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# Federal Register

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## DEPARTMENT OF AGRICULTURE

## Animal and Plant Health Inspection Service

## 7 CFR Parts 300 and 301

**[Docket No. 96–069–2]**

## High-Temperature Forced-Air Treatments for Citrus

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are adding new treatments to the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference into the Code of Federal Regulations, for certain citrus. We are adding treatments involving high-temperature forced air for tangerines, oranges (except navel oranges), and grapefruit from Mexico and areas of the United States that are infested with plant pests in the genus *Anastrepha,* which includes *A. ludens,* the Mexican fruit fly. This action provides an additional option for treating these fruits.

**DATES:** This regulation is effective December 10, 1998. The incorporation by reference of the material described in the rule is approved by the Director of the Federal Register as of December 10, 1998.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ron Campbell, Operations Officer, Port Operations, PPQ, APHIS, 4700 River Road Unit 136, Riverdale, MD 20737–1236, (301) 734–6799; or e-mail RonaldCCampbell@usda.gov.

**SUPPLEMENTARY INFORMATION:**

### Background

To prevent the spread of plant pests into or within the United States, the U.S. Department of Agriculture (USDA) restricts the importation and interstate movement of many articles, including fruits. As a condition of movement, some fruits are required to be treated for plant pests in accordance with title 7 of the Code of Federal Regulations (CFR). The Plant Protection and Quarantine Treatment Manual (PPQ Treatment Manual) of the USDA's Animal and Plant Health Inspection Service (APHIS) contains approved treatment schedules and is incorporated by reference into the CFR at 7 CFR 300.1.

Pursuant to 7 CFR 319.56–2x, USDA allows tangerines, oranges, and grapefruit from Mexico to be imported into the United States if treated in accordance with the PPQ Treatment Manual. In addition, because the Mexican fruit fly infests parts of the United States (currently, parts of Texas and California), USDA regulates the interstate movement of certain articles from those areas under the Mexican Fruit Fly Quarantine and Regulations, found at 7 CFR 301.64 through 301.64–10. Acceptable treatments for the regulated articles are listed in § 301.64–10. Treatments for the regulated articles themselves include a cold treatment, fumigation with methyl bromide, and a high-temperature forced-air treatment for grapefruit of a certain size; treatments for the fields or groves in which the regulated articles are grown include a soil drench with diazinon and a malathion bait spray.

On December 30, 1997, we published in the **Federal Register** (62 FR 67761–67763, Docket No. 96–069–1) a proposed rule to amend § 301.64–10 and the PPQ Treatment Manual to include the high-temperature forced-air treatments described below for tangerines, oranges (except navel oranges), and grapefruit from Mexico and areas of the United States affected with pests in the genus *Anastrepha,* which includes *A. ludens,* the Mexican fruit fly. We proposed to amend 7 CFR 300.1 to show that the PPQ Treatment Manual had been so changed and to amend § 301.64–10(e) of the Mexican fruit fly regulations to indicate that treatments for movement of domestic grapefruit, oranges (except navel oranges), and tangerines from areas of the United States infested with the Mexican fruit fly are included in the PPQ Treatment Manual. We also proposed to remove from § 301.64–10 paragraphs (a), (d), and (e) the specific requirements for the cold treatment, the methyl bromide treatment, and the high-temperature forced-air treatment. Because all of these treatments are listed in the PPQ Treatment Manual, there appeared to be no reason for them also to be listed in the CFR. Finally, we proposed to amend 301.64–10(b) to make some minor grammatical and punctuation changes.

The high-temperature forced-air treatments we proposed were developed by the USDA's Agricultural Research Service (ARS) in conjunction with APHIS–PPQ Methods Development. As proposed, the treatments must be administered in sealed, insulated chambers; the air may be heated in the chambers, or hot air may be introduced into the chambers.

### Proposed Treatment for Tangerines

The tangerines must be commercial size 125 or smaller. (Commercial size is an index based on the approximate number of fruit that fit into a commercial shipping box [40 lb or 18.14 kg].) Each tangerine must weigh no more than 8.6 oz (245 g).

Place the tangerines in the chamber and seal it. Raise the air temperature in the chamber to 113 °F (45 °C) or higher for 210 minutes. (Treatment time begins when the coldest air temperature sensor reaches 113 °F.) Record the temperature of each sensor at least once every 2 minutes throughout the treatment. Any temperature reading below 113 °F will invalidate the entire treatment. If any low temperature readings occur, repeat (do not simply extend) the treatment.

### Proposed Treatment for Oranges (Except Navel Oranges)

The oranges must be commercial size 100 or smaller. Each orange must weigh no more than 16.5 oz (468 g).

Place the oranges in the chamber and seal it. Raise the air temperature in the chamber to 114.8 °F (46 °C) or higher for 250 minutes. (Treatment time begins when the coldest air temperature sensor reaches 114.8 °F.) Record the temperature of each sensor at least once every 2 minutes throughout the treatment. Any temperature reading below 114.8 °F will invalidate the entire treatment. If any low temperature readings occur, repeat (do not simply extend) the treatment.

### Proposed Treatment for Grapefruit

The grapefruit must be commercial size 70 or smaller. Each grapefruit must weigh no more than 18.8 oz (532 g).

Place the grapefruit in the chamber and seal it. Raise the air temperature in the chamber to 114.8 °F (46 °C) or higher for 300 minutes. (Treatment time begins when the coldest air temperature sensor reaches 114.8 °F.) Record the temperature of each sensor at least once every 2 minutes throughout the treatment. Any temperature reading below 114.8 °F will invalidate the entire treatment. If any low temperature readings occur, repeat (do not simply extend) the treatment.

**Comments**

We solicited comments concerning our proposal for 60 days ending March 2, 1998. We received 28 comments by that date. They were from Mexican citrus producers, USDA employees, a State government, and a citrus industry association. The commenters generally supported the adoption of the proposed high-temperature forced-air treatments; several commenters stated that the proposed treatments were an environmentally sound and feasible alternative to methyl bromide treatments. However, some of the commenters suggested changes or clarifications to the proposed treatments. These comments are discussed below.

One commenter had several questions regarding administration of the proposed treatments: (1) Would the location of the temperature probes make any difference to the efficacy of the treatments (i.e., does it matter if the probes are in the air in the open space in the chamber or if they are attached to a fruit in the fruit container)? (2) Fruits cooled at room temperature have an extended treatment effect, whereas fruits that are hydrocooled or cooled in some other manner following treatment do not. Will there be a requirement addressing the cool-down of the fruits following treatment? (3) Would climatic conditions at the packing plant make any difference in the prescribed length of the proposed treatments? (In the commenter's experience, it takes longer during cold and damp conditions for the internal temperature of fruits treated in high-temperature forced-air or vapor-heat chambers to reach the required final treatment temperature than during hot and dry conditions.) (4) Would it make any difference if the fruits were treated in lugs (fruits arranged in single layers stacked one on top of another) or in bulk bins (fruits compiled in containers that measure about 2′h × 4′l × 4′w)? (5) Would the ratio of air space and fruit volume in a chamber affect the prescribed length and efficacy of the treatment? (6) Would not the monitoring of the treatments be more precise and safer if the protocol prescribed the measurement of the internal temperature of the citrus fruits and duration needed at that temperature to ensure larvae mortality rather than the temperature and time of the air in the chamber?

A comment provided by the ARS researchers who did the research upon which the proposed high-temperature forced-air treatments were based suggested the inclusion of a high-temperature forced-air treatment for navel oranges. The commenters stated that research proving the quarantine security of the treatment for navel oranges was performed shortly after the completion of the research on the treatments for oranges other than navel oranges, tangerines, and grapefruit. The researchers also suggested changes to clarify the prescribed fruit sizes. Finally, the researchers suggested adding information to the proposed treatments about fruit tolerance, i.e., the maximum temperatures to which the fruit could be subjected and still maintain market quality.

After carefully considering the six procedural questions and the suggestions for clarifying and expanding the proposed treatments, we have decided to change the proposed treatment procedures to a single treatment procedure for tangerines, oranges (except navel oranges), and grapefruit. We believe that this procedure will be an effective treatment for these fruits and will better ensure efficacy and consistency in administration of the high-temperature forced-air treatment. We have reviewed the completed data concerning the inclusion of a high-temperature forced-air treatment for navel oranges provided by ARS and have determined that the treatment would be effective for navel oranges as well. Accordingly, in the near future we will publish a direct final rule to allow its use on navel oranges. We are amending the PPQ Treatment Manual to include the treatment spelled out below. We are also amending 7 CFR 300.1 to show that there has been a revision to the PPQ Treatment Manual. We are also amending § 301.64–10(e) to indicate that grapefruit, oranges (except navel oranges), and tangerines may be treated with high-temperature forced air as specified in the PPQ Treatment Manual.

**New Treatment Procedure**

The treatment must be administered in sealed, insulated chambers; the air may be heated in the chambers, or hot air may be introduced into the chambers. The number of temperature probes must be approved in advance during the chamber certification procedure.

Place the temperature probes into the centers of the largest fruit in the load. Place the fruit inside the chamber, seal it, and begin the treatment.

The target temperature is 44 °C (111.2 °F). Throughout the treatment, record the fruit center temperatures at least once every 2 minutes. If it takes less than 90 minutes for the fruit to reach the target temperature, the fruit must remain at the target temperature for any additional time needed to reach 90 minutes, plus another 100 minutes. If the fruit takes 90 minutes or more to reach the target temperature, the fruit must remain at the target temperature for an additional 100 minutes only.

Hydrocooling after treatment is optional.

The treatment is for fruit of the following sizes:

| Fruit Variety | Standard Pack Count [1] | Container Size (bu) | Maximum Weight (g) | Maximum Diameter (in) |
|---|---|---|---|---|
| Tangerines | 120 | 4/5 | 245 (8.6 oz) | Not specified. |
| Oranges (except navel oranges | 100 | 1 2/5 | 468 (16.4 oz) | 3 13/16 |
| Grapefruit | 70 | 1 2/5 | 536 (18.8 oz) | 4 5/16 |

[1] Standard pack count is an index based on the approximate number of fruit of uniform diameter that fit into a bushel container of the size indicated.

**Examples of Treatment Administration**

1. If the center temperature of fruit located in the coolest location inside a forced-air chamber required 112 minutes to reach 44 °C, then the total treatment time for the fruit load would be 212 minutes (112 minutes approach time to target temperature +100 minutes treatment time at target temperature).

2. If the center temperature of fruit located in the coolest location inside a forced-air chamber required 80 minutes to reach 44 °C, then the total treatment time for the fruit load would be 190 minutes (80 minutes approach time to target temperature + 10 additional minutes so that approach time is the required 90 minutes in duration + 100 minutes treatment time at target temperature).

**Note:** Tolerance data may be obtained from the USDA–ARS Subtropical Research Center, Crop Quality & Fruit Insects, 2301 S. International Blvd., Weslaco, TX 78596, or the USDA–APHIS–PPQ Oxford Plant Protection Center, 901 Hillsboro Street, Oxford, NC 27565.

We developed the changes in treatment procedure in consultation with the ARS researchers who performed the research upon which the proposed procedures were based. The new procedure is based upon the same research. As discussed below, we and ARS believe the modifications address the comments concerning placement of the temperature probes, measurement of internal fruit temperature, fruit cool-down following treatment, variable climatic conditions at the treatment facilities, arrangement of the fruit during treatment, and ratio of air space and fruit volume in the treatment chamber.

We agree that placing the temperature probes in the centers of the largest fruit in the load to measure the internal temperatures of the fruit instead of placing the temperature probes in the open space of the chamber to measure the air temperature in the chamber is a better method of monitoring the treatment to ensure larvae mortality. Variable climatic conditions at the treatment facilities (which could cause differences in the amount of time needed for fruit centers to reach the target temperature) are of no consequence now because the new procedure allows for a variable approach time to the target temperature but requires a minimum approach time of 90 minutes. Fruit cool-down is irrelevant under the new procedure because treating the fruit at the temperature and for the time prescribed ensures larvae mortality, so any extended treatment effect resulting from cooling the fruit at room temperature would be unnecessary. Fruit placement in the treatment chamber and the ratio of air space and fruit volume does not matter because, by measuring the center temperatures of the largest fruit in the load as required in the new procedure, treatment administrators will know that the fruit in the load has been raised to the target temperature. (Using the procedure specified in the proposed rule, treatment administrators might not know whether fruit in the center of a bulk bin had reached the required temperature because the proposed treatments called for measuring the temperature of the air in the chamber.)

The new procedure better describes the required sizes of the fruit undergoing treatment, as requested by the ARS researchers who did the research on the high-temperature forced-air treatments. We are not including the fruit tolerance information suggested by the researchers because the data submitted was for fruit of different sizes than those specified in this rule. However, we have provided two sources that treatment administrators may consult for information on fruit tolerance. We are also not allowing the treatment to be used for navel oranges at this time. However, as stated previously, we have reviewed the data provided by the ARS researchers and have determined that the treatment would be effective for use on navel oranges. In the near future, we will publish a direct final rule to allow the treatment to be used on navel oranges.

One commenter expressed concern that, by removing from the CFR certain treatments that are also listed in the PPQ Treatment Manual, we might gain flexibility by eliminating the need to publish treatment changes in the **Federal Register**, but the result would be less industry input.

This commenter has misunderstood the effect of incorporation by reference. Because the PPQ Treatment Manual is incorporated by reference into the CFR, any changes made to the Manual must be made in accordance with the procedures for making changes to the CFR. Therefore, before we make any changes to the treatments listed in either the PPQ Treatment Manual or in title 7 of the CFR, we must publish the changes as a proposed rule in the **Federal Register** for public comment.

We are making the proposed nonsubstantive changes to paragraphs (a) and (e) of § 301.64–10 to avoid redundancies with the PPQ Treatment Manual. We are also making some nonsubstantive changes to paragraphs (b) and (c) of § 301.64–10 to correct some punctuation and formatting errors.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

**Effective Date**

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. The shipping season for citrus from Mexico, Texas, and California is under way. Making this rule effective immediately will allow interested producers and others in the marketing chain to benefit during this year's shipping season. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

**Executive Order 12866 and Regulatory Flexibility Act**

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This rule, which allows the use of a process involving high-temperature forced air for treating tangerines, oranges (except navel oranges), and grapefruit from areas of Mexico and the United States infested with plant pests of the genus *Anastrepha* (which includes *A. ludens*, the Mexican fruit fly), could affect producers and treatment administrators in areas in Texas and California regulated for the Mexican fruit fly and U.S. citrus imports from Mexico.

Regulated areas in Texas comprise a major citrus-growing region of the United States. Four of the five regulated production areas in Texas were infested in fiscal year (FY) 1996 and FY 1997. Methyl bromide fumigation is the method used to treat fruit for export and for shipment to other U.S. citrus-growing areas, although other treatments (including an existing high-temperature forced-air alternative for grapefruit) and a bait-spray program are options available to producers. More than 90 percent of the fruit treated are grapefruit; the rest are oranges. In FY 1996, 5.4 million pounds of citrus from regulated areas of Texas were fumigated, and this amount increased to 19.2 million pounds in FY 1997. Ninety

percent of the treated fruit is shipped to California, and 10 percent, to Mexico.

Eight fumigation companies treat citrus shipped from the regulated areas of Texas. The fumigation facilities are located in the packing sheds of major packing houses. Some are private companies; others operate as cooperatives. All of the fumigation companies can be considered small entities by Small Business Administration standards (annual revenue less than $5 million, averaged over 3 years).

The use of high-temperature forced air as an alternative treatment could lead to a reduction in revenue for the fumigation companies, if the new treatment is found by the growers to be financially preferable. At growers' meetings in the area, the possibility of building and operating one or two high-temperature forced-air treatment facilities as cooperative ventures has been discussed. However, the consensus has been that more information is needed before the sizable expenditures such facilities would require are made. Major doubts remain in the minds of producers concerning the speed with which the fruit could be treated and the risk of fruit being damaged by the high temperatures. Producers are unlikely to replace fumigation with the proposed high-temperature forced-air process until these issues are resolved to their satisfaction.

The area in California currently infested with the Mexican fruit fly is in San Diego County. Avocados are the major crop in the regulated area. Because this outbreak occurred recently, there is little history of treatment for movement of restricted articles from the area.

Mexico is a major supplier of oranges to the United States, providing one-third or more of all oranges imported. Tangerine imports from Mexico are less significant, while grapefruit shipments from Mexico have been minor or nonexistent. In 1996, Mexico exported 7,633 metric tons of oranges (worth about $3.7 million), 2,596 metric tons of tangerines ($1.2 million), and 109 metric tons of grapefruit ($88,000) to the United States; the combined import value of the three fruits was about $5 million. In 1997, Mexico exported 10,461 metric tons of oranges ($4.9 million), 4,198 metric tons of tangerines ($1.6 million), and no grapefruit to the United States; the combined import value was about $6.5 million. This pattern has continued in the 1998 export season, with about 9,100 metric tons of oranges and about 3,100 metric tons of tangerines entering the United States from Mexico.

Citrus imports from Mexico that originate in certain areas of the State of Sonora considered to be free of the Mexican fruit fly require only certification. Citrus imports from the rest of Mexico are treated for *Anastrepha* species using methyl bromide fumigation. Outside the designated areas in Sonora, tangerines are the most commonly exported fruit to the United States because they are not as susceptible to damage from methyl bromide fumigation as are oranges. Conversely, only oranges are exported to the United States from the designated areas of Sonora.

The use of high-temperature forced air as an alternative treatment will provide an incentive for citrus producers outside of Sonora to broaden their citrus exports to the United States to include oranges because the phytotoxicity of oranges to methyl bromide will no longer be an issue. A facility capable of treating citrus with high-temperature forced air has been built in Mexico. Its use is expected to widen the citrus export season for producers outside of Sonora: The export season for tangerines from Mexico is from November to February; the export season for all citrus from Mexico is from October to May or June.

Citrus producers in the regulated areas in Texas are expected to monitor the experiences of Mexican producers with the new treatment and reassess its future adoption. Effects of this rule on fumigation companies in the regulated areas of Texas (and on any fumigation companies that may serve producers in the newly regulated area in California) are expected to be negligible to nonexistent. The proposed treatment will provide another alternative for producers and fumigation companies.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

**Paperwork Reduction Act**

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

**List of Subjects**

*7 CFR Part 300*

Incorporation by reference, Plant diseases and pests, Quarantine.

*7 CFR Part 301*

Agricultural commodities, Incorporation by reference, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR parts 300 and 301 as follows:

## PART 300—INCORPORATION BY REFERENCE

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

**Authority:** 7 U.S.C. 150ee, 154, 161, 162, and 167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 300.1, the section heading and paragraph (a) introductory text are revised to read as follow:

### § 300.1 Materials incorporated by reference.

(a) *Plant Protection and Quarantine Treatment Manual.* The Plant Protection and Quarantine Treatment Manual, which was reprinted November 30, 1992, and includes all revisions through January 1, 1999 has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

## PART 301—DOMESTIC QUARANTINE NOTICES

3. The authority citation for part 301 continues to read as follows:

**Authority:** 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

4. Section 301.64–10 is revised to read as follows:

### § 301.64–10 Treatments.

Treatments for regulated articles must be one of the following:

(a) *Apple, grapefruit, orange, pear, plum, pomegranate, quince, and tangerine.* Cold treatment in accordance with the PPQ Treatment Manual. For the full identification of this standard,

see § 300.1 of this chapter, ''Materials incorporated by reference''.

(b) *Soil within the dripline of plants that are producing or that have produced fruits listed in § 301.64–2(a).* Remove host fruits from host plants prior to treatment. Using ground equipment, drench the soil under the host plants with 5 lb a.i. diazinon per acre (0.12 lb or 2 oz avdp per 1,000 $ft^2$) mixed with 130 gal of water per acre (3 gal per 1,000 $ft^2$). Apply at 14- to 16-day intervals as needed. Repeat applications if infestations become established. In addition to the above, follow all label directions for diazinon.

(c) *Premises.* A field, grove, or area that is located within the quarantined area but outside the infested core area, and that produces regulated articles, must receive regular treatments with malathion bait spray. These treatments must take place at 6- to 10-day intervals, starting a sufficient time before harvest (but not less than 30 days before harvest) to allow for completion of egg and larvae development of the Mexican fruit fly. Determination of the time period must be based on the day degrees model for Mexican fruit fly. Once treatment has begun, it must continue through the harvest period. The malathion bait spray treatment must be applied by aircraft or ground equipment at a rate of 2.4 oz of technical grade malathion and 9.6 oz of protein hydrolysate per acre.

(d) *Grapefruit and oranges.* Methyl bromide in accordance with the PPQ Treatment Manual.

(e) *Grapefruit, oranges (except navel oranges), and tangerines.* High-temperature forced air in accordance with the PPQ Treatment Manual.

Done in Washington, DC, this 2nd day of December 1998.

**Joan M. Arnoldi,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 98–32589 Filed 12–9–98; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 98–NM–263–AD; Amendment 39–10930; AD 98–13–12 R1]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 737, 747, 757, 767, and 777 Series Airplanes

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

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

**SUMMARY:** This amendment revises an existing airworthiness directive (AD), applicable to certain Boeing Model 737, 747, 757, 767, and 777 series airplanes, that currently requires a one-time inspection to detect discrepancies of the fasteners that connect the pushrods to the rudder pedal assemblies; and corrective actions, if necessary. That AD was prompted by reports of loose and missing fasteners due to incorrect installation. The actions specified by that AD are intended to prevent loss of rudder control, jamming of the rudder system, uncommanded movement of the rudder system, and consequent reduced controllability of the airplane, due to loose or missing fasteners that connect the pushrods to the rudder pedal assemblies. This amendment clarifies certain procedures for the required inspection and expands the applicability to include additional airplanes, which are not currently on the U.S. Register.

**DATES:** Effective December 28, 1998.

The incorporation by reference of certain publications listed in the regulations, is approved by the Director of the Federal Register as of December 28, 1998.

The incorporation by reference of certain other publications was approved previously by the Director of the Federal Register as of July 6, 1998 (63 FR 33246, June 18, 1998).

Comments for inclusion in the Rules Docket must be received on or before February 8, 1999.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–263–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

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:** R.C. Jones, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1118; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:** On June 11, 1998, the FAA issued AD 98–13–12, amendment 39–10600 (63 FR 33246, June 18, 1998), applicable to certain Boeing Model 737, 747, 757, 767, and 777 series airplanes. That AD requires a one-time inspection to detect discrepancies of the fasteners that connect the pushrods to the rudder pedal assemblies; and corrective actions, if necessary. That action was prompted by reports of loose and missing fasteners due to incorrect installation. The requirements of that AD are intended to prevent loss of rudder control, jamming of the rudder system, uncommanded movement of the rudder system, and consequent reduced controllability of the airplane, due to loose or missing fasteners that connect the pushrods to the rudder pedal assemblies.

### Actions Since Issuance of the AD

Since the issuance of that AD, the FAA has become aware that paragraph (a) of the rule misidentifies the area to be inspected. Currently, that AD specifies that operators are to inspect the fasteners that connect the ''forward'' ends of the pushrods to the rudder pedal assemblies. However, the FAA intended to omit any reference to either the forward ends or the rear ends of the pushrods. (For certain models, the forward end of the pushrod is the subject inspection area; for other models, the rear end of the pushrod is the subject inspection area.) Therefore, the FAA has revised paragraph (a) of the rule to identify ''the ends'' of the pushrods as the appropriate area for the required inspection.

### New Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–27A2368, Revision 1, dated May 7, 1998, and Revision 2, dated May 28, 1998 (for Boeing Model 747 series airplanes). Revision 1 adds part numbers and respective torque value specifications for the nuts for the rudder pedal pushrods; these specifications had been inadvertently omitted from the original version of that alert service bulletin. Revision 2 identifies three Model 747 series airplanes that had been incorrectly omitted from the effectivity listing in Boeing Alert Service Bulletin 747–27A2368, dated March 26, 1998 (which is cited in the existing AD as the appropriate source of service information for affected Model 747 series airplanes). The inspection procedures described in Revisions 1 and 2 are identical to those described in the original version of the alert service bulletin. The only change made by

Revision 1 is to add specifications for certain parts. The only change made by Revision 2 is to expand the effectivity to include additional airplanes.

In addition, the FAA has reviewed and approved Boeing Alert Service Bulletin 777–27A0029, Revision 1, dated October 1, 1998 (for Model 777 series airplanes), which deletes a reference to the Boeing Standard Overhaul Practices Manual. The torque range in the manual was higher than required for the nut in this application; however, the low-end torque specified in that alert service bulletin has not changed. Revision 1 also expands the effectivity to include additional airplanes.

**Explanation of Requirements of the Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent loss of rudder control, jamming of the rudder system, uncommanded movement of the rudder system, and consequent reduced controllability of the airplane, due to loose or missing fasteners that connect the pushrods to the rudder pedal assemblies. This AD revises AD 98–13–12 to continue to require a one-time inspection to detect discrepancies of the fasteners that connect the pushrods to the rudder pedal assemblies; and corrective actions, if necessary. In addition, this action clarifies the inspection procedures and expands the applicability to include additional airplanes, which are not currently on the U.S. Register. The actions are required to be accomplished in accordance with the applicable alert service bulletin.

In accordance with various bilateral airworthiness agreements with countries around the world, the FAA is obligated to advise foreign airworthiness authorities of unsafe conditions identified in products manufactured in the United States; the issuance of AD's is the means by which the FAA satisfies this obligation.

**Cost Impact**

There are approximately 5,572 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,477 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $88,620, or $60 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.

Operators should note that none of the airplanes added by this action is on the U.S. Register. The airplanes added to the applicability by this revised AD 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 that this revised rule is necessary to ensure that the unsafe condition is addressed in the event that any of the three subject airplanes are imported and placed on the U.S. Register in the future.

**Determination of Rule's Effective Date**

Because none of the airplanes added by this action is on the U.S. Registry, this revision will not increase the burden on U.S. operators beyond the requirements of the existing AD. For this reason, it is found that notice and opportunity for prior public comment hereon are unnecessary, and that good cause exists for making this amendment 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 Number 98–NM–263–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) 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 removing amendment 39–10600 (63 FR 33246, June 18, 1998), and by adding a new airworthiness directive (AD),

amendment 39–10930, to read as follows:

**98–13–12 R1 Boeing:** Amendment 39–10930. Docket 98–NM–263–AD. Revises AD 98–13–12, Amendment 39–10600.

*Applicability:* Model 737, 747, 757, 767, and 777 series airplanes; as listed in the following Boeing alert service bulletins; certificated in any category.

| Alert Service Bulletin | Date |
|---|---|
| 737–27A1212 ..... | Mar. 26, 1998. |
| 747–27A2368, Revision 2 ... | May 28, 1998. |
| 757–27A0128 ..... | Mar. 26, 1998. |
| 767–27A0156 ..... | Mar. 26, 1998. |
| 777–27A0029, Revision 1 ... | Oct. 1, 1998. |

**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 (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

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

To prevent loss of rudder control, jamming of the rudder system, uncommanded movement of the rudder system, and consequent reduced controllability of the airplane, due to loose or missing fasteners that connect the pushrods to the rudder pedal assemblies, accomplish the following:

(a) Within 90 days after July 6, 1998 (the effective date of AD 98–13–12, amendment 39–10600), perform a one-time inspection to detect discrepancies of the fasteners that connect the ends of the pushrods to the rudder pedal assemblies; in accordance with Boeing Alert Service Bulletin 737–27A1212, dated March 26, 1998; 747–27A2368, dated March 26, 1998, Revision 1, dated May 7, 1998, or Revision 2, dated May 28, 1998; 757–27A0128, dated March 26, 1998; 767–27A0156, dated March 26, 1998; or 777–27A0029, Revision 1, dated October 1, 1998; as applicable.

(1) If no discrepancy is detected, no further action is required by this AD.

(2) If any discrepancy is detected, prior to further flight, perform the applicable corrective action in accordance with the applicable alert service bulletin.

**Note 2:** For Boeing Model 777 series airplanes, inspection and corrective action performed prior to the effective date of this AD in accordance with Boeing Alert Service Bulletin 777–27A0029, dated March 26, 1998, are considered acceptable for compliance with the applicable requirements of paragraph (a) of this AD.

(b) Submit a report of inspection findings (discrepant findings only) to the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (425) 227–1181; and to the Boeing Commercial Airplane Group, Attention: Manager, Airline Support, P.O. Box 3707, Seattle, Washington 98124–2207; at the applicable time specified in paragraph (b)(1) or (b)(2) of this AD. The report must include a description of any discrepancy found, the airplane serial number, and the total number of landings and flight hours accumulated on the airplane. Discrepant findings include, but are not limited to, loose or missing fasteners, inadequately torqued fasteners, and fasteners incorrectly installed on the pedal assemblies or pushrod bearing surfaces. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspection is accomplished after July 6, 1998: Submit the report within 10 days after performing the inspection required by paragraph (a) of this AD.

(2) For airplanes on which the inspection has been accomplished prior to July 6, 1998: Submit the report within 10 days after the effective date of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. 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 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

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

(e) The actions shall be done in accordance with:

- Boeing Alert Service Bulletin 737–27A1212, dated March 26, 1998;
- Boeing Alert Service Bulletin 757–27A0128, dated March 26, 1998;
- Boeing Alert Service Bulletin 767–27A0156, dated March 26, 1998;
- Boeing Alert Service Bulletin 777–27A0029, Revision 1, dated October 1, 1998;
- Boeing Alert Service Bulletin 747–27A2368, dated March 26, 1998;
- Boeing Alert Service Bulletin 747–27A2368, Revision 1, dated May 7, 1998; or
- Boeing Alert Service Bulletin 747–27A2368, Revision 2, dated May 28, 1998.

(1) The incorporation by reference of Boeing Alert Service Bulletin 747–27A2368, Revision 1, dated May 7, 1998; Boeing Alert Service Bulletin 747–27A2368, Revision 2, dated May 28, 1998; and Boeing Alert Service Bulletin 777–27A0029, Revision 1, dated October 1, 1998, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Alert Service Bulletin 737–27A1212, dated March 26, 1998; Boeing Alert Service Bulletin 757–27A0128, dated March 26, 1998; Boeing Alert Service Bulletin 767–27A0156, dated March 26, 1998; and Boeing Alert Service Bulletin 747–27A2368, dated March 26, 1998; was approved previously by the Director of the Federal Register as of July 6, 1998 (63 FR 33246, June 18, 1998).

(3) 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.

(f) This amendment becomes effective on December 28, 1998.

Issued in Renton, Washington, on November 30, 1998.

**Darrell M. Pederson,**

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

[FR Doc. 98–32360 Filed 12–9–98; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 97–NM–153–AD; Amendment 39–10933; AD 98–25–07]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A300–600 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300–600 series airplanes, that requires repetitive inspections to detect cracks in the angle fitting at frame 40 of the center wing box, and corrective actions, if necessary; and eventual modification of that angle fitting, which terminates the repetitive inspections. 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 cracks in the center wing box angle fitting, which could result in the failure of the center wing box at frame 40, and consequent reduced structural integrity of the airplane.

**DATES:** Effective January 14, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 14, 1999.

**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 A300–600 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on October 14, 1998 (63 FR 55063). That action proposed to require repetitive inspections to detect cracks in the angle fitting at frame 40 of the center wing box, and corrective actions, if necessary; and eventual modification of that angle fitting, which would terminate the repetitive inspections.

### 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 54 Model A300–600 series airplanes of U.S. registry will be affected by this AD.

It will take approximately 36 work hours per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $116,640, or $2,160 per airplane, per inspection cycle.

It will take approximately 754 work hours per airplane to accomplish the required modification, at an average labor rate of $60 per work hour. Required parts will cost approximately $11,605 per airplane. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $3,069,630, or $56,845 per airplane.

The cost impact figures discussed above are 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:

**98–25–07 Airbus:** Amendment 39–10933. Docket 97–NM–153–AD.

*Applicability:* Model A300–600 series airplanes on which Airbus Modification 10453 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 (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

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

To prevent cracks in the center wing box angle fitting, which could result in the failure of the center wing box at frame 40, and consequent reduced structural integrity of the airplane, accomplish the following:

(a) Prior to the accumulation of the threshold specified in Table 1 of this AD, as applicable, or within 1,500 flight cycles after the effective date of this AD, whichever occurs later: Perform a detailed visual, eddy current, or liquid penetrant inspection to detect cracking in the angle fitting of frame 40 (both left and right), with the nut removed, in accordance with Airbus Service Bulletin A300–57–6052, Revision 1, dated July 22, 1996. Thereafter, repeat the inspections at the interval specified in Table 1 of this AD, as applicable, until the actions required by paragraph (c) of this AD have been accomplished.

TABLE 1

| Average flight time (AFT): flight hours/flight cycles | Threshold (flight cycles) | Visual inspection interval (flight cycles) | Eddy current/ liquid penetrant inspection interval (flight cycles) |
|---|---|---|---|
| 2.10–2.49 | 5,900 | 4,700 | 5,300 |
| 2.50–2.99 | 5,600 | 4,400 | 4,900 |
| 3.00–3.49 | 5,200 | 4,100 | 4,600 |
| 3.50–3.99 | 4,800 | 3,800 | 4,200 |
| 4.00–4.49 | 4,400 | 3,500 | 3,900 |
| 4.50–4.99 | 4,000 | 3,200 | 3,500 |
| 5.00–5.49 | 3,600 | 2,800 | 3,200 |
| 5.50–5.99 | 3,200 | 2,500 | 2,800 |
| 6.00–6.50 | 2,800 | 2,200 | 2,500 |

(b) Except as provided by paragraph (d) of this AD, if any crack is found during an inspection required by paragraph (a) of this AD, prior to further flight, accomplish follow-on corrective actions in accordance with the procedures specified in Airbus Service Bulletin A300–57–6052, Revision 1, dated July 22, 1996.

(c) Within 4 years after the effective date of this AD, modify the angle fitting at frame 40 (both left and right) in accordance with Airbus Service Bulletin A300–57–6053, Revision 1, dated October 31, 1995. Accomplishment of the modification constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

(d) If any crack is found during an inspection required by paragraph (a) of this AD, and the applicable service bulletin specifies to contact the manufacturer for an appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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.

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

(g) Except as provided by paragraph (d) of this AD, the actions shall be done in accordance with Airbus Service Bulletin A300–57–6052, Revision 1, dated July 22, 1996; and Airbus Service Bulletin A300–57–6053, Revision 1, dated October 31, 1995, which contains the following list of effective pages:

| Page No. | Revision level shown on page | Date shown on page |
|---|---|---|
| 1, 7–9, 11–15, 19–24, 35, 36, 41, 42, 45–47 | 1 | October 31, 1995. |
| 2–6, 10, 16–18, 25–34, 37–40, 43, 44 | Original | February 21, 1995. |

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 (CN) 95–111–181(B) R1, dated October 23, 1996.

(h) This amendment becomes effective on January 14, 1999.

Issued in Renton, Washington, on December 2, 1998.

**John W. McGraw,**

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

[FR Doc. 98–32623 Filed 12–9–98; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 98–NM–237–AD; Amendment 39–10935; AD 98–25–09]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier Model DHC–7 and DHC–8 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model DHC–7 and DHC–8 series airplanes, that requires a one-time visual inspection to determine the serial number of the brake shuttle valves of the main landing gear (MLG); and replacement of the filter fittings with new filter fittings, if necessary. 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 ensure that proper filter fittings are installed. Installation of improper filter fittings could result in failure of the brake shuttle valves, and consequent loss of brake effectiveness, which could reduce controllability of the airplane during taxi, takeoff, and landing roll.

**DATES:** Effective January 14, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 14, 1999.

**ADDRESSES:** The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. 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 FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Anthony E. Gallo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7510; fax (516) 568–2716.

**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 Bombardier Model DHC–7 and DHC–8 series airplanes was published in the **Federal Register** on October 2, 1998 (63 FR 52994). That action proposed to require a one-time visual inspection to determine the serial number of the brake shuttle valves of the main landing gear (MLG); and replacement of the filter fittings with new filter fittings, if necessary.

## 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 260 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $15,600, or $60 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:

**98–25–09 Bombardier, Inc. (Formerly de Havilland, Inc.):** Amendment 39–10935. Docket 98–NM–237–AD.

*Applicability:* Model DHC–7–1, –100, –101, –102, and –103 series airplanes, having serial numbers (S/N) 003 through 113 inclusive; and Model DHC–8–100, –200, and –300 series airplanes, having S/N's 003 through 498 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 (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

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

To prevent failure of the brake shuttle valves, and consequent loss of the brake effectiveness, due to installation of improper filter fittings, which could reduce controllability of the airplane during taxi, takeoff, and landing roll, accomplish the following:

(a) Within 3 months after the effective date of this AD, perform a one-time visual inspection to determine the serial numbers of the brake shuttle valves of the main landing gear (MLG), in accordance with Bombardier Alert Service Bulletin S.B. A7–32–102, Revision 'A,' dated November 26, 1997 (for Model DHC–7 series airplanes), or S.B. A8–32–139, Revision 'A,' dated December 19, 1997 (for Model DHC–8 series airplanes), as applicable. If any brake shuttle valve having S/N 2162A through 2244A inclusive is installed, prior to further flight, replace the filter fittings with new filter fittings, in accordance with the applicable alert service bulletin.

(b) As of the effective date of this AD, no person shall install a brake shuttle valve having part number 5084–1 on any airplane, unless it has been inspected and any defective filter fitting replaced, in accordance with the requirements of this AD.

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

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

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

(e) The inspection and replacement shall be done in accordance with Bombardier Alert Service Bulletin S.B. A7–32–102, Revision 'A,' dated November 26, 1997, or Bombardier Alert Service Bulletin S.B. A8–32–139, Revision 'A,' dated December 19, 1997, as applicable. 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 Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada.

Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; 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 Canadian airworthiness directive CF–98–05, dated March 2, 1998.

(f) This amendment becomes effective on January 14, 1999.

Issued in Renton, Washington, on December 2, 1998.

**John W. McGraw,**

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

[FR Doc. 98–32622 Filed 12–9–98; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 98–NM–216–AD; Amendment 39–10934; AD 98–25–08]**

**RIN 2120–AA64**

## Airworthiness Directives; British Aerospace BAe Model ATP Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace BAe Model ATP airplanes. This amendment requires repetitive inspections to detect wear damage on the nosewheel steering control cables located in the nosewheel bay of the nose landing gear (NLG); repetitive testing of the cable pulleys to detect seizing; and corrective action, if necessary. 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 failure of the nosewheel steering control cables, which could result in loss of the nosewheel steering or collapse of the NLG, and possible injury to the flightcrew and passengers.

**DATES:** Effective January 14, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 14, 1999.

**ADDRESSES:** The service information referenced in this AD may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. 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 British Aerospace BAe Model ATP airplanes was published in the **Federal Register** on October 15, 1998 (63 FR 55350). That action proposed to require repetitive inspections to detect wear damage on the nosewheel steering control cables located in the nosewheel bay of the nose landing gear (NLG); repetitive testing of the cable pulleys to detect seizing; and corrective action, if necessary.

### 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.

### Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

### Cost Impact

The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD.

It will take approximately 2 work hours per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $1,200, or $120 per airplane, per inspection cycle.

It will take approximately 4 work hours per airplane to accomplish the required replacement, at an average labor rate of $60 per work hour. Required parts will cost approximately $775 per airplane. Based on these figures, the cost impact of the replacement required by this AD on U.S. operators is estimated to be $10,150, or $1,015 per airplane.

The cost impact figures discussed above are 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:

**98–25–08 British Aerospace Regional Aircraft** (Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited): Amendment 39–10934. Docket 98–NM–216–AD.

*Applicability:* Model ATP airplanes, constructor's numbers 2002 through 2063 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 (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 failure of the nosewheel steering control cables, which could result in loss of the nosewheel steering or collapse of the nose landing gear (NLG), and possible injury to the flightcrew and passengers, accomplish the following:

(a) Perform a visual and tactile inspection of the nosewheel steering control cables located in the nosewheel bay of the NLG to detect excessive wear, and test the cable pulleys for seizing, in accordance with British Aerospace Service Bulletin ATP–32–91, dated May 19, 1998; at the applicable time specified in paragraph (a)(1) or (a)(2) of this AD. Thereafter, repeat the inspection and test at intervals not to exceed 1,800 flight hours, or 2,400 landings, whichever occurs first.

(1) For airplanes on which the nosewheel steering control cables have accumulated 6,000 or more total flight hours, or 8,000 or more total landings as of the effective date of this AD, and for airplanes on which the time-in-service of the nosewheel steering control cables is unknown: Inspect and test within 600 flight hours or 800 landings after the effective date of this AD, whichever occurs first.

(2) For airplanes on which the nosewheel steering control cables have accumulated less than 6,000 total flight hours or 8,000 total landings as of the effective date of this AD: Inspect and test within 900 flight hours or 1,200 landings after the effective date of this AD, whichever occurs first.

(b) If any cable wear is outside the limits specified in British Aerospace Service Bulletin ATP–32–91, dated May 19, 1998, or if any discrepant pulley is detected during any inspection or test required by paragraph (a) of this AD, prior to further flight, replace the discrepant cable or pulley with a new component in accordance with the service bulletin. Thereafter, continue accomplishment of the actions required by paragraphs (a) and (c) of this AD at the intervals specified in those paragraphs.

(c) Replace the nosewheel steering control cables with new cables at the later of the times specified in paragraphs (c)(1) and (c)(2) of this AD in accordance with British Aerospace Service Bulletin ATP–32–91, dated May 19, 1998. Thereafter, repeat the replacement at intervals not to exceed 6,000 total flight hours or 8,000 total landings on the nosewheel steering cables, whichever occurs first.

(1) Within 900 flight hours or 1,200 landings after the effective date of this AD, whichever occurs first.

(2) Prior to the accumulation of 6,000 total flight hours or 8,000 total landings on the nosewheel steering cables, whichever occurs first.

**Note 2:** Accomplishment of the initial inspection or initial replacement of the nosewheel steering control cables prior to the effective date of this AD in accordance with British Aerospace Alert Service Bulletin ATP–A32–90, dated March 21, 1998, is considered acceptable for compliance with the initial inspection or initial replacement required by 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, International Branch, ANM–116, 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, International Branch, ANM–116.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(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 airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with British Aerospace Service Bulletin ATP–32–91, dated May 19, 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 AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. 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 4:** The subject of this AD is addressed in British airworthiness directive 004–05–98.

(g) This amendment becomes effective on January 14, 1999.

Issued in Renton, Washington, on December 2, 1998.

**John W. McGraw,**

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

[FR Doc. 98–32621 Filed 12–9–98; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 98–NM–348–AD; Amendment 39–10937; AD 98–25–11]**

**RIN 2120–AA64**

## Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

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

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

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to all McDonnell Douglas Model MD–11 series airplanes. This action requires a one-time inspection to detect discrepancies at certain areas around the entry light connector of the sliding ceiling panel above the forward passenger doors, and repair, if necessary. This amendment is prompted by a report indicating that damaged electrical wires were found above the forward passenger doors due to flapper panels moving inboard and chafing the electrical wire assemblies of this area. The actions specified in this AD are intended to prevent such chafing, which could result in an electrical fire in the passenger compartment.

**DATES:** Effective December 28, 1998.

Comments for inclusion in the Rules Docket must be received on or before February 8, 1999.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–348–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Information pertaining to this amendment may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

**FOR FURTHER INFORMATION CONTACT:** Brett Portwood, Aerospace Engineer,

ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5347; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:** As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware that damaged electrical wires were found above the forward left- and right-hand passenger doors on a McDonnell Douglas Model MD–11 series airplane during a regularly scheduled heavy maintenance visit. Investigation revealed that, when the passenger doors are raised to the open position, the flapper panels above the passenger doors move inboard and chafe the electrical wire assemblies of this area. This condition, if not corrected, could lead to an electrical fire in the passenger compartment.

This incident is not considered to be related to a recent accident that occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. The cause of that accident is still under investigation.

**Explanation of the Requirements of the Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other McDonnell Douglas Model MD–11 series airplanes of the same type design, this AD is being issued to prevent chafing of the electrical wires above the forward passenger doors, which could result in an electrical fire in the passenger compartment. This AD requires a one-time visual inspection to detect discrepancies (including, but not limited to, frayed, chafed, or nicked wires and wire insulation) in the areas listed below; and repair, if necessary:

1. At the area around the entry light connector of the sliding ceiling panel above the forward left passenger door (1L) at station location x = 24.75, y = 435, and z = 64.5; and

2. At the area above the forward right passenger door (1R) at station location x = −30, y = 430, and z = 70 in the area of bracket part number 4225419–1.

This AD also requires operators to submit a report of the inspection results to the FAA.

**Interim Action**

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

**Determination of Rule's Effective Date**

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

**Comments Invited**

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–348–AD.'' The postcard will be date stamped and returned to the commenter.

**Regulatory Impact**

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

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

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

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**98–25–11 McDonnell Douglas:** Amendment 39–10937. Docket 98–NM–348–AD.

*Applicability:* All Model MD–11 series airplanes, 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 (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 chafing of certain electrical wires above the forward passenger doors, which could result in an electrical fire in the passenger compartment, accomplish the following:

(a) Within 10 days after the effective date of this AD, perform a visual inspection to detect discrepancies that include but are not limited to frayed, chafed, or nicked wires and wire insulation in the areas specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) At the area around the entry light connector of the sliding ceiling panel above the forward left passenger door (1L) at station location x = 24.75, y = 435, and z = 64.5; and

(2) At the area above the forward right passenger door (1R) at station location x = -30, y = 430, and z = 70 in the area of bracket part number 4225419–1.

(b) If any discrepancy is detected during the visual inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with Chapter 20, Standard Wiring Practices of the MD–11 Wiring Diagram Manual, dated January 1, 1998.

(c) Within 10 days after accomplishing the visual inspection required by paragraph (a) of this AD, submit a report of the inspection results (both positive and negative findings) to the Manager, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5350; fax (562) 627–5210. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(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, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

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

(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 airplane to a location where the requirements of this AD can be accomplished.

(f) This amendment becomes effective on December 28, 1998.

Issued in Renton, Washington, on December 3, 1998.

**John W. McGraw,**

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

[FR Doc. 98–32791 Filed 12–9–98; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 98–ASO–17]**

## Establishment of Class E2 Airspace; Atlanta Dekalb-Peachtree Airport, GA

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

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes Class E2 airspace at Atlanta, GA, for the Dekalb-Peachtree Airport. An automated weather observing system transmits the required weather observations continuously to The William B. Hartsfield, Atlanta International Airport Traffic Control Tower, the controlling facility for the airport, when the Dekalb-Peachtree Airport Traffic Control Tower is closed. Therefore, the airport now meets the criteria for Class E2 surface area airspace. The Class E airspace will consist of that airspace extending upward from the surface to but not including 700 feet within a 4-mile radius of Dekalb-Peachtree Airport.

**EFFECTIVE DATE:** 0901 UTC, March 25, 1999.

**FOR FURTHER INFORMATION CONTACT:** Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

**SUPPLEMENTARY INFORMATION:**

### History

On October 15, 1998, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E2 airspace at Atlanta, GA, (63 FR 55354). This action provides adequate Class E airspace for IFR operations at Dekalb-Peachtree Airport. Designations for Class E2 airspace extending upward from the surface of the earth are published in FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comment objecting to the proposal was received.

### The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E2 airspace at Atlanta, GA for the Dekalb-Peachtree Airport. An automated weather observing system transmits the required weather observations continuously to The William B. Hartsfield, Atlanta International Airport Traffic Control Tower, the controlling facility for the airport, when the Dekalb-Peachtree Airport Traffic Control Tower is closed. Therefore, the airport now meets the criteria for Class E2 surface area airspace.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this 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 14 CFR part 71 continues to read as follows:

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

### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

*Paragraph 6002 Class E Airspace Designated as Surface Areas*

* * * * *

**ASO GA E2 Atlanta Dekalb-Peachtree Airport, GA [New]**

Atlanta Dekalb-Peachtree Airport

(Lat. 33°52′30″N, long. 84°18′08″W)

Within a 4-mile radius of the Dekalb-Peachtree Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will therefore be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on November 25, 1998.

**Nancy B. Shelton,**

*Acting Manager, Air Traffic Division Southern Region.*

[FR Doc. 98–32820 Filed 12–9–98; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Parts 91 and 121

## General Operating and Flight Rules

*CFR Correction*

In Title 14 of the Code of Federal Regulations, parts 60 to 139, revised as of Jan. 1, 1998, make the following corrections:

1. On page 173, left column, the date in Sec. 9 of the effective date note for SFAR No. 50-2 is corrected to read ''January 31, 1999''.

2. On page 261, in Appendix G to part 91, right column, under *Section 2. Aircraft Approval*, in paragraphs (c)(2)(i), (ii), (3)(i) and (ii) the symbol ''#'' is corrected to read ''±''.

3. On page 452, § 121.402, paragraph (a), add the word ''flight'' between the words ''provide'' and ''training'' in the sixth line.

4. On page 520, § 121.713, paragraph (b)(2), ''§ 119.35'' is corrected to read ''§ 119.36''.

BILLING CODE 1505–01–D

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 141

## Pilot Schools

*CFR Correction*

In Title 14 of the Code of Federal Regulations, parts 140 to 199, revised as of Jan. 1, 1998, page 22, Appendix A to part 141, paragraph 4(a) is corrected by removing the words ''as provided in section No. 5 of this appendix'' beginning in the third line, and moving them to line 6 after the word ''training''.

BILLING CODE 1505–01–D

## COMMODITY FUTURES TRADING COMMISSION

## 17 CFR Part 140

## Requests for Exemptive, No-Action and Interpretative Letters

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is adopting Rule 140.99, which establishes procedures for the filing of requests for the issuance of exemptive, no-action and interpretative letters from the Commission's staff. The Commission believes that implementation of these procedures will significantly assist the Commission, its staff and requesters by assuring a focused presentation of the guidance sought, the issues raised thereby, and the relevant legal authorities.

**DATES:** Effective January 11, 1999.

**FOR FURTHER INFORMATION CONTACT:** David M. Battan, Chief Counsel, Christopher W. Cummings, Special Counsel, or Helene D. Schroeder, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418–5450.

**SUPPLEMENTARY INFORMATION:**

### I. Requests for Exemptive, No-Action and Interpretative Letters

In the course of administering the Commodity Exchange Act (''Act'')[1] and the rules, regulations and orders promulgated thereunder by the Commission,[2] Commission staff receives written requests for advice on, or interpretation of, particular provisions of the Act or Commission rules and the application of those provisions to proposed transactions or activities. Where appropriate, Commission staff provides the relief, advice or guidance sought through the issuance of exemptive, no-action or interpretative letters (''Letters''), respectively.[3]

On January 22, 1998, the Commission published for comment Proposed Rule 140.99 (the ''Proposal'')[4] to establish procedures for requesting Letters. As stated in the Proposal, although a procedural rule such as Rule 140.99 is not required to be published for comment, the Commission decided to seek comment in the belief that input from interested persons would assist it in fashioning a final rule.[5] The comment period on the Proposal originally was due to expire on March 22, 1998. To maximize public participation in this rulemaking process, the Commission extended the comment period for an additional thirty days,[6] and the comment period closed on April 22, 1998. The input received was very helpful, and a number of changes were made to the Proposal following consideration of the comments.[7]

While the commenters generally were supportive of the Commission's intention to establish uniform procedures for persons requesting Letters, they expressed various concerns of which the most significant are discussed below. Before addressing the comments received and the final rules the Commission is issuing hereby, the Commission wishes to emphasize that under the new rules Commission staff will continue to be receptive to informal inquiries and to engage in discussions with industry participants, counsel, members of the public, and others, by telephone, in face-to-face meetings or otherwise, regarding the application of the provisions of the Act and the Commission's rules, with the *caveat* that any advice given in the context of those discussions does not bind the Commission or its staff.[8] The Commission's goal in adopting new Rule 140.99 is to ensure that, where an issue has been framed and defined sufficiently that a request for a Letter is appropriate, proper procedures exist for submitting that request.

### II. Section-By-Section Analysis

*A. Definitions—Section 140.99(a)*

The Proposal defined ''exemptive letter,'' ''no-action letter,'' and ''interpretative letter'' for purposes of Rule 140.99. Briefly stated, the Proposal defined: (1) an exemptive letter as involving a grant of exemptive relief by the staff of the Division of Trading and Markets or the Division of Economic

[1] 7 U.S.C. 1 *et seq.* (1994).

[2] Commission regulations are found at 17 CFR Ch. I. *et seq.* (1998).

[3] These types of letters are proposed to be defined in Rules 140.99(a)(1), (a)(2) and (a)(3), respectively, and each is discussed in Part II, below.

[4] *Requests for Exemptive, No-Action and Interpretative Letters,* 63 FR 3285.

[5] *See* 63 FR 3287.

[6] *Requests for Exemptive, No-Action and Interpretative Letters,* 63 FR 14866 (March 27, 1998).

[7] The Commission received eight comment letters in response to the Proposal: two from registered futures commission merchants; two from commodity industry associations; one from a securities industry association; two from bar associations; and one from a law firm.

[8] *See* Rule 140.99(e), which provides that no response to a request for a Letter is effective unless it is in writing, signed by appropriate Commission staff and transmitted in final form to the requester.

Analysis (each a ''Division'') pursuant to authority delegated to staff by the Commission; (2) a no-action letter as denoting the determination by staff of the Division of Trading and Markets or the Division of Economic Analysis not to recommend commencement of enforcement action if a proposed activity or transaction was conducted; and (3) an interpretative letter as conveying the advice or guidance of staff of the Division of Trading and Markets, the Division of Economic Analysis or the Office of the General Counsel concerning the application of provisions of the Act or Commission rules in the context of specific activities or transactions.

In response to the comments, the Commission has modified the definitions somewhat. ''Exemptive letter'' is now defined to make clear that only the person on whose behalf an exemptive letter is sought may rely upon it and that an exemptive letter binds the Commission and its staff with respect to the relief provided. ''No-action letter'' is now defined to clarify that only the person on whose behalf a no-action letter is sought may rely upon the Letter and that a no-action letter binds only the staff of the Division (or the Office of the General Counsel)[9] that issues the Letter. Finally, interpretative letter has been redefined to clarify that an interpretative letter binds only the Division that issues it (or the Office of General Counsel, is issued thereby). The definition of interpretative letter also now expressly provides that an interpretative letter generally may be relied upon by persons in addition to the person on whose behalf the interpretative letter was sought.[10]

The Commission is not adopting the recommendation of some commenters that no-action letters be accorded precedential value such that third parties may rely upon them without requesting their own Letters. The Commission likewise is declining to expand the class of persons who may rely on an exemptive letter to include persons not exempted by name in the Letter. The Commission continues to believe that, where a situation not covered by a rule is encountered on a repeated basis, the appropriate remedy is rulemaking. Letters generally address particular, fact-specific issues either not clearly addressed by relevant rules or otherwise requiring individualized review by Commission staff. It would not be appropriate to allow uninvolved third parties to rely on staff positions taken on the basis of different sets of facts. Of course, counsel may wish to consider Letters issued by Commission staff in advising their clients about particular courses of conduct. Moreover, if an industry participant or its counsel determines to seek its own Letter from Commission staff, prior Letters on similar issues are relevant and should be cited to staff.

Some comments indicated that the commenters did not understand that Rule 140.99 does not apply to requests for exemption submitted pursuant to Section 4(c) of the Act.[11] To make clear that exemption requests under Section 4(c) must be made directly to the Commission—and must comply with the requirements set forth in Section 4(c)—paragraph (i)(B) of Rule 140.99 provides that the rule ''shall not affect the requirements of, or otherwise be applicable to'' requests for exemption pursuant to Section 4(c) of the Act.

*B. General Requirements—Section 140.99(b)*

Paragraph (b)(1) of the Proposal stated that the issuance of Letters is entirely within the staff's discretion and that the staff could deny or refuse to consider or respond to a request without explanation. While it was clearly not the intent of the Commission, commenters were concerned that this provision would allow staff to ignore requests. In response to these comments, the rule as adopted simply provides that issuance of Letters is within the Commission staff's discretion. While the Commission recognizes the importance of Letters to industry participants and their counsel, nothing in the Act or the Commission's rules requires Commission staff to issue Letters. Because the staff exercises its discretion to issue Letters within the constraints of its limited staffing and other resources, certain circumstances may arise in which as prompt a reply to a request as counsel would like becomes difficult or impossible. Moreover, in some limited instances the issuance of a Letter may not be justified from a legal or regulatory standpoint, or it may not be an appropriate resolution from a policy standpoint.

Paragraph (b)(2), which sets forth the staff's right to reject or decline to respond to a request that does not comply with Rule 140.99, was adopted as proposed. In this connection, Commission staff will not issue a Letter in response to an oral request, and a Letter will not be issued in response to a tentative or ''draft'' request.

As proposed and as adopted, paragraph (b)(3) states that a request must relate to a proposed transaction or activity and that, absent extraordinary circumstances, Letters will not be issued based upon past transactions or activities. This stricture is consistent with longstanding Commission staff policy. Commenters expressed concern that persons who become aware that ongoing activities raise issues under the Act or Commission rules would have no recourse under this provision. The Commission disagrees. In the absence of extraordinary circumstances, a Letter issued with regard to ongoing activities will be prospective in terms of its coverage (and will not cover past activities or transactions).[12] Thus, a Letter will not ordinarily relieve the person for whose benefit it is issued from the consequences of non-compliance that pre-dates the Letter. Nevertheless, persons (or their counsel) who become aware that their activities are not in compliance with the Act or Commission rules are urged to contact the staff as soon as possible. Although the staff generally reserves the right to refer prior violations for enforcement action in appropriate situations, the good faith demonstrated by efforts to regularize non-complying activities on a ''going forward'' basis will be carefully considered.

As proposed, paragraph (b)(4) states that a request must be made by the person seeking a Letter (or an authorized representative) and that Commission staff will not respond to requests made by or on behalf of unidentified persons. As adopted, the request is required to be made by or on behalf of the person on whose behalf a Letter is sought. Proposed paragraph

[9] The Commission also has modified the definition of no-action letter to reflect that the Office of the General Counsel may issue no-action letters in certain circumstances. Similarly, the Commission has modified the definition of interpretative letter to reflect the practice of the Divisions of Trading and Markets and Economic Analysis of issuing interpretations of statutory provisions when related to regulatory matters under their review.

[10] In the Proposal, the preamble, but not the text of the rule, stated that persons other than the recipient could rely on an interpretative letter.

[11] 7 U.S.C. 6(c) (1994). *See* footnote 5 of the Proposal (63 FR 3285, n.5), in which the Commission stated that the proposed rule would govern requests submitted to and processed by Commission staff and would not apply to those circumstances under which requests must be submitted to and processed by the Commission itself (*e.g.*, requests pursuant to Section 4(c) of the Act and any other instance in which exemptive authority has not been delegated to the Staff) The Commission went on to state that paragraphs (b), (c), (f) and (h) nevertheless provide some helpful guidance for persons making requests not within the scope of Rule 140.99.

[12] One commenter pointed out that Section 4(c) of the Act expressly provides for retroactive relief and asserted that Rule 140.99(b)(3) is inconsistent with Section 4(c) in this respect. As noted earlier, the provisions of Rule 140.99 do not apply to requests for exemptions under Section 4(c). *See* also 63 FR 3285, n.5.

(b)(5)(i) would have required the request to set forth as completely as possible ''the particular facts and circumstances giving rise to the request. As adopted, this paragraph now requires the request to set forth as completely as possible ''all material facts and circumstances giving rise to the request.'' Proposed paragraph (b)(5)(ii) stated that Commission staff would not respond to a request based upon a hypothetical situation. In proposing this paragraph, the Commission did not intend to discourage requesters from presenting reasonably realistic alternatives.[13] To make this clear, the rule as adopted has been modified to permit the request to include one or more alternative structures or fact situations, provided that the request complies with Rule 140.99 with respect to each alternative structure or fact situation.

*C. Information Requirements—Section 140.99(c)*

Paragraph 140.99(c)(1) as proposed and as adopted sets forth the required identifying information concerning the person on whose behalf a request is made and, where applicable, concerning the authorized representative if the requester is not making the request on his or her own behalf. Paragraph (c)(2) as proposed and as adopted requires that the requester indicate in the upper right-hand corner of the request the provision(s) of the Act and/or Commission rules to which the request relates.

Proposed paragraph (c)(3)(i) would have required a person with knowledge of the facts to certify that the representations in the request are accurate and complete. Commission staff too often has found, after modest scrutiny of representations made in support of a request for a Letter, that those representations were substantially inaccurate. Moreover, during recent market volatility events, it appears that the actual facts in certain instances proved to be substantially different from those the registrant had previously represented in their filings and other communications with the Commission. The Commission hopes that the certification requirement will encourage requesters to use proper care in making factual representations relating to their requests, thus saving time and resources (of staff and of requesters) that otherwise would be expended making and responding to successive requests for additional or corrected information. Upon consideration of the comments, however, the Commission has modified the proposed text to make clear that the certification applies only to material statements *of fact* that are set forth in the request. While requesters have a responsibility accurately to analyze the legal issues surrounding their request, the certification requirement in paragraph (c)(3)(i) is limited to factual representations.[14]

Proposed paragraph (c)(3)(ii) would have required an undertaking by the person making the certification required by paragraph (c)(3)(i) that the person for whose benefit the request is made will promptly supplement the request in writing at such time as a material representation relating to the request ceases to be accurate and complete. Comments indicated uncertainty as to who would be bound by the undertaking and whether the obligation to update information material to a request would continue after issuance of a Letter. The Commission has modified paragraph (c)(3)(ii) to clarify that the undertaking must be made by the person on whose behalf the Letter is sought, or that person's authorized representative, and that it requires only that the person who made the undertaking will ensure that someone informs Commission staff of changed circumstances (without specifying who should actually submit any supplement). The Commission has modified paragraph (c)(3)(ii) to clarify that the duty to update pursuant to the undertaking required by paragraph (c)(3)(ii) applies only from the time of the submission of the request until the issuance of the Letter.

With respect to material changes of circumstances after issuance of a Letter, paragraph (c)(3)(ii) has been revised to make clear that the person on whose behalf the Letter is sought, or its authorized representative at the time, must notify Commission staff of the occurrence of such changes. The Commission notes that staff typically concludes Letters with a statement to the following effect:

''This letter is based upon the representations made to us. Any different, changed or omitted material facts or circumstances might render this letter void. You must notify us immediately in the event that the operations or activities of [the party on whose behalf the Letter was requested] change in any material respect from those as represented to us.''

The comments addressing the next three paragraphs of the proposed rules overlapped significantly. Proposed paragraph (c)(4) would have required the request to indicate the type of Letter sought, to state why a Letter is needed, to identify the relevant legal and factual issues surrounding the request and to discuss the bases for issuance of the Letter. Proposed paragraph (c)(5) would have required the request to reference all relevant statutory, decisional and administrative authorities (favorable and otherwise). Proposed paragraph (c)(6) would have required identification of prior Letters issued by Commission staff in circumstances similar to the request (and any conditions imposed in those Letters).[15] Some commenters expressed concern that a requirement of comprehensive exposition and discussion of issues, bases and authorities would result in excessive labor and expense on the part of the staff as well as the requesters. Commenters also stated that not all persons seeking Letters can afford experienced counsel or can afford to research relevant law and precedent, and they expressed concern that not all past Letters may be readily accessible.[16]

The Commission notes that it does not intend to impose a requirement, express or implied, that requests be submitted by counsel. Individuals and firms are invited to prepare and submit requests directly, or to engage counsel for that purpose, at their own option. The Commission intends that the staff will take into account the level of legal sophistication of the person submitting a request (including whether that person is represented by counsel) in determining whether the requirements of paragraphs (c)(4) through (c)(6) have been met.

Likewise, in adopting Rule 140.99 the Commission does not intend to require excessively lengthy briefing of the relevant issues. However, the request is required to contain a full statement of the material facts, a concise and clear statement of the issues and a thorough examination of any law that would be applicable to those issues, with citations to the relevant authorities. Requesters

[13] Moreover, paragraph (c)(7), discussed below, permits requesters to ask for alternative modes of response.

[14] Legal arguments must nevertheless be supported by the facts and warranted by law.

[15] Letters are published from 1975 forward in the *Commodity Futures Law Reporter,* published by CCH Incorporated. Letters also are available from 1987 onward from the Westlaw research database of West Publishing Corporation and from 1989 onward from the Lexis database service of Mead Data Central, Inc.

[16] The Commission adopted Rule 140.98 in December 1992 (effective January 25, 1993). That rule requires that all Letters be made available for inspection and copying (subject to confidentiality safeguards). Prior to the effectiveness of Rule 140.98, in the absence of any specific requirements, the decision whether to make a Letter available for publication was subject to the discretion and policies of the various Commission staff. For example, the Division of Trading and Markets generally made available for publication only those Letters that it considered significant.

are not required to cite more than a representative selection of authorities on any issue to the extent that those authorities are cumulative.

While paragraph (c)(4) has adopted essentially as proposed, paragraph (c)(5) as adopted makes clear that it seeks reference to ''applicable provisions'' of the Act, Commission rules, and other authorities, and paragraph (c)(6) as adopted requires identification of prior Letters that are ''publicly available.'' [17]

Moreover, the requirements of paragraphs (c)(5) and (c)(6) should not be understood to require exhaustive citation and analysis where, for example, an issue raised by the request has been the subject of several substantially similar Letters. Rule 140.99(c)(6) as adopted states that citation of a representative sample of prior Letters is sufficient where a comprehensive recitation of prior Letters on a given topic would be repetitious or would not assist Commission staff in considering the request. A requester should exercise good judgment in presenting the request in the context of both the legal and regulatory requirements and the authorities that speak to the merits of the request.

*D. Filing Requirements—Section 140.99(d)*

Proposed paragraph (d) called for requests to be written, signed and filed with the Director of the Division of Trading and Markets for routing to appropriate Commission staff. Several commenters asked the Commission to accept electronically filed requests, with one commenter including a proposed caveat that a separate manually signed request be required in the absence of an electronic signature mechanism. Other commenters urged that the Commission agree to accept draft requests and urged the Commission to make clear that it welcomes informal discussions and meetings in advance of (or even in the absence of) the submission of a formal request.

As adopted, paragraph (d) differs from the Proposal only insofar as it permits submission of requests to the Director of the Division of Trading and Markets by electronic mail (as well as by post), provided a ''hard copy'' is submitted shortly after an electronic mail submission in order to permit authentication. As stated above, in adopting Rule 140.99 the Commission does not intend to discourage informal discussions, whether by telephone, by face-to-face meeting or otherwise. As further stated above, however, Commission staff will *not* issue a Letter in response to an oral request, and a Letter will *not* be issued in response to a tentative or ''draft'' request.

*E. Form of Staff Response—Section 140.99(e)*

Proposed paragraph (e) stated that the grant of any request for a Letter is not effective unless the response has been signed and transmitted in final form to the requester and that inaction on the part of Commission staff does not constitute approval of the request. The paragraph further permitted the staff to respond by endorsing the request or by another abbreviated written form of response. Several commenters encouraged the Commission to allow abbreviated responses to requests in appropriate cases, such as where the staff has no objection to the request and where no special conditions or additional precautions are warranted.

Paragraph (e) has been adopted essentially as proposed, with minor word changes.[18] To the extent that requests are adequately developed, articulated and complete, the Commission intends to encourage the use by the staff of abbreviated responses to requests where possible.[19]

*F. Withdrawal of Requests—Section 140.99(f)*

As proposed, paragraph (f) would have permitted withdrawal of a request prior to issuance of a Letter only under specific circumstances: (1) where a written withdrawal request is submitted with a certification that the person seeking a Letter has determined not to proceed with the contemplated transaction or activity or that intervening events have rendered the request for a Letter moot; or 92) where confidential treatment has been sought under Rule 140.98 in connection with the request for a Letter and Commission staff has notified the requester that confidential treatment will be denied. Several commenters claimed that the proposed restrictions were unnecessary and were likely to cause more harm than benefit. They argued that withdrawal should always be permitted. Some were concerned that the proposed restrictions would severely discourage requests for Letters because a person seeking a Letter who changed his or her mind could neither withdraw the request nor proceed with the proposed transaction or activity while the request was pending. Other commenters suggested that the provision could effectively block lawful activity, either where the response to a request is delayed or where a requester and Commission staff disagree concerning a change in facts or whether an issue has become moot.

Upon consideration of the comments, the Commission has determined to modify the proposed language of paragraph (f). As adopted, paragraph (f) now permits withdrawal of a request for a Letter by filing with Commission staff a signed written request for withdrawal that states whether the person on whose behalf the Letter was requested will proceed with the transaction or activity described in the request for a Letter. This change is designed to allow withdrawal of requests for Letters in appropriate circumstances beyond those enumerated in the Proposal. Paragraph (f) as adopted also now provides for the withdrawal from representation of the authorized representative of the person on whose behalf a Letter has been sought. The only requirement in such as event is that Commission staff be notified promptly of the change in representation. The requirement in the Proposal that requests for withdrawal of a Letter be accompanied by a certification has been eliminated in the final rule.

*G. Failure To Pursue a Request—Section 140.99(g)*

Paragraph (g) as proposed and as adopted provides that, where a requester fails to respond within 30 days to a Commission staff request for additional information or analysis, the staff generally will issue a denial of the request for a Letter unless an extension of time has been granted. Two commenters suggested that the 30-day period should be tolled as soon as a requester timely asks for an extension of time or that the rule should provide for an automatic 30-day extension if timely requested. Because the Commission believes that it is within the discretion of the staff to grant extensions of time in appropriate circumstances, it has modified paragraph (g) to make clear that any extensions of time are within the staff's discretion.

[17] If a letter is not generally available publicly (*i.e.,* it has not been published by a third-party service), it need not be cited *unless* the requester was the recipient of that prior Letter.

[18] The reference to ''responsible staff'' was changed to ''appropriate staff.''

[19] In response to commenters' concerns, the Commission confirms that, when a Letter is issued by abbreviated or endorsed response to the request, a redacted version of the request letter will be made available for publication together with the Commission staff response unless the requester has sought confidential treatment under Rule 140.98(b) and confidential treatment has been granted for the period specified in that rule.

*H. Confidential Treatment—Section 140.99(h)*

Paragraph (h) as proposed and as adopted requires that, where confidential treatment is sought for a request, a separate request for such treatment must be submitted in accordance with Rule 140.98 or Rule 145.9, as applicable.

*I. Applicability to Other Sections—Section 140.99(i)*

As proposed and as adopted, paragraph (i) states that Rule 140.99 does not affect the requirements of, or otherwise apply to, notice filings submitted where relief is claimed under Rules 4.5, 4.7(a), 4.7(b), 4.12(b), 4.13(b) and 4.14(a)(8). As noted above, several commenters expressed perceived inconsistencies or conflicts between the provisions of proposed Rule 140.99 and the provisions for requesting exemption under Section 4(c) of the Act. In order to dispel such confusion, paragraph (i) as adopted also expressly excludes from Rule 140.99 requests made pursuant to Section 4(c).

## III. Related Matters

*A. Regulatory Flexibility Act—Final Regulatory Flexibility Analysis*

1. Introduction

The Regulatory Flexibility Act (''RFA'')[20] requires each federal agency that proposes and adopts rules to consider the impact of those rules on small entities[21] that are subject to the agency's regulations. Pursuant to the provisions of the RFA, a federal agency is required to prepare an initial regulatory flexibility analysis to accompany any proposed rule that requires a general Notice of Proposed Rulemaking.[22] A similar regulatory flexibility analysis must accompany the promulgation of the final rule.[23] An agency is not required to prepare a regulatory flexibility analysis if the agency publishes in the **Federal Register** a certification that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.''[24]

In the preamble accompanying the Proposal, the Chairperson certified that Rule 140.99 would not have a significant economic impact on a substantial number of small entities.[25] In support of this certification, the Commission stated that Rule 140.99 would remove a burden on all persons by whom (or on whose behalf) Letters are sought, regardless of size, by providing greater certainty to requesters as to the procedures to follow in seeking relief and advice. In proposed Rule 140.99, the Commission also stated that the rule would provide Commission staff with the flexibility to accommodate requesters who lacked the financial resources to prepare a conforming request by accepting for consideration non-conforming requests, by providing guidance to the requester, or by other means. Because this certification was made, the Commission was not required to prepare an initial regulatory flexibility analysis.

While none of the commenters directly addressed the RFA, five of the comment letters raised issues within the scope of the RFA. Accordingly, the Commission has prepared this regulatory flexibility analysis to address these comments.

2. Analysis

*(a) Small Entities That May Be Subject to the Rule.* Requests for Letters may be submitted by any person, including those persons who are subject to or potentially subject to the Commission's oversight. Some of these persons may be considered to be small entities within the meaning of the RFA. In this regard, the Commission has established a definition of ''small entities'' to be used in evaluating the impact of its Rules on such small entities in accordance with the RFA.[26] In accordance with this definition, registered futures commission merchants, commodity pool operators (''CPOs''), leverage transaction merchants, large traders, and contract markets have been determined not to be small entities under the RFA.[27] Agricultural trade option merchants similarly have been found not to be small entities under the RFA.[28] With respect to persons registered as commodity trading advisors,[29] introducing brokers[30] and floor brokers,[31] the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some of such registrants would be considered to be small entities, and, if so, the economic impact on them of the particular rule. Floor traders[32] and CPOs exempt from registration[33] also may be considered small entities under the RFA.

In fiscal year 1997, the Office of Chief Counsel of the Division of Trading and Markets[34] received 303 inquiries from registrants, persons exempt from registration, unregistered persons and members of the general public. Written responses were issued or other dispositions were made with respect to 277 of these inquiries.[35] Many, but not all, of the responses took the form of Letters within the meaning of Rule 140.99. More than 55%, or 158, of these responses were provided to persons that are not small entities. The remaining responses were provided to persons that could, in the context of Rule 140.99, be classified as small entities as recognized by the Commission.

Rule 140.99 requires all requesters, including both small and large entities, to follow uniform procedures when requesting Letters. Based upon past experience, it is expected, though not required, that most requests will be prepared by the legal counsel of the person on whose behalf a Letter is sought.[36] In this regard, the type of skills required to submit a request for a Letter will not change under Rule 140.99. No other compliance or

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[20] 5 U.S.C. 601 *et seq.* (1994).

[21] A small entity includes a ''small business'' as defined by an agency in consultation with the Office of Advocacy of the Small Business Administration. *Id.* at § 601(6).

[22] The initial analysis must contain a description of the proposed rule's impact on small entities and any significant alternatives to the action ''which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.'' *Id.* at § 603.

[23] *Id.* at § 604.

[24] *Id.* at § 605(b).

[25] 63 FR 3287.

[26] *Policy Statement and Establishment of Definitions of ''Small Entities'' for purposes of the Regulatory Flexibility Act,* 47 FR 18618 (April 30, 1982).

[27] *Id.*

[28] *Trade Options on the Enumerated Agricultural Commodities,* 63 FR 18821 (April 16, 1998).

[29] 47 FR at 18620. *See also Interpretation Regarding Use of Electronic Media by Commodity Pool Operators and Commodity Trading Advisors for Delivery of Disclosure Documents and Other Materials,* 62 FR 39104, 39114 (July 22, 1997); and *Exemption for Commodity Pool Operators with Respect to Offerings to Qualified Eligible Participants; Exemption for Commodity Trading Advisors with Respect to Qualified Eligible Clients,* 57 FR 34853, 34860 (Aug. 7, 1992).

[30] *See e.g., Financial Reporting Requirements for Futures Commission Merchants and Introducing Brokers,* 53 FR 4606, 4610 (Feb. 17, 1988).

[31] 47 FR at 18620. *See also Adverse Registration Actions and Other Registration Matters,* 57 FR 23136, 23142 (June 2, 1992).

[32] *See e.g., Registration of Floor Traders; Mandatory Ethics Training for Registrants; Suspension of Registrants Charged with Felonies,* 58 FR 19575, 19588 (April 15, 1993).

[33] *See, e.g., Commodity Pool Operators; Exclusion for Otherwise Regulated Persons From the Definition of the Term ''Commodity Pool Operator''; Other Regulatory Requirements,* 50 FR 15868, 15881 (April 23, 1985).

[34] Historically, this Office has received and responded to the largest number of requests for Letters of any Office or Division of the Commission.

[35] Some of the responses were issued in fiscal year 1998.

[36] As the Commission noted above, ''it does not intend to impose a requirement . . . that requests be submitted by counsel.''

reporting requirements are imposed by Rule 140.99.

*(b) Summary of the Issues Affecting Small Entities Raised by the Comments.* Commenters argued that Rule 140.99 essentially would require that requests be exhaustively researched and contain a lengthy recitation of all relevant legal and factual issues and all legal authority, including all prior Letters on a given topic. Commenters claimed that such requirements are unnecessary for routine or basic requests and would entail significant costs to persons on whose behalf Letters are sought, including small entities, which may lack the library or staffing resources to prepare a conforming request. They added that persons seeking Letters would be required to hire specialized legal counsel to prepare their requests. Some commenters further claimed that the requirements would discourage requests for Letters because relief could be denied simply because the request did not conform to the requirements of Rule 140.99.

Two commenters recommended that Rule 140.99 be modeled after comparable procedures adopted under Federal securities laws and regulations that provide that the writer should indicate why he thinks a problem exists, his own opinion in the matter and the basis for such opinion.[37] With respect to Rule 140.99's requirements that all prior Letters and all relevant legal authority be identified, some commenters recommended that the Commission clarify that requesters would be required to identify only relevant precedent or only those relevant authorities of which they are aware through the exercise of reasonable diligence.

Some of the commenters also expressed concerns about the availability of prior Letters, especially older ones, and the burden on persons seeking Letters, including small entities, arising from a requirement to locate and identify prior Letters. In this regard, the commenters pointed out that the Commission was not required to make its Letters available for public inspection and copying before 1993, the effective date of Rule 140.98.[38] They further claimed that Letters issued prior to 1987 are not available on any online database service and that it would be particularly onerous on all persons, including small entities, to conduct a manual search for such Letters. To address these concerns, one commenter recommended that the Rule be modified to permit requesters to affirm the scope of any prior research or to note in their requests the practical limitations placed on the scope of their research. Another commenter suggested that the Commission commit to publish widely its prior Letters and to publish promptly all Letters issued in the future. The same commenter also recommended that the Commission post all of its Letters on its Internet web site.

*(c) Alternatives Proposed and Adopted.* The Commission has considered the concerns expressed by commenters and, as stated above, has clarified that requesters are not required to provide an excessively lengthy recitation of all relevant legal authority (including prior Letters) in support of a request for a Letter. It is sufficient that requests contain a full statement of the material facts, a concise and clear statement of the issues and a thorough examination of any law that would be applicable to those issues, with citations to the relevant authorities. Similarly, and as also stated above, the Commission has clarified that requesters are not required to cite more than a representative selection of authorities on any issue, to the extent that those authorities are cumulative.

To minimize the potential compliance burden on small entities, including those entities that are not represented by counsel, the Commission is reiterating that staff may accommodate persons who lack the financial resources to prepare a conforming request by accepting for consideration the non-conforming request as submitted, by providing guidance to the requesters, or by other means.

To address commenters' concerns about the lack of public availability of relevant authorities, including prior Letters, the Commission intends that the staff take this fact into account when reviewing requests, particularly those that are submitted by small entities. The Commission also has undertaken a review of the feasibility of making the full text of Letters available at the Commission's Internet web site as one commenter has suggested.[39]

Other than these specific comments, commenters proposed no other alternatives short of abandonment of the Proposal. Given the goals sought to be achieved by Rule 140.99, including decreasing the burden on all persons seeking Letters, regardless of size, this alternative would not be feasible.

[37] Securities Act Release No. 5127, 36 FR 2600 (Jan. 25, 1971), and Securities Act Release No. 6269 (Dec. 5, 1980).

[38] *See supra* note 16.

[39] The Commission's web site (http://www.cftc.gov) currently contains a summary, but not the full text, of all Letters that were issued and made publicly available pursuant to Rule 140.98 commencing December 24, 1994.

*B. Paperwork Reduction Act*

When publishing final rules, the Paperwork Reduction Act of 1989 (''PRA''), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the Act, this **Federal Register** release informs the public of: (1) The reasons the information is planned to be and/or has been collected; (2) the way such information is planned to be and/or has been used to further the proper performance of the functions of the agency; (3) an estimate, to the extent practicable, of the average burden of the collection (together with a request that the public direct to the agency any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden); (4) whether responses to the collection of information are voluntary, required to obtain or retain a benefit or mandatory; (5) the nature and extent of confidentiality to be provided, if any; and (6) the fact that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The Commission previously submitted Rule 140.99 in proposed form and its associated information collection requirements to the Office of Management and Budget. The Office of Management and Budget approved the collection of information associated with this rule on March 30, 1998, and assigned OMB control number 3038–0049 to the rule. The burden associated with this specific final rule is as follows:

*Average burden hours per response:* 7.

*Number of Respondents:* 215.

*Frequency of response:* On occasion.

Persons wishing to comment on the information required by this final rule should contact the Desk Officer, CFTC, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503 (202) 395–7340. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW, Washington, DC 20581 (202) 418-5160.

**List of Subjects in 17 CFR Part 140**

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and in particular section 8(a)(5) of the Act, as amended, 7 U.S.C. 12(a)(5), the

Commission hereby proposes to amend Chapter I of title 17 of the Code of Federal Regulations as follows:

## PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

1. The authority citation for part 140 continues to read as follows:

**Authority:** 7 U.S.C. 7a(j) and 12a.

2. Section 140.99 is added to read as follows:

### § 140.99 Requests for exemptive, no-action and interpretative letters.

(a) *Definitions.* For the purpose of this section:

(1) *Exemptive letter* means a written grant of relief issued by the staff of a Division of the Commission from the applicability of a specific provision of the Act or of a rule, regulation or order issued thereunder by the Commission. An exemptive letter may only be issued by staff of a Division when the Commission itself has exemptive authority and that authority has been delegated by the Commission to the Division in question. An exemptive letter binds the Commission and its staff with respect to the relief provided therein. Only the Beneficiary may rely upon the exemptive letter.

(2) *No-action letter* means a written statement issued by the staff of a Division of the Commission or of the Office of the General Counsel that it will not recommend enforcement action to the Commission for failure to comply with a specific provision of the Act or of a Commission rule, regulation or order if a proposed transaction is completed or a proposed activity is conducted by the Beneficiary. A no-action letter represents the position only of the Division that issued it, or the Office of the General Counsel if issued thereby. A no-action letter binds only the issuing Division or the Office of the General Counsel, as applicable, and not the Commission or other Commission staff. Only the Beneficiary may rely upon the no-action letter.

(3) *Interpretative letter* means written advice or guidance issued by the staff of a Division of the Commission or the Office of the General Counsel. An interpretative letter binds only the issuing Division or the Office of the General Counsel, as applicable, and does not bind the Commission or other Commission staff. An interpretative letter may be relied upon by persons in addition to the Beneficiary.

(4) *Letter* means an exemptive, no-action or interpretative letter.

(5) *Division* means the Division of Trading and Markets or the Division of Economic Analysis.

(b) *General Requirements.* (1) Issuance of a Letter is entirely within the discretion of Commission staff.

(2) Each request for a Letter must comply with the requirements of this section. Commission staff may reject or decline to respond to a request that does not comply with the requirements of this section.

(3) The request must relate to a proposed transaction or a proposed activity. Absent extraordinary circumstances, Commission staff will not issue a Letter based upon transactions or activities that have been completed or activities that have been conducted prior to the date upon which the request is filed with the Commission.

(4) The request must be made by or on behalf of the person whose activities or transactions are the subject of the request. Commission staff will not respond to a request for a Letter that is made by or on behalf of an unidentified person.

(5)(i) The request must set forth as completely as possible all material facts and circumstances giving rise to the request.

(ii) Commission staff will not respond to a request based on a hypothetical situation. However, a requester may set forth one or more alternative structures or fact situations for a proposed transaction or activity; *Provided,* That the request complies with this section with respect to each alternative structure or fact situation.

(c) *Information Requirements.* Each request for a Letter must comply with the following information requirements:

(1)(i) A request made by the person on whose behalf the Letter is sought must contain:

(A) The name, main business address, main telephone number and, if applicable, the National Futures Association registration identification number of such person; and

(B) The name and, if applicable, the National Futures Association registration identification number of each other person for whose benefit the person is seeking the Letter.

(ii) When made by a requester other than the person on whose behalf the Letter is sought, the request must contain:

(A) The name, main business address and main business telephone number of the requester;

(B) The name and, if applicable, the National Futures Association registration identification number of the person on whose behalf the Letter is sought; and

(C) The name and, if applicable, the National Futures Association registration identification number of each other person for whose benefit the requester is seeking the Letter.

(iii) The request must provide the name, address and telephone number of a contact person from whom Commission staff may obtain additional information if necessary.

(2) The section number of the particular provision of the Act and/or Commission rules, regulations or orders to which the request relates must be set forth in the upper right-hand corner of the first page of the request.

(3) The request must be accompanied by:

(i) A certification by a person with knowledge of the facts that the material facts as represented in the request are true and complete. The following form of certification is sufficient for this purpose:

> I hereby certify that the material facts set forth in the attached letter dated _____ are true and complete to the best of my knowledge.
> (name and title) _____

and

(ii) An undertaking made by the person on whose behalf the Letter is sought or by that person's authorized representative that, if at any time prior to issuance of a Letter, any material representation made in the request ceases to be true and complete, the person who made the undertaking will ensure that Commission staff is informed promptly in writing of all materially changed facts and circumstances. If a material change in facts or circumstances occurs subsequent to issuance of a Letter, the person on whose behalf the Letter is sought (or that person's authorized representative at the time of the change) must promptly so inform Commission staff.

(4) The request must identify the type of relief requested and Letter sought and must clearly state why a Letter is needed. The request must identify all relevant legal and factual issues and discuss the legal and public policy bases supporting issuance of the Letter.

(5) The request must contain references to all relevant authorities, including applicable provisions of the Act, Commission rules, regulations and orders, judicial decisions, administrative decisions, relevant statutory interpretations and policy statements. Adverse authority must be cited and discussed.

(6) The request must identify prior publicly available Letters issued by

Commission staff in response to circumstances similar to those surrounding the request (including adverse Letters), and must identify any conditions imposed by prior Letters as prerequisites for the issuance of those Letters. Citation of a representative sample of prior Letters is sufficient where a comprehensive recitation of prior Letters on a given topic would be repetitious or would not assist the staff in considering the request.

(7) Requests may ask that, if the requested exemptive relief, no-action position or interpretative guidance is denied, the staff consider granting alternative relief or adopting an alternative position.

(d) *Filing Requirements.* Each request for a Letter must comply with the following filing requirements:

(1) The request must be in writing and signed.

(2) The request must be filed with the Director, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Request must be submitted electronically using the e-mail address tmletters@cftc.gov; *Provided*, That a properly signed paper copy of the request is provided to the Division of Trading and Markets within ten days for purposes of verification of the electronic transmission. The Director will route the request to the appropriate Division or the Office of the General Counsel.

(e) *Form of Staff Response.* No response to any request governed by this section is effective unless it is in writing, signed by appropriate Commission staff, and transmitted in final form to the recipient. Failure by Commission staff to respond to a request for a Letter does not constitute approval of the request. Nothing in this section shall preclude Commission staff from responding to a request for a Letter by way of endorsement or any other abbreviated, written form of response.

(f) *Withdrawal of Requests.* (1) A request for a Letter may be withdrawn by filing with Commission staff a written request for withdrawal, signed by the person on whose behalf the Letter was sought or by that person's authorized representative, that states whether the person on whose behalf the Letter was sought will proceed with the proposed transaction or activity.

(2) Where a request has been submitted by an authorized representative of the person on whose behalf a Letter is sought, the authorized representative may withdraw from representation at any time without explanation, *Provided*, That Commission staff is promptly so notified.

(g) *Failure to Pursue a Request.* In the event that Commission staff requests additional information or analysis from a requester and the requester does not provide that information or analysis within thirty calendar days, Commission staff generally will issue a denial of the request; *Provided, however*, that Commission staff in its discretion may issue an extension of time to provide the information and or analysis.

(h) *Confidential Treatment.* Confidential treatment of a request for a Letter must be requested separately in accordance with § 140.98 or § 145.9 of this chapter, as applicable.

(i) *Applicability to Other Sections.* The provisions of this section shall not affect the requirements of, or otherwise be applicable to:

(A) Notice filings required to be made to claim relief from the Act or from a Commission rule, regulation or order including, without limitations, §§ 4.5, 4.7(a), 4.7(b), 4.12(b), 4.13(b) and 4.14(a)(8) of this chapter; or

(B) Requests for exemption pursuant to Section 4(c) of the Act.

Issued in Washington, DC on December 2, 1998 by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 98–32587 Filed 12–9–98; 8:45 am]

**BILLING CODE 6351–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 522

### Implantation or Injectable Dosage Form New Animal Drugs; Gentamicin Sulfate Injection

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

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Merial Ltd. The supplemental NADA provides for use of gentamicin sulfate injection in the neck of 1 to 3-day-old turkey poults for prevention of early mortality due to susceptible *Arizona paracolon* infections.

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

**FOR FURTHER INFORMATION CONTACT:** Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209.

**SUPPLEMENTARY INFORMATION:** Merial Ltd., 2100 Ronson Rd., Iselin, NJ 08830–3077, filed supplemental NADA 200–147 that provides for subcutaneous use of Genta-Ject® (gentamicin sulfate) injectable solution in the neck of 1 to 3-day-old turkey poults as an aid in the prevention of early mortality due to *A. paracolon* infections susceptible to gentamicin. The supplemental NADA is approved as of October 30, 1998, and the regulations are amended in 21 CFR 522.1044(b)(4) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this supplemental application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

### List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

## PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

2. Section 522.1044 is amended by revising paragraph (b)(4) to read as follows:

**§ 522.1044 Gentamicin sulfate injection.**

* * * * *

(b) * * *

(4) See No. 050604 for use of 100 milligram-per-milliliter solution in turkeys as in paragraph (d)(2) of this section and in chickens as in paragraph (d)(3) of this section.

* * * * *

Dated: December 2, 1998.

**Andrew J. Beaulieu,**

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

[FR Doc. 98–32741 Filed 12–9–98; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 522, 524, and 556

### Animal Drugs, Feeds, and Related Products; Doramectin

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

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADA's) filed by Pfizer, Inc. The supplemental NADA's provide for added use of doramectin in cattle for injectable use for additional persistent efficacy for treatment and control of certain gastrointestinal roundworms and lungworms and for topical use for treatment and control of horn flies.

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

**FOR FURTHER INFORMATION CONTACT:** Estella Z. Jones, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7575.

**SUPPLEMENTARY INFORMATION:** Pfizer, Inc., 235 East 42d St., New York, NY 10017–5755, filed supplemental NADA 141–061 that provides for subcutaneous and intramuscular use of Dectomax® (doramectin) 1 percent injectable solution in cattle to control infections and to protect from reinfection with *Cooperia oncophora* for 14 days and *Oesophagostomum radiatum* for 28 days after treatment. The new persistent use is in addition to the currently approved use in cattle for treatment and control of various gastrointestinal roundworms, lungworms, eyeworms, grubs, sucking lice, and mange mites, and to control infections and to protect from reinfection with *Ostertagia ostertagi* for 21 days and *C. punctata* and *Dictyocaulus viviparus* for 28 days after treatment.

Pfizer, Inc., also filed supplemental NADA 141–095 that provides for topical use of Dectomax® (doramectin) 0.5 percent pour-on in beef and nonlactating dairy cattle to treat and control horn flies (*Haematobia irritans*) in addition to its use for treatment and control of gastrointestinal roundworms, lungworms, eyeworms, grubs, biting and sucking lice, and mange mites, and to control infections and to protect from reinfection with *C. oncophora* and *Dictyocaulus viviparus* for 21 days, and *O. ostertagi, C. punctata,* and *O. radiatum* for 28 days after treatment.

The supplemental NADA's are approved as of October 25, 1998, and the regulations are amended in 21 CFR 522.770(d)(1)(ii) and 524.770(d)(2) to reflect the approvals. The basis of approval is discussed in the freedom of information summaries.

In addition, a tolerance for doramectin and its residues in cattle muscle has not been previously established. Also, the acceptable daily intake (ADI) for doramectin has not been previously codified. At this time, the regulations are amended in 21 CFR 556.225 to provide for a tolerance for doramectin residues in cattle muscle and an ADI.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), these supplemental approvals for food-producing animals qualify for 3 years of marketing exclusivity beginning October 25, 1998, because the supplements contain substantial evidence of the effectiveness of the drug involved, any studies of animal safety or, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) required for approval of the supplemental applications and conducted or sponsored by the applicant. Exclusivity applies only to the added indication for use of doramectin injection to control infections and to protect cattle from reinfection with *C. oncophora* for 14 days and *O. radiatum* for 28 days after treatment, and for doramectin topical for the treatment and control of horn flies (*H. irritans*).

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

**List of Subjects**

*21 CFR Parts 522 and 524*

Animal drugs.

*21 CFR Part 556*

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 522, 524, and 556 are amended as follows:

## PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

2. Section 522.770 is amended by revising paragraph (d)(1)(ii) to read as follows:

**§ 522.770 Doramectin.**

* * * * *

(d) * * *

(1) * * *

(ii) *Indications for use*. For treatment and control of gastrointestinal roundworms, lungworms, eyeworms, grubs, sucking lice, and mange mites. To control infections and to protect from reinfection with *Cooperia oncophora* for 14 days, *Ostertagia ostertagi* for 21 days, and *C. punctata, Oesophagostomum radiatum*, and *Dictyocaulus viviparus* for 28 days after treatment.

* * * * *

## PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 524 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

4. Section 524.770 is amended by revising paragraph (d)(2) to read as follows:

**§ 524.770 Doramectin.**

* * * * *

(d) * * *

(2) *Indications for use*. For treatment and control of gastrointestinal roundworms, lungworms, eyeworms, grubs, biting and sucking lice, horn flies, and mange mites, and to control infections and to protect from reinfection with *Cooperia oncophora* and *Dictyocaulus viviparus* for 21 days, and *Ostertagia ostertagia, C. punctata,* and *Oesophagostomum radiatum* for 28 days after treatment.

* * * * *

## PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

5. The authority citation for 21 CFR part 556 continues to read as follows:

**Authority:** 21 U.S.C. 342, 360b, 371.

6. Section 556.225 is revised to read as follows:

**§ 556.225 Doramectin.**

(a) *Acceptable daily intake (ADI).* The ADI for total residues of doramectin is 0.75 microgram per kilogram of body weight per day.

(b) *Tolerances*—(1) *Cattle.* A tolerance of 100 parts per billion is established for parent doramectin (marker residue) in liver (target tissue) and of 30 parts per billion for parent doramectin in muscle.

(2) *Swine.* A tolerance is established for parent doramectin (marker residue) in liver (target tissue) of 160 parts per billion.

Dated: December 2, 1998.

**Andrew J. Beaulieu,**

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

[FR Doc. 98–32740 Filed 12–9–98; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[TD 8792]**

**RIN 1545–AV56**

## Qualified Long-Term Care Insurance Contracts

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

**ACTION:** Final regulations.

**SUMMARY:** This document contains final Income Tax Regulations relating to consumer protection with respect to qualified long-term care insurance contracts and relating to events that will result in the loss of grandfathered status for long-term care insurance contracts issued prior to January 1, 1997. Changes to the applicable law were made by the Health Insurance Portability and Accountability Act of 1996. The regulations affect issuers of long-term care insurance contracts and individuals entitled to receive payments under these contracts. The regulations are necessary to provide these taxpayers with guidance needed to comply with these changes.

**DATES:** *Effective date.* These regulations are effective December 10, 1998.

*Applicability date.* Section 1.7702B–1 (concerning consumer protection provisions) of the regulations applies with respect to contracts issued after December 10, 1999. Section 1.7702B–2 (concerning special rules for pre-1997 contracts) of the regulations is applicable January 1, 1999.

**FOR FURTHER INFORMATION CONTACT:** Katherine A. Hossofsky, (202) 622–3477 (not a toll free number).

**SUPPLEMENTARY INFORMATION:**

### Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) to provide rules relating to consumer protection with respect to qualified long-term care insurance contracts and relating to events that will result in the loss of grandfathered status for long-term care insurance contracts issued prior to January 1, 1997.

A notice of proposed rulemaking (REG–109333–97) under section 7702B of the Code was published in the **Federal Register** on January 2, 1998 (63 FR 35). Written comments were received from the public, and a public hearing was held on May 13, 1998. After consideration of all the comments, the regulations proposed by REG–109333–97 are adopted as revised by this Treasury decision.

### Explanation of Statutory Provisions

The Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191, 110 Stat. 1936, 2054 and 2063) (HIPAA) added section 7702B to the Internal Revenue Code of 1986 (the Code). Section 7702B establishes the tax treatment for qualified long-term care insurance contracts. Section 7702B(a)(1) and (3) of the Code provide that a qualified long-term care insurance contract is treated as an accident and health insurance contract and that any employer plan providing coverage under a qualified long-term care insurance contract is treated as an accident or health plan with respect to that coverage.

Section 7702B(a)(2) of the Code provides that amounts (other than policyholder dividends and premium refunds) received under a qualified long-term care insurance contract are generally excludable from gross income as amounts received for personal injuries and sickness.

Section 213(d)(1)(D) of the Code was amended by section 322 of HIPAA to provide that eligible long-term care insurance premiums, as defined in section 213(d)(10) of the Code, are medical care expenses.

Under section 7702B(b)(1)(F) of the Code, a qualified long-term care insurance contract must meet the consumer protection provisions of section 7702B(g) of the Code. In addition, section 4980C of the Code imposes an excise tax on issuers of qualified long-term care insurance contracts that do not provide further consumer protections.

Section 7702B of the Code applies to contracts issued after December 31, 1996. Section 321(f)(2) of HIPAA treats a contract issued before January 1, 1997, as a qualified long-term care insurance contract under section 7702B(b) of the Code, and services provided or reimbursed under such a contract as qualified long-term care services under section 7702B(c) of the Code, provided the contract met the long-term care insurance requirements of the State in which the contract was situsted at the time the contract was issued. Section 321(f)(2) of HIPAA also provides that in the case of an individual covered on December 31, 1996, by a State long-term care plan under section 7702B(f) of the Code, the terms of the plan on that date are treated as a contract meeting the long-term care insurance requirements of that State.

Section 321(f)(4) of HIPAA provides that for purposes of applying sections 101(f), 7702, and 7702A of the Code, neither the issuance of a rider that is treated as a qualified long-term care insurance contract nor the addition of any provision required to conform any other long-term care rider to the requirements applicable to a qualified long-term care insurance contract is treated as a modification or material change of the contract.

### Explanation of Provisions

The final regulations provide guidance concerning

- The consumer protection requirements that apply to qualified long-term care insurance contracts under sections 7702B(g), 7702B(b)(1)(F), and 4980C of the Code; and
- The grandfather provisions of section 321(f)(2) of HIPAA under which pre-1997 contracts are treated as qualified long-term care insurance contracts if certain conditions are met.

The standards in the final regulations are based on safe harbors that were originally set forth in Notice 97–31 (1997–1 C.B. 417), and in the regulations proposed in REG–109333–97.

*Notice 97–31*

Notice 97–31 was issued to provide interim standards for taxpayers to use in interpreting the new long-term care provisions and to facilitate operation of the insurance market by avoiding the

need to amend contracts. For example, Notice 97–31 includes interim guidance on the determination of whether an individual is a chronically ill individual, including safe harbor definitions of the terms *substantial assistance, hands-on assistance, standby assistance, severe cognitive impairment*, and *substantial supervision*. The standards contained in Notice 97–31 include interim guidance on both the consumer protection provisions and the scope of the statutory grandfather provisions that apply to long-term care insurance contracts issued before 1997.

*Consumer Protection Requirements*

Under sections 7702B(b)(1)(F), 7702B(g), and 4980C of the Code, qualified long-term care insurance contracts and issuers of those contracts are required to satisfy certain provisions of the Long-Term Care Insurance Model Act (Model Act) and Long-Term Care Insurance Model Regulation (Model Regulation) promulgated by the National Association of Insurance Commissioners (NAIC) for long-term care insurance as of January 1993. The requirements relate to guaranteed renewability, unintentional lapse, disclosure, prohibitions against post-claims underwriting, inflation protection, and prohibitions against pre-existing conditions exclusions and probationary periods. Section 4980C imposes an excise tax on an issuer of a qualified long-term care insurance contract if, after 1996, the issuer fails to satisfy certain requirements, including requirements relating to application forms, reporting, marketing, appropriateness of recommended purchase, standard format outline of coverage, delivery of a shopper's guide, right to return, outline of coverage, and incontestability. Most of these requirements are based on the NAIC Model Act and Regulation.

The final regulations reflect the standards that were set forth in Notice 97–31 and in the regulations proposed in REG–109333–97. For example, the consumer protection requirements will be considered satisfied if a contract complies with State law in a State that has adopted the related NAIC model or a more stringent version of the model.

Commentators generally approved of the consumer protection provisions of the proposed regulations. Some commentators suggested that the provisions should be applied on a prospective basis, such as for long-term care insurance contracts issued more than one year after publication of the final regulations. Consistent with this suggestion, the final regulations apply to contracts issued after December 10, 1999.

Commentators suggested that if any State has adopted a Model Act or Model Regulation requirement, such State's interpretation of that requirement should be considered probative but not controlling of the meaning of the analogous requirements for purposes of applying sections 7702B(g) and 4980C of the Code to a contract sitused in another State. This suggestion was not adopted. If a particular State has adopted a Model Act or Model Regulation requirement, that State's interpretation should apply to determine whether the contract meets that State's requirement. If a State has not adopted a particular requirement, the determination of what interpretation should apply for purposes of section 7702B(g) and 4980C of the Code is more appropriately made on a case-by-case basis.

*Pre-1997 Long-Term Care Insurance Contracts*

Section 321(f)(2) of HIPAA provides that a contract issued before January 1, 1997, is treated as a qualified long-term care insurance contract if the contract met the ''long-term care insurance requirements of the State'' in which the contract was sitused at the time it was issued. Under the final regulations, the date on which a long-term care insurance contract other than a group long-term care insurance contract is issued is generally the date assigned to the contract by the insurance company. In no event is the issue date earlier than the date on which the policyholder submitted a signed application for coverage to the insurance company. In addition, if the period between the date of application and the date on which the long-term care insurance contract actually becomes effective is substantially longer than under the insurance company's usual business practice, then the issue date is generally the date the contract becomes effective. For purposes of applying the grandfather rule of section 321(f)(2) of HIPAA to a group long-term care insurance contract, the issue date of the contract is the date the group contract was issued. As a result, coverage for an individual who joins a grandfathered group long-term care insurance contract on or after January 1, 1997, is accorded the same treatment under section 321(f)(2) as is accorded coverage for those who joined the group before that date.

Notice 97–31 and the proposed regulations use the term *material change* to identify those changes to pre-1997 long-term care insurance contracts that are treated as the issuance of a new contract and, therefore, result in the loss of grandfathered status under section 7702B. The use of the term *material* may have caused some confusion in light of the bright line standards that the regulations are generally intended to provide. For this reason, the final regulations do not use the term *material* in this context. No substantive change is intended by this modification.

The final regulations generally adopt the standards set forth in the proposed regulations for purposes of determining whether a change to a pre-1997 long-term care insurance contract is considered the issuance of a new contract.[1] For example, the final regulations provide that the exercise of any right provided to a policyholder or the addition of any right that is required by State law to be provided to the policyholder will not be treated as the issuance of a new contract. Thus, as illustrated in an example in the regulations, the exercise of a right set forth in a pre-1997 contract, without underwriting, does not result in the loss of grandfathered status.

The final regulations also provide that the following practices will not be treated as the issuance of a new contract for purposes of the grandfathering provision of section 321(f)(2) of HIPAA: (1) A change in the mode of premium payment, such as a change from paying premiums monthly to quarterly; (2) a classwide increase or decrease in premiums for contracts that have been issued on a guaranteed renewable basis; (3) a reduction in premiums due to the purchase of a long-term care insurance policy by a member of the policyholder's family; (4) a reduction in coverage (with correspondingly lower premiums) made at the request of a policyholder; (5) a reduction in premiums that occurs because the policyholder becomes entitled to a discount under the issuer's pre-1997 premium rate structure (such as when a policyholder becomes a member of a group entitled to a group discount, or changes from smoker to nonsmoker status); (6) the addition, without an increase in premiums, of alternative forms of benefits that may be selected by the policyholder; (7) the addition of a rider to increase benefits under a pre-1997 contract if the rider would

[1] These standards are different from those that apply for purposes of determining the grandfathered status of other types of insurance contracts under the Code (including sections 7702, 7702A, 101(f), and 264). Those other provisions limit the tax benefits associated with the purchase of insurance products that, unlike pre-1997 long-term care insurance contracts, have a substantial investment orientation.

constitute a qualified long-term care insurance contract if it were a separate contract; (8) the deletion of a rider or provision of a contract (called an HHS (Health and Human Services) rider) that prohibited coordination of benefits with Medicare; (9) the effectuation of a continuation or conversion of coverage right under a group contract following an individual's ineligibility for continued coverage under the group contract; and (10) the substitution of one insurer for another in an assumption reinsurance transaction. These exceptions are generally similar to those listed in the proposed regulations. In response to comments, however, the exceptions have been broadened to permit certain premium reductions and to clarify that a change in insurer pursuant to an assumption reinsurance transaction is not treated as the issuance of a new contract (assuming that the contract would not otherwise be treated as newly issued, such as by reason of a change in the amount or timing of benefits or premiums).

Some commentators suggested that the regulations include a parenthetical to the effect that some changes in the amount or timing of items (such as de minimis changes in premiums) are not treated as the issuance of a new contract, even if no specific exception applies under the regulation. An important purpose of these regulations is to provide certainty as to the qualification of pre-1997 long-term care insurance contracts, and the exceptions enumerated in the proposed regulations provide broad relief from treatment as the issuance of a new contract resulting in the loss of grandfathered status. Accordingly, the final regulations do not contain this additional parenthetical.

Some commentators identified additional circumstances under which expansion of coverage under a group long-term care insurance contract should not be treated as the issuance of a new contract. For example, some requested that the addition of a spouse, dependent children, or others should not be treated as the issuance of a new contract. Other commentators suggested that no loss of grandfathering should result from the expansion of coverage under a group contract by reason of a corporate merger or acquisition, or the extension of coverage to collectively bargained employees, or the addition of former employees. The final regulations clarify that such expansion is not treated as the issuance of a new contract, provided that the addition is without underwriting and is pursuant to the terms of the contract and the plan under which the contract was issued as in effect on December 31, 1996. Thus, the addition of a business's assets and related employees by a company with a pre-1997 group contract is not treated as the issuance of a new contract if, as of December 31, 1996, the contract and the plan under which it was issued provided that new employees automatically are eligible to participate in the group contract. If, however, a new subsidiary is acquired by the company and the company's pre-1997 group contract or plan requires that a subsidiary be designated by the company in order for its employees to be eligible to participate, then the designation of the new subsidiary would be a change in the terms of the contract or in the plan relating to eligibility. Although the final regulations were not modified to accommodate further expansion, a new qualified long-term care insurance contract could be entered into to expand coverage under these circumstances. Alternatively, the final regulations permit coverage under the pre-1997 contract to be expanded by a rider to the pre-1997 contract if the rider would constitute a qualified long-term care insurance contract if it were issued as a separate contract.[2]

Finally, it was suggested that the grandfather provisions of the final regulations should be effective immediately. The final regulations with respect to contracts issued before 1997 are effective January 1, 1999.

*Standards Before the Effective Date of the Final Regulations*

The consumer protection provisions in the final regulations apply with respect to contracts issued after December 10, 1999. Taxpayers may continue to rely on Notice 97–31 with respect to contracts issued on or before that date. In addition, a contract issued on or before December 10, 1999 will not be treated as failing to satisfy the consumer protection requirements of section 7702B(g) or 4980C of the Code if the contract satisfies the requirements of the final regulations. Taxpayers may not rely on Notice 97–31 with respect to contracts issued after December 10, 1999.

The final regulations are effective January 1, 1999, with respect to pre-1997 long-term care insurance contracts. Taxpayers may continue to rely on Notice 97–31 for the purpose of determining whether a change made before January 1, 1999, to a pre-1997 contract is treated as the issuance of a new contract. In addition, a change made before that date to a pre-1997 contract will not be treated as the issuance of a new contract if the change is not treated as the issuance of a new contract under the final regulations. Taxpayers may not rely on Notice 97–31 with respect to changes made on or after January 1, 1999.

[2] As was indicated in the preamble to the proposed regulations, certain of the consumer protection requirements would not apply to such a rider. Specifically, sections 7702B(g)(2)(A)(i)(III), 7702B(g)(2)(A)(i)(V), 7702B(g)(2)(A)(i)(VII) (other than section 9B of the NAIC Model regulation), 7702B(g)(2)(A)(i)(X), 7702B(g)(3), 7702B(g)(4), 4980C(c)(1)(A)(I), and 4980C(c)(2) of the Internal Revenue Code would apply only the first time a contract is purchased, and would not apply to the purchase of a rider.

**Special Analyses**

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

Drafting information. The principal author of these regulations is Katherine A. Hossofsky, Office of Assistant Chief Counsel (Financial Institutions & Products). However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 1 is amended as follows:

## PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

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

**Par. 2.** Sections 1.7702B–1 and 1.7702B–2 are added to read as follows:

**§ 1.7702B–1 Consumer protection provisions.**

(a) *In general.* Under sections 7702B(b)(1)(F), 7702B(g), and 4980C, qualified long-term care insurance contracts and issuers of those contracts are required to satisfy certain provisions

of the Long-Term Care Insurance Model Act (Model Act) and Long-Term Care Insurance Model Regulation (Model Regulation) promulgated by the National Association of Insurance Commissioners (NAIC), as adopted as of January 1993. The requirements for qualified long-term care insurance contracts under section 7702B(b)(1)(F) and (g) relate to guaranteed renewal or noncancellability, prohibitions on limitations and exclusions, extension of benefits, continuation or conversion of coverage, discontinuance and replacement of policies, unintentional lapse, disclosure, prohibitions against post-claims underwriting, minimum standards, inflation protection, prohibitions against pre-existing conditions exclusions and probationary periods, and prior hospitalization. The requirements for qualified long-term care insurance contracts under section 4980C relate to application forms and replacement coverage, reporting requirements, filing requirements for marketing, standards for marketing, appropriateness of recommended purchase, standard format outline of coverage, delivery of a shopper's guide, right to return, outline of coverage, certificates under group plans, policy summary, monthly reports on accelerated death benefits, and incontestability period.

(b) *Coordination with State requirements*—(1) *Contracts issued in a State that imposes more stringent requirements.* If a State imposes a requirement that is more stringent than the analogous requirement imposed by section 7702B(g) or 4980C, then, under section 4980C(f), compliance with the more stringent requirement of State law is considered compliance with the parallel requirement of section 7702B(g) or 4980C. The principles of paragraph (b)(3) of this section apply to any case in which a State imposes a requirement that is more stringent than the analogous requirement imposed by section 7702B(g) or 4980C (as described in this paragraph (b)(1)), but in which there has been a failure to comply with that State requirement.

(2) *Contracts issued in a State that has adopted the model provisions.* If a State imposes a requirement that is the same as the parallel requirement imposed by section 7702B(g) or 4980C, compliance with that requirement of State law is considered compliance with the parallel requirement of section 7702B(g) or 4980C, and failure to comply with that requirement of State law is considered failure to comply with the parallel requirement of section 7702B(g) or 4980C.

(3) *Contracts issued in a State that has not adopted the model provisions or more stringent requirements.* If a State has not adopted the Model Act, the Model Regulation, or a requirement that is the same as or more stringent than the analogous requirement imposed by section 7702B(g) or 4980C, then the language, caption, format, and content requirements imposed by sections 7702B(g) and 4980C with respect to contracts, applications, outlines of coverage, policy summaries, and notices will be considered satisfied for a contract subject to the law of that State if the language, caption, format, and content are substantially similar to those required under the parallel provision of the Model Act or Model Regulation. Only nonsubstantive deviations are permitted in order for language, caption, format, and content to be considered substantially similar to the requirements of the Model Act or Model Regulation.

(c) *Effective date.* This section applies with respect to contracts issued after December 10, 1999.

**§ 1.7702B–2 Special rules for pre-1997 long-term care insurance contracts.**

(a) *Scope.* The definitions and special provisions of this section apply solely for purposes of determining whether an insurance contract (other than a qualified long-term care insurance contract described in section 7702B(b) and any regulations issued thereunder) is treated as a qualified long-term care insurance contract for purposes of the Internal Revenue Code under section 321(f)(2) of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191).

(b) *Pre-1997 long-term care insurance contracts*—(1) *In general.* A pre-1997 long-term care insurance contract is treated as a qualified long-term care insurance contract, regardless of whether the contract satisfies section 7702B(b) and any regulations issued thereunder.

(2) *Pre-1997 long-term care insurance contract defined.* A pre-1997 long-term care insurance contract is any insurance contract with an issue date before January 1, 1997, that met the long-term care insurance requirements of the State in which the contract was situsued on the issue date. For this purpose, the long-term care insurance requirements of the State are the State laws (including statutory and administrative law) that are intended to regulate insurance coverage that constitutes ''long-term care insurance'' (as defined in section 4 of the National Association of Insurance Commissioners (NAIC) Long-Term Care Insurance Model Act, as in effect on August 21, 1996), regardless of the terminology used by the State in describing the insurance coverage.

(3) *Issue date of a contract*—(i) *In general.* Except as otherwise provided in this paragraph (b)(3), the issue date of a contract is the issue date assigned to the contract by the insurance company. In no event is the issue date earlier than the date the policyholder submitted a signed application for coverage to the insurance company. If the period between the date the signed application is submitted to the insurance company and the date coverage under which the contract actually becomes effective is substantially longer than under the insurance company's usual business practice, then the issue date is the later of the date coverage under which the contract becomes effective or the issue date assigned to the contract by the insurance company. A policyholder's right to return a contract within a free-look period following delivery for a full refund of any premiums paid is not taken into account in determining the contract's issue date.

(ii) *Special rule for group contracts.* The issue date of a group contract (including any certificate issued thereunder) is the date on which coverage under the group contract becomes effective.

(iii) *Exchange of contract or certain changes in a contract treated as a new issuance.* For purposes of this paragraph (b)(3)—

(A) A contract issued in exchange for an existing contract after December 31, 1996, is considered a contract issued after that date;

(B) Any change described in paragraph (b)(4) of this section is treated as the issuance of a new contract with an issue date no earlier than the date the change goes into effect; and

(C) If a change described in paragraph (b)(4) of this section occurs with regard to one or more, but fewer than all, of the certificates evidencing coverage under a group contract, then the insurance coverage under the changed certificates is treated as coverage under a newly issued group contract (and the insurance coverage provided by any unchanged certificate continues to be treated as coverage under the original group contract).

(4) *Changes treated as the issuance of a new contract*—(i) *In general.* For purposes of paragraph (b)(3) of this section, except as provided in paragraph (b)(4)(ii) of this section, the following changes are treated as the issuance of a new contract—

(A) A change in the terms of a contract that alters the amount or timing of an item payable by either the

policyholder (or certificate holder), the insured, or the insurance company;

(B) A substitution of the insured under an individual contract; or

(C) A change (other than an immaterial change) in the contractual terms, or in the plan under which the contract was issued, relating to eligibility for membership in the group covered under a group contract.

(ii) *Exceptions.* For purposes of this paragraph (b)(4), the following changes are not treated as the issuance of a new contract—

(A) A policyholder's exercise of any right provided under the terms of the contract as in effect on December 31, 1996, or a right required by applicable State law to be provided to the policyholder;

(B) A change in the mode of premium payment (for example, a change from monthly to quarterly premiums);

(C) In the case of a policy that is guaranteed renewable or noncancellable, a classwide increase or decrease in premiums;

(D) A reduction in premiums due to the purchase of a long-term care insurance contract by a family member of the policyholder;

(E) A reduction in coverage (with a corresponding reduction in premiums) made at the request of a policyholder;

(F) A reduction in premiums as a result of extending to an individual policyholder a discount applicable to similar categories of individuals pursuant to a premium rate structure that was in effect on December 31, 1996, for the issuer's pre-1997 long-term care insurance contracts of the same type;

(G) The addition, without an increase in premiums, of alternative forms of benefits that may be selected by the policyholder;

(H) The addition of a rider (including any similarly identifiable amendment) to a pre-1997 long-term care insurance contract in any case in which the rider, if issued as a separate contract of insurance, would itself be a qualified long-term care insurance contract under section 7702B and any regulations issued thereunder (including the consumer protection provisions in section 7702B(g) to the extent applicable to the addition of a rider);

(I) The deletion of a rider or provision of a contract that prohibited coordination of benefits with Medicare (often referred to as an HHS (Health and Human Services) rider);

(J) The effectuation of a continuation or conversion of coverage right that is provided under a pre-1997 group contract and that, in accordance with the terms of the contract as in effect on December 31, 1996, provides for coverage under an individual contract following an individual's ineligibility for continued coverage under the group contract; and

(K) The substitution of one insurer for another insurer in an assumption reinsurance transaction.

(5) *Examples.* The following examples illustrate the principles of this paragraph (b):

*Example 1.* (i) On December 3, 1996, A, an individual, submits a signed application to an insurance company to purchase a nursing home contract that meets the long-term care insurance requirements of the State in which the contract is situsued. The insurance company decides on December 20, 1996, that it will issue the contract, and assigns December 20, 1996, as the issue date for the contract. Under the terms of the contract, A's insurance coverage becomes effective on January 1, 1997. The company delivers the contract to A on January 3, 1997. A has the right to return the contract within 15 days following delivery for a refund of all premiums paid.

(ii) Under paragraph (b)(3)(i) of this section, the issue date of the contract is December 20, 1996. Thus, the contract is a pre-1997 long-term care insurance contract that is treated as a qualified long-term care insurance contract.

*Example 2.* (i) The facts are the same as in *Example 1*, except that the insurance coverage under the contract does not become effective until March 1, 1997. Under the insurance company's usual business practice, the period between the date of the application and the date the contract becomes effective is 30 days or less.

(ii) Under paragraph (b)(3)(i) of this section, the issue date of the contract is March 1, 1997. Thus, the contract is not a pre-1997 long-term care insurance contract, and, accordingly, the contract must meet the requirements of section 7702B(b) and any regulations issued thereunder to be a qualified long-term care insurance contract.

*Example 3.* (i) B, an individual, is the policyholder under a long-term care insurance contract purchased in 1995. On June 15, 2000, the insurance coverage and premiums under the contract are increased by agreement between B and the insurance company.

(ii) Under paragraph (b)(4)(i)(A) of this section, a change in the terms of a contract that alters the amount or timing of an item payable by the policyholder or the insurance company is treated as the issuance of a new contract. Thus, B's coverage is treated as coverage under a contract issued on June 15, 2000, and, accordingly, the contract must meet the requirements of section 7702B(b) and any regulations issued thereunder in order to be a qualified long-term care insurance contract.

*Example 4.* (i) C, an individual, is the policyholder under a long-term care insurance contract purchased in 1994. At that time and through December 31, 1996, the contract met the long-term care insurance requirements of the State in which the contract was situsued. In 1996, the policy was amended to add a provision requiring the policyholder to be offered the right to increase dollar limits for inflation every three years (without the policyholder being required to pass a physical or satisfy any other underwriting requirements). During 2002, C elects to increase the amount of insurance coverage (with a resulting premium increase) pursuant to the inflation provision.

(ii) Under paragraph (b)(4)(ii)(A) of this section, an increase in the amount of insurance coverage at the election of the policyholder (without the insurance company's consent and without underwriting or other limitations on the policyholder's rights) pursuant to a pre-1997 inflation provision is not treated as the issuance of a new contract. Thus, C's contract continues to be a pre-1997 long-term care insurance contract that is treated as a qualified long-term care insurance contract.

(c) *Effective date.* This section is applicable January 1, 1999.

**David A. Mader,**

*Acting Deputy Commissioner of Internal Revenue.*

Approved: November 24, 1998.

**Donald C. Lubick,**

*Assistant Secretary of the Treasury.*

[FR Doc. 98–32759 Filed 12–9–98; 8:45 am]

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Parts 1, 25, and 602

**[TD 8791]**

**RIN 1545–AU25**

## Guidance Regarding Charitable Remainder Trusts and Special Valuation Rules for Transfers of Interests in Trusts

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

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to charitable remainder trusts and to special valuation rules for transfers of interests in trusts. The final regulations provide additional guidance regarding charitable remainder trusts. The final regulations affect charitable remainder trusts and their beneficiaries.

**DATES:** *Effective date:* These regulations are effective December 10, 1998.

*Applicability dates:* For dates of applicability of these regulations, see the explanations under **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** Mary Beth Collins or Jeff Erickson, (202) 622–3080 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act**

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1536. Responses to this collection of information are required to allow taxpayers alternative means of valuing a charitable remainder trust's unmarketable assets.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated annual burden per respondent varies from .25 to .75 hours, depending on individual circumstances, with an estimated average of .5 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Background**

On April 18, 1997, the IRS published in the **Federal Register** (62 FR 19072) a notice of proposed rulemaking (REG–209823–96) regarding sections 664 and 2702. Comments responding to the proposed regulations were received, and a public hearing was held on November 18, 1997. After considering the comments received and the statements made at the public hearing, the proposed regulations are adopted as revised by this Treasury decision.

**Explanation of Provisions**

This document amends 26 CFR parts 1 and 25 to provide additional rules under sections 664 and 2702. Section 664 contains the rules for charitable remainder trusts (CRTs). In general, a CRT provides for a specified periodic distribution to one or more beneficiaries (at least one of whom is a noncharitable beneficiary) for life or for a term of years with an irrevocable remainder interest held for the benefit of charity.

There are two types of CRTs: a charitable remainder annuity trust (CRAT) and a charitable remainder unitrust (CRUT). A CRAT pays a sum certain at least annually to the beneficiaries (the annuity amount). A CRUT pays a unitrust amount at least annually to the beneficiaries. Generally, the unitrust amount is a fixed percentage of the net fair market value of the CRUT's assets valued annually (fixed percentage CRUT). The unitrust amount can instead be calculated under one of two income exception methods (income exception CRUT). Under the first method, the unitrust amount is the lesser of the fixed percentage amount or the trust's annual net income (net income method). Under the second method, the unitrust amount is determined under the net income method plus any amount of income that exceeds the current year's fixed percentage amount to make up for any shortfall in payments from prior years when the trust income was less than the fixed percentage amount (NIMCRUT method). The shortfall in payments from prior years is commonly referred to as the ''make-up amount.''

The revisions to the proposed regulations are discussed below.

**I. Flip Unitrusts**

*A. Triggering Events*

The proposed regulations provide specific rules for when a trust may convert from one of the income exception methods of computing the unitrust amount to the fixed percentage method (flip unitrust). The proposed rule was designed for taxpayers who ultimately wanted the unitrust amount to be computed on the fixed percentage method but funded the trust with unmarketable assets that generate little annual income. A number of commentators agreed with the policy underlying the proposed rule. Some commentators requested that we permit flip unitrusts for all income exception CRUTs regardless of the marketability of the trust assets. Other commentators suggested that the final regulations clarify whether the proposed rule was a safe harbor or the exclusive circumstance for which a flip unitrust would be permitted.

In response, the final regulations expand the availability of the flip unitrust to certain other situations that the IRS and Treasury believe are consistent with the legislative history indicating that a trustee should not have discretion to change the method used to calculate the unitrust amount. H.R. Conf. Rep. No. 782, 91st Cong., 1st Sess. 296 (1969), 1969–3 C.B. 644, 655.

The final regulations allow the governing instrument of a CRUT to provide that the CRUT will convert once from one of the income exception methods to the fixed percentage method for calculating the unitrust amount if the date or event triggering the conversion is outside the control of the trustees or any other persons. The final regulations include examples of permissible and impermissible triggering events. For example, permissible triggering events with respect to any individual include marriage, divorce, death, or birth of a child. Also, the sale of an unmarketable asset such as real estate is a permissible triggering event. Examples of impermissible triggering events include the sale of marketable assets and a request from the unitrust recipient or the unitrust recipient's financial advisor that the trust convert to the fixed percentage method.

The final regulations also provide that the conversion to the fixed percentage method occurs at the beginning of the taxable year that immediately follows the taxable year in which the triggering date or event occurs. Any make-up amount described in section 664(d)(3)(B) is forfeited when the trust converts to the fixed percentage method.

The proposed regulations define unmarketable assets as assets other than cash, cash equivalents, or marketable securities (within the meaning of section 731(c)). Commentators asked for clarification of the term *unmarketable assets* and recommended changing the scope of this class of assets. In response, the final regulations define unmarketable assets as assets other than cash, cash equivalents, or assets that can be readily sold or exchanged for cash or cash equivalents. For example, unmarketable assets include real property, closely-held stock, and unregistered securities for which there is no available exemption permitting public sale.

Commentators requested that the final regulations permit conversions from the fixed percentage method to one of the income exception methods and conversions from a CRAT to a CRUT. The flip unitrust allowed in the final regulations is the only type of permissible conversion. Thus, a CRAT cannot convert to a CRUT without losing its status as a CRT. Similarly, a CRUT using the fixed percentage method cannot convert to an income exception method without losing its status as a CRT.

*B. Effective Date and Transitional Rules*

The rules for flip unitrusts are effective for CRUTs created on or after December 10, 1998. The proposed regulations allowed reformations in

limited circumstances. In response to comments, the final regulations expand the circumstances in which reformation is available. The final regulations allow income exception CRUTs to be reformed to add provisions allowing a conversion to the fixed percentage method provided the triggering event does not occur in a year prior to the year in which the court issues the order reforming the trust. Adding the conversion provisions will not cause the CRUT to fail to function exclusively as a CRT and will not be an act of self-dealing under section 4941 if the trustee initiates legal proceedings to reform the trust by June 8, 1999.

**II. Time for Paying the Annuity Amount or the Unitrust Amount**

The proposed regulations provide that the payment of the annuity amount or the unitrust amount determined under the fixed percentage method must be made by the close of the taxable year in which it is due. The rules were proposed in response to abuses associated with the use of accelerated CRTs described in Notice 94–78 (1994–2 C.B. 555). After receiving a significant number of comments on the proposed rules, the IRS issued Notice 97–68 (1997–48 I.R.B. 11), which provided guidance on complying with the proposed rules for the 1997 taxable year.

One commentator recommended applying the proposed rules only to trusts created after the date the final regulations are published. Another commentator suggested adopting the rules in Notice 97–68 for all trusts created after a certain date. Although recent legislative changes have reduced the potential tax benefits of accelerated CRTs, the IRS and Treasury continue to be concerned about the potential abuse of the post-year-end grace period to produce a tax-free return of appreciation in the assets contributed to a CRAT or a fixed percentage CRUT. Therefore, the final regulations adopt rules similar to those in Notice 97–68 with certain modifications. The rules are effective for taxable years ending after April 18, 1997.

For CRATs and fixed percentage CRUTs, the annuity or unitrust amount may be paid within a reasonable time after the close of the year for which it is due if (a) the character of the annuity or unitrust amount in the recipient's hands is income under section 664(b)(1), (2), or (3); and/or (b) the trust distributes property (other than cash) that it owned as of the close of the taxable year to pay the annuity or unitrust amount and the trustee elects on Form 5227, ''Split-Interest Trust Information Return,'' to treat any income generated by the distribution as occurring on the last day of the taxable year for which the amount is due. In addition, for CRATs and fixed percentage CRUTs that were created before December 10, 1998, the annuity or unitrust amount may be paid within a reasonable time after the close of the taxable year for which it is due if the percentage used to calculate the annuity or unitrust amount is 15 percent or less.

**III. Appraising Unmarketable Assets**

Under section 664(d)(2)(A), a CRUT must value its assets annually. The proposed regulations provide that, if a CRT holds unmarketable assets and the only trustee is the grantor, a noncharitable beneficiary, or a related or subordinate party to the grantor or the noncharitable beneficiary within the meaning of section 672(c) and the applicable regulations, the trustee must value those assets using a *current qualified appraisal,* as defined in § 1.170A–13(c)(3), from a *qualified appraiser,* as defined in § 1.170A–13(c)(5).

The final regulations follow the proposed regulations and provide that the trust's unmarketable assets must be valued by an independent trustee, or by a qualified appraisal from a qualified appraiser. The proposed regulations define an independent trustee as a person who is not the grantor, a noncharitable beneficiary or a related or subordinate party to the grantor, or the noncharitable beneficiary within the meaning of section 672(c) and the applicable regulations. The final regulations add the grantor's spouse to the list of persons to whom an independent trustee cannot be related or subordinate. A co-trustee who is an independent trustee may value the trust's unmarketable assets.

Finally, in response to comments, the final regulations define unmarketable assets as assets other than cash, cash equivalents, or assets that can be readily sold or exchanged for cash or cash equivalents. For example, unmarketable assets include real property, closely-held stock, and unregistered securities for which there is no available exemption permitting public sale.

The rules for valuing unmarketable assets are effective for trusts created on or after December 10, 1998.

**IV. Application of Section 2702 to Certain CRUTs**

Under the proposed regulations, unitrust interests in an income exception CRUT that are retained by the donor or any applicable family member will be valued at zero when a noncharitable beneficiary of the trust is someone other than (1) the donor, (2) the donor's U.S. citizen spouse, or (3) both the donor and the donor's U.S. citizen spouse. Commentators stated that income exception CRUTs without a make-up provision should be exempt from section 2702. The IRS and Treasury believe that, in addition to the NIMCRUT method, the net income method can be used to circumvent the intent of section 2702. Therefore, the final regulations do not exempt from section 2702 CRUTs that use only the net income method.

Commentators also stated that the proposed rule encompassed other transfers that section 2702 was not intended to include. A commentator noted that the proposed rule would value a transferor's interest at zero even though the transferor merely retained a secondary life estate. The final regulations clarify that section 2702 will not apply when there are only two consecutive noncharitable beneficial interests and the transferor holds the second of the two interests.

Commentators also asked whether section 2702 may apply to flip unitrusts. The potential abuse associated with income exception CRUTs also exists with flip unitrusts. Therefore, under the final regulations, section 2702 applies to a flip unitrust if the CRUT does not fall within one of the exemptions.

**V. Prohibition on Allocating Precontribution Gain to Trust Income and Make-up Amount as a Liability**

The proposed regulations clarify that the proceeds from the sale of an income exception CRUT's assets, at least to the extent of the fair market value of the assets when contributed to the trust, must be allocated to trust principal. Some commentators stated that the rule is inconsistent with the rule concerning income under section 643(b). Other commentators questioned whether the make-up amount under the NIMCRUT method should be treated as a liability when valuing the trust's assets.

The final regulations maintain the prohibition on allocating precontribution gain to trust income for an income exception CRUT. However, the governing instrument, if permitted under applicable local law, may allow the allocation of post-contribution capital gains to trust income. Taxpayers do not have to treat the make-up amount as a liability when valuing the assets of a NIMCRUT.

**VI. Example Illustrating Rule for Characterizing Distributions From CRUTs**

The proposed regulations contain an example of how the ordering rule under section 664(b) operates when the

unitrust amount is computed under an income exception method. No comments were received on this example. Thus, the final regulations adopt the example without any changes.

**Effect on Other Documents**

Notice 97–68 (1997–48 I.R.B. 11) is obsolete as of December 10, 1998.

**Special Analyses**

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

Drafting Information. The principal authors of these regulations are Mary Beth Collins and Jeff Erickson, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from offices of the IRS and Treasury Department participated in their development.

**List of Subjects**

*26 CFR Part 1*

Income taxes, Reporting and recordkeeping requirements.

*26 CFR Part 25*

Gift taxes, Reporting and recordkeeping requirements.

*26 CFR Part 602*

Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

Accordingly, CFR parts 1, 25, and 602 are amended as follows:

## PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

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

**Par. 2.** In § 1.664–1, paragraphs (a)(7) and (d)(1)(iii) are added and paragraph (f)(4) is added following the concluding text of paragraph (f)(3) to read as follows:

**§ 1.664–1 Charitable remainder trusts.**

(a) * * *

(7) *Valuation of unmarketable assets*—(i) *In general.* If unmarketable assets are transferred to or held by a trust, the trust will not be a trust with respect to which a deduction is available under section 170, 2055, 2106, or 2522, or will be treated as failing to function exclusively as a charitable remainder trust unless, whenever the trust is required to value such assets, the valuation is—

(*a*) Performed exclusively by an independent trustee; or

(*b*) Determined by a *current qualified appraisal,* as defined in § 1.170A–13(c)(3), from a *qualified appraiser,* as defined in § 1.170A–13(c)(5).

(ii) *Unmarketable assets.* Unmarketable assets are assets that are not cash, cash equivalents, or other assets that can be readily sold or exchanged for cash or cash equivalents. For example, unmarketable assets include real property, closely-held stock, and an unregistered security for which there is no available exemption permitting public sale.

(iii) *Independent trustee.* An independent trustee is a person who is not the grantor of the trust, a noncharitable beneficiary, or a related or subordinate party to the grantor, the grantor's spouse, or a noncharitable beneficiary (within the meaning of section 672(c) and the applicable regulations).

* * * * *

(d) * * * (1) * * *

(iii) *Example.* The following example illustrates the application of this paragraph (d)(1):

*Example.* (i) *X* is a charitable remainder unitrust described in section 664(d)(2) and (3). The annual unitrust amount is the lesser of the amount of trust income, as defined in § 1.664–3(a)(1)(i)(*b*), or six percent of the net fair market value of the trust assets valued annually. The net fair market value of the trust assets on the valuation date in 1996 is $150,000. During 1996, *X* has $7,500 of income after allocating all expenses. All of *X*'s income for 1996 is tax-exempt income. At the end of 1996, *X*'s ordinary income for the current taxable year and undistributed ordinary income for prior years are both zero; *X*'s capital gain for the current taxable year is zero and undistributed capital gain for prior years is $30,000; and *X*'s tax-exempt income for the current year is $7,500 and undistributed tax-exempt income for prior years is $2,500.

(ii) Because the trust income of $7,500 is less than the fixed percentage amount of $9,000, the unitrust amount for 1996 is $7,500. The character of that amount in the hands of the recipient of the unitrust amount is determined under section 664(b). Because the unitrust amount is less than *X*'s undistributed capital gain income, the recipient of the unitrust amount treats the distribution of $7,500 as capital gain. At the beginning of 1997, *X*'s undistributed capital gain for prior years is reduced to $22,500, and *X*'s undistributed tax-exempt income is increased to $10,000.

* * * * *

(f) * * *

(4) *Valuation of unmarketable assets.* The rules contained in paragraph (a)(7) of this section are applicable for trusts created on or after December 10, 1998. A trust in existence as of December 10, 1998 whose governing instrument requires that an independent trustee value the trust's unmarketable assets may be amended or reformed to permit a valuation method that satisfies the requirements of paragraph (a)(7) of this section for taxable years beginning on or after December 10, 1998.

* * * * *

**Par. 3.** In § 1.664–2, paragraph (a)(1)(i) is revised to read as follows:

**§ 1.664–2 Charitable remainder annuity trust.**

(a) * * *

(1) * * * (i) *Payment of sum certain at least annually.* The governing instrument provides that the trust will pay a sum certain not less often than annually to a person or persons described in paragraph (a)(3) of this section for each taxable year of the period specified in paragraph (a)(5) of this section.

(*a*) *General rule applicable to all trusts.* A trust will not be deemed to have engaged in an act of self-dealing (within the meaning of section 4941), to have unrelated debt-financed income (within the meaning of section 514), to have received an additional contribution (within the meaning of paragraph (b) of this section), or to have failed to function exclusively as a charitable remainder trust (within the meaning of § 1.664–1(a)(4)) merely because the annuity amount is paid after the close of the taxable year if such payment is made within a reasonable time after the close of such taxable year and the entire annuity amount in the hands of the recipient is characterized only as income from the categories described in section 664(b)(1), (2), or (3), except to the extent it is characterized as corpus described in section 664(b)(4) because—

(*1*) The trust distributes property (other than cash) that it owned at the close of the taxable year to pay the annuity amount; and

(*2*) The trustee elects to treat any income generated by the distribution as

occurring on the last day of the taxable year in which the annuity amount is due.

(*b*) *Special rule for trusts created before* December 10, 1998. In addition to the circumstances described in paragraph (a)(1)(i)(*a*) of this section, a trust created before December 10, 1998 will not be deemed to have engaged in an act of self-dealing (within the meaning of section 4941), to have unrelated debt-financed income (within the meaning of section 514), to have received an additional contribution (within the meaning of paragraph (b) of this section), or to have failed to function exclusively as a charitable remainder trust (within the meaning of § 1.664–1(a)(4)) merely because the annuity amount is paid after the close of the taxable year if such payment is made within a reasonable time after the close of such taxable year and the sum certain to be paid each year as the annuity amount is 15 percent or less of the initial net fair market value of the property irrevocably passing in trust as determined for federal tax purposes.

(*c*) *Reasonable time.* For this paragraph (a)(1)(i), a reasonable time will not ordinarily extend beyond the date by which the trustee is required to file Form 5227, ''Split-Interest Trust Information Return,'' (including extensions) for the taxable year.

(*d*) *Example.* The following example illustrates the rules in paragraph (a)(1)(i)(*a*) of this section:

*Example. X* is a charitable remainder annuity trust described in section 664(d)(1) that was created after December 10, 1998. The prorated annuity amount payable from *X* for Year 1 is $100. The trustee does not pay the annuity amount to the recipient by the close of Year 1. At the end of Year 1, *X* has only $95 in the ordinary income category under section 664(b)(1) and no income in the capital gain or tax-exempt income categories under section 664(b)(2) or (3), respectively. By April 15 of Year 2, in addition to $95 in cash, the trustee distributes to the recipient of the annuity a capital asset with a $5 fair market value and a $2 adjusted basis to pay the $100 annuity amount due for Year 1. The trust owned the asset at the end of Year 1. Under § 1.664–1(d)(5), the distribution is treated as a sale by *X*, resulting in *X* recognizing a $3 capital gain. The trustee elects to treat the capital gain as occurring on the last day of Year 1. Under § 1.664–1(d)(1), the character of the annuity amount for Year 1 in the recipient's hands is $95 of ordinary income, $3 of capital gain income, and $2 of trust corpus. For Year 1, *X* satisfied paragraph (a)(1)(i)(*a*) of this section.

(*e*) *Effective date.* This paragraph (a)(1)(i) is applicable for taxable years ending after April 18, 1997.

* * * * *

**Par. 4.** Section 1.664–3 is amended as follows:

1. Paragraphs (a)(1)(i)(*a*), (a)(1)(i)(*b*)(*1*), and (a)(1)(i)(*b*)(*2*) are revised.

2. Paragraphs (a)(1)(i)(*b*)(*3*), (a)(1)(i)(*b*)(*4*), (a)(1)(i)(*b*)(*5*), and (a)(1)(i)(*c*) through (a)(1)(i)(*l*) are added.

3. The third sentence of paragraph (a)(1)(iv) is revised.

The added and revised provisions read as follows:

**§ 1.664–3 Charitable remainder unitrust.**

(a) * * *

(1) * * * (i) * * * (*a*) *General rule.* The governing instrument provides that the trust will pay not less often than annually a fixed percentage of the net fair market value of the trust assets determined annually to a person or persons described in paragraph (a)(3) of this section for each taxable year of the period specified in paragraph (a)(5) of this section. This paragraph (a)(1)(i)(*a*) is applicable for taxable years ending after April 18, 1997.

(*b*) * * *

(*1*) The amount of trust income for a taxable year to the extent that such amount is not more than the amount required to be distributed under paragraph (a)(1)(i)(*a*) of this section.

(*2*) An amount of trust income for a taxable year that is in excess of the amount required to be distributed under paragraph (a)(1)(i)(*a*) of this section for such year to the extent that (by reason of paragraph (a)(1)(i)(*b*)(*1*) of this section) the aggregate of the amounts paid in prior years was less than the aggregate of such required amounts.

(*3*) For this paragraph (a)(1)(i)(*b*), trust income means income as defined under section 643(b) and the applicable regulations.

(*4*) For this paragraph (a)(1)(i)(*b*), proceeds from the sale or exchange of any assets contributed to the trust by the donor must be allocated to principal and not to trust income at least to the extent of the fair market value of those assets on the date of contribution.

(*5*) The rules in paragraphs (a)(1)(i)(*b*)(*1*), (*2*), and (*3*) of this section are applicable for taxable years ending after April 18, 1997, and the rule in paragraph (a)(1)(i)(*b*)(*4*) is applicable for sales or exchanges that occur after April 18, 1997.

(*c*) *Combination of methods.* Instead of the amount described in paragraph (a)(1)(i)(*a*) or (*b*) of this section, the governing instrument may provide that the trust will pay not less often than annually the amount described in paragraph (a)(1)(i)(*b*) of this section for an initial period and then pay the amount described in paragraph (a)(1)(i)(*a*) of this section (calculated using the same fixed percentage) for the remaining years of the trust only if the governing instrument provides that—

(*1*) The change from the method prescribed in paragraph (a)(1)(i)(*b*) to the method prescribed in paragraph (a)(1)(i)(*a*) is triggered on a specific date or by a single event whose occurrence is not discretionary with, or within the control of, the trustees or any other persons;

(*2*) The change from the method prescribed in paragraph (a)(1)(i)(*b*) of this section to the method prescribed in paragraph (a)(1)(i)(*a*) of this section occurs at the beginning of the taxable year that immediately follows the taxable year during which the date or event specified under paragraph (a)(1)(i)(*c*)(*1*) of this section occurs; and

(*3*) Following the trust's conversion to the method described in paragraph (a)(1)(i)(*a*) of this section, the trust will pay at least annually to the permissible recipients the amount described only in paragraph (a)(1)(i)(*a*) of this section and not any amount described in paragraph (a)(1)(i)(*b*) of this section.

(*d*) *Triggering event.* For purposes of paragraph (a)(1)(i)(*c*)(*1*) of this section, a triggering event based on the sale of unmarketable assets as defined in § 1.664–1(a)(7)(ii), or the marriage, divorce, death, or birth of a child with respect to any individual will not be considered discretionary with, or within the control of, the trustees or any other persons.

(*e*) *Examples.* The following examples illustrate the rules in paragraph (a)(1)(i)(*c*) of this section. For each example, assume that the governing instrument of charitable remainder unitrust *Y* provides that *Y* will initially pay not less often than annually the amount described in paragraph (a)(1)(i)(*b*) of this section and then pay the amount described in paragraph (a)(1)(i)(*a*) of this section (calculated using the same fixed percentage) for the remaining years of the trust and that the requirements of paragraphs (a)(1)(i)(*c*)(*2*) and (*3*) of this section are satisfied. The examples are as follows:

*Example 1. Y* is funded with the donor's former personal residence. The governing instrument of *Y* provides for the change in method for computing the annual unitrust amount as of the first day of the year following the year in which the trust sells the residence. *Y* provides for a combination of methods that satisfies paragraph (a)(1)(i)(*c*) of this section.

*Example 2. Y* is funded with cash and an unregistered security for which there is no available exemption permitting public sale under the Securities and Exchange Commission rules. The governing instrument of *Y* provides that the change in method for computing the annual unitrust amount is triggered on the earlier of the date when the

stock is sold or at the time the restrictions on its public sale lapse or are otherwise lifted. *Y* provides for a combination of methods that satisfies paragraph (a)(1)(i)(*c*) of this section.

*Example 3. Y* is funded with cash and with a security that may be publicly traded under the Securities and Exchange Commission rules. The governing instrument of *Y* provides that the change in method for computing the annual unitrust amount is triggered when the stock is sold. *Y* does not provide for a combination of methods that satisfies the requirements of paragraph (a)(1)(i)(*c*) of this section because the sale of the publicly-traded stock is within the discretion of the trustee.

*Example 4. S* establishes *Y* for her granddaughter, *G*, when *G* is 10 years old. The governing instrument of *Y* provides for the change in method for computing the annual unitrust amount as of the first day of the year following the year in which *G* turns 18 years old. *Y* provides for a combination of methods that satisfies paragraph (a)(1)(i)(*c*) of this section.

*Example 5.* The governing instrument of *Y* provides for the change in method for computing the annual unitrust amount as of the first day of the year following the year in which the donor is married. *Y* provides for a combination of methods that satisfies paragraph (a)(1)(i)(*c*) of this section.

*Example 6.* The governing instrument of *Y* provides that if the donor divorces, the change in method for computing the annual unitrust amount will occur as of the first day of the year following the year of the divorce. *Y* provides for a combination of methods that satisfies paragraph (a)(1)(i)(*c*) of this section.

*Example 7.* The governing instrument of *Y* provides for the change in method for computing the annual unitrust amount as of the first day of the year following the year in which the noncharitable beneficiary's first child is born. *Y* provides for a combination of methods that satisfies paragraph (a)(1)(i)(*c*) of this section.

*Example 8.* The governing instrument of *Y* provides for the change in method for computing the annual unitrust amount as of the first day of the year following the year in which the noncharitable beneficiary's father dies. *Y* provides for a combination of methods that satisfies paragraph (a)(1)(i)(*c*) of this section.

*Example 9.* The governing instrument of *Y* provides for the change in method for computing the annual unitrust amount as of the first day of the year following the year in which the noncharitable beneficiary's financial advisor determines that the beneficiary should begin receiving payments under the second prescribed payment method. Because the change in methods for paying the unitrust amount is triggered by an event that is within a person's control, *Y* does not provide for a combination of methods that satisfies paragraph (a)(1)(i)(*c*) of this section.

*Example 10.* The governing instrument of *Y* provides for the change in method for computing the annual unitrust amount as of the first day of the year following the year in which the noncharitable beneficiary submits a request to the trustee that the trust convert to the second prescribed payment method. Because the change in methods for paying the unitrust amount is triggered by an event that is within a person's control, *Y* does not provide for a combination of methods that satisfies paragraph (a)(1)(i)(*c*) of this section.

(*f*) *Effective date*—(*1*) *General rule.* Paragraphs (a)(1)(i)(*c*), (*d*), and (*e*) of this section are applicable for charitable remainder trusts created on or after December 10, 1998.

(*2*) *General rule regarding reformations of combination of method unitrusts.* If a trust is created on or after December 10, 1998 and contains a provision allowing a change in calculating the unitrust amount that does not comply with the provisions of paragraph (a)(1)(i)(*c*) of this section, the trust will qualify as a charitable remainder unitrust only if it is amended or reformed to use the initial method for computing the unitrust amount throughout the term of the trust, or is reformed in accordance with paragraph (a)(1)(i)(*f*)(*3*) of this section. If a trust was created before December 10, 1998 and contains a provision allowing a change in calculating the unitrust amount that does not comply with the provisions of paragraph (a)(1)(i)(*c*) of this section, the trust may be reformed to use the initial method for computing the unitrust amount throughout the term of the trust without causing the trust to fail to function exclusively as a charitable remainder unitrust under § 1.664–1(a)(4), or may be reformed in accordance with paragraph (a)(1)(i)(*f*)(*3*) of this section. Except as provided in paragraph (a)(1)(i)(*f*)(*3*) of this section, a qualified charitable remainder unitrust will not continue to qualify as a charitable remainder unitrust if it is amended or reformed to add a provision allowing a change in the method for calculating the unitrust amount.

(*3*) *Special rule for reformations of trusts that begin by June 8, 1999.* Notwithstanding paragraph (a)(1)(i)(*f*)(*2*) of this section, if a trust either provides for payment of the unitrust amount under a combination of methods that is not permitted under paragraph (a)(1)(i)(*c*) of this section, or provides for payment of the unitrust amount under only the method prescribed in paragraph (a)(1)(i)(*b*) of this section, then the trust may be reformed to allow for a combination of methods permitted under paragraph (a)(1)(i)(*c*) of this section without causing the trust to fail to function exclusively as a charitable remainder unitrust under § 1.664–1(a)(4) or to engage in an act of self-dealing under section 4941 if the trustee begins legal proceedings to reform by June 8, 1999. The triggering event under the reformed governing instrument may not occur in a year prior to the year in which the court issues the order reforming the trust, except for situations in which the governing instrument prior to reformation already provided for payment of the unitrust amount under a combination of methods that is not permitted under paragraph (a)(1)(i)(*c*) of this section and the triggering event occurred prior to the reformation.

(*g*) *Payment under general rule for fixed percentage trusts.* When the unitrust amount is computed under paragraph (a)(1)(i)(*a*) of this section, a trust will not be deemed to have engaged in an act of self-dealing (within the meaning of section 4941), to have unrelated debt-financed income (within the meaning of section 514), to have received an additional contribution (within the meaning of paragraph (b) of this section), or to have failed to function exclusively as a charitable remainder trust (within the meaning of § 1.664–1(a)(4)) merely because the unitrust amount is paid after the close of the taxable year if such payment is made within a reasonable time after the close of such taxable year and the entire unitrust amount in the hands of the recipient is characterized only as income from the categories described in section 664(b)(1), (2), or (3), except to the extent it is characterized as corpus described in section 664(b)(4) because—

(*1*) The trust distributes property (other than cash) that it owned at the close of the taxable year to pay the unitrust amount; and

(*2*) The trustee elects to treat any income generated by the distribution as occurring on the last day of the taxable year for which the unitrust amount is due.

(*h*) *Special rule for fixed percentage trusts created before December 10, 1998.* When the unitrust amount is computed under paragraph (a)(1)(i)(*a*) of this section, a trust created before December 10, 1998 will not be deemed to have engaged in an act of self-dealing (within the meaning of section 4941), to have unrelated debt-financed income (within the meaning of section 514), to have received an additional contribution (within the meaning of paragraph (b) of this section), or to have failed to function exclusively as a charitable remainder trust (within the meaning of § 1.664–1(a)(4)) merely because the unitrust amount is paid after the close of the taxable year if such payment is made within a reasonable time after the close of such taxable year and the fixed percentage to be paid each year as the unitrust amount is 15 percent or less of the net fair market value of the trust assets as determined under paragraph (a)(1)(iv) of this section.

(*i*) *Example.* The following example illustrates the rules in paragraph (a)(1)(i)(*g*) of this section:

*Example. X* is a charitable remainder unitrust that calculates the unitrust amount under paragraph (a)(1)(i)(*a*) of this section. *X* was created after December 10, 1998. The prorated unitrust amount payable from *X* for Year 1 is $100. The trustee does not pay the unitrust amount to the recipient by the end of the Year 1. At the end of Year 1, *X* has only $95 in the ordinary income category under section 664(b)(1) and no income in the capital gain or tax-exempt income categories under section 664(b) (2) or (3), respectively. By April 15 of Year 2, in addition to $95 in cash, the trustee distributes to the unitrust recipient a capital asset with a $5 fair market value and a $2 adjusted basis to pay the $100 unitrust amount due for Year 1. The trust owned the asset at the end of Year 1. Under § 1.664–1(d)(5), the distribution is treated as a sale by *X*, resulting in *X* recognizing a $3 capital gain. The trustee elects to treat the capital gain as occurring on the last day of Year 1. Under § 1.664–1(d)(1), the character of the unitrust amount for Year 1 in the recipient's hands is $95 of ordinary income, $3 of capital gain income, and $2 of trust corpus. For Year 1, *X* satisfied paragraph (a)(1)(i)(*g*) of this section.

(*j*) *Payment under income exception.* When the unitrust amount is computed under paragraph (a)(1)(i)(*b*) of this section, a trust will not be deemed to have engaged in an act of self-dealing (within the meaning of section 4941), to have unrelated debt-financed income (within the meaning of section 514), to have received an additional contribution (within the meaning of paragraph (b) of this section), or to have failed to function exclusively as a charitable remainder trust (within the meaning of § 1.664–1(a)(4)) merely because payment of the unitrust amount is made after the close of the taxable year if such payment is made within a reasonable time after the close of such taxable year.

(*k*) *Reasonable time.* For paragraphs (a)(1)(i) (*g*), (*h*), and (*j*) of this section, a reasonable time will not ordinarily extend beyond the date by which the trustee is required to file Form 5227, ''Split-Interest Trust Information Return,'' (including extensions) for the taxable year.

(*l*) *Effective date.* Paragraphs (a)(1)(i) (*g*), (*h*), (*i*), (*j*), and (*k*) of this section are applicable for taxable years ending after April 18, 1997.

* * * * *

(iv) * * * If the governing instrument does not specify the valuation date or dates, the trustee must select such date or dates and indicate the selection on the first return on Form 5227, ''Split-Interest Trust Information Return,'' that the trust must file. * * *

* * * * *

## PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

**Par. 5.** The authority citation for part 25 continues to read in part as follows:

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

**Par. 6.** In § 25.2702–1, paragraph (c)(3) is revised to read as follows:

**§ 25.2702–1 Special valuation rules in the case of transfers of interests in trust.**

* * * * *

(c) * * *

(3) *Charitable remainder trust.* (i) For transfers made on or after May 19, 1997, a transfer to a pooled income fund described in section 642(c)(5); a transfer to a charitable remainder annuity trust described in section 664(d)(1); a transfer to a charitable remainder unitrust described in section 664(d)(2) if under the terms of the governing instrument the unitrust amount can be computed only under section 664(d)(2)(A); and a transfer to a charitable remainder unitrust if under the terms of the governing instrument the unitrust amount can be computed under section 664(d)(2) and (3) and either there are only two consecutive noncharitable beneficial interests and the transferor holds the second of the two interests, or the only permissible recipients of the unitrust amount are the transferor, the transferor's U.S. citizen spouse, or both the transferor and the transferor's U.S. citizen spouse.

(ii) For transfers made before May 19, 1997, a transfer in trust if the remainder interest in the trust qualifies for a deduction under section 2522.

* * * * *

## PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

**Par. 7.** The authority citation for part 602 continues to read as follows:

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

**Par. 8.** In § 602.101, paragraph (c) is amended by adding a new entry in numerical order to the table to read as follows:

**§ 602.101 OMB Control numbers.**

* * * * *

(c) * * *

| CFR part or section where identified and described | Current OMB control No. |
|---|---|
| * * * * * | |
| 1.664–1(a)(7) ..... | 1545–1536 |
| * * * * * | |

Approved: December 1, 1998.

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

**Donald C. Lubick,**

*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. 98–32559 Filed 12–9–98; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF DEFENSE

## Office of the Secretary

## 32 CFR Part 270

**RIN 0790–AG67**

## Compensation of Certain Former Operatives Incarcerated by the Democratic Republic of Vietnam

**AGENCY:** Office of Under Secretary of Defense for Personnel and Readiness, DoD.

**ACTION:** Interim final rule.

**SUMMARY:** This rule amends part 270 to reflect changes necessary as a result of new language in Section 658 of the FY99 National Defense Authorization Act. Section 658 expands the field of beneficiaries of the Vietnamese Commandos Compensation Commission to parents and siblings of deceased Commandos. It also adds words ''notwithstanding any agreement (including a power of attorney) to the contrary, the actual disbursement'' must be made directly to the person who is eligible for the payment. This rule also amends part 270 to reflect necessary technical changes to accommodate the new language.

**EFFECTIVE DATE:** This rule is effective October 17, 1998. Comments are requested by February 8, 1999.

**ADDRESSES:** Forward comments to Commission on Compensation, Office of the Secretary of Defense, 4000 Defense Pentagon, Washington, DC 20301–4000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Chuck Witschonke, (703) 693–1059 or LTC Frank Hudson, (703) 588–6570.

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that this is not a significant rule as defined under section 3(f)(1) through 3(f)(4) of Executive Order 12866.

### Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

It has been determined that this rule will not have a significant economic impact on a substantial number of small entities because it affects only a limited

number of Vietnamese Commandos who were incarcerated in North Vietnam, and as such, does not affect small entities.

**Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)**

It has been certified that this rule does not impose reporting and recordkeeping requirements under the Paperwork Reduction Act of 1995. The reporting and recordkeeping requirements are exempt from this Act, as it directly involves active litigation in which the U.S. is a party.

The specific exemption from the Paperwork Reduction Act is found in 5 CFR Part 1320. The information collection in this interim final rule is exempt from OMB approval under Sec. 1320.4(a)(2), ''Controlling Paperwork Burdens on the Public; Regulatory Changes Reflecting Recodification of the Paperwork Reduction Act''.

**Public Law 104–4, ''Unfunded Mandates Report Act of 1995 (UMRA)''**

It has been determined that this rule does not contain a federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year.

**List of Subjects in 32 CFR Part 270**

Military personnel, Payments, Prisoners of war, Vietnam.

Accordingly, 32 CFR part 270 is amended to read as follows:

## PART 270—[AMENDED]

1. The authority citation for 32 CFR part 270 continues to read as follows:

**Authority:** Sec. 657, Pub. L. 104–201, 110 Stat. 2422.

2. Section 270.2, ''Definitions,'' is amended by redesignating paragraphs (c), (d), (e), (f), (g), (h), (i), (j), and (k) as paragraphs (e), (f), (g), (h), (i), (j), (k), (l), and (m), respectively, and by adding paragraphs (c) and (d) to read as follows:

**§ 270.2 Definitions.**

* * * * *

(c) *Parents of an eligible person*. Natural parents, adoptive parents, or step parents of a deceased person described in Part A of appendix A to this part. (Step parents must show that they established a parent-child relationship with the deceased person described in Part A of appendix A to this part.)

(d) *Siblings by blood of an eligible person*. Siblings related by blood to a deceased person described in Part A of appendix A to this part, including half-brothers and half-sisters.

* * * * *

3. Section 270.6, ''Standards of eligibility,'' is amended by removing the period and adding ''; or'' at the end of paragraph (b)(2), and adding paragraphs (b)(3) and (b)(4) to read as follows:

**§ 270.6 Standards of eligibility.**

* * * * *

(b) * * *

(3) If there is no surviving spouse of an eligible person and no surviving children of an eligible person, to the surviving parents of an eligible person, in equal shares (step parents take equal shares the same as natural parents); or

(4) If there is no surviving spouse of an eligible person, no surviving children of an eligible person, and no surviving parents of an eligible person, to the surviving siblings of an eligible person, in equal shares. (Half siblings take equal shares in the same manner as full siblings.)

* * * * *

4. Section 270.8, ''Authorization of payment,'' second sentence, is amended by revising the words ''spouse or children'' to read ''spouse, children, parents, or siblings''.

5. Section 270.11, ''Limitation on disbursements,'' is revised to read as follows:

**§ 270.11 Limitation on disbursement.**

Notwithstanding any agreement (including a power of attorney) to the contrary, the Commission must disburse a payment under this part only to the person who is eligible for the payment, i.e., the commando, his surviving spouse, children, parents, or siblings. The Commission may, in its discretion, require the person who is eligible for the payment to appear at any designated Defense Finance Accounting Service disbursement office in the United States to receive payment. The Commission may, in its discretion, coordinate with other U.S. governmental agencies to facilitate disbursement of payments to persons eligible for payments who reside outside the United States. If an eligible person makes a written request that payment be made at an alternate location or in an alternate manner, the Commission may, in its discretion, grant such request, provided that the actual disbursement of the payment (i.e., the physical delivery of the payment) is made only to the eligible person. The Commission will not disburse payment to any person other than an eligible person, notwithstanding any written request, assignment of rights, power of attorney, or other agreement. In the case of an application authorized for payment but not disbursed as a result of the foregoing, the Secretary will hold the funds in trust for the person authorized to receive payment in an interest bearing account until such time as the person complies with the conditions for disbursement set out in this part.

6. Appendix A to Part 270—Application for Compensation of Vietnamese Commandos, is amended as follows:

a. The Privacy Act Statement, Principal Purpose, is revised to read as follows:

**Appendix A to Part 270—Application for Compensation of Vietnamese Commandos**

* * * * *

Principal Purpose: To evaluate applications for cash payments for those individuals, or their surviving spouse, children, parents, or siblings, who were captured and incarcerated by North Vietnam as a result of participating in specified joint United States-South Vietnamese operations.

* * * * *

b. The last sentence of the Privacy Act Statement is revised to read as follows:

* * * * *

* * * This application shall be executed by the person applying for eligibility, or his surviving spouse, children, parents, or siblings, or designated representatives of such persons.

* * * * *

c. The introductory text to Part B is revised to read as follows:

* * * * *

Part B—In addition to PART A, above, any applicant who is a surviving spouse, child, parent, or sibling by blood of a deceased commando must complete Part B, below, with information on themselves.

* * * * *

d. Paragraphs (10) and (11) of Part B are redesignated as (12) and (13), respectively.

e. Part B is amended to add paragraphs (10) and (11), to read as follows:

* * * * *

(10) If you are a surviving parent, the deceased person described in PART A has no surviving spouse or children, list the name and address of the other parent of the deceased person.

(11) If you are a surviving sibling, the deceased person described in Part A has no surviving spouse, children, or parents, list the names and addresses of all other siblings of the deceased person, including half-brothers or half-sisters. Provide the date of death for any who are deceased.

* * * * *

f. The heading ''For Surviving Spouse or Child of Deceased Commando (OPLAN 34A or Predecessor Operations-Missions Into North Vietnam)'' is

revised to read ''For Surviving Spouse, Child, Parent, or Sibling of Deceased Commando (OPLAN 34A or Predecessor Operations-Missions Into North Vietnam).''

g. The heading ''For Surviving Spouse or Child of Deceased Commando (OP 35 Units-Missions Into Laos or Along the Viet-Lao Border)'' is revised to read ''For Surviving Spouse, Child, Parent, or Sibling of Deceased Commando (OP 35 Units-Missions Into Laos or Along the Viet-Lao Border).''

h. The heading ''For a Spouse or Surviving Child of a Deceased Person Described in Part A, Above'' is revised to read ''For a Surviving Spouse, Child, Parent, or Sibling of a Deceased Person Described in Part A, Above.''

i. Add new sections ''For the Surviving Parent'' and ''For the Surviving Sibling by Blood'' after ''For the Surviving Children,'' paragraph (12)(d), as follows:

* * * * *

**For the Surviving Parent**

In addition to documents described in Part C items (1) through (8), above, each surviving parent should submit the following:

(13) An affidavit certifying that the deceased individual described in Part A, above, has no surviving spouse.

(a) In addition to the above affidavit, if the individual described in Part A, above, was divorced at the time of his death, a copy of the divorce decree from his spouse shall be submitted as additional proof that he has no surviving spouse.

(b) In addition to the above affidavit, if the individual described in Part A, above, had been married at some point prior to his death, and his spouse pre-deceased him, one of the following documents as evidence of the death of the spouse of the individual described in Part A, above, shall be submitted as additional proof that he has no surviving spouse:

(i) A certified copy of extract from the public records of death, coroner's report of death, or verdict of a coroner's jury;

(ii) A certificate by the custodian of the public record of death;

(iii) A statement of the funeral director or attending physician or intern of the institution where death occurred;

(iv) A certified copy, or extract from an official report or finding of death made by an agency or department of the United States government; or

(v) If death occurred outside the United States, an official report of death by a United States Consul or other employee of the State Department, or a copy of public record of death in the foreign country.

(vi) If you cannot obtain any of the above evidence of death of the spouse of the deceased individual described in Part A, above, you must submit other convincing evidence, such as signed sworn statements of two or more persons with personal knowledge of the death, giving the place, date, and cause of death.

(14) One of the following documents as evidence of the death of all of the children (if any), of the deceased individual described in Part A, above:

(a) A certified copy of extract from the public records of death, coroner's report of death, or verdict of a coroner's jury;

(b) A certificate by the custodian of the public record of death;

(c) A statement of the funeral director are attending physician or intern of the institution where death occurred;

(d) A certified copy, or extract from an official report or finding of death made by an agency or department of the United States government; or

(e) If death occurred o8tside the United States, an official report of death by a United States Consul or other employee of the State Department, or a copy of public record of death in the foreign country.

(f) If you cannot obtain any of the above evidence of death of all of the children of the deceased individual described in Part A, above, you must submit other convincing evidence, such as signed sworn statements of two or more persons with personal knowledge of the death, giving the place, date, and cause of death.

(15) One document as evidence of your relationship to your child (the deceased person described in Part A, above), as follows:

If a Natural Parent:

(a) Birth certificate showing that the deceased person was your child.

(b) If the birth certificate does not show the deceased person as your child, a certified copy of:

(i) An acknowledgement in writing signed by the deceased person;

(ii) The public record of birth or a religious record showing that the deceased person was named as your child.

(iii) Public records, such as records of school or welfare agencies, which show that the deceased individual was named as your child; or

(iv) Other convincing evidence, such as signed, sworn statements of two or more persons who know that the deceased person was your child.

If An Adoptive Parent:

An adoptive parent must submit a certified copy of the decree of adoption. If the adoption took place outside of the United States and there is no decree of adoption, other convincing evidence must be submitted, such as signed, sworn statements of two or more persons with personal knowledge of the adoptive relationship, or a government official who can attest to the adoptive relationship.

If a Step-Parent:

Submit all three of the following documents as evidence of the step-parent relationship:

(a) One document as evidence of birth of the deceased person to the natural parent, or other convincing evidence that reasonably supports the existence of a parent-child relationship between the deceased person and the natural parent (see ''If a Natural Parent,'' above).

(b) One document as evidence that you had established a parent-child relationship with the deceased person; and

(c) One of the following documents as evidence that you were married to the natural parent of the deceased person:

(i) A copy of the public records of marriage, certified or attested, or an abstract of the public records, containing sufficient information to identify the parties, the date and place of marriage, and the number of prior marriages by either party if shown on the official record, issued by the officer having custody of the record or other public official authorized to certify the record, or a certified copy of the religious record of marriage;

(ii) An official report from a public agency as to a marriage which occurred while either parent was employed by such agency;

(iii) An affidavit of the clergyman or magistrate who officiated;

(iv) The certified copy of a certificate of marriage attested to by the custodian of the records;

(v) The affidavits of two or more eyewitnesses to the ceremony; or

(vi) In jurisdictions where ''common law'' marriages are recognized, an affidavit by the parent setting forth all of the facts and circumstances concerning the alleged marriage, such as the agreement between the parties at the beginning of their cohabitation, places and dates of residences, and whether children were born as the result of the relationship. This evidence should be supplemented by affidavits from two or more persons who know as a result of personal observation the reputed relationship which existed between the parties to the alleged marriage, including the period of cohabitation, places of residences, whether the parties held themselves out as husband and wife and whether they were generally accepted as such in the communities in which they lived.

(vii) If you cannot obtain any of the above evidence of your marriage to the natural parent, you must submit any other evidence that would reasonably support a belief that a valid marriage actually existed.

(16) In addition, submit the following documents about yourself:

(a) Identification. A document with your current legal name and address plus two or more sworn affidavits from individuals having personal knowledge of your identity (these should be submitted in addition to the document with current name and address).

(b) One document of date of birth. A Birth certificate, or if unavailable, other proof of birth (e.g., passport).

(c) One document of name change. If your current legal name is the same as that shown on documents attesting to your birth, this section does not apply. Persons whose current legal name is different than that used on such documents should submit a document or affidavit to corroborate the name change.

(d) One document of evidence of guardianship. If you are executing this document as the guardian of the person identified as a surviving parent of the deceased person described in Part A, above, you must submit evidence of your authority. If you are a legally-appointed guardian, submit a certificate executed by the proper official of the court appointment. If you are

not such a legally-appointed guardian, submit an affidavit describing your relationship to the parent and the extent to which you are responsible for the care of the parent, or your position as an officer of the institution in which the parent is institutionalized.

**For the Surviving Sibling by Blood**

In addition to documents described in Part C items (1) through (8), above, each surviving sibling by blood should submit the following:

(17) An affidavit certifying that the deceased individual described in Part A, above, has no surviving spouse.

(a) In addition to the above affidavit, If the individual described in Part A, above, was divorced at the time of his death, a copy of the divorce decree from his spouse shall be submitted as additional proof that he has no surviving spouse.

(b) In addition to the above affidavit, If the individual described in Part A, above, had been married at some point prior to his death, and his spouse pre-deceased him, one of the following documents as evidence of the death of the spouse of the deceased individual described in Part A, above, shall be submitted as additional proof that he has no surviving spouse:

(i) A certified copy of extract from the public records of death, coroner's report of death, or verdict of a coroner's jury;

(ii) A certificate by the custodian of the public record of death;

(iii) A statement of the funeral director or attending physician or intern of the institution where death occurred;

(iv) A certified copy, or extract from an official report or finding of death made by an agency or department of the United States government; or

(v) If death occurred outside the United States, an official report of death by a United States Consul or other employee of the State Department, or a copy of public record of death in the foreign country.

(vi) If you cannot obtain any of the above evidence of death of the spouse of the deceased individual described in Part A, above, you must submit other convincing evidence, such as signed sworn statements of two or more persons with personal knowledge of the death, giving the place, date, and cause of death.

(18) One of the following documents as evidence of the death of all of the children (if any), of the deceased individual described in Part A, above:

(a) A certified copy of extract from the public records of death, coroner's report of death, or verdict of a coroner's jury;

(b) A certificate by the custodian of the public record of death;

(c) A statement of the funeral director or attending physician or intern of the institution where death occurred;

(d) A certified copy, or extract from an official report or finding of death made by an agency or department of the United States government; or

(e) If death occurred outside the United States, an official report of death by a United States Consul or other employee of the State Department, or a copy of public record of death in the foreign country.

(f) If you cannot obtain any of the above evidence of death of the children of the deceased individual described in Part A, above, you must submit other convincing evidence, such as signed sworn statements of two or more persons with personal knowledge of the death, giving the place, date, and cause of death.

(19) One of the following documents as evidence of the death of the parents of the deceased in individual described in Part A, above:

(a) A certified copy of extract from the public records of death, coroner's report of death, or verdict of a coroner's jury;

(b) A certificate by the custodian of the public record of death;

(c) A statement of the funeral director or attending physician or intern of the institution where death occurred;

(d) A certified copy, or extract from an official report or finding of death made by an agency or department of the United States government; or

(e) If death occurred outside the United States, an official report of death by a United States Consul or other employee of the State Department, or a copy of public record of death in the foreign country.

(f) If you cannot obtain any of the above evidence of death of the parents of the deceased individual described in Part A, above, you must submit other convincing evidence, such as signed sworn statements of two or more persons with personal knowledge of the death, giving the place, date, and cause of death.

Each surviving sibling should submit the following:

(20) One document as evidence of your relationship to your sibling (the deceased individual described in Part A, above), as follows:

(a) Birth certificate showing that at least one of your deceased parents was also the natural parent of the deceased person described in Part A, above;

(b) If the birth certificate does not show the deceased individual described in Part A, above, as your sibling, a certified copy of:

(i) An acknowledgement in writing signed by the deceased person;

(ii) The public record of birth or a religious record showing that the deceased person was named as your sibling.

(iii) Affidavit of a person who knows that the deceased person was your sibling; or

(iv) Public records, such as records of school or welfare agencies, which show that the deceased individual was named as your sibling.

(v) If you cannot obtain any of the above evidence of your sibling relationship to the deceased individual described in Part A, above, you must submit any other evidence that would reasonably support a belief that a valid sibling relationship actually existed.

(21) In addition, submit the following documents about yourself:

(a) Identification. A document with your current legal name and address plus two or more sworn affidavits from individuals having personal knowledge of your identity (these should be submitted in addition to the document with current name and address).

(b) One document of date of birth. A Birth certificate, or if unavailable, other proof of birth (e.g., passport).

(c) One document of name change. If your current legal name is the same as that shown on documents attesting to your birth, this section does not apply. Persons whose current legal name is different than that used on such documents should submit a document or affidavit to corroborate the name change.

(d) One document of evidence of guardianship. If you are executing this document as the guardian of the person identified as a surviving sibling by blood of the deceased individual described in Part A, above, you must submit evidence of your authority. If you are a legally-appointed guardian, submit a certificate executed by the proper official of the court appointment. If you are not such a legally-appointed guardian, submit an affidavit describing your relationship to the sibling and the extent to which you are responsible for the care of the sibling, or your position as an officer of the institution in which the sibling is institutionalized.

Dated: December 1, 1998.

**Patricia L. Toppings,**

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

[FR Doc. 98–32755 Filed 12–9–98; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 52

**[CC Docket No. 95–116; FCC 98–275]**

### Telephone Number Portability

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document addresses database issues, location portability, 500 and 900 number portability, and wireless issues, all of which were raised in petitions for reconsideration of the *First Report and Order* in this proceeding, and not addressed in the *First Order on Reconsideration*. We address these because their resolution will foster deployment of number portability and promote competition in the local telecommunications marketplace.

**EFFECTIVE DATE:** January 11, 1999.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Askin, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580, or via the Internet at jaskin@fcc.gov.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order adopted October 15, 1998, and released October 20, 1998. The full text of this

Order is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St., NW, Room 239, Washington, DC. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc98275.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th St., NW, Washington, DC 20036.

**Regulatory Flexibility Certification**

As required by the Regulatory Flexibility Act, the Order contains a Final Regulatory Flexibility Analysis on Reconsideration which is set forth in the Order on Reconsideration. A brief description of the analysis follows. Pursuant to section 604 of the Regulatory Flexibility Act, the Commission performed a comprehensive analysis of the Order with regard to small entities. This analysis includes: (1) a succinct statement of the need for, and objectives of, the Commission's decisions in the Order; (2) a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the Commission's assessment of these issues, and a statement of any changes made in the Order as a result of the comments; (3) a description of and an estimate of the number of small entities to which the Order will apply; (4) a description of the projected reporting, recordkeeping and other compliance requirements of the Order, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for compliance with the requirement; (5) a description of the steps the Commission has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the Order and why each one of the other significant alternatives to each of the Commission's decisions which affect small entities was rejected.

**Synopsis of Second Memorandum Opinion and Order**

**I. Introduction**

On June 27, 1996, the Commission adopted the *First Report and Order and Further Notice of Proposed Rulemaking*, 61 FR 38605, July 25, 1996 (*First Report and Order*) in this docket, which implemented the provisions of section 251 of the Communications Act of 1934, as amended, that relate to telephone number portability. Specifically, section 251(b)(2) requires that all local exchange carriers (LECs) provide, ''to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.'' Section 251(e)(2) provides that ''the costs of establishing . . . number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.'' The Act defines ''number portability'' as ''the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.'' In the *First Report and Order*, the Commission determined, among other things, that the Commission has authority under section 251 to promulgate rules regarding long-term and currently available number portability, as well as to establish cost recovery methods for each.

2. Twenty-two parties filed petitions for reconsideration or clarification of the *First Report and Order*; 19 parties filed oppositions or comments on the petitions; and 16 parties filed reply comments. On March 6, 1997, the Commission adopted a *First Memorandum Opinion and Order on Reconsideration*, 62 FR 18280, April 15, 1997 *(First Order on Reconsideration)* in this proceeding, addressing a number of issues. In this *Second Memorandum Opinion and Order on Reconsideration*, we address all remaining issues raised by the petitioners, except issues relating to cost recovery for currently available number portability, which will be addressed in a future order. We also address American Mobile Telecommunications' (AMTA) petition for reconsideration of the *First Order on Reconsideration*, which raises similar issues to those raised by AMTA in its petition for reconsideration of the *First Report and Order.*

**II. Background**

3. In the *First Report and Order*, the Commission required all LECs to begin implementing a long-term service provider portability solution that meets the Commission's performance criteria in the 100 largest Metropolitan Statistical Areas (MSAs) no later than October 1, 1997, and to complete deployment in those MSAs by December 31, 1998, in accordance with a phased implementation schedule. In the *First Order on Reconsideration*, the Commission modified this schedule, extending the completion dates for the first two phases of the implementation schedule and clarifying that, within the 100 largest MSAs, LECs need only provide number portability in switches for which another carrier has made a specific request for the provision of portability.

4. In the *First Report and Order*, the Commission also required all cellular, broadband personal communications services (PCS) and covered specialized mobile radio (SMR) providers to have the capability of delivering calls from their networks to ported numbers anywhere in the country by December 31, 1998, and to offer service provider portability, including the ability to support roaming, throughout their networks by June 30, 1999. In the *First Order on Reconsideration*, the Commission concluded that these commercial mobile radio service (CMRS) providers need only deploy local number portability by the June 30, 1999, deadline in switches in the 100 largest MSAs for which they receive a request at least nine months prior to the deadline. On September 1, 1998, the Wireless Telecommunications Bureau extended the deadline for implementation of number portability by CMRS providers to March 31, 2000.

5. In the *First Report and Order*, the Commission concluded, *inter alia*, that a system of regional number portability databases, managed by independent local number portability administrator(s) (LNPA(s)) would serve the public interest. The Commission directed the North American Numbering Council (NANC), an advisory committee established pursuant to the Federal Advisory Committee Act, to recommend as local number portability administrators one or more independent, non-governmental entities that are not aligned with any particular telecommunications industry segment within seven months of the initial meeting of the NANC. The Commission also directed the NANC to make recommendations regarding, *inter alia*, the duties of local number portability administrator(s), the location of regional databases, and technical specifications for the regional databases. In the *Second Report and Order*, 62 FR 48774, September 17, 1997, the Commission adopted, with minor modifications, the *NANC LNPA Working Group Report*, containing the recommendations of the NANC regarding the selection of LNPAs, the duties of LNPAs, the locations of regional databases, and technical specifications for the regional databases.

**III. Reconsideration Issues**

*A. Database Issues*

1. Treatment of Industry Efforts to Implement Regional Databases Prior to Issuance of NANC's Recommendations

a. Discussion

6. The Commission has adopted the *NANC LNPA Working Group Report*, which contains NANC's recommendations with respect to regional database implementation, in a separate order. In particular, in that order, the Commission adopted the NANC's recommendation that Lockheed Martin serve as local number portability database administrator for the Northeast, Mid-Atlantic, Midwest and Southwest regions, and that Perot Systems serve as the local number portability database administrator for the Southeast, Western and West Coast regions.

7. On February 20, 1998, the Chief of the Common Carrier Bureau received a letter from the Chairman of the NANC informing him that the Limited Liability Corporations (LLCs) for the Southeast, Western, and West Coast regions reported to the NANC on local number portability implementation. The LLCs for the Southeast, Western, and West Coast regions reported that it was necessary to terminate their contracts with Perot Systems, with whom they had experienced repeated performance problems, and to enter into contracts with Lockheed Martin to serve as the LNPA to expedite implementation of local number portability. The NANC members supported unanimously the decision to change vendors as ''essential in successfully implementing [number portability] in these regions.''

8. We adopt the *NANC Perot Recommendation* to replace Perot Systems with Lockheed Martin as the LNPA in the Southeast, Western and West Coast regions. The record indicates that the NPAC database and associated facilities needed for long-term number portability in the regions where Perot Systems was the database administrator were not ready for intercompany testing as late as January 23, 1998, putting in jeopardy the dates for which number portability was required to be made commercially available in these regions. The record indicates that this delay was specifically due to the failure of the designated LNPA, Perot Systems, to provide a stable software and hardware platform. We find that *NANC Perot Recommendation* supports timely implementation of local number portability.

9. We find it unnecessary to authorize expressly or approve automatically carriers' actions implementing regional database solutions that were taken prior to the issuance of the *NANC LNPA Working Group Report* or the Commission's order acting on the *NANC LNPA Working Group Report*. We conclude that the concerns raised by BellSouth and U S WEST in this area have become moot in light of subsequent industry actions to implement local number portability. Carriers, both on their own and through the regionally-based LLCs, have successfully worked with the NANC to implement regional SMS database solutions.

2. Scope of the NANC's Responsibilities

a. Discussion

10. We find moot BellSouth's request that the NANC should address only SMS database administration. The recommendations contained in the *NANC LNPA Working Group Report*, adopted by the Commission in the *Second Report and Order*, address technical specifications related to SMS database administration only and do not address SMS/SCP pairs.

11. In addition, we find moot BellSouth's request that carriers, and not the NANC, propose standards for interfaces between regional SMS and downstream SCP databases. In the *Second Report and Order*, the Commission adopted the NANC's recommended standards for interfaces between regional SMS and downstream SCP databases. The carriers sharing in the costs of developing, establishing and maintaining the regional databases had ample opportunity, through the NANC, to participate in the development of interface recommendations.

12. Finally, we find moot Pacific's request that we direct an industry group other than the NANC to address operational and technical issues that will arise as number portability is implemented. In the *Second Report and Order*, the Commission found that the NANC represents a broad cross-section of the industry, has developed substantial expertise in number portability issues, and provides a valuable forum in which carriers are able to consider, at the national level, possible ways to resolve the issues that arise as number portability is deployed within each number portability region. As a result, the Commission charged the NANC with the task of addressing technical and operational issues related to local number portability that may arise in the future.

3. Effect of Implementation of Long-Term Number Portability on Interim Number Portability Methods

a. Discussion

13. We clarify that all LECs must discontinue using transitional number portability methods in areas where a long-term number portability method has been implemented. In the *First Report and Order*, the Commission concluded that the Act ''contemplates a dynamic, not static, definition of technically feasible number portability methods.'' Based on this finding, the Commission required LECs to offer number portability, as soon as reasonably possible upon receipt of a specific request, through remote call forwarding (RCF), direct inward dialing (DID) and other comparable methods, because these are the only methods that currently are technically feasible. Because transitional number portability methods do not meet the performance criteria established for long-term number portability, LECs may not continue to utilize such measures once long-term solutions have been implemented. This conclusion is consistent with the Commission's finding in the *First Report and Order* that the Act ''clearly contemplates that [currently available] methods should serve as only temporary measures until long-term portability is implemented.''

14. We also wish to clarify that, under the rules adopted in the *First Report and Order*, RCF and DID are not the *exclusive* methods of providing number portability that LECs are obligated to provide today. As the Commission stated in the *First Report and Order*, ''LECs are required to offer number portability through RCF, DID, and other *comparable* methods because they are the only methods that currently are technically feasible.'' In specifically identifying RCF and DID as technically feasible number portability methods, the Commission did not imply that RCF and DID are the *only* methods through which LECs must port numbers until a permanent number portability solution is implemented. Clearly, the references to RCF and DID were illustrative of the types of measures that LECs must provide on a transitional basis. The Commission's rules require that LECs must provide, on a transitional basis, any technically feasible method of number portability comparable to RCF and DID.

15. In the two years since adoption of the *First Report and Order*, a number of state commissions have ordered carriers to provide Route Indexing—Portability Hub (RI–PH) and Directory Number Route Indexing (DNRI), based on

findings of technical feasibility. To date, LECs in more than half the states have either agreed or been ordered to provide RI–PH and DNRI as technically feasible methods of providing number portability prior to deployment of a database method. We therefore conclude, consistent with the Commission's prior findings in this docket and with the rules and policies established in the Commission's *Local Competition Order*, 61 FR 45476, August 29, 1996, that RCF, DID, DNRI and RI–PH are comparable and technically feasible transitional methods of providing number portability. We conclude that state commissions may determine that additional methods are comparable and technically feasible, as well.

16. In adopting the requirements for transitional number portability in the *First Report and Order*, the Commission relied on the fact that no network modifications would be necessary in order to provide number portability on a transitional basis, prior to implementation of a long-term database solution. In particular, in adopting section 52.27, the Commission concluded that it is not unduly burdensome for LECs to provide number portability through RCF and DID because these methods are offered as retail services in a number of states today.

17. Since adoption of the *First Report and Order*, certain new entrants have sought other transitional methods of number portability that are better suited, in their view, to their particular business needs. A number of carriers make available other transitional methods of number portability, such as RI–PH and DNRI, only if requested by a competing carrier. We conclude that it is not *per se* unreasonable for a LEC to make available transitional number portability methods only upon request, provided that the LEC does not deliberately use the request process to delay competitive entry. We would expect a LEC to respond expeditiously to a request for a particular method of transitional number portability.

18. The *First Report and Order* did not address the issue of which carrier has the right to select the particular transitional method of number portability to be provided when there is more than one technically feasible method. We amend the Commission's rules, on our own motion, to clarify that a LEC is required to furnish the specific method of currently available number portability that a competing carrier requests, provided that provision of the requested method is not unduly burdensome. We believe that the burden of fulfilling a competing carrier's request for a specific method of providing number portability will be minimal if the functionality described by a requested currently available method already exists in the network. As the Commission noted in the *First Report and Order*, the capability to provide number portability through currently available methods, such as RCF and DID, already exists in most networks, and no additional network upgrades should be necessary in order to provide number portability in this manner. We clarify this finding by adding that, to the extent no network upgrades are necessary in order to provide number portability through methods other than RCF or DID, a LEC must make such methods available upon request as well.

19. Given that a number of states have ordered LECs to provide RI–PH and DNRI, we presume that RI–PH and DNRI are not unduly burdensome to provide. We conclude that the burden should be on the LEC providing number portability to overcome this presumption. In particular, consistent with the pro-competitive goals of the Act, we conclude that the LEC shall bear the burden of demonstrating that a particular requested transitional number portability method is unduly burdensome, and therefore should not be provided to a requesting carrier. In determining whether a specific method is unduly burdensome, relevant factors are the extent of network upgrades needed to provide the requested method, the cost of such upgrades, the business needs of the requesting carrier, and the timetable for deployment of a long-term number portability method in that particular geographic location.

4. Issues Related to Performance Criteria

a. Discussion

20. We reject Nextel's request that the Commission establish an industry committee to develop a single, nationwide number portability methodology. As a threshold matter, we disagree with Nextel's underlying premise that number portability methodology decisions will be made on a state-by-state basis. In the *First Report and Order*, the Commission specifically concluded that regionally deployed databases best serve the public interest. Because the harm that Nextel raised in its petition (*i.e.*, the deployment of a different number portability plan in each state resulting in dramatically increased costs for multi-state providers) has not occurred and is not likely to occur, we conclude that it is unnecessary to grant Nextel's request.

21. In addition, we note that, to a great extent, the NANC already has served the function that Nextel asserts is necessary. The NANC was charged with developing recommendations regarding the implementation of number portability, in large part, ''to ensure consistency and to provide a national perspective on number portability issues, as well as to reduce the costs of implementing a national number portability plan.'' Further, the NANC includes representatives from each of the constituencies that Nextel identifies: state and federal officials, service providers, and equipment manufacturers. Moreover, we point out that, to date, the industry and state/regional workshops have chosen the Location Routing Number (LRN) methodology as the preferred method of number portability, and carriers have proceeded to implement LRN. As such, it would appear that states have chosen the same number portability method, rather than several incompatible methods, as Nextel feared.

22. We grant AirTouch's request for clarification that carriers may arrange with other carriers to perform database dips and other routing functions. Contrary to AirTouch's claims, we have not assumed, nor do we require, that all carriers must satisfy their number portability obligations by upgrading their networks to perform database dips. In the *Second Report and Order*, the Commission concluded that, although the carrier in the call routing process immediately preceding the terminating carrier shall be responsible for ensuring that number portability database dips are performed, that carrier can meet this obligation by either querying the number portability database itself or by arranging with another entity to perform database dips on its behalf.

*B. Location Portability*

1. Discussion

23. We decline to adopt SBC's proposal that the Commission decide now that we will not consider location portability until service provider number portability is successfully deployed in the 100 largest MSAs. The Commission concluded in the *First Report and Order* that the requirement that all LECs provide local number portability (*i.e.*, service provider portability) pursuant to section 251(b)(2) does not include location portability because the Act's number portability mandate is limited to situations when users remain ''at the same location'' when switching from one telecommunications carrier to another. Although we did not require LECs to

provide location portability when the *First Report and Order* was issued, we nevertheless concluded that nothing in the Act would preclude us from mandating location portability if, in the future, we determine that location portability is in the public interest.

24. The Commission has no current plans to address location portability at this time. We need not and do not address the issue of whether it may be in the public interest to require the implementation of location portability at some point in the future.

*C. 500 and 900 Number Portability*

25. In the *First Report and Order*, the Commission concluded there was insufficient evidence in the record to determine whether it is technically feasible for LECs to make their assigned 500 and 900 numbers portable. The Commission directed the Industry Numbering Committee (INC) to examine this issue and to file a report of its findings with the Commission within twelve months of the effective date of the *First Report and Order*. The Commission stated that ''[u]pon receipt of this report, we will take appropriate action under the * * * Act.'' The INC released its report on July 2, 1997.

1. Provision of 500 and 900 Number Portability By Carriers Other Than LECs

a. Discussion

26. The number portability requirements of section 251(b)(2) apply only to LECs. Specifically, section 251(b)(2) imposes a duty on ''each local exchange carrier * * * to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.'' Thus, we cannot rely on section 251 for authority to require IXCs or other non-LECs to provide number portability for 500 and/or 900 number service. We therefore affirm the Commission's conclusion in the *First Report and Order* that IXCs are not required under section 251(b)(2) to make their assigned 500 and 900 numbers portable to any other carrier offering 500 and 900 number service.

27. We, however, may possess independent authority under sections 1, 2 and 4(i) of the Act to require other carriers to provide number portability for 500 and/or 900 number service to the extent that such portability is in the public interest. Section 1 requires the Commission to make available to all people of the United States ''a rapid, efficient, Nation-wide, and world-wide wire and radio communication service.'' Section 1 of the Act thus gives the Commission jurisdiction to ensure that the portability of *all* telephone numbers within the United States, including 500 and 900 numbers, is handled efficiently and fairly. 500 and 900 number portability would promote this mandate. 500 and 900 number portability also would promote the efficient and uniform treatment of numbering that is essential to the efficient delivery of interstate and international telecommunications. Section 2 gives the Commission authority to regulate interstate common carriers, including those that provide 500 and 900 number services. Section 4(i) grants the Commission authority to ''perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with [the Act], as may be necessary in the execution of its functions.'' The conclusion that we may possess independent authority to require all carriers to provide number portability for their assigned 500 and 900 numbers would be similar to the Commission's decision in the *First Report and Order* to rely on its general rulemaking authority to order number portability for CMRS providers, and to reserve the Commission's authority to require service and location portability, even though the Commission concluded that these types of number portability are not specifically required by section 251(b)(2). This result would also be consistent with our exercise of authority under sections 1, 2 and 4(i) to require the Bell Operating Companies and GTE to provide number portability for 800 numbers even prior to enactment of the 1996 Act.

28. As the Commission noted in the *First Report and Order*, most users of 500 and 900 number services today have obtained their numbers from IXCs. Thus, ''as a practical matter, portability for the vast majority of 500 and 900 numbers can occur only if the IXC releases to the new carrier management of the 500 or 900 number that is to be ported.'' If only LECs were required to make their 500 and 900 numbers portable, the vast majority of 500 and 900 numbers would not be portable, and competing 500 and 900 service providers would face a significant impediment in persuading customers to switch carriers. Imposing portability obligations on all 500 and 900 service providers would make it possible for all customers of 500 and 900 services to switch providers without changing their numbers. This, in turn, would promote competition in the 500 and 900 services markets.

29. We decline to rule at this time, however, on our authority to require all carriers to offer 500 and 900 number portability. We will first determine whether 500 and/or 900 number portability by all carriers is technically feasible. In the event that it is determined that 500 and 900 number portability by all carriers is technically feasible, we will address our authority to impose the same number portability requirements on all carriers that provide 500 and 900 services.

2. Implementation of 500 and 900 Number Portability

a. Discussion

We decline to determine at this time whether we have independent rulemaking authority to require number portability for 500 and 900 numbers assigned to all carriers, if that would serve the public interest. In its report, the INC expressly limited its analysis to the technical feasibility of porting numbers assigned to LECs between LECs; it did not address the technical feasibility of LEC-to-non-LEC, non-LEC-to-LEC, or non-LEC-to-non-LEC portability for 500 or 900 numbers. In order to evaluate whether the public interest would be served by mandating 500 and 900 number portability for all carriers, we must first determine whether number portability for the entire 500 and 900 number resource is technically feasible. We therefore conclude that we should expand the scope of the inquiry that the Commission previously delegated to the INC. We direct the NANC, which may refer the issues to the INC, to examine the following questions:

1. Is it technically feasible for all 500 number service providers to implement 500 number portability using existing network and administrative database capabilities?

2. If the answer to Question #1 is ''No,'' is technology available to develop the appropriate network and administrative database capabilities to deploy 500 number portability in the future?

3. If the answer to Question #2 is ''Yes,'' how long would it take to develop and deploy the necessary network infrastructure for 500 number portability, upon receipt of a regulatory directive?

4. Is it technically feasible for all 900 number service providers to implement 900 number portability using existing network and administrative database capabilities?

5. If the answer to Question #4 is ''No,'' is technology available to develop the appropriate network and administrative database capabilities to deploy 900 number portability in the future?

6. If the answer to Question #5 is ''Yes,'' how long would it take to

develop and deploy the necessary network infrastructure for 900 number portability, upon receipt of a regulatory directive?

31. The NANC is directed to file a report addressing the questions referred to it in this *Second Memorandum Opinion and Order on Reconsideration* within twelve months of the effective date of this order. Upon receipt of the NANC's report, we will take appropriate action.

32. We decline to rule at this time on SBC's request that we consider economic feasibility, as well as technical feasibility, in evaluating the provision of 500 and 900 number portability. As a practical matter, we believe that it is premature to determine what factors may be appropriate to consider with respect to the possible implementation of portability for such numbers, if we ultimately conclude we have jurisdiction to order portability of those numbers for all carriers.

*D. Wireless Issues*

33. In the *First Report and Order,* the Commission concluded that number portability must be provided by cellular, broadband PCS, and covered SMR providers.

34. With respect to wireless carriers, the Commission concluded that number portability will facilitate the entry of new service providers, such as broadband PCS and covered SMR, into CMRS markets currently dominated by cellular providers, and competition from these new entrants will provide incentives for incumbent cellular providers to lower prices and increase service choice and quality. The Commission also noted that number portability will promote competition between CMRS and wireline service providers as CMRS providers offer comparable local exchange and fixed commercial radio services. The Commission determined that it would not adopt a number portability schedule for other categories of CMRS providers (including SMR operators that do not fit the definition of ''covered SMR'') because these other providers offer services that ''currently will have little competitive impact on competition between providers of wireless telephony service or between wireless and wireline carriers.''

1. Definition of ''Covered SMR''

b. Discussion

35. The term ''covered SMR'' was intended to include SMR licensees that offer services that compete, or potentially compete, with services offered by cellular and broadband PCS licensees. The Commission concluded that because cellular, broadband PCS, and certain SMR providers will compete directly with one another, and potentially will compete in the future with wireline carriers, number portability was sufficiently important to the development of competition that it should be required for these carriers. Within the SMR service, however, it was clear that some providers would be offering mass market, two-way, real-time, interconnected voice services that compete with the offerings of traditional cellular and broadband PCS providers, and others would not. The definition of covered SMR is intended to distinguish between these two groups of SMR providers.

36. We agree with the petitioners that the existing definition of ''covered SMR'' imperfectly accomplishes its intended purpose.

37. We note also that it may be infeasible, from a technical standpoint, to require SMR providers whose systems lack an in-network switching capability to provide number portability.

38. For the foregoing reasons, we adopt, with some modification, the definition suggested by the petitioners:

''Covered CMRS systems offer real-time, two-way switched voice service that are interconnected with the public switched network, and utilize an in-network switching facility which enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls.''

With this change, number portability must be provided by ''covered CMRS'' providers, which may hold licenses in cellular, PCS, SMR or any other services.

39. We also clarify, in response to Nextel's petition, that the definition of covered CMRS should be applied on a system-by-system basis. That is, an entity may hold more than one CMRS license, but the entity is required to provide number portability only with respect to licenses that satisfy the definition of covered CMRS.

40. In addition, we reject AMTA's proposal that the covered SMR definition apply only to systems serving 20,000 or more subscribers nationwide. The approach we adopt above is a functional one, which is based on whether the provider offers a certain type of service. We find that determining whether an SMR system is required to provide number portability based on how many subscribers it serves would be arbitrary, and could discourage SMR providers from expanding their systems.

41. Further, we dismiss SBT's petition for reconsideration as untimely. Public notice in this case was given on July 26, 1996, the date on which the *First Report and Order* was published in the **Federal Register**. Therefore, petitions to reconsider that decision were due on or before August 26, 1996. Because the time period for filing petitions for reconsideration is prescribed by statute, the Commission may not, except in extraordinary cases, waive or extend the filing period. SBT has not demonstrated that its late-filed petition fits into this narrow exception; indeed, SBT has not even moved for leave to file its petition. As such, we dismiss SBT's petition.

42. Finally, we dismiss AMTA's petition for reconsideration of the *First Order on Reconsideration* as moot. By amending, in this Order, the Commission's rules to ensure that only those CMRS carriers that compete in the market for two-way, interconnected, real-time voice services are subject to the Commission's number portability requirements, we grant the relief that AMTA requests. Moreover, because we have clarified that CMRS licensees providing primarily dispatch service with a non-cellular type of system are exempt from the Commission's number portability requirements, there is no need to extend the implementation period for such licensees.

2. Geographic Scope of Number Portability for Wireless Carriers

a. Discussion

43. Requiring service provider portability in a wireless environment, without imposing any geographic boundaries, could theoretically result in *de facto* nationwide location portability, which the Commission explicitly declined to adopt in the First *Report and Order.* Conversely, limiting number portability in a wireless environment to those carriers already serving the NPA of the ported wireless number may thwart the pro-competitive goals of the Act. A single geographic area may now have multiple NPAs due to area code overlays. Typically, wireless carriers provide their customers with the choice of NPAs when they have more than one switch in the geographic market, but some new entrants may only have one or two switches with all numbers coming out of the same NPA. Limiting number portability in a wireless environment to those carriers already serving the NPA of the ported wireless number may discourage customers from switching wireless carriers if they cannot port their number to a different NPA even though the number continues to be used in the same geographic

market. As noted, wireless carriers are not obligated to port numbers until March 31, 2000. Furthermore, the NANC is currently examining the myriad of complex issues surrounding wireless number portability. Consequently, we defer a decision on this matter pending further analysis by the NANC. We encourage AirTouch to participate in the NANC's standards development process to ensure consideration of AirTouch's concerns.

3. Preemption of State Number Portability Requirements for CMRS Providers

a. Discussion

44. We reject the request for preemption of state number portability requirements for CMRS carriers. While, under certain circumstances, the Commission has authority to preempt state law, the record is devoid of any evidence that such action is warranted at this time. Pursuant to the Supremacy Clause of the U.S. Constitution, Congress has the power to preempt state laws or regulations.

45. The petitioners have failed to identify any specific state number portability requirements that apply to CMRS carriers that conflict with federal number portability mandates or objectives. Nor is there a basis in the current record for concluding that it will be impossible for carriers to comply with federal and state CMRS number portability requirements. Thus, we decline to consider the preemption of state number portability requirements for CMRS carriers based on the record before us.

46. In addition, despite the conclusory assertions of the petitioners to the contrary, the record does not indicate that there are, or will be, state number portability requirements applicable to CMRS carriers that will conflict with the requirements of any other state, such that CMRS carriers will be required to accommodate multiple portability architectures and/or service requirements. Indeed, the framework for implementing number portability is designed, in part, to minimize such burdens. For example, in the *First Report and Order*, the Commission directed one entity—the NANC—to develop recommendations for technical and operational standards with respect to regional number portability databases. Accordingly, we expect there will be a high degree of national uniformity in this regard. Moreover, as discussed above, the industry and state/regional workshops chose a single method as the preferred method for number portability. In short, it is unlikely that CMRS systems that span state lines will be required to accommodate multiple portability architectures that differ significantly from one another.

## IV. Ordering Clauses

47. *It is ordered that*, pursuant to the authority contained in sections 1, 4(i), 4(j), 201–205, 218, 251, and 332 of the Communications Act as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 218, 251 and 332, and 47 CFR 52 is amended.

48. *It is further ordered* that the Petitions for Reconsideration and/or Clarification are granted to the extent indicated herein and otherwise are denied.

49. *It is further ordered* that the policies, rules, and requirements set forth herein are adopted, effective 30 days after publication of a summary of this *Second Reconsideration Order* in the **Federal Register**.

50. *It is further ordered* that the Petition for Reconsideration of Small Business in Telecommunications is hereby dismissed.

51. *It is further ordered* that the Petition for Reconsideration filed by the Ameritech Mobile Telecommunications Association, Inc. on May 15, 1997, is dismissed as moot.

52. *It is further ordered* that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Second Memorandum Opinion and Order on Reconsideration, including the Second Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

## List of Subjects in 47 CFR Part 52

Communications common carriers, Telecommunications, Telephone

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

## Final Rules

Part 52 of Title 47 of the Code of Federal Regulations (CFR) is amended as follows:

## PART 52—NUMBERING

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

**Authority:** Sec. 1, 2, 4, 5, 48 Stat. 1066, as amended; 47 U.S.C. 151, 152, 154, 155 unless otherwise noted. Interpret or apply secs. 3, 4, 201–05, 207–09, 218, 225–7, 251–2, 271 and 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 153, 154, 201–05, 207–09, 218, 225–7, 251–2, 271 and 332 unless otherwise noted.

2. Section 52.21 is amended by revising paragraphs (c) and (q) to read as follows:

### § 52.21 Definitions.

* * * * *

(c) The term *covered CMRS* means broadband PCS, cellular, and 800/900 MHz SMR licensees that hold geographic area licenses or are incumbent SMR wide area licensees, and offer real-time, two-way switched voice service, are interconnected with the public switched network, and utilize an in-network switching facility that enables such CMRS systems to reuse frequencies and accomplish seamless hand-offs of subscriber calls.

* * * * *

(q) The term *transitional number portability measure* means a method that allows one local exchange carrier to transfer telephone numbers from its network to the network of another telecommunications carrier, but does not comply with the performance criteria set forth in 52.3(a). Transitional number portability measures are technically feasible methods of providing number portability including Remote Call Forwarding (RCF), Direct Inward Dialing (DID), Route Indexing—Portability Hub (RI–PH), Directory Number Route Indexing (DNRI) and other comparable methods.

3. Section 52.27 is revised to read as follows:

### § 52.27 Deployment of transitional measures for number portability.

(a) All LECs shall provide transitional number portability measures, as defined in section 52.21(q) of this chapter, 47 CFR 52.21(q), as soon as reasonably possible upon receipt of a specific request from another telecommunications carrier, until such time as the LEC implements a long-term database method for number portability in that area.

(b) A LEC must provide the particular transitional number portability measure requested by a telecommunications carrier, except as set forth in paragraph (c) of this section.

(c) A LEC that does not provide a requested transitional number portability measure must demonstrate that provision of the requested transitional number portability measure either is not technically feasible or if technically feasible, is unduly burdensome.

(1) Previous successful provision of a particular transitional number portability measure by any LEC constitutes substantial evidence that the particular method is technically feasible.

(2) In determining whether provision of a transitional number portability measure is unduly burdensome, relevant factors to consider are the extent of network upgrades needed to provide that particular method, the cost of such upgrades, the business needs of the requesting carrier, and the timetable for deployment of a long-term number portability method in that particular geographic location.

(d) LECs must discontinue using transitional number portability measures in areas where a long-term number portability method has been implemented.

4. Section 52.31 is amended by revising paragraphs (a), (b), and (e) as follows:

**§ 52.31 Deployment of long-term database methods for number portability by CMRS providers.**

(a) By March 31, 2000, all covered CMRS providers must provide a long-term database method for number portability, including the ability to support roaming, in compliance with the performance criteria set forth in section 52.23(a) of this chapter, 47 CFR 52.23. A licensee may have more than one CMRS system, but only the systems that satisfy the definition of covered CMRS are required to provide number portability.

(b) By December 31, 1998, all covered CMRS providers must have the capability to obtain routing information, either by querying the appropriate database themselves or by making arrangements with other carriers that are capable of performing database queries, so that they can deliver calls from their networks to any party that has retained its number after switching from one telecommunications carrier to another.

* * * * *

(e) The Chief, Wireless Telecommunications Bureau, may establish reporting requirements in order to monitor the progress of covered CMRS providers implementing number portability, and may direct such carriers to take any actions necessary to ensure compliance with this deployment schedule.

## Second Supplemental Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Notice of Proposed Rulemaking* in this docket (*NPRM*). The Commission sought written public comment on the proposals in the *Notice*, including comment on the IRFA. The comments received on the IRFA were discussed in the *First Report and Order's* Final Regulatory Flexibility Analysis (FRFA-First Report and Order), which was incorporated as Appendix C to the *First Report and Order* in this docket. The FRFA-First Report and Order conforms to the RFA. On reconsideration of the *First Report and Order*, parties commented on the FRFA-First Report and Order. The comments received on the FRFA-First Report and Order were discussed in the Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) incorporated into the *First Order on Reconsideration* in this docket. The Supplemental FRFA conforms to the RFA. This Second Supplemental Final Regulatory Flexibility Analysis (Second Supplemental FRFA) is incorporated as an appendix to the *Second Order on Reconsideration* in this docket. This Second Supplemental FRFA also conforms to the RFA.

### *A. Need for and Objectives of Second Order on Reconsideration*

2. The need for and objectives of the requirements adopted in this *Second Order on Reconsideration* are the same as those discussed in the Final Regulatory Flexibility Analysis in the *First Report and Order*. The Commission, in compliance with sections 251(b)(2) and 251(d)(1) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the Act), adopts requirements and procedures intended to ensure the prompt implementation of telephone number portability with the minimum regulatory and administrative burden on telecommunications carriers. These requirements are necessary to implement the provision in the Act requiring local exchange carriers (LECs) to offer number portability, if technically feasible. In implementing the statute, the Commission has the responsibility to adopt requirements that will implement most quickly and effectively the national telecommunications policy embodied in the Act and to promote the pro-competitive, deregulatory markets envisioned by Congress. Congress has recognized that number portability will lower barriers to entry and promote competition in the local exchange marketplace.

### *B. Summary of Significant Issues Raised By Public Comments in Response to the IRFA, FRFA-First Report and Order, and Supplemental FRFA*

3. The comments received on the IRFA were discussed in the FRFA-First Report and Order incorporated into the *First Report and Order*. The comments received on the FRFA-First Report and Order were discussed in the Supplemental FRFA incorporated into the *First Order on Reconsideration*. No additional comments were sought or received for purposes of this Second Supplemental FRFA.

### *C. Summary of the FRFA-First Report and Order*

4. In the FRFA-First Report and Order, we concluded that incumbent LECs do not qualify as small businesses because they are dominant in their field of operation, and, accordingly, we did not address the impact of the Commission's requirements on incumbent LECs. We noted that the RFA generally defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one that (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). According to the SBA's regulations, entities engaged in the provision of telephone service may have a maximum of 1,500 employees in order to qualify as a small business concern. This standard also applies in determining whether an entity is a small business for purposes of the Regulatory Flexibility Act.

5. We did recognize that the Commission's requirements may have a significant economic impact on a substantial number of small businesses insofar as they apply to telecommunications carriers other than incumbent LECs, including competitive LECs, as well as cellular, broadband personal communications services (PCS), and covered specialized mobile radio (SMR) providers. Based upon data contained in the most recent census and a report by the Commission's Common Carrier Bureau, we estimated that 2,100 carriers could be affected. We also discussed the reporting requirements imposed by the *First Report and Order*.

6. Finally, we discussed the steps we had taken to minimize the impact on small entities, consistent with the Commission's stated objectives. We concluded that our actions in the *First Report and Order* would benefit small entities by facilitating their entry into the local exchange market. We found that the record in this proceeding indicated that the lack of number portability would deter entry by competitive providers of local service because of the value customers place on retaining their telephone numbers. These competitive providers, many of which may be small entities, may find

it easier to enter the market as a result of number portability, which will eliminate this barrier to entry. We noted that, in general, we attempted to keep burdens on local exchange carriers to a minimum. For example, we adopted a phased deployment schedule for implementation in the 100 largest MSAs, and then elsewhere upon a carrier's request; we conditioned the provision of currently available measures upon request only; we did not require cellular, broadband PCS, and covered SMR providers, which may be small businesses, to offer currently available number portability measures; and we did not require paging and messaging service providers, which may be small entities, to provide any number portability.

*D. Summary of the Supplemental FRFA*

7. *Implementation Schedule.* In the *First Report and Order,* we required local exchange carriers operating in the 100 largest MSAs to offer long-term service provider portability, according to a phased deployment schedule commencing on October 1, 1997, and concluding by December 31, 1998, set forth in Appendix F of the *First Report and Order.* In the *First Order on Reconsideration,* we extended the end dates for Phase I of our deployment schedule by three months, and for Phase II by 45 days. Thus, deployment will now take place in Phase I from October 1, 1997, through March 31, 1998, and in Phase II from January 1, 1998, through May 15, 1998. We also clarified that LECs need only provide number portability within the 100 largest MSAs in switches for which another carrier has made a specific request for the provision of portability. LECs must make available lists of their switches for which deployment has and has not been requested. The parties involved in such requests identifying preferred switches may need to use legal, accounting, economic and/or engineering services.

8. In the *First Order on Reconsideration,* we reduced the burdens on rural and smaller LECs by establishing a procedure whereby, within as well as outside the 100 largest MSAs, portability need only be implemented in the switches for which another carrier has made a specific request for the provision of portability. If competition is not imminent in the areas covered by rural/small LEC switches, then the rural or smaller LEC should not receive requests from competing carriers to implement portability, and thus need not expend its resources until competition does develop. By that time, extensive non-carrier-specific testing will likely have been done, and rural and small LECs need not expend their resources on such testing. We noted that the majority of parties representing small or rural LECs seeking relief asked that we only impose implementation requirements where competing carriers have shown interest in portability. Moreover, our extension of Phases I and II of our deployment schedule may permit smaller LECs to reduce their testing costs by allowing time for larger LECs to test and resolve the problems of this new technology.

9. In the *First Order on Reconsideration,* we rejected several alternatives put forth by parties that might impose greater burdens on small entities and small incumbent LECs. We rejected requests to accelerate the deployment schedule for areas both within and outside the 100 largest MSAs. We also rejected the procedures proposed by some parties that would require LECs to file waiver requests for their specific switches if they believe there is no competitive interest in those switches, instead of requiring LECs to identify in which switches of other LECs they wish portability capabilities. The suggested waiver procedures would burden the LEC from whom portability is requested with preparing and filing the petition for waiver. In addition, a competing carrier that opposes the waiver petition would be burdened with challenging the waiver. In contrast, under the procedure we establish, the only reporting burden on requesting carriers is to identify and request their preferred switches. Carriers from which portability is being requested, which may be small incumbent LECs, only incur a reporting burden if they wish to lessen their burdens further by requesting more time in which to deploy portability. Finally, we clarified that CMRS providers, like wireline providers, need only provide portability in requested switches, both within and outside the 100 largest MSAs.

*E. Description and Estimates of the Number of Small Entities Affected by This Second Order on Reconsideration*

10. Consistent with our prior practice, we shall continue to exclude small incumbent LECs from the definition of a small entity for the purpose of this Second Supplemental FRFA. Accordingly, our use of the terms ''small entities'' and ''small businesses'' does not encompass ''small incumbent LECs.'' Nevertheless, we include small incumbent LECs in our Second Supplemental FRFA. We use the term ''small incumbent LECs'' to refer to any incumbent LECs that arguably might be defined by SBA as ''small business concerns.''

11. *Total Number of Telephone Companies Affected.* Many of the decisions and rules adopted herein may have a significant effect on a substantial number of the small telephone companies identified by SBA. The United States Bureau of the Census (''the Census Bureau'') reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not ''independently owned and operated.'' For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by this Order on Reconsideration.

12. *Wireline Carriers and Service Providers.* SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing fewer than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules

adopted in this *Order on Reconsideration*.

13. *Local Exchange Carriers.* Neither the Commission nor SBA has developed a definition of small providers of local exchange services (LECs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS) Worksheet. According to our most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,347 small incumbent LECs that may be affected by the decisions and rules adopted in this *Order on Reconsideration*.

14. *Interexchange Carriers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of IXCs nationwide of which we are aware appears to be the data that we collect annually in connection with the *TRS Worksheet.* According to our most recent data, 130 companies reported that they were engaged in the provision of interexchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 130 small entity IXCs that may be affected by the decisions and rules adopted in this *Order on Reconsideration*.

15. *Competitive Access Providers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of competitive access services (CAPs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of CAPs nationwide of which we are aware appears to be the data that we collect annually in connection with the *TRS Worksheet.* According to our most recent data, 57 companies reported that they were engaged in the provision of competitive access services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 57 small entity CAPs that may be affected by the decisions and rules adopted in this *Order on Reconsideration*.

16. *Operator Service Providers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of operator service providers nationwide of which we are aware appears to be the data that we collect annually in connection with the *TRS Worksheet.* According to our most recent data, 25 companies reported that they were engaged in the provision of operator services. Although it seems certain that some of these companies are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 25 small entity operator service providers that may be affected by the decisions and rules adopted in this *Order on Reconsideration*.

17. *Pay Telephone Operators.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of pay telephone operators nationwide of which we are aware appears to be the data that we collect annually in connection with the *TRS Worksheet.* According to our most recent data, 271 companies reported that they were engaged in the provision of pay telephone services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 271 small entity pay telephone operators that may be affected by the decisions and rules adopted in this *Order on Reconsideration*.

18. *Wireless (Radiotelephone) Carriers.* SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business radiotelephone company is one employing fewer than 1,500 persons. The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned are operated. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the decisions and rules adopted in this *Order on Reconsideration*.

19. *Cellular Service Carriers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of cellular services. The closest applicable definition under SBA rules is for radiotelephone (wireless) companies. The most reliable source of information regarding the number of cellular service carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the *TRS Worksheet.* According to our most recent data, 792 companies reported that they were engaged in the provision of cellular services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate

that there are fewer than 792 small entity cellular service carriers that may be affected by the decisions and rules adopted in this *Order on Reconsideration*.

20. *Mobile Service Carriers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. The closest applicable definition under SBA rules is for radiotelephone (wireless) companies. The most reliable source of information regarding the number of mobile service carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the *TRS Worksheet.* According to our most recent data, 138 companies reported that they were engaged in the provision of mobile services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of mobile service carriers that would qualify under SBA's definition. Consequently, we estimate that there are fewer than 138 small entity mobile service carriers that may be affected by the decisions and rules adopted in this *Order on Reconsideration*.

21. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequency blocks designated A through F and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for ''very small businesses'' was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F. However, licenses for blocks C through F have not been awarded fully, therefore there are few, if any, small businesses currently providing PCS services. Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small PCS providers as defined by the SBA and the Commission's auction rules.

22. *SMR Licensees.* Pursuant to 47 CFR 90.814(b)(1), the Commission has defined ''small entity'' in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than $15 million in the three previous calendar years. This definition of a ''small entity'' in the context of 800 MHz and 900 MHz SMR has been approved by the SBA. The rules adopted in this *Order on Reconsideration*. may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. We assume, for purposes of this Supplemental FRFA, that all of the extended implementation authorizations may be held by small entities, which may be affected by the decisions and rules adopted in this *Order on Reconsideration*.

23. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected by the rule adopted in this *Order on Reconsideration* includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. However, the Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we assume, for purposes of this FRFA, that all of the licenses may be awarded to small entities who, thus, may be affected by the decisions in this Order on *Reconsideration*.

24. *Resellers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable definition under SBA rules is for all telephone communications companies. The most reliable source of information regarding the number of resellers nationwide of which we are aware appears to be the data that we collect annually in connection with the *TRS Worksheet.* According to our most recent data, 260 companies reported that they were engaged in the resale of telephone services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 260 small entity resellers that may be affected by the decisions and rules adopted in this *Second Order on Reconsideration*.

*F. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements*

25. There are no significant reporting, recordkeeping or other compliance requirements imposed on small entities by this *Second Order on Reconsideration* on other entities.

*G. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered*

26. The Commission's actions in this *Second Order on Reconsideration* will benefit small entities by facilitating their entry into the local exchange market. The record in this proceeding indicates that the lack of number portability would deter entry by competitive providers of local service because of the value customers place on retaining their telephone numbers. These competitive providers, many of which may be small entities, may find it easier to enter the market as a result of number portability which will eliminate this barrier to entry.

27. In general in this docket, we have attempted to keep burdens on local exchange carriers to a minimum. The regulatory burdens we have imposed are necessary to ensure that the public receives the benefit of the expeditious provision of service provider number portability in accordance with the statutory requirements. We believe that the *Second Order on Reconsideration* furthers our commitment to minimizing regulatory burdens on small entities. Based on the record before us, we do not find that any of the recommendations we adopt in the *Second Order on Reconsideration* will have a

disproportionate impact on small entities.

28. *Report to Congress:* The Commission will send a copy of the *Second Order on Reconsideration,* including the Second Supplemental FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Fairness Act of 1996. A copy of the *Second Order on Reconsideration* and this Second Supplemental FRFA (or summary thereof) will also be published in the **Federal Register** and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

[FR Doc. 98–32808 Filed 12–9–98; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

**[CC Docket No. 96–45; FCC 98–278]**

### Federal-State Joint Board on Universal Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; interim guidelines.

**SUMMARY:** On July 18, 1997, the Commission released a draft copy of the Universal Service Worksheet (Worksheet) which requires contributors to list their revenues by certain categories. In response to the release of the draft Worksheet, several wireless telecommunications providers requested clarification on how, for purposes of completing the Worksheet, entities that cannot derive various revenue data directly from their books of account should calculate the requested revenue information. In this document, the Commission addressed the concerns of wireless telecommunications providers with regard to certain aspects of universal service administration.

**DATES:** Effective: December 10, 1998.

**FOR FURTHER INFORMATION CONTACT:** Lori Wright, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's document released on October 26, 1998. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C., 20554.

### I. Introduction

1. In this Memorandum Opinion and Order (Order), we provide wireless telecommunications providers with interim guidelines for reporting on FCC Form 457, the Universal Service Worksheet (Worksheet) their percentage of interstate wireless telecommunications revenues. Specifically, until we issue final rules regarding the mechanisms that wireless telecommunications providers should use in allocating their wireless telecommunications revenues between the interstate and intrastate jurisdictions, we establish ''safe-harbor'' percentages that we believe reasonably approximate the percentage of interstate wireless telecommunications revenues generated by each category of wireless telecommunications provider. These percentages can be used for purposes of calculating these providers' federal universal service contribution obligations. We conclude that wireless telecommunications providers that report on the Worksheet a percentage of interstate wireless telecommunications revenues that is less than the ''safe harbor'' percentage established for that category of provider should continue to document how they arrived at their reported percentage and make such information available to the Commission or the universal service Administrator upon request.

*Interim Guidelines for Separating Interstate and Intrastate Revenues*

2. In this Order, we provide wireless telecommunications providers with additional interim guidance on reporting their wireless interstate telecommunications revenues for purposes of universal service contributions. We share the concern expressed by Comcast and Vanguard that some CMRS carriers presently may have an unreasonable advantage in the market as a result of either unintentional or purposeful under-reporting of their end-user interstate telecommunications revenues. To illustrate, some CMRS providers reported seven percent of their CMRS revenues as interstate, while others reported 28 percent as interstate. We anticipate that the interim safe harbor, in combination with our willingness to inquire about individual carriers' methods for calculating interstate revenues, will address this matter until we develop final rules.

3. The *NECA II Order,* 62 FR 47369 (September 9, 1997), permitted contributors that cannot readily derive interstate revenues from their books of account to provide on the Worksheet good faith estimates of these figures pending final Commission resolution of this issue. The *NECA II Order* also directed such contributors to document how they calculated their estimates and to make such information available to the Commission or Administrator upon request. In this Order, we identify, on an interim basis, suggested, or ''safe harbor,'' percentages that we believe reasonably approximate the percentage of interstate wireless telecommunications revenues generated by each category of wireless telecommunications provider. We identify the safe harbor percentages set forth below in response to the requests of wireless telecommunications providers for specific guidance beyond that provided in the *NECA II Order* and for expeditious resolution of the issues raised by these providers. The safe harbor percentage suggested for each category of provider is set forth below. Wireless telecommunications providers that choose to avail themselves of these suggested percentages may assume that the Commission will not find it necessary to review or question the data underlying their reported percentages. Conversely, a provider that elects to report a percentage of interstate telecommunications revenues that is less than the ''safe harbor'' percentage established for that category of provider should document the method used to calculate its percentage and make that information available to the Commission or Administrator upon request. The Commission retains its authority to require carriers that report interstate revenues below the safe harbors to document, perhaps through traffic studies, the method by which they arrived at their reported percentage of interstate telecommunications revenues.

4. We emphasize that these percentages are intended only to provide guidance to carriers in reporting on the Worksheet their percentage of interstate wireless telecommunications revenues and are not prescriptive in nature. The Commission may elect to adopt final prospective rules that deviate from the interim guidance provided here. Accordingly, we note that our guidance here is an interim measure pending final Commission resolution of these issues.

5. *Cellular, broadband PCS, and digital SMR providers.* We establish a safe harbor percentage of interstate revenues for cellular and broadband PCS providers of 15 percent of their total cellular and broadband PCS telecommunications revenues. The Commission, therefore, will not seek supporting data from cellular and broadband PCS providers regarding their reported percentage of interstate telecommunications revenues if they report at least 15 percent of their

cellular and broadband PCS telecommunications revenues as interstate. We reach this determination based on the level of interstate traffic experienced by wireline providers. Several wireless telecommunications providers have suggested that the Commission consider establishing for cellular and broadband PCS providers a safe harbor percentage of interstate cellular and broadband PCS revenues based on the percentage of interstate wireline traffic reported for purposes of the Dial Equipment Minutes (DEM) weighting program, i.e., approximately 15 percent. Current Commission statistics indicate that the nationwide average percentage of interstate wireline traffic reported for purposes of the DEM weighting program is approximately 15 percent. We believe it is reasonable to use this percentage as a proxy for the percentage of interstate wireline traffic as whole. Furthermore, we note that we do not have evidence before us to indicate that the level of interstate wireless traffic experienced by cellular and broadband PCS providers is less than the level experienced by wireline providers. We find that establishing a safe harbor that assumes that wireless carriers receive interstate and intrastate revenues in similar proportions to wireline carriers represents a conservative estimate, and that such a conservative approach is reasonable as an interim safe harbor. Moreover, unlike paging and analog SMR providers, cellular and broadband PCS providers have not, as a group, reported on the Worksheet sufficiently similar percentages of interstate cellular and broadband PCS revenues.

6. *Paging providers.* We establish a safe harbor percentage of interstate revenues for paging providers of 12 percent of their total paging revenues. Therefore, paging providers that report at least 12 percent of their paging revenues as interstate will not be asked by the Commission to provide documentation supporting their reported level of interstate telecommunications revenues. Our determination is based on the fact that paging providers, as a group, reported on the Worksheets due on March 31 that approximately 12 percent of their paging revenues generated in the 1997 calendar year was interstate. We realize that the percentage of interstate telecommunications revenues derived from the provision of paging service may vary according to the amount of local service versus nationwide service that a paging carrier provides. Therefore, with regard to a paging carrier that reports less than 12 percent of their revenues as interstate, we will consider the amount of local service versus nationwide service that such a carrier provides. We believe that, until the Commission issues final rules regarding the mechanisms that paging providers should use to allocate their revenues between the interstate and intrastate jurisdictions, it is reasonable to establish a safe harbor based on the average percentage of interstate paging revenues reported by paging providers for 1997.

7. *SMR providers.* We establish a safe harbor percentage for analog Specialized Mobile Radio (SMR) providers of one percent of their total revenues derived from the provision of analog SMR service. Therefore, if analog SMR providers report at least one percent of their analog SMR revenues as interstate, the Commission will not seek supporting documentation from those analog SMR providers that indicate in Block 4 of the Worksheet that their principal communications business is ''SMR/dispatch.'' We reach this determination based on the fact that these analog SMR providers, as a group, reported on the Worksheets due on March 31 that approximately one percent of their analog SMR revenues generated in the 1997 calendar year was interstate. As with the safe harbor percentage we establish for paging providers, we believe that it is reasonable to establish an interim safe harbor percentage based on the average interstate revenues percentage reported by analog SMR providers for 1997.

## II. Procedural Matters and Ordering Clauses

### *A. Initial Regulatory Flexibility Analysis*

8. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Order. In addition, the Order and IRFA (or summaries thereof) will be published in the **Federal Register**.

9. *Description of Projected Reporting, Record keeping, and Other Compliance Requirements.* Section 254(d) states ''that all telecommunications carriers that provide interstate telecommunications services shall make equitable and nondiscriminatory contributions'' toward the preservation and advancement of universal service. Under the Commission's rules, all telecommunications carriers that provide interstate telecommunications services and some providers of interstate telecommunications are required to contribute to the universal service support mechanisms. Contributions for support for programs for high cost areas and low-income consumers are assessed on the basis of interstate and international end-user telecommunications revenues. Contributions for support for programs for schools, libraries, and rural health care providers are assessed on the basis of interstate, intrastate, and international end-user telecommunications revenues. Contributors are required to submit information on the Universal Service Worksheet regarding their end-user telecommunications revenues. Contributors are required to distinguish between their interstate and intrastate revenues. In this Order, we provide interim safe harbor percentages that carriers may use in reporting their interstate telecommunications revenues. Under our interim guidance, those carriers that choose not to report the safe harbor percentage may be required to perform reporting and record keeping assignments in order to use a different percentage. This task may require some administrative, accounting, and legal skills.

10. It is furthered ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Memorandum Opinion and Order, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

### *B. Ordering Clauses*

It is ordered, pursuant to sections 1, 4(i) and (j), 201–209, 218–222, 254, and 403 of the Communications Act, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–209, 218–222, 254, and 403 that this Memorandum Opinion and Order is hereby adopted.

### List of Subjects in 47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 98–32802 Filed 12–9–98; 8:45 am]

BILLING CODE 6712–01–P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

**[Docket No. 971208298–8055–02; I.D. 120498A]**

## Fisheries of the Exclusive Economic Zone Off Alaska; Pacific cod for Vessels Using Hook-and-line and Pot Gear in the Bering Sea and Aleutian Islands

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

**ACTION:** Closure.

**SUMMARY:** NMFS is closing directed fishing for Pacific cod for vessels using hook-and-line and pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the amount of the 1998 total allowable catch (TAC) of Pacific cod allocated to vessels using hook-and-line and pot gear in this area.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), December 9, 1998, until 2400 hrs, A.l.t., December 31, 1998.

**FOR FURTHER INFORMATION CONTACT:** Mary Furuness, 907–586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and CFR part 679.

In accordance with § 679.20(c)(3)(iii), the TAC of Pacific cod allocated to vessels using hook-and-line and pot gear in the BSAI was established by the Final 1998 Harvest Specifications of Groundfish for the BSAI (63 FR 12689, March 16, 1998) as 99,068 metric tons (mt) and subsequent reserve releases as 110,568 mt (63 FR 47218, September 4, 1998), (63 FR 63801, November 17, 1998).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the TAC of Pacific cod allocated to vessels using hook-and-line and pot gear in the BSAI will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 110,468 mt, and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is closing directed fishing for Pacific cod for vessels using hook-and-line and pot gear in the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

### Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent overharvesting the amount of Pacific cod allocated to vessels using hook-and-line and pot gear in the BSAI. A delay in the effective date is impracticable and contrary to the public interest. The Pacific cod directed fishing allowance established for vessels using hook-and-line and pot gear will soon be reached. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

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

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

Dated: December 4, 1998.

**Bruce C. Morehead,**

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

[FR Doc. 98–32880 Filed 12–7–98; 4:26 pm]

BILLING CODE 3510–22–F

# Proposed Rules

Federal Register
Vol. 63, No. 237
Thursday, December 10, 1998

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

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 25

**[Docket No. NM151; Notice No. 25–98–04–SC]**

## Special Conditions: Boeing Model 757–300 Sudden Engine Stoppage

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

**ACTION:** Notice of proposed special conditions.

**SUMMARY:** This notice proposes special conditions for the Boeing Model 757–300 airplane. This airplane will have a novel or unusual design feature associated with sudden engine stoppage. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** Comments must be received on or before January 11, 1999.

**ADDRESSES:** Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, Attn: Rules Docket (ANM–7), Docket No. NM151, 1601 Lind Avenue SW., Renton, Washington, 98055–4056, or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: NM151. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Joe Jacobsen, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2011; facsimile (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The proposals described in this notice may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to NM151.'' The postcard will be date stamped and returned to the commenter.

### Background

On February 21, 1996, Boeing applied for an amendment to Type Certificate No. A2NM to include the new Model 757–300 airplane, a derivative of the Model 757–200 currently approved under Type Certificate No. A2NM. The Model 757–300 airplane is a swept wing, conventional tail, twin engine, turbofan powered transport. Each engine will be capable of delivering 43,100 pounds of thrust. The airframe has been strengthened to accommodate the increased design loads and weights. The airplane has a seating capacity of up to 295, and a maximum takeoff weight of 270,000 pounds (122,470 Kg).

### Type Certification Basis

Under the provisions of 14 CFR 21.101, Boeing must show that the Model 757–300 airplane meets the applicable provisions of the regulations incorporated by reference in Type Certificate No. A2NM, or the applicable regulations in effect on the date of application for the change to the Model 757–300. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. A2NM include part 25, as amended by Amendments 25–1 through 25–45, and certain other later amended sections of part 25 that are not relevant to these proposed special conditions. In addition, Boeing has chosen to comply with the applicable regulations in effect on February 21, 1996; specifically part 25 as amended by Amendments 25–1 through 25–85 and certain other earlier amended sections of part 25 that are not relevant to these proposed special conditions. Three exemptions have been granted. The special conditions that may be developed as a result of this notice will form an additional part of the type certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Boeing Model 757–300 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model 757–300 airplane must comply with the fuel vent and exhaust emission requirements of part 34, effective September 10, 1990, plus any amendments in effect at the time of certification; and the noise certification requirements of part 36, effective December 1, 1969, as amended by Amendment 36–1 through the amendment in effect at the time of certification.

Special conditions, as appropriate, are issued in accordance with 14 CFR 11.49 after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

**Novel or Unusual Design Features**

The engine proposed for the Boeing Model 757–300 airplane is a high-bypass ratio fan jet engine that will not seize and produce transient torque loads in the same manner that is envisioned by current § 25.361(b)(1) related to ''sudden engine stoppage.''

**Discussion**

For the engine proposed for the Model 757–300 airplanes, the limit engine torque load imposed by sudden engine stoppage due to malfunction or structural failure (such as compressor jamming) has been a specific requirement for transport category airplanes since 1957. The size, configuration, and failure modes of jet engines has changed considerably from those envisioned in 14 CFR 25.361(b) when the engine seizure requirement was first adopted. Engines have grown much larger and are now designed with large bypass fans capable of producing much higher torque loads if they become jammed.

Relative to the engine configuration that existed when the rule was developed in 1957, the present generation of engines are sufficiently different and novel to justify issuance of a special condition to establish appropriate design standards. The latest generation of jet engines are capable of producing engine seizure torque loads that are significantly higher than previous generations of engines.

The FAA is developing a new regulation and a new advisory circular that will provide more comprehensive criteria for treating engine torque loads resulting from sudden engine stoppage. In the meantime, a special condition is needed to establish appropriate criteria for the Boeing Model 757–300 airplane.

**Limit Engine Torque Loads for Sudden Engine Stoppage**

In order to maintain the level of safety envisioned by § 25.361(b), more comprehensive criteria are needed for the new generation of high bypass engines. These proposed special conditions would distinguish between the more common seizure events and those rare seizure events resulting from structural failures in the engine. For these more rare but severe seizure events, the proposed criteria would allow some deformation in the engine supporting structure (ultimate load design) in order to absorb the higher energy associated with the high bypass engines, while at the same time protecting the adjacent primary structure in the wing and fuselage by applying a higher factor of safety to the maximum torque load imposed by sudden engine stoppage due to a structural failure.

**Applicability**

As discussed above, these special conditions are applicable to the Boeing Model 757–300. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

**Conclusion**

This action affects only certain novel or unusual design features on one model series of airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

**List of Subjects in 14 CFR Part 25**

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

**The Proposed Special Conditions**

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Boeing Model 757–300 airplanes.

1. *Engine Torque Loads.* In lieu of compliance with § 25.361(b), compliance with the following special condition is proposed:

(a) For turbine engine installations, the mounts and local supporting structure must be designed to withstand each of the following:

(1) The maximum torque load, considered as limit, imposed by:

(i) sudden deceleration of the engine due to a malfunction that could result in a temporary loss of power or thrust capability, and that could cause a shutdown due to vibrations; and

(ii) the maximum acceleration of the engine.

(2)The maximum torque load, considered as ultimate, imposed by sudden engine stoppage due to a structural failure, including fan blade failure.

(3) The load condition defined in paragraph (a)(2) of this section is also assumed to act on adjacent airframe structure, such as the wing and fuselage. This load condition is multiplied by a factor of 1.25 to obtain ultimate loads when the load is applied to the adjacent wing and fuselage supporting structure.

Issued in Renton, Washington, on December 3, 1998.

**John W. McGraw,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.*

[FR Doc. 98–32821 Filed 12–9–98; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 207, 807, and 1271

**[Docket No. 97N–484R]**

**RIN 0910–AB05**

## Establishment Registration and Listing for Manufacturers of Human Cellular and Tissue–Based Products

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

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** The Food and Drug Administration (FDA) is reopening the comment period for the proposed rule concerning establishment registration and listing for manufacturers of human cellular and tissue-based products that was published in the **Federal Register** of May 14, 1998 (63 FR 26744). FDA is taking this action in response to a request for an extension and to allow interested parties additional time for review and to submit comments.

**DATES:** Submit written comments on the proposed rule by February 8, 1999.

**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:** Paula S. McKeever, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of May 14, 1998 (63 FR 26744), FDA published a proposed rule to require manufacturers of certain human cellular and tissue-based products to register with the agency and list their products. In addition, the agency proposed to amend the registration and listing regulations that currently apply to human cellular and tissue-based products regulated as drugs, devices, and/or biological products. Interested persons were given until August 12, 1998, to submit written comments on the proposed rule.

On August 6, 1998, a comment was submitted to the docket requesting that the agency extend the comment period on the proposed rule 60 days. The comment noted that certain information relevant to the rulemaking was not included in the public docket. Because the docket was scheduled to close on August 12, 1998, there was insufficient time to prepare and submit a letter of extension to the docket. However, the agency agrees that an additional period will provide time for interested parties to review the proposed rule and information now placed in the public docket and submit written comments. Therefore, the agency is reopening the comment period for an additional 60 days, until February 8, 1999.

Interested persons may, on or before February 8, 1999 submit to the Dockets Management Branch (address above) written comments on the proposed rule. 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 proposed rule and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 1, 1998.

**William K. Hubbard,**

*Associate Commissioner for Policy Coordination.*

[FR Doc. 98–32744 Filed 12–9–98; 8:45 am]

BILLING CODE 4160–01–F

## OVERSEAS PRIVATE INVESTMENT CORPORATION

### 22 CFR Parts 706 and 713

**RIN 3420–AA02**

### Production of Nonpublic Records and Testimony of OPIC Employees in Legal Proceedings

**AGENCY:** Overseas Private Investment Corporation.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** OPIC proposes to establish rules regarding subpoenas seeking nonpublic records or the testimony of OPIC employees in legal proceedings. The proposed rule facilitates access to records in OPIC's custody by centralizing agency decision-making with respect to demands for records or testimony in such legal proceedings. The proposed rule provides procedures, requirements and information on how OPIC will handle these matters and expressly prohibits any disclosure or testimony except as provided by the proposed rule. The effect of the rule will be, among other benefits, to ensure an efficient use of OPIC resources, promote uniformity in decisions, protect confidential information, maintain agency control over the release of official information, protect the interests of the United States, and provide guidance to parties. The proposed rule will also amend the current rule regarding release of OPIC records which are exempt from disclosure under the Freedom of Information Act, to conform with the procedures provided in this proposed rule.

**DATES:** Submit comments on or before February 8, 1999.

**ADDRESSES:** Direct comments to Mitchel Neurock, Counsel for Administrative Affairs. Mail or hand-deliver comments to: Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527. Fax comments to (202) 408–0297. E-mail comments to mneur@opic.gov. Please send comments via one method only.

**FOR FURTHER INFORMATION CONTACT:** Mitchel Neurock, Counsel for Administrative Affairs, at (202) 336–8400.

**SUPPLEMENTARY INFORMATION:**

#### Background

OPIC receives subpoenas and requests for OPIC employees to provide evidence in legal proceedings. Typically, subpoenas are for OPIC records which are not available to the public under the Freedom of Information Act (FOIA). Also, OPIC receives subpoenas and requests for OPIC employees to appear as witnesses in legal proceedings in conjunction with requests for nonpublic records or to provide testimony.

In recent years, the number of requests has averaged 3 to 4 per year. Often, these subpoenas and requests relate to litigation involving projects financed and/or insured in whole or in part by OPIC, where one or more parties want to use nonpublic records, such as OPIC financing documents, in the case. In addition, parties to litigation frequently wish to have an OPIC employee, often a finance or insurance officer, testify to establish the authenticity of the records or to explain the information contained in those records. If OPIC provides these records and an OPIC employee appears as a witness, this will cause a significant disruption in the employee's work schedule. In many cases, parties want to use the OPIC employee as an expert witness on matters such as the fundamentals of project finance or other issues involving opinion evidence. OPIC's experience has been that, in practically all cases, the parties can address these issues by eliciting the testimony of other witnesses, including the testimony of their own independent expert witnesses. They may also use their own records.

OPIC's current regulations fail to inform parties about any matter concerning submission of subpoenas. There is no guidance for parties seeking to submit subpoenas addressing when parties should submit a request for nonpublic documents or testimony, the time period for OPIC's review of such a request, potential fees, or, if a request is granted, any restrictions which OPIC might place upon the disclosure of records or the appearance of an OPIC employee as a witness. There is also no guidance for parties about the factors OPIC will consider in making its determination in response to such requests.

The proposed rule fills in these gaps in OPIC's current regulations. OPIC has tried to write the proposed rule in an easy-to-read, question-and-answer format, to promote straightforward English. The proposed rule, in brief: prohibits disclosure of nonpublic records or testimony by OPIC employees absent compliance with the rule; lets the public know what information to submit and what factors OPIC will consider; and sets out filing fees, deadlines and potential restrictions on disclosure of nonpublic documents and testimony of OPIC employees. The proposed charges for witnesses are the same as those provided by the federal courts, and the fees relating to the production of records are the same as those charged under FOIA.

A few simple definitions clarify that the proposed rule applies to a broad range of cases (not just matters before courts). The proposed rule applies to former as well as to current OPIC employees. Former OPIC employees remain prohibited from testifying about specific matters for which they had responsibility during their OPIC employment, unless permitted to testify as provided in the proposed rule. They would not, however, be barred from appearing on general matters or otherwise employing their expertise (as expert witnesses, for example).

The proposed rule solves some problems which have arisen in the past. It should eliminate or reduce eleventh hour requests for nonpublic documents or testimony of OPIC employees. The procedures and criteria will ensure a more efficient use of OPIC resources, will minimize the possibility of involving OPIC in issues unrelated to its responsibilities, will promote

uniformity in responding to such requests, and subpoenas, and will maintain the necessary impartiality of OPIC in matters between private litigants. The proposed rule will serve OPIC's interest in protecting sensitive, confidential and privileged information and records generated by its work.

The proposed rule is procedural, not substantive. It does not confer a benefit upon anyone. It does not create a right to obtain OPIC records or the testimony of any OPIC employee, past or present, nor does it create any additional right or privilege not already available to OPIC to deny such a request. OPIC makes no waiver of its sovereign immunity by proposing or implementing this rule. Failure to comply with the rule, however, constitutes grounds for OPIC's denial of any request.

OPIC is most interested in receiving comments on the application of the proposed regulation to former as well as to current employees, including its application to proceedings to which OPIC is a party, the exception from coverage for expert testimony by former OPIC employees, and any other factors which commentors believe OPIC should consider in addition to those set out in § 713.7 in reaching a final decision.

**Legal Authority**

More than 60 government agencies and departments have promulgated regulations governing the circumstances and manner in which an employee may respond to demands for testimony or production of documents. These regulations, issued under the authority of 5 U.S.C. 301, the so-called ''housekeeping statute,'' are separate from FOIA regulations. In addition, OPIC has statutory authority to ''take such actions as may be necessary or appropriate to carry out the powers'' granted it by Congress. 22 U.S.C. 2199(d).

The housekeeping statute expressly states that it does not provide a basis for withholding information or limiting the availability of records, but authorizes a head of an executive agency to issue ''regulations for the government of his department, the conduct of its employees, the distribution and performance of its business and the custody, use and preservation of its records, papers, and property.'' 5 U.S.C. 301. These regulations are known as ''Touhy regulations,'' thanks to a landmark Supreme Court decision, *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951).

*Touhy* was the first in a long line of cases which have upheld regulations restricting the rights of private litigants to require testimony or production of documents from employees of federal agencies. In *Touhy*, the Supreme Court held that a Department of Justice (DoJ) official, acting on order of the Attorney General, could not be held in contempt for declining to produce records in response to a subpoena. The Court reasoned that the variety of information contained in the files of any government agency, as well as the possibilities of harm from unrestricted disclosure in court, justify centralized determinations as to whether to obey or challenge a subpoena. The Court stated that it was appropriate for the Attorney General to prescribe regulations for the preservation of DoJ records.

Federal circuit and district courts have consistently held that a person seeking testimony or records from an agency must comply with that agency's Touhy regulations prior to seeking judicial enforcement of a subpoena. *Davis* v. *Braswell Motor Freight Lines, Inc.*, 363 F.2d 600 (5th Cir. 1966); *Colonial Savings and Loan Assoc.* v. *St. Paul Fire and Marine Ins. Co.*, 89 F.R.D. 481, 484 (D. Kan. 1980); *Marcoux* v. *Mid-States Livestock*, 66 F.R.D. 573, 575 n.1 (W.D. Mo. 1975).

Generally speaking, courts cannot compel an agency employee who is the subject of a subpoena to testify or produce records in violation of the agency's Touhy regulations. *Touhy*, 340 U.S. at 467–70; *United States Steel* v. *Mattingly*, 663 F.2d 68 (10th Cir. 1980). Courts have also upheld regulations which limit federal employees' testifying about purely factual information. *Southeastern Pa. Transp. Auth.* v. *General Motors Corp.*, 103 F.R.D. 12 (E.D. Pa. 1984); *Kline* v. *Martin*, 345 F. Supp. 31 (E.D. Va. 1972). Consequently, a limited or conditional authorization to testify or produce records does not waive an employee's immunity from contempt or compulsion with regard to releasing records or testifying on unauthorized matters. *Swett* v. *Schenk*, 792 F.2d 1447, 1451–52 (9th Cir. 1986).

There is also precedent suggesting that agencies may also restrict the testimony of former employees. *Fowkes* v. *Dravo Corporation*, 5 F.R.D. 51 (E.D. Pa. 1945). In *Fowkes*, a former employee and a current employee of the Treasury Department refused to testify or produce documents pursuant to subpoenas, in accordance with instructions from the Deputy Commissioner of Internal Revenue. Because the employees obtained the information while in their official positions, disclosure could not be permitted unless in accordance with a Treasury regulation and a Treasury Department circular. The *Fowkes* court upheld the Treasury Department's refusal to allow the testimony, at least until the procedures in the Department's circular were followed. The court based its decision on the nature of the information. Thus, it is generally understood that, so long as a former employee acquired the information in an official capacity, persons seeking the former employee's testimony are still required to comply with an agency regulation limiting disclosure or testimony. As noted previously, OPIC's proposed rule will not bar former OPIC employees from serving as expert witnesses; however, former OPIC employees are prohibited from testifying about specific matters for which they had responsibility during their employment, unless permission is granted pursuant to the proposed rule.

With respect to the cost of processing and responding to requests for records and testimony, an agency may prescribe regulations establishing the charge for a service or thing of value provided by the agency, 31 U.S.C. 9701.

The proposed rule is not intended to restrict access to records under the Freedom of Information Act (5 U.S.C. 552), the Privacy Act (5 U.S.C. 552a), or any other authority. At the same time, nothing in this proposed rule would permit disclosure of information by OPIC or its employees except as provided by statute or other applicable law.

**Regulatory Procedures**

*Regulatory Flexibility Act*

The Regulatory Flexibility Act requires OPIC to prepare an analysis to describe any significant economic impact any proposed regulation may have on any small business or other small entity. 5 U.S.C. 602, 603. OPIC has determined and certifies that the proposed rule, if adopted, will not have a significant economic impact on any entity. The reasons for this determination are that the copying and witness fees to be charged to persons and entities submitting requests under the regulation are not large, and will not create a financial burden. The proposed rule will not create any significant demand for legal, accounting or consulting expenditures. Accordingly, OPIC has determined that a Regulatory Flexibility Analysis is not required.

*Paperwork Reduction Act*

OPIC has determined that this rulemaking is not subject to the Paperwork Reduction Act, because OPIC averages less than 10 requests per year, and expects this level of activity to remain below this threshold. 5 CFR 1320.3(c).

*Executive Order 12612*

OPIC has determined that the proposed rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government.

**List of Subjects in 22 CFR Part 713**

Administrative practice and procedure, Confidential business information, Freedom of Information Act, Government employees, Reporting and recordkeeping requirements, Subpoenas.

For the reasons set forth in the preamble, OPIC proposes to amend 22 CFR part 706 and add part 713 as set forth below:

## PART 706—[AMENDED]

1. The authority citation for part 706 is revised to read as follows:

**Authority:** The Freedom of Information Act, as amended, 5 U.S.C. 552; 5 U.S.C. 301; 22 U.S.C. 2199(d).

2. Amend § 706.22, to redesignate the existing test as paragraph (a). In redesignated paragraph (a), further redesignate paragraphs (a) through (f) as paragraphs (a)(1) through (a)(6). Add paragraph (b) to read as follows:

**§ 706.22 Information and records not generally available to the public.**

* * * * *

(b) *Prohibition against disclosure.* Except as provided in part 713 of this chapter, no officer, employee or agent of OPIC shall disclose or permit the disclosure of any exempt records of OPIC or of any information described in paragraph (a) of this section to any person other than those OPIC officers, employees or agents properly entitled to such information for the performance of their official duties.

3. Add Part 713 to read as follows:

## PART 713—PRODUCTION OF NONPUBLIC RECORDS AND TESTIMONY OF OPIC EMPLOYEES IN LEGAL PROCEEDINGS

Sec.

713.1 What does this part prohibit?
713.2 When does this part apply?
713.3 How do I request nonpublic records or testimony?
713.4 What must my written request contain?
713.5 When should I make my request?
713.6 Where should I send my request?
713.7 What will OPIC do with my request?
713.8 If my request is granted, what fees apply?
713.9 If my request is granted, what restrictions may apply?
713.10 Definitions.

**Authority:** 5 U.S.C. 301; 5 U.S.C. 552; 5 U.S.C. 552a; 5 U.S.C. 702; 18 U.S.C. 207; 18 U.S.C. 641; 22 U.S.C. 2199(d); 28 U.S.C. 1821.

**§ 713.1 What does this part prohibit?**

This part prohibits the release of nonpublic records or the appearance of an OPIC employee to testify in legal proceedings except as provided in this part. Any person possessing nonpublic records may release them or permit their disclosure only as provided in this part.

(a) *Duty of OPIC employees.* (1) If you are an OPIC employee and you are served with a subpoena requiring you to appear as a witness or to produce records, you must promptly notify the Vice-President/General Counsel in the Department of Legal Affairs. The Vice-President/General Counsel has the authority to instruct OPIC employees to refuse to appear as a witness or to withhold nonpublic records. The Vice-President/General Counsel may let an OPIC employee provide testimony, including expert or opinion testimony, if the Vice-President/General Counsel determines that the need for the testimony clearly outweighs contrary considerations.

(2) If a court or other appropriate authority orders or demands from you expert or opinion testimony or testimony beyond authorized subjects contrary to the Vice-President/General Counsel's instructions, you must immediately notify the Vice-President/General Counsel of the order an then respectfully decline to comply with the order. You must decline to answer questions on the grounds that this part forbids such disclosure. You should produce a copy of this part, request an opportunity to consult with the Vice-President/General Counsel, and explain that providing such testimony without approval may expose you to disciplinary or other adverse action.

(b) *Duty of persons who are not OPIC employees.* (1) If you are not an OPIC employee but have custody of nonpublic records and are served with a subpoena requiring you to appear as a witness or produce records, you must promptly notify OPIC of the subpoena. Also, you must notify the issuing court or authority and the person or entity for whom the subpoena was issued of the content of this part. Provide notice to OPIC by sending a copy of the subpoena to the Vice-President/General Counsel, OPIC, 1100 New York Avenue, NW, Washington, DC 20527. After receiving notice, OPIC may advise the issuing court or authority and the person or entity for whom the subpoena was issued that this part applies and, in addition, may intervene, attempt to have the subpoena quashed or withdrawn, or register appropriate objections.

(2) After notifying the Vice-President/General Counsel, respond to a subpoena by appearing at the time and place stated in the subpoena. Unless otherwise authorized by the Vice-President/General Counsel, decline to produce any records or give any testimony, basing your refusal on this part. If the issuing court or authority orders the disclosure of records or orders you to testify, decline to produce records or testify and advise the Vice-President/General Counsel.

(c) *Penalties.* Anyone who discloses nonpublic records or gives testimony related to those records, except as expressly authorized by OPIC or as ordered by a federal court after OPIC has had the opportunity to be heard, may face the penalties provided in 18 U.S.C. 641 and other applicable laws. Also, former OPIC employees, in addition to the prohibition contained in this part, are subject to the restrictions and penalties of 18 U.S.C. 207.

**§ 713.2 When does this part apply?**

This part applies if you want to obtain nonpublic records or testimony of an OPIC employee for a legal proceeding. It does not apply to records that OPIC is required to release under the Freedom of Information Act (FOIA), records that OPIC releases to federal or state investigatory agencies, or records that OPIC is required to release pursuant to the Privacy Act, 5 U.S.C. 552a.

**§ 713.3 How do I request nonpublic records or testimony?**

To request nonpublic records or the testimony of an OPIC employee, you must submit a written request to the Vice-President/General Counsel of OPIC. If you serve a subpoena on OPIC or an OPIC employee before submitting a written request and receiving a final determination, OPIC will oppose the subpoena on the grounds that you failed to follow the requirements of this part. You may serve a subpoena as long as it is accompanied by a written request that complies with this part.

**§ 713.4 What must my written request contain?**

Your written request for records or testimony must include:

(a) The caption of the legal procedure, docket number, and name of the court or other authority involved.

(b) A copy of the complaint or equivalent document setting forth the assertions in the case and any other

pleading or document necessary to show relevance.

(c) A list of categories of records sought, a detailed description of how the information sought is relevant to the issues in the legal proceeding, and a specific description of the substance of the testimony or records sought.

(d) A statement as to how the need for the information outweighs the need to maintain the confidentiality of the information and outweighs the burden on OPIC to produce the records or provide testimony.

(e) A statement indicating that the information sought is not available from another source, such as the requestor's own books and records, other persons or entities, or the testimony of someone other than an OPIC employee, such as retained experts.

(f) A description of all prior decisions, orders, or pending motions in the case that bear upon the relevance of the records or testimony you want.

(g) The name, address, and telephone number of counsel to each party in the case.

(h) An estimate of the amount of time you anticipate that you and other parties will need with each OPIC employee for interviews, depositions, and/or testimony.

**§ 713.5 When should I make a request?**

Submit your request at least 45 days before the date you need the records or testimony. If you want your request processed in a shorter time, you must explain why you could not submit the request earlier and why you need such expedited processing. If you are requesting the testimony of an OPIC employee, OPIC expects you to anticipate your need for the testimony in sufficient time to obtain it by deposition. The Vice-President/General Counsel may well deny a request for testimony at a legal proceeding unless you explain why you could not have used deposition testimony instead. The Vice-President/General Counsel will determine the location of a deposition, taking into consideration OPIC's interest in minimizing the disruption for an OPIC employee's work schedule and the costs and convenience of other persons attending the deposition.

**§ 713.6 Where should I send my request?**

Send your request or subpoena for records or testimony to the attention of the Vice-President/General Counsel, OPIC, 1100 New York Avenue NW, Washington, DC 20527.

**§ 713.7 What will OPIC do with my request?**

(a) *Factors OPIC will consider.* OPIC may consider various factors in reviewing a request for nonpublic records or testimony of OPIC employees, including:

Whether disclosure would assist or hinder OPIC in performing its statutory duties or use OPIC resources unreasonably, including whether responding to the request will interfere with OPIC employees' ability to do their work.

(2) Whether disclosure is necessary to prevent the perpetration of a fraud or other injustice in the matter or if you can get the records or testimony you want from sources other than OPIC.

(3) Whether the request is unduly burdensome.

(4) Whether disclosure would violate a statute, executive order, or regulation, such as the Privacy Act, 5 U.S.C. 552a.

(5) Whether disclosure would reveal confidential, sensitive or privileged information, trade secrets or similar, confidential commercial or financial information, or would otherwise be inappropriate for release and, if so, whether a confidentiality agreement or protective order as provided in § 713.9(a) can adequately limit the disclosure.

(6) Whether the disclosure would interfere with law enforcement proceedings, compromise constitutional rights, or hamper OPIC programs or other OPIC operations.

(7) Whether the disclosure could result in OPIC's appearing to favor one litigant over another.

(8) Any other factors OPIC determines to be relevant to the interests of OPIC.

(b) *Review of your request.* OPIC will process your request in the order it is received. OPIC will try to respond to your request within 45 days, but this may vary, depending on the scope of your request.

(c) *Final determination.* The Vice-President/General Counsel makes the final determination on requests for nonpublic records or OPIC employee testimony. All final determinations are in the sole discretion of the Vice President/General Counsel. The Vice-President/General Counsel will notify you and the court or other authority of the final determination of your request. In considering your request, the Vice-President/General Counsel may contact you to inform you of the requirements of this part, ask that the request or subpoena be modified or withdrawn, or may try to resolve the request or subpoena informally without issuing a final determination. You may seek judicial review of the final determination under the Administrative Procedure Act, 5 U.S.C. 702.

**§ 713.8 If my request is granted, what fees apply?**

(a) *Generally.* You must pay any fees associated with complying with your request, including copying fees for records and witness fees for testimony. The Vice-President/General Counsel may condition the production of records or appearance for testimony upon advance payment of a reasonable estimate of the fees.

(b) *Fees for records.* You must pay all fees for searching, reviewing and duplicating records produced in response to your request. The fees will be the same as those charged by OPIC under its Freedom of Information Act regulations, § 706.26 of this chapter.

(c) *Witness fees.* You must pay the fees, expenses, and allowances prescribed by the court's rules for attendance by a witness. If no such fees are prescribed, the local federal district court rule concerning witness fees, for the federal district court closest to where the witness appears, will apply. For testimony by current OPIC employees, you must pay witness fees, allowances, and expenses to the Vice-President/General Counsel by check made payable to the ''Overseas Private Investment Corporation'' within 30 days from receipt of OPIC's billing statement. For the testimony of a former OPIC employee, you must pay witness fees, allowances, and expenses directly to the former employee, in accordance with 28 U.S.C. 1821 or other applicable statutes.

(d) *Certification of records.* OPIC may authenticate or certify records to facilitate their use as evidence. If you require authenticated records, you must request certified copies at least 45 days before the date they will be needed. Send your request to the Vice-President/General Counsel. OPIC will charge you a certification fee of $5.00 per document.

(e) *Waiver of fees.* A waiver or reduction of any fees in connection with the testimony, production, or certification or authentication of records may be granted in the discretion of the Vice-President/General Counsel. Waivers will not be granted routinely. If you request a waiver, your request for records or testimony must state the reasons why a waiver should be granted.

**§ 713.9 If my request is granted, what restrictions may apply?**

(a) *Records.* The Vice-President/General Counsel may impose conditions or restrictions on the release of nonpublic records, including a requirement that you obtain a protective order or execute a confidentiality agreement with the other parties in the legal proceeding that limits access to

and any further disclosure of the nonpublic records. The terms of a confidentiality agreement or protective order must be acceptable to the Vice-President/General Counsel. In cases where protective orders or confidentiality agreements have already been executed, OPIC may condition the release of nonpublic records on an amendment to the existing protective order or confidentiality agreement.

(b) *Testimony.* The Vice-President/General Counsel may impose conditions or restrictions on the testimony of OPIC employees, including, for example, limiting the areas of testimony or requiring you and the other parties to the legal proceeding to agree that the transcript of the testimony will be kept under seal or will only be used or made available in the particular legal proceeding for which you requested the testimony. The Vice-President/General Counsel may also require you to provide a copy of the transcript of the testimony to OPIC at your expense.

**§ 713.10 Definitions.**

For purposes of this part:

*Legal proceedings* means any matter before any federal, state or foreign administrative or judicial authority, including courts, agencies, commissions, boards or other tribunals, involving such proceedings as lawsuits, licensing matters, hearings, trials, discovery, investigations, mediation or arbitration. When OPIC is a party to a legal proceeding, it will be subject to the applicable rules of civil procedure governing production of documents and witnesses; however, this part will still apply to the testimony of former OPIC employees.

*Nonpublic records* means any OPIC records which are exempt from disclosure by statute or under part 706 of this chapter, OPIC's regulations implementing the provisions of the Freedom of Information Act. For example, this means records created in connection with OPIC's receipt, evaluation and action on actual and proposed OPIC finance projects and insurance policies (whether such projects or policies were canceled or not), including all reports, internal memoranda, opinions, interpretations, and correspondence, whether prepared by OPIC employees or by persons under contract, as well as confidential business information submitted by parties seeking to do business with OPIC. Whether OPIC has actually chosen in practice to apply any exemption to specific documents is irrelevant to the question of whether they are ''nonpublic'' for the purposes of this part.

*OPIC employee* means current and former officials, members of the Board of Directors, officers, directors, employees and agents of the Overseas Private Investment Corporation, including contract employees, consultants and their employees. This definition does not include persons who are no longer employed by OPIC and are retained or hired as expert witnesses or agree to testify about general matters, matters available to the public, or matters with which they had no specific involvement or responsibility during their employment.

*Subpoena* means any order, subpoena for records or other tangible things or for testimony, summons, notice or legal process issued in a legal proceeding.

*Testimony* means any written or oral statements made by an individual in connection with a legal proceeding, including personal appearances in court or at depositions, interviews in person or by telephone, responses to written interrogatories or other written statements such as reports, declarations, affidavits, or certifications or any response involving more than the delivery of records.

Dated: December 4, 1998.

**Michael C. Cushing,**

*Managing Director for Administration.*

[FR Doc. 98–32810 Filed 12–9–98; 8:45 am]

BILLING CODE 3210–01–M

## DEPARTMENT OF JUSTICE

## 28 CFR Part 16

**[AAG/A Order No. 157–98]**

## Exemption of Records System Under the Privacy Act

**AGENCY:** Department of Justice.

**ACTION:** Proposed Rule.

**SUMMARY:** The Department of Justice proposes to exempt a Privacy Act system of records from subsection (d) of the Privacy Act, 5 U.S.C. 552a. This system of records is the ''Freedom of Information/Privacy Acts (FOI/PA) Records, (JUSTICE/OPR–002).'' Records in this system may contain information which relates to official Federal investigations and matters of law enforcement of the Office of Professional Responsibility (OPR). Accordingly, where applicable, the exemptions are necessary to avoid interference with the law enforcement functions of OPR. Specifically, the exemptions are necessary to prevent subjects of investigations from frustrating the investigatory process; preclude the disclosure of investigative techniques; protect the identities and physical safety of confidential sources and of law enforcement personnel; ensure OPR's ability to obtain information from information sources; protect the privacy of third parties; and safeguard classified information as required by Executive Order 12958.

**DATE:** Submit any comments by January 11, 1998.

**ADDRESS:** Address all comments to Patricia E. Neely, Program Analyst, Information Management and Security Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 850 WCTR Building).

**FOR FURTHER INFORMATION CONTACT:** Patricia E. Neely, (202) 616–0178.

**SUPPLEMENTARY INFORMATION:** In the notice section of today's **Federal Register**, the Department of Justice provides a description of the ''Freedom of Information/Privacy Acts (FOI/PA) Records (JUSTICE/OPR–002).''

This Order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have ''a significant economic impact on a substantial number of small entities.''

**List of Subjects in Part 16**

Administrative Practices and Procedures, Courts, Freedom of Information Act, Privacy Act, and Government in Sunshine Act.

Dated: November 20, 1998.

**Stephen R. Colgate,**

*Assistant Attorney General for Administration.*

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, it is proposed to amend 28 CFR part 16 as follows:

## PART 16—[AMENDED]

1. The authority for part 16 continues to read as follows:

**Authority:** 5 U.S.C. 301, 552, 552a, 552b(g), 553, 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. It is proposed to amend 28 CFR 16.80 by adding paragraphs (c) and (d) to read as follows:

**§ 16.80 Exemption of Office of Professional Responsibility (OPR) System—limited access.**

* * * * *

(c) The following system of records is exempted from 5 U.S.C. 552a(d).

(1) Freedom of Information/Privacy Act (FOI/PA) Records (JUSTICE/OPR–002).

This exemption applies only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2). To the extent that information in a record pertaining to an individual does not relate to national defense or foreign policy, official Federal investigations and/or law enforcement matters, the exemption does not apply. In addition, where compliance would not appear to interfere with or adversely affect the overall law enforcement process, the applicable exemption may be waived by OPR.

(d) Exemption from subsection (d) is justified for the following reasons:

(1) From the access and amendment provisions of subsection (d) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation of the existence of that investigation; of the nature and scope of the information and evidence obtained as to his activities; of the identity of confidential sources, witnesses, and law enforcement personnel; and of information that may enable the subject to avoid detection or apprehension. These factors would present a serious impediment to effective law enforcement where they prevent the successful completion of the investigation, endanger the physical safety of confidential sources, witnesses, and law enforcement personnel, and/or lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony. In addition, granting access to such information could disclose security-sensitive or confidential business information or information that would constitute an unwarranted invasion of the personnel privacy of third parties. Finally, access to the records could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy. Amendment of the records would interfere with ongoing investigations and law enforcement activities and impose an enormous administrative burden by requiring investigations to be continuously reinvestigated.

[FR Doc. 98–32866 Filed 12–9–98; 8:45 am]

BILLING CODE 4410–28–M

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 913

**[SPATS No. IL–096–FOR]**

## Illinois Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing.

**SUMMARY:** OSM is announcing receipt of an amendment to the Illinois regulatory program (Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Illinois proposes revisions to and additions of regulations concerning definitions, hydrologic and subsidence control plan permit application requirements for underground mining operations, and hydrologic balance protection and subsidence control performance standards for underground mining operations. Illinois intends to revise its program to be consistent with the corresponding Federal regulations.

This document gives the times and locations that the Illinois program and the amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that will be followed for the public hearing, if one is requested.

**DATES:** Written comments must be received by 4:00 p.m., e.s.t., January 11, 1999. If requested, we will hold a public hearing on the amendment on January 4, 1999. We will accept requests to speak at the hearing until 4:00 p.m., e.s.t. on December 28, 1998.

**ADDRESSES:** You should mail or hand deliver written comments and requests to speak at the hearing to Andrew R. Gilmore, Director, Indianapolis Field Office, at the address listed below.

You may review copies of the Illinois program, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Indianapolis Field Office.

Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204, Telephone: (317) 226–6700.

Illinois Department of Natural Resources, Office of Mines and Minerals, 524 South Second Street, Springfield, Illinois 62701–1787, Telephone (217) 782–4970.

**FOR FURTHER INFORMATION CONTACT:** Andrew R. Gilmore, Director, Indianapolis Field Office. Telephone: (317) 226–6700. Internet: INFOMAIL@indgw.osmre.gov.

**SUPPLEMENTARY INFORMATION:**

### I. Background on the Illinois Program

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. You can find background information on the Illinois program, including the Secretary's findings, the disposition of comments, and the conditions of approval, in the June 1, 1982, **Federal Register** (47 FR 23883). You can find later actions concerning the Illinois program at 30 CFR 913.15, 913.16, and 913.17.

### II. Description of the Proposed Amendment

By letter dated November 24, 1998 (Administrative Record No. IL–5028), Illinois sent us an amendment to its program under SMCRA. Illinois sent the amendment in response to our letter dated May 20, 1996 (Administrative Record No. IL–1900), that we sent to Illinois under 30 CFR 732.17(c). The amendment also includes changes made at Illinois' own initiative. Illinois proposes to amend its regulations at Title 62 of the Illinois Administrative Code (IAC). Below is a summary of the changes proposed by Illinois. The full text of the program amendment is available for your inspection at the locations listed above under ''**ADDRESSES.**''

*1. 62 IAC 1701.Appendix A Definition of Drinking, Domestic or Residential Water Supply*

Illinois proposes to add the following definition for ''drinking, domestic or residential water supply'':

'Drinking, domestic or residential water supply' means water received from a well or spring and any appurtenant delivery system that provides water for direct human consumption or household use. Wells and springs that serve only agricultural, commercial or industrial enterprises are not included except to the extent the water supply is for direct human consumption or human sanitation, or domestic use.

*2. 62 IAC 1701.Appendix A Definition of Material Damage*

Illinois proposes the following definition for ''material damage'':

'Material damage,' in the context of Sections 1784.20 and 1817.121 of this Part, means:

Any functional impairment of surface lands, features, structures or facilities;

Any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or

Any significant change in the condition, appearance or utility of any structure or facility from its pre-subsidence condition.

*3. 62 IAC 1701.Appendix A Definition of Replacement of Water Supply*

Illinois proposes to define ''replacement of water supply'' as follows:

'Replacement of water supply' means, with respect to protected water supplies contaminated, diminished, or interrupted by coal mining operations, provision of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies.

Upon agreement by the operator and the water supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one-time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the permittee and the water supply owner. In conjunction with this requirement, the applicant shall provide a plan for determining an appropriate present worth amount and describe how to resolve disputes between the land owner and the applicant over this amount.

If the affected water supply was not needed for the land use in existence at the time of loss, contamination or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If the latter approach is selected, written concurrence must be obtained from the water supply owner.

*4. 62 IAC 1784.14 Hydrologic Information*

At 62 IAC 1784.14(e)(3)(D), Illinois proposes to require that the determination of the probable hydrologic consequences include the following finding:

Whether the underground mining activities conducted after January 19, 1996 may result in contamination, diminution or interruption of a well or spring in existence at the time the permit application is submitted and used for domestic, drinking, or residential purposes within the permit or adjacent areas.

*5. 62 IAC 1784.20 Subsidence Control Plan*

Illinois is removing the existing language and proposing to add the following provisions at 62 IAC 1784.20:

a. Section 1784.20(a)(1) requires the pre-subsidence survey to include a map of the permit, shadow and adjacent areas at a scale of 1:12,000 or larger if determined necessary. The map must show the location and type of structures and renewable resource lands that subsidence may materially damage or for which the value or reasonably foreseeable use may be diminished by subsidence. It must also show the location and type of drinking, domestic and residential water supplies that could be contaminated, diminished or interrupted by subsidence.

b. Section 1784.20(a)(2) requires the pre-subsidence survey to include a narrative addressing the potential impacts of subsidence on the protected structures or renewable resource lands and protected water supplies.

c. Section 1784.20(a)(3) requires the pre-subsidence survey to include identification of the premining condition of all protected structures and facilities within the area of the applicable angle of draw and a survey of the quantity and quality of all protected water supplies. Section 1784.20(a)(3) also requires that if the applicant cannot make this survey because the owner will not allow access to the site, the applicant must notify the owner, in writing, of the effect that denial of access will have as described in Section 1817.121(c)(3)(C). The applicant must pay for any technical assessment or engineering evaluation used to determine the pre-mining condition or value of the protected structures and facilities and the protected water supplies. Copies of the survey and any technical assessment or engineering evaluation must be provided to the property owner. The survey of structures and facilities must be maintained at the mine office and provided upon request. The survey of water must be provided to the Illinois Department of Natural Resources, Office of Mines and Minerals (Department).

d. At section 1784.20(b), if the survey shows that no protected structures, renewable resource lands, or water supplies would be impacted as a result of mine subsidence, and if the Department agrees, no further information need be provided. If the survey shows that structures, renewable resource lands or water supplies exist and that subsidence could impact them, the application must include a subsidence control plan.

e. Section 1784.20(b)(1) requires the subsidence control plan to contain a description of the method of coal removal.

f. Section 1784.20(b)(2) requires a map of the underground workings that describes the location and extent of the areas in which planned subsidence mining methods will be used and that identifies all areas where measures will be taken to prevent or minimize subsidence and subsidence-related damage and, when applicable, to correct subsidence-related material damage.

g. Section 1784.20(b)(3) requires the pre-subsidence survey to include a description of the physical conditions, such as depth of cover, seam thickness and lithology of overlying and underlying strata.

h. Section 1784.20(b)(4) requires a description of the monitoring, if any, needed to determine the commencement and degree of subsidence.

i. For those areas where planned subsidence is not projected, section 1784.20(b)(5) requires the subsidence control plan to include a detailed description of the subsidence control measures that will be taken to prevent or minimize subsidence and subsidence-related damage. A list of possible measures to be taken is contained in subsection (b)(5) (A) through (E).

j. Section 1784.20(b)(6) requires the subsidence control plan to include a description of the anticipated effects of planned subsidence, if any.

k. For those areas where planned subsidence is projected to be used, section 1784.20(b)(7) requires the subsidence control plan to include a description of methods to be employed to minimize damage to structures and facilities; or the written consent of the owner of the structure or facility that minimization measures not be taken; or, unless the anticipated damage would constitute a threat to health or safety, a demonstration that the costs of minimizing damage exceed the anticipated costs of repair.

l. Section 1784.20(b)(8) requires the subsidence control plan to include a description of the measures to be taken to replace adversely affected protected water supplies or to mitigate or remedy any subsidence-related material damage to the land and protected structures. The applicant must provide a description of measures to be taken to determine the degree of material damage or diminution of value or foreseeable use of the surface and structures potentially impacted and the impact on water quality or quantity. The applicant must also provide a plan for resolving

disputes between the landowner and the operator over the amount, level or degree of damage.

m. Section 1784.20(b)(9) requires other information specified by the Department.

*6. 62 IAC 1817.41 Hydrologic Balance Protection*

Illinois proposes to add the following new provision at 62 IAC 1817.41(j):

Drinking, domestic or residential water supply. The operator must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after January 19, 1996, if the affected well or spring was in existence before the date the Department received the permit application for the activities causing the loss, contamination or interruption. The baseline hydrologic information required in Sections 1780.21 and 1784.14 of this Part and the geologic information concerning baseline hydrologic conditions required in Sections 1781.21 and 1784.22 of this Part will be used to determine the impact of mining activities upon the water supply.

*7. 62 IAC 1817.121 Subsidence Control*

Illinois proposes the following revisions to 62 IAC 1817.121:

a. At section 1817.121(a), Illinois added the heading ''Measures to prevent or minimize damage''; numbered the existing language in the first sentence as subsection (a)(1); and removed the last sentence.

b. At new subsection (a)(2), if an operator employs mining technology that provides for planned subsidence, Illinois requires the operator to take necessary and prudent measures to minimize material damage to the extent technologically and economically feasible to structures and facilities. Measures to minimize material damage are not required if the operator has the written consent of the owners; or unless the anticipated damage would constitute a threat to health or safety, the costs of such measures exceed the anticipated costs of repair. Written consent or cost analysis must be provided to the Department 60 days prior to performing planned subsidence operations under a structure or prior to extraction occurring within 1000 feet of a protected structure. A lesser time period or distance may be employed if approved in writing.

c. Section 1817.121(a)(3) provides that nothing in this Part prohibits the standard method of room-and-pillar mining.

d. At section 1817.121(c), Illinois added the heading ''Repair of damage.''

e. At subsection (c)(1), Illinois added the heading ''Repair of damage to surface lands.''

f. At subsection (c)(2), Illinois added the heading ''Repair or compensation for damage to structures and facilities.'' Illinois also revised subsection (c)(2) to require the operator to promptly repair or compensate the owner for material damage resulting from subsidence caused to any structure or facility that existed at the time of the coal extraction under or adjacent to the materially damaged structure. If the repair option is selected, the operator must fully rehabilitate, restore or replace the damaged structure. If compensation is selected, the operator must compensate the owner of the damaged structure for the full amount of the decrease in value resulting from the subsidence-related damage. The operator may provide compensation by the purchase, before mining, of a non-cancelable premium-prepaid insurance policy. These requirements apply only to subsidence-related damage caused by underground coal extraction conducted after February 1, 1983.

g. At section 1817.121(c)(3), Illinois added the heading ''Rebuttable presumption of causation by subsidence'' and removed the existing language.

h. New subsection (c)(3)(A) requires that if damage to any structure or facility occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land, a rebuttable presumption exists that the operator caused the damage. The presumption will apply to a 30-degree angle of draw.

i. At new subsection (c)(3)(B), Illinois allows an operator to request that the presumption apply to a different angle of draw. The Department may approve application of the presumption to a site-specific angle of draw based on a site-specific analysis submitted by the applicant. To establish a site-specific angle of draw, an operator must demonstrate that the proposed angle of draw has a more reasonable basis than the standard. It must be based on a site-specific geotechnical analysis of the potential surface impacts of the mining operation.

j. Subsection (c)(3)(C) provides that if the operator was denied access to the land or property for the purpose of conducting the pre-subsidence survey, no rebuttable presumption will exist.

k. At subsection (c)(3)(D), Illinois provides some examples of a rebuttal of presumption. The presumption will be rebutted if the evidence establishes that the damage predated the mining in question; the damage was proximately caused by some other factor or factors; or the damage occurred outside the surface areas within which subsidence was actually caused by the mining in question.

l. Subsection (c)(3)(E) provides that all relevant and reasonably available information will be considered by the Department in any determination of whether damage to protected structures was caused by subsidence from underground mining.

m. New subsection (c)(4) provides requirements for adjustment of the performance bond amount when subsidence-related material damage to protected land, structures or facilities occur or when contamination, diminution, or interruption to a water supply occurs. If repair, compensation, or replacement is completed within 90 days of the occurrence of damage, no additional bond is required. This time frame may be extended, but not to exceed one year, if the operator demonstrates that subsidence is not complete, that not all probable subsidence-related material damage has occurred, or that not all reasonable anticipated changes have occurred. The operator may also use appropriate terms and conditions for liability insurance to assure that the financial responsibility to comply with subsection (c) is in place.

## III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are requesting comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Illinois program.

*Written Comments*

Your written comments should be specific and pertain only to the issues proposed in this rulemaking. You should explain the reason for any recommended change. In the final rulemaking, we will not necessarily consider or include in the Administrative Record any comments received after the time indicated under **DATES** or at locations other than the Indianapolis Field Office.

*Public Hearing*

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on December 28, 1998. We will arrange the location and time of the hearing with those persons requesting the hearing. If you are disabled and need special accommodations to attend a public hearing, contact the individual listed under **FOR FURTHER INFORMATION**

**CONTACT**. The hearing will not be held if no one requests an opportunity to speak at the public hearing.

You should file a written statement at the time you request the hearing. This will allow us to prepare responses and appropriate questions. The public hearing will continue until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

**Public Meeting**

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with us to discuss the amendment, request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We also make a written summary of each meeting a part of the Administrative Record.

**IV. Procedural Determinations**

*Executive Order 12866*

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

*Executive Order 12988*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

*National Environmental Policy Act*

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

*Unfunded Mandates*

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

**List of Subjects in 30 CFR Part 913**

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 2, 1998.

**Charles Sandberg,**

*Acting Regional Director, Mid-Continent Regional Coordinating Center.*

[FR Doc. 98–32745 Filed 12–9–98; 8:45 am]

**BILLING CODE 4310–05–P**

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 948

**[WV–077–FOR]**

## West Virginia Permanent Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule; reopening of public comment period.

**SUMMARY:** OSM is reopening the public comment period on part of a proposed amendment to the West Virginia permanent regulatory program (hereinafter referred to as the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment was submitted on April 28, 1997 (with revisions submitted on May 14, 1997) and amends both the West Virginia Surface Mining Reclamation Regulations and the West Virginia Surface Mining Code. The comment period is being reopened specifically on an amendment to allow fish and wildlife habitat and recreation lands as a postmining land use for mountaintop removal operations. The amendment is intended to improve the effectiveness of the West Virginia program.

**DATES:** Written comments must be received on or before 4:00 p.m. on January 15, 1999.

**ADDRESSES:** Written comments should be mailed or hand delivered to Mr. Roger W. Calhoun, Director, Charleston Field Office at the address listed below.

Copies of the West Virginia program, the program amendment, and the administrative record on the West Virginia program are available for public review and copying at the addresses below, during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed changes by contacting the OSM Charleston Field Office.

Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301 Telephone: (304) 347–7158.

West Virginia Division of Environmental Protection, 10 McJunkin Road, Nitro, West Virginia 25143, Telephone: (304) 759–0515.

In addition, copies of the amendment that is the subject of this notice are available for inspection during regular

business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, P.O. Box 886, Morgantown, West Virginia 26507, Telephone: (304) 291–4004.

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 323 Harper Park Drive, Suite 3, Beckley, West Virginia 25801, Telephone: (304) 255–5265.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger W. Calhoun, Director, Charleston Field Office; Telephone: (304) 347–7158.

**SUPPLEMENTARY INFORMATION:**

## I. Background on the West Virginia Program

On January 21, 1981, the Secretary of the Interior conditionally approved the West Virginia program. Background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of the approval can be found in the January 21, 1981, **Federal Register** (46 FR 5915–5956). Subsequent actions concerning the West Virginia program and previous amendments are codified at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

## II. Discussion of the Proposed Amendment

By letter dated April 28, 1997 (Administrative Record Number WV–1056), the West Virginia Division of Environmental Protection (WVDEP) submitted amendments to its approved permanent regulatory program pursuant to 30 CFR 732.17. Some revisions to the original amendment were submitted by letter dated May 14, 1997 (Administrative Record Number WV–1057). The amendments revise the West Virginia Surface Mining Reclamation Regulations (CSR Section 38–2 *et seq.*), and Section 22–3 of the West Virginia Surface Mining Code. The amendments concern changes to implement the standards of the Federal Energy Policy Act of 1992, and other changes desired by the State.

Concurrent with the Director's review of the proposed amendments, OSM's Charleston Field Office conducted an evaluation and prepared an oversight report on portions of the West Virginia surface mining program. The oversight report is focused, in part, on postmining land uses pertaining to mountaintop removal operations. OSM will be requesting public comment on the oversight report, and expects that some of the comments received concerning the oversight report will address a proposed amendment at section 22–3–13(c)(3) of the West Virginia Surface Mining Code, concerning mountaintop removal operations. Therefore, OSM is reopening the public comment period on the specific proposed amendment identified below.

Section 22–3–13(c)(3) of the West Virginia Surface Mining Code. This provision is amended to allow the approval of permits involving a variance from restoring approximate original contour (AOC) for mountaintop removal operations when the postmining land use includes fish and wildlife habitat and recreation lands.

## III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comments on the proposed amendment identified above. Comments should address whether the amendment identified above satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the West Virginia program.

### Written Comments

Written comments should be specific, pertain only to the issue proposed in this notice and include explanations in support of the commenter's recommendations.

Comments received after the time indicated under ''DATES'' or at locations other than the OSM Charleston Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

## IV. Procedural Determinations

*Executive Order 12866*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

*Executive Order 12988*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

*National Environmental Policy Act*

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

*Unfunded Mandates*

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

### List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 2, 1998.

**Michael K. Robinson,**

*Acting Regional Director, Appalachian Regional Coordinating Center.*

[FR Doc. 98–32746 Filed 12–9–98; 8:45 am]

**BILLING CODE 4310–05–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Office of Inspector General

## 42 CFR Part 1001

## Solicitation of New Safe Harbors and Special Fraud Alerts

**AGENCY:** Office of Inspector General (OIG), HHS.

**ACTION:** Notice of intent to develop regulations.

**SUMMARY:** In accordance with section 205 of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, this annual notice solicits proposals and recommendations for developing new and modifying existing safe harbor provisions under the Federal and State health care programs' anti-kickback statute, as well as developing new OIG Special Fraud Alerts.

**DATES:** To assure consideration, public comments must be delivered to the address provided below by no later than 5 p.m. on February 8, 1999.

**ADDRESSES:** Please mail or deliver your written comments to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG–31–N, Room 5246, Cohen Building, 330 Independence Avenue, S.W., Washington, D.C. 20201.

We do not accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OIG–31–N. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 5541 of the Office of Inspector General at 330 Independence Avenue, S.W., Washington, D.C., on Monday through Friday of each week from 8:00 a.m. to 4:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** Joel Schaer, (202) 619–0089, OIG Regulations Officer.

**SUPPLEMENTARY INFORMATION:**

### I. Background

*A. The OIG Safe Harbor Provisions*

Section 1128B(b) of the Social Security Act (the Act) (42 U.S.C. 1320a–7b(b)) provides criminal penalties for individuals or entities that knowingly and willfully offer, pay, solicit or receive remuneration in order to induce business reimbursed under the Federal or State health care programs. The offense is classified as a felony, and is punishable by fines of up to $25,000 and imprisonment for up to 5 years.

The types of remuneration covered specifically include kickbacks, bribes, and rebates, whether made directly or indirectly, overtly or covertly, or in cash or in kind. In addition, prohibited conduct includes not only remuneration intended to induce referrals of patients, but remuneration intended to induce the purchasing, leasing, ordering, or arranging for any good, facility, service, or item paid for by Federal or State health care programs.

Since the statute on its face is so broad, concern has been expressed for many years that some relatively innocuous commercial arrangements are technically covered by the statute and are, therefore, subject to criminal prosecution. As a response to the above concern, the Medicare and Medicaid Patient and Program Protection Act of 1987, section 14 of Public Law 100–93, specifically required the development and promulgation of regulations, the so-called ''safe harbor'' provisions, designed to specify various payment and business practices which, although potentially capable of inducing referrals of business under the Federal and State health care programs, would not be treated as criminal offenses under the anti-kickback statute (section 1128B(b) of the Act; 42 U.S.C. 1320a–7b(b)) and would not serve as a basis for a program exclusion under section 1128(b)(7) of the Act; 42 U.S.C. 1320a–7(b)(7). The OIG safe harbor provisions have been developed ''to limit the reach of the statute somewhat by permitting certain non-abusive arrangements, while encouraging beneficial and innocuous arrangements'' (56 FR 35952, July 29, 1991). Health care providers and others may voluntarily seek to comply with these provisions so that they have the assurance that their business practices are not subject to any enforcement action under the anti-kickback statute or program exclusion authority.

To date, the OIG has developed and codified in 42 CFR 1001.952 a total of 13 final safe harbors that describe practices that are sheltered from liability. The OIG is also currently drafting a comprehensive safe harbor rule that intends to finalize certain proposals for new and clarified safe harbors that were published in the **Federal Register** in 1993 and 1994 (58 FR 49008, September 21, 1993 and 59 FR 37202, July 21, 1994). The OIG is also developing an interim final rule for the shared-risk exception to the anti-kickback statute (section 216 of HIPAA). This rule, which will set forth two new safe harbors, is being developed through the negotiated rulemaking process in accordance with the requirements of HIPAA and the Federal Advisory Committee Act.

*B. OIG Special Fraud Alerts*

In addition, the OIG has also periodically issued Special Fraud Alerts to give continuing guidance to health care providers with respect to practices the OIG regards as unlawful. These Special Fraud Alerts serve to notify the health care industry that the OIG has become aware of certain abusive practices that the OIG plans to pursue and prosecute, or to bring civil and administrative action, as appropriate. The Special Fraud Alerts also serve as a tool to encourage industry compliance by giving providers an opportunity to examine their own practices. The OIG Special Fraud Alerts are intended for extensive distribution directly to the health care provider community, as well as those charged with administering the Medicare and Medicaid programs.

In developing these Special Fraud Alerts, the OIG has relied on a number of sources and has consulted directly with experts in the subject field, including those within the OIG, other agencies of the Department, other Federal and State agencies, and those in the health care industry. To date, nine individual Special Fraud Alerts have been issued by the OIG and subsequently reprinted in the **Federal Register** on December 19, 1994 (59 FR 65372), August 10, 1995 (60 FR 40847), June 17, 1996 (61 FR 30623) and April 24, 1998 (63 FR 20415).

*C. Section 205 of Public Law 104–191*

In accordance with the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191), the Department is now required to provide additional formal guidance regarding the application of the anti-kickback statute and the safe harbor provisions, as well as other OIG health care fraud and abuse sanctions. In addition to accepting and responding to requests for advisory opinions from outside parties regarding the interpretation and applicability of certain statutes relating to the Federal and State health care programs, section 205 of Public Law 104–191 requires the Department to develop and publish an annual notice in the **Federal Register** formally soliciting proposals for modifying existing safe harbors to the anti-kickback statute and for developing new safe harbors and Special Fraud Alerts. In accordance with this requirement, the OIG has published notices in the **Federal Register** on December 31, 1996 (61 FR 69060) and on December 10, 1997 (62 FR 65049) soliciting such proposals.

In developing safe harbors for a criminal statute, the OIG is compelled to engage in a complete and thorough review of the range of factual circumstances that may fall within the proposed safe harbor subject area so as to uncover all potential opportunities for fraud and abuse. Only then can the OIG determine, in consultation with the Department of Justice, whether it can effectively develop regulatory limitations and controls that will permit beneficial and innocuous arrangements within a subject area while, at the same time, protecting the Federal health care programs and their beneficiaries from abusive practices.

### II. Solicitation of Additional New Recommendations and Proposals

In accordance with the requirements of section 205 of Public Law 104–191, the OIG is continuing to study safe harbor and Special Fraud Alert proposals submitted in response to the annual solicitations concerning subject areas other than those to be addressed in the safe harbor rulemakings under development. In response to the 2 previously-issued **Federal Register** solicitation notices, the OIG received 32 timely-filed responses to the 1996 notice and 17 responses to the 1997 notice. A status report of these public comments for new and modified safe harbors is contained in Appendix G of the OIG's Semiannual Report for the period April 1, 1998 through September 30, 1998.[1] The OIG is currently taking these recommendations under advisement and is not seeking additional public comment on those proposals at this time. Rather, this notice seeks additional recommendations from affected provider, practitioner, supplier and beneficiary representatives regarding the development of proposed or modified safe harbor regulations and new Special Fraud Alerts beyond those summarized in Appendix G of the OIG Semiannual Report.

Criteria for Modifying and Establishing Safe Harbor Provisions

In accordance with the statute, we will consider a number of factors in reviewing proposals for new or modified safe harbor provisions, such as the extent to which the proposals would effect an increase or decrease in—

- Access to health care services;
- The quality of care services;
- Patient freedom of choice among health care providers;
- Competition among health care providers;
- The cost to Federal health care programs;
- The potential overutilization of the health care services; and
- The ability of health care facilities to provide services in medically underserved areas or to medically underserved populations.

In addition, we will also take into consideration the existence (or nonexistence) of any potential financial benefit to health care professionals or providers that may vary based on their decisions whether to (1) order a health care item or service, or (2) arrange for a referral of health care items or services to a particular practitioner or provider.

Criteria for Developing Special Fraud Alerts

In determining whether to issue additional Special Fraud Alerts, we will also consider whether, and to what extent, those practices that would be identified in new Special Fraud Alerts may result in any of the consequences set forth above, and the volume and frequency of the conduct that would be identified in these Special Fraud Alerts.

A detailed explanation of justifications or empirical data supporting the suggestion, and sent to the address indicated above, would prove helpful in our considering and drafting new or modified safe harbor regulations and Special Fraud Alerts.

Dated: December 4, 1998.

**June Gibbs Brown,**

*Inspector General.*

[FR Doc. 98–32806 Filed 12–6–98; 8:45 am]

**BILLING CODE 4150–04–P**

[1] The OIG Semiannual Report can be accessed through the OIG web site at http://www.dhhs.gov/progorg/oig/semann/index.htm.

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

**[CC Docket No. 96–45; FCC 98–278]**

### Federal-State Joint Board on Universal Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Between September, 1997 and March, 1998, the Commission's Wireless Telecommunications Bureau and Common Carrier Bureau hosted a series of *ex parte* meetings with representatives of the wireless telecommunications industry. The Bureau's primary objective in hosting those meetings was to solicit proposals on methods by which wireless telecommunications providers might allocate between the intrastate and interstate jurisdictions their end-user telecommunications revenues for purposes of the universal service reporting requirements. In this document, the Commission seeks comment on what amount of local usage, if any, eligible telecommunications carriers should be required to provide.

**DATES:** Comments are due on or before January 11, 1999 and reply comments are due on or before January 25, 1999.

Written comments by the public on the proposed information collections are due January 11, 1999. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before February 8, 1999.

**ADDRESSES:** Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., TW-A325, Washington, D.C. 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

**FOR FURTHER INFORMATION CONTACT:** Lori Wright, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400. For additional information concerning the information collections contained in this Further Notice of Proposed Rulemaking contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's document released on October 26, 1998. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C., 20554.

### Initial Paperwork Reduction Act Analysis

1. This Further Notice of Proposed Rulemaking (Further Notice) contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections

contained in this Further Notice, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this Further Notice; OMB notification of action is due February 8, 1999. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other form of information technology.

*OMB Approval Number:* None.

*Form No.:* N/A.

*Type of Review:* New collection.

*Respondents:* Business or Other for Profit.

*Title:* Data to Determine Percentage of Interstate Telecommunications Revenues from Wireless Carriers and Submission of Data to Determine Eligibility.

| | Number of respondents | Estimate time per response (hours) | Total annual burden (hours) |
|---|---|---|---|
| Data to Determine Percentage of Interstate Telecommunications Revenue by Wireless Carriers | 900 | 10 | 9000 |
| Submission of Data to Determine Eligibility | 3400 | .25 | 850 |

*Total Annual Burden:* 9,850 hours.

*Estimated costs per respondent:* $0.

*Needs and Uses:* The Commission seeks comment on various mechanisms for allocating between the intrastate and interstate jurisdictions the end-user telecommunications revenues of universal service contributors that cannot derive this information readily from their books of account. The Commission seeks comment on its proposals for wireless carriers to conduct traffic studies and extrapolate from the data the percentage of their revenues that should be attributed to the interstate jurisdiction. This allocation will be used for purposes of calculating the federal universal service reporting and contribution obligations. The Commission also seeks comment on whether to require eligible telecommunications carriers to include some fixed number of minutes of use per month as part of the basic universal service package or whether we should require some number of calls. This information would be reported by the carriers to their state utility commission when they seek designation as an eligible telecommunications carriers.

## I. Introduction

2. Between September, 1997 and March, 1998, the Commission's Wireless Telecommunications Bureau and Common Carrier Bureau hosted a series of *ex parte* meetings with representatives of the wireless telecommunications industry. The Bureau's primary objective in hosting those meeting was to solicit proposals on methods by which wireless telecommunications providers might allocate between the intrastate and interstate jurisdictions their end-user telecommunications revenues for purposes of the universal service reporting requirements. In this Further Notice, we propose and seek comment on various mechanisms for allocating between the intrastate and interstate jurisdictions the end-user telecommunications revenues of universal service contributions that cannot derive this information readily from their books of account. This allocation will be used for purposes of calculating the federal universal service reporting and contribution obligation. On March 8, 1996, the Commission adopted an initial *Notice of Proposed Rulemaking and Order Establishing Joint Board,* 61 FR 10499 (March 14, 1996) seeking comments on recommended changes to our regulations to implement the universal service directives of the Telecommunications Act of 1996.

### *A. Proposed Mechanisms for Separating Interstate and Intrastate Revenues*

a. Good Faith Estimates

3. We tentatively conclude that we should provide specific guidance to wireless telecommunications providers in identifying their interstate revenues, as required on the Universal Service Worksheet (Worksheet). Certain parties initially proposed that we adopt on a permanent basis the revenue reporting approach relied upon for purposes of the Telecommunications Relay Services (TRS) Fund Worksheet. The Commission's TRS rules permit carriers that are not subject to the Uniform System of Accounts (USOA) in Part 32, such as CMRS providers, to rely on a special study to estimate their percentages of interstate and international traffic. Under this approach, contributors must document how they calculated their estimates and make such information available to the Commission or TRS Administrator upon request. Although the *NECA II Order,* 62 FR 47369 (September 9, 1997), permitted certain universal service contributors, on an interim basis, to make good faith estimates of their interstate revenues along the lines of the special study method used for TRS, we tentatively conclude that we should not adopt this approach on a permanent basis. Given the greater impact universal service contributions have on carriers, we tentatively agree with CTIA and Comcast that allowing carriers to rely on good faith estimates on a permanent basis as a means of distinguishing contributors' interstate and intrastate revenues will not provide contributors with sufficient certainty as to the appropriate amount of their payment obligations and may result in inequities in payment obligations. Comcast contends that the Commission should provide specific guidance on this issue to minimize the ''potential for systematic underreporting or underestimating of revenues, or, in some cases, overestimation of revenues.'' Specifically, Comcast suggests that, without establishing relevant markets according to which carriers report their percentage of interstate telecommunications revenues, larger wireless carriers will ''average down their interstate percentages by including [revenue information from] distant markets.'' We seek comment on the merits of our tentative conclusions and on how we might amend our rules in a manner that would provide certainty and avoid substantial inequities in payment obligations.

b. Percentage of Interstate Revenues Estimates

4. We tentatively conclude that, as proposed by Comcast, the Commission should establish a fixed percentage of interstate end-user wireless telecommunications revenues that a wireless telecommunications provider

must report on the Worksheet. It appears that such an approach would eliminate competitive inequities that may be associated with the use of differing allocation assumptions and methodologies. We invite parties to comment on the use of such an approach for determining the interstate wireless telecommunications revenues for wireless telecommunications providers.

5. Given that various categories of wireless providers may have substantially differing levels of interstate traffic, we also tentatively conclude that we should establish different percentages according to the type of provider (*e.g.*, cellular, broadband PCS, paging, and SMR). We adopt a similar approach for our interim guidelines for wireless providers' reporting on the Worksheet of their interstate wireless telecommunications revenues. Although this approach recognizes that interstate traffic levels may differ among differing classes of wireless providers, it assumes that such levels are generally similar among competing carriers with similar systems and operations. We seek comment on whether this is a reasonable assumption.

6. With regard to broadband PCS and cellular services, we seek comment on whether the fixed percentage of interstate telecommunications revenues that must be reported on the Worksheet should be based on the level of interstate traffic experienced by wireline providers. We seek comment on whether the similarities between broadband PCS, cellular, and traditional wireline services are sufficient to warrant such an outcome. For wireline services, current Commission statistics indicate that the nationwide average percentage of interstate wireline traffic reported for the DEM weighting program is approximately 15 percent. We seek comment on whether cellular and broadband PCS providers should report 15 percent of their cellular and PCS revenues as interstate. We note that members of the wireless telecommunications industry have suggested that 15 percent represents a reasonable approximation of the percentage of cellular and PCS traffic that is interstate. We are not aware of evidence that cellular and broadband PCS providers experience substantially more or less interstate traffic than wireline providers, nor do we have evidence before us to indicate that the level of interstate traffic for wireline carriers reporting under the DEM weighting program differs substantially from wireline carriers as a whole. At the same time, we are cognizant that, due to the difference in pricing structures between wireline service and wireless service, the level of interstate telecommunications revenues generated by each type of service may vary from one to another. Moreover, some cellular and PCS carriers have reported as much as 28 percent of their revenues as interstate, which may represent a more accurate accounting given that carriers have incentives to underreport their interstate revenues for universal service reporting purposes. We therefore invite parties to comment on the appropriateness of using data submitted for purposes of the DEM weighting program to approximate the percentage of interstate cellular and PCS revenues generated by wireless telecommunications providers.

7. We recognize that analog SMR and paging services do not as closely resemble broadband PCS, cellular, or traditional wireline services, and therefore seek comment on an appropriate estimation of these providers' interstate analog SMR and paging revenues. We adopt interim guidelines for paging and analog SMR providers, based on the average interstate revenues percentage reported by those carriers in 1998. Paging providers and analog SMR providers reported, on average, interstate paging and analog SMR revenue levels at approximately 12 percent and one percent, respectively. Unlike our estimate for the interstate portion of cellular and PCS revenues, however, the DEM weighting reports do not provide the Commission with an independent source for estimating the portion of paging and analog SMR revenues that is interstate. We also note that these carriers may have incentives to underreport their interstate revenues for universal service reporting purposes. We seek comment on whether the 12 percent average reported by paging carriers and one percent reported by analog SMR providers should form the basis for the final fixed percentages, and, if not, what would be an appropriate allocation. We are interested in knowing of any other mechanisms that, like DEM weighting, could provide an independent basis for a permanent rule for analog SMR and paging carriers. Parties are encouraged to provide alternative estimations of the percentage of interstate traffic experienced by analog SMR and paging providers and a detailed basis for the estimation.

8. According to the American Mobile Telecommunications Association (AMTA), SMR providers, with the possible exception of NEXTEL, generate relatively low levels of interstate traffic. We seek comment on this assertion and on whether any other categories of provider, such as paging providers, generate similarly low levels of interstate telecommunications traffic relative to other categories of providers. We also seek comment on how to treat providers, like NEXTEL, that may generate atypical levels of interstate traffic. Likewise, we seek comment on whether any category of provider experiences higher levels of interstate telecommunications traffic relative to other categories of providers.

9. We note that traffic studies may represent one possible mechanism wireless telecommunications carriers could use to determine their percentage of interstate telecommunications revenues. We believe that it would be reasonably simple for most wireless carriers to conduct traffic studies and extrapolate from the data the percentage of their revenues that should be attributed to the interstate jurisdiction. Some wireless carriers could conduct joint traffic studies, the results of which could be used by all similarly situated companies. We seek comment on these proposals. Furthermore, if the Commission elects not to use the data submitted for purposes of the DEM weighting program to estimate the percentage of broadband PCS and cellular revenues generated by broadband PCS and cellular providers (*i.e.*, 15 percent), as discussed above, one alternative would be to derive a fixed percentage for each category of provider based upon data reported on the 1997 TRS Fund Worksheets. Given the impact that universal service contributions have on carriers, however, we believe that we should establish a percentage of interstate wireless telecommunications revenues that is based on data more certain and accurate than what may be obtained from TRS worksheets. Therefore, we tentatively conclude that we should not use the allocations made for the TRS Fund Worksheet to determine the proper portion of revenues derived from interstate calls. We seek comment on this tentative conclusion.

10. We also seek comment on whether the Commission should establish different percentages within each category of provider, rather than establishing a single percentage for each category of provider. For example, because the service areas of some wireless telecommunications providers may consist of many smaller states (*i.e.*, in the northeastern part of the United States) and thus experience a higher level of interstate traffic than service areas in, for example, the midwestern and western parts of the United States, the Commission could establish various

percentages within each category of provider that take into consideration the area of the country being served. Comcast asserts that, in order to estimate accurately the percentage of broadband PCS providers' interstate broadband PCS revenues, the Commission must first establish an appropriate market size. Comcast recommends that the level of interstate telecommunications revenues reported by wireless telecommunications providers whose license territories are established on the basis of Major Trading Areas (MTAs) should be determined on an MTA-by-MTA basis. Comcast, which serves markets in the northeastern part of the United States where there may be a relatively high number of interstate calls, contends that reporting the level of interstate revenues on an MTA-by-MTA basis would ensure consistent reporting of interstate revenues among wireless telecommunications providers. Comcast contends that this approach would minimize the possibility that larger carriers, that are likely to have a relatively larger proportion of interstate traffic, would report their interstate revenues on the basis of an average that includes markets with relatively low levels of interstate traffic. Comcast maintains, therefore, that carriers in a single market would be less likely to impose widely varying charges on bills to recover their universal service contributions. We seek comment on Comcast's proposal. If the Commission elects to establish a market-by-market approach, we seek comment on the appropriate market size for wireless telecommunications providers that are not licensed on the basis of MTAs. We also seek comment on whether the Commission should establish different percentages within each category of provider according to other criteria.

11. We seek comment on whether wireless telecommunications providers should be given the option of using a Commission-established percentage of interstate wireless telecommunications revenues, as discussed above, or using their own data-collection procedures to demonstrate to the Commission the percentage of their wireless telecommunications revenues derived from interstate calls. Allowing carriers to choose between these two options, rather than requiring all wireless providers to use the Commission-established percentage, may be preferable for wireless providers that are able, without substantial difficulty, to distinguish their interstate revenues. We note that this approach may encourage providers that can derive accurate estimates of their revenues from their books of account nevertheless to use the Commission-established percentage if they determine that using the Commission established percentage provides a financial advantage. We seek comment on whether wireless telecommunications providers that wish to use their own data collection procedures to identify the percentage of their end-user wireless telecommunications revenues that is derived from interstate calls should be required to obtain a waiver from the Commission.

12. We also seek comment on whether we should adopt for wireless telecommunications providers a universal service contribution methodology that does not require these carriers to allocate their revenues as either interstate or intrastate. We seek comment on whether it would be competitively neutral, equitable, and economically efficient to require wireless telecommunications providers to contribute to the universal service support mechanisms on the basis of a flat fee per voice grade access line or voice grade equivalent, rather than as a percentage of their revenues. We note that parties have generally sought reconsideration of the Commission's decision to assess carriers based on a percentage of their telecommunications revenues, and we seek further comment on this issue with regard to wireless carriers. We seek comment on how we would determine the amount of such a flat charge. We are cognizant that the amount of a flat charge may need to vary according to the type of carrier on which it is assessed. If we were to assess different types of carriers differently, we seek comment on how to accomplish this in a fair and equitable manner. In connection with this issue, we seek comment on how to establish for paging carriers a voice grade equivalent on which to assess a flat charge, *e.g.,* capacity level. We also seek comment on whether we should assess wireless carriers different amounts for business and residential subscribers. We also seek comment on whether a flat charge would be consistent with our prior determination that contributions to the federal high cost and low-income support mechanisms should be assessed only on interstate revenues. We also invite parties to comment on other methodologies that the Commission could adopt to assess universal service contribution obligations on wireless providers or other providers that generally do not operate with regard to state boundaries.

c. Simplifying Assumptions

13. In this section, we seek comment on a number of proposed simplifying assumptions that either the Commission or wireless telecommunications providers could use to determine the appropriate percentage of interstate wireless telecommunications revenues that should be reported on the Worksheet. These simplifying assumptions could be used in the event that the Commission declines to establish the percentage of interstate wireless telecommunications revenues that some or all categories of wireless telecommunications providers should report on the Worksheet. Additionally, in the event that the Commission decides to provide wireless telecommunications providers with the option of using either a Commission-established percentage or their own data-collection procedures to determine their percentage of interstate wireless telecommunications revenues, wireless telecommunications providers selecting the latter option could use these simplifying assumptions.

14. We seek comment on whether it would be appropriate for the Commission to adopt the following assumptions in light of the manner and extent to which wireless telecommunications providers maintain revenue data. These simplifying assumptions are set forth below according to various categories of wireless telecommunications providers. We note that certain simplifying assumptions may be relevant to more than one category of wireless telecommunications provider. Therefore, we invite comment on these simplifying assumptions as they may apply to any category of wireless telecommunications provider.

i. Cellular and Broadband PCS Providers

15. *Originating point of a call.* CTIA proposes that, in determining the jurisdictional nature of a call, cellular and broadband PCS providers should consider the originating point of a call to be the location of the antenna that first receives the call. We understand that some wireless telecommunications providers use this approach for purposes of reporting their revenues on the TRS Fund Worksheet and recommend doing so for purposes of universal service reporting. We seek comment on this proposal. To account for the situation in which an antenna serves a region encompassing more than one state, a call would be considered to originate in the state in which the antenna that originally received the call is located, even though the customer

may be located in a different state than the antenna and even if, during the course of a call, the customer enters another cell area served by an antenna located in another state. We seek comment on whether this would systematically understate the amount of revenues derived from interstate wireless telecommunications. We also seek comment on whether wireless telecommunications providers experience difficulty in determining the jurisdictional nature of revenues derived from calls that originate as wireline and terminate as wireless.

16. An assumption that a call originates in the state in which the antenna that first receives the call is located would address CTIA's concern that the billing systems of CMRS providers generally do not record the location of the antenna to which the call is transferred when the mobile customer enters a new cell area. This proposed assumption also would address the situation described by CTIA in which calls originating and terminating in the same state are transported, during the course of the call, to a switch in another state. We note that, in the *Local Competition Order*, 61 FR 45476 (August 29, 1996), the Commission determined that, ''[f]or administrative convenience, the location of the initial cell cite when a call begins shall be used as the determinant of the geographic location of the mobile customer.'' We seek comment on whether the originating call assumption discussed above adequately addresses the concerns identified by CTIA.

17. *Terminating point of a call.* In addition to the originating point of a call, the terminating point of a call must be identified in order to determine the jurisdictional nature of the call. We seek comment on whether a cellular or broadband PCS provider should assume that a call terminates in the state that corresponds to the area code to which the call was placed. Because we have received no evidence indicating otherwise, we assume that this would be a reasonable approach for determining the terminating point of a call. We seek comment on our assumption that determining the terminating point of a cellular or broadband PCS call in this manner is reasonable and does not pose substantial difficulties for providers.

18. *Calls originating and terminating in a Major Trading Area.* Because many wireless telecommunications providers operate without regard to state boundaries, we seek comment on whether the Commission should consider using MTA boundaries as the basis on which CMRS providers might estimate the level of interstate wireless traffic for universal service reporting purposes. Specifically, we seek comment on whether CMRS traffic that originates and terminates within an MTA should be classified as intrastate and all other calls classified as interstate for purposes of the Worksheet. Because a single MTA can occupy more than one state, this approach would result in some calls that cross state boundaries being classified as intrastate. At the same time, because some states have more than one MTA, a call could be classified as interstate under this approach, even though the call originates and terminates in the same state. We seek comment on the significance of these observations. Because different types of wireless telecommunications providers use different Commission-authorized licensed territories, we also seek comment on whether we should use the boundaries of other types of wireless licensed territories (*e.g.*, Metropolitan Statistical Areas or Rural Service Areas) to differentiate between interstate and intrastate traffic.

19. *Roaming revenues.* We seek comment on how ''roaming'' revenues obtained by broadband PCS and cellular providers should be classified. ''Roaming'' occurs when customers located outside the scope of their provider's network use a different provider's network to place and receive calls. CTIA and AirTouch assert that when a customer is ''roaming'' on the system of another provider (the ''serving provider''), the customer's principal provider, which is responsible for billing the customer, receives limited information about the calls made by the customer. In determining how a principal provider should account for revenues generated while its customer ''roams'' on a serving provider's system, AirTouch suggests that the principal provider apply an established percentage to such revenues to approximate the level of interstate usage by ''roaming'' customers. We seek comment on AirTouch's proposal, and, assuming we adopt AirTouch's proposal, the appropriate fixed percentage that should be applied to such revenues. AirTouch explains that this option would eliminate the need for extensive information exchanges between the customer's principal provider and the serving provider. AirTouch further notes that this approach would address the situation in which, because CMRS providers price air-time usage differently, the identical levels of usage do not generate uniform levels of revenues. We seek comment on these assertions.

20. With regard to how ''roaming'' traffic should be treated for purposes of distinguishing interstate and intrastate revenues, CTIA notes that, some of its members have concluded that the principal provider should treat all roaming traffic as interstate. CTIA further states that some of its members have taken the position that calls forwarded from the customer's principal provider to a serving provider in the area where the customer is located should be treated as interstate calls. We seek comment on these proposed simplifying assumptions.

ii. Paging Providers

21. Due to the technical design of a paging system, AirTouch claims that the information necessary to assess the jurisdictional nature of a paging call is unavailable. AirTouch explains that a paging network terminates communications simultaneously at all locations in its service area, because the paging network cannot identify the location of the paging unit. Thus, the paging network cannot identify the area code of the location where the customer actually receives the page. In light of these difficulties, we seek comment on any simplifying assumptions that paging carriers may adopt in determining the percentage of interstate paging revenues that they should report on the Worksheet. For example, we seek comment on whether paging providers should estimate their level of interstate traffic based, at least in part, on the percentage of customers whose service package includes toll-free number capabilities (*e.g.*, 888–, 800–, and 877–numbers), with the assumption that these customers are more likely to receive interstate pages. If a paging provider is capable of distinguishing between the paging revenues derived from its customers who subscribe to local service and those who subscribe to nationwide service, we seek comment on whether paging carriers should assume that its nationwide customers generate more interstate traffic than the local customers. If we were to direct wireless carriers to use a Commission-established percentage of interstate wireless telecommunications revenues, we seek comment on whether we should establish two percentages, one for traffic to local paging customers and one for traffic to national paging customers.

iii. SMR Providers

22. Analog SMR service provides land mobile communications and consists of at least one base station transmitter and antenna, as well as a mobile radio unit. Analog SMR service may be

interconnected with the public switched telephone network, which allows mobile radio units to function essentially as a mobile telephone, or through a dispatch system, which allows two-way, over-the-air, voice communications only between two mobile radio units. We seek comment on an appropriate estimation of the percentage of interstate telecommunications revenues generated by analog SMR providers and on whether there are appropriate simplifying assumptions to estimate the percentage of analog SMR providers' interstate analog SMR revenues. AMTA states that some of the dispatch systems provide service exclusively within a state and others provide service across state boundaries. AMTA states that, in a recent survey of its members, 63 percent of the respondents reported that their coverage areas are intrastate, while the remaining 37 percent reported the use of systems crossing state boundaries. AMTA also reports that 90 percent of the survey respondents claimed to derive between zero and two percent of their revenues from interstate service. AMTA further notes that 97 percent of the respondents maintain that they are exempt under the *de minimis* standard from contributing to the universal service support mechanisms. AMTA contends that ''the survey results to date certainly indicate that SMR and related services bear little resemblance to mass-market mobile telephony such as broadband PCS and cellular.'' We seek comment on whether, and how, AMTA's survey results may be used to help determine an appropriate percentage of analog SMR providers' interstate analog SMR revenues. We also seek comment on other ways to arrive at such an estimation.

iv. Point-to-point Wireless Providers

23. Unlike mobile service, which transmits a signal that may be received by any of the mobile units within a certain area, the signal that is transmitted as part of fixed, point-to-point wireless service is sent directly to a fixed location. We seek comment on whether any point-to-point wireless providers experience difficulty in reporting their percentage of interstate telecommunications revenues. If so, we seek comment on ways to estimate such carriers' level of interstate telecommunications revenues derived from the provision of fixed, point-to-point service and on whether any simplifying assumptions should be applied to this type of provider. Because the service offered by entities that provide wireless telecommunications on a fixed, point-to-point basis is not mobile in nature, such entities' contribution compliance concerns may differ from those of broadband PCS and cellular providers.

d. AirTouch's Methodology

24. AirTouch states that its jurisdictional tracking system is able to determine, with a reasonable degree of accuracy, whether a particular cellular call is interstate or intrastate. AirTouch explains that its tracking system initially was developed for state tax purposes. According to AirTouch, this tracking system forwards data received from the originating switch to databases used for billing. The databases compiled from this data enable AirTouch to compare the originating switch location with the terminating area code. AirTouch uses this capability to estimate the percentage of interstate airtime usage and then applies this percentage to an estimated level of total end-user revenues, which yields the amount of interstate revenues. AirTouch explains that the total-revenues estimate includes charges for airtime revenues and monthly access charges, less non-telecommunications revenues. Revenues from long-distance resale, AirTouch further explains, are then included for purposes of determining the total interstate revenues figure reported on the Worksheet. We seek comment on the extent to which wireless telecommunications and other providers are capable of distinguishing their interstate and intrastate revenues using the method employed by AirTouch or could, without substantial difficulty, adopt such a method. We seek comment on whether wireless telecommunications carriers that use a method similar to that described by AirTouch to identify their interstate revenues should be allowed to do so, in the event that the Commission adopts, for universal service reporting purposes, a Commission-established percentage. In addition, we seek comment on whether, for purposes of assessing certain charges, such as state universal service charges or state taxes, wireless providers are already required to distinguish their revenues in a way that could be applied to their federal universal service reporting obligations.

25. AirTouch notes that its tracking system may yield inaccurate information to the extent that the interstate portion of a call is not recorded when the call originates as intrastate but terminates as interstate due to the customer crossing a state boundary. Similarly, we note that a tracking system like the one employed by AirTouch also may yield inaccurate results when a call originates as interstate and terminates as intrastate due to the customer crossing a state boundary. We seek comment on whether the potential inaccuracies that may arise from these two scenarios would, when taken together, tend to cancel each other out and thus have no measurable effect.

e. Other Issues Surrounding Universal Service Reporting Requirements

26. We seek comment on whether wireless telecommunications providers experience difficulty in complying with any universal service reporting requirements other than identifying their interstate and intrastate revenues, as described above. We also seek comment on any other actions that the Commission might take to ensure that wireless telecommunications providers are treated in an equitable and nondiscriminatory manner with respect to the universal service reporting and contribution obligations.

f. Providers Other Than Wireless Telecommunications Providers

27. In the previous sections, we discuss possible mechanisms that wireless telecommunications providers could use in allocating their wireless telecommunications revenues between the interstate and intrastate jurisdictions for universal service reporting purposes. We also seek comment whether there are other types of providers, such as satellite providers, that may not be able to derive easily from their books of account their percentage of interstate and intrastate telecommunications revenues. Parties are invited to address whether the proposals discussed in this Further Notice, such as the simplifying assumptions discussed, might benefit other telecommunications providers that cannot readily distinguish their interstate and intrastate revenues for universal service reporting purposes.

*B. Competitive Neutrality*

28. In the *Universal Service Order,* 62 FR 32862 (June 17, 1997), the Commission sought to adopt rules that would facilitate the entry of new providers and promote competition in the context of universal service. The Commission also sought to establish universal service rules that are competitively and technologically neutral. We seek comment here on the success of that goal. Specifically, we seek comment on the extent to which our rules, in application, are accomplishing that goal. We seek comment on the extent to which our rules facilitate the provision of services eligible for universal service support by providers, such as wireless

telecommunications providers and cable operators, that historically have not supplied such services. We also seek comment on the extent to which such providers are supplying the services supported by the federal universal service support mechanisms to eligible beneficiaries. For example, we seek comment on the extent to which wireless service providers are supplying supported services to eligible schools and libraries. Similarly, we seek comment on the extent to which cable and other service providers are supplying supported services to entities eligible for universal service support.

29. We also seek comment on whether, in practice, any of our universal service rules discourage wireless service providers or cable service providers from offering supported services to low-income subscribers and rural, insular, and high cost subscribers. We also seek comment on whether, in practice, our universal service rules may favor unfairly one technology over another. If parties answer these statements affirmatively, we seek specific suggestions on how those rules could be amended, consistent with the Act, to facilitate the provision of services eligible for universal service support by all eligible providers.

*C. Definition of Basic Service Packages To Be Provided by Eligible Telecommunications Carriers*

30. We seek comment on whether some amount of minimum local usage should be included in the basic service packages, and if so, how to determine that local usage requirement. In light of the cost characteristics of mobile wireless service, we seek comment on how to define a basic service package with a local usage requirement that presents a realistic option to wireless customers. For example, the obligation to provide some local usage would be rendered meaningless if a wireless carrier could satisfy that obligation by offering, among other service options, a basic service package containing local usage that was priced hundreds of dollars higher than options offered by that wireless carrier or competing carriers, so that no one selected it. Thus we seek comment on how to ensure that a local usage requirement is included as part of an option that represents a viable choice for consumers. We seek comment on whether carriers should only be eligible to receive universal service support with respect to subscribers who select a basic service package that includes a certain amount of local usage without additional charge. Alternatively, we seek comment on whether carriers should only be eligible to receive universal service support if a certain percentage of their subscribers subscribe to a basic service package that includes a certain amount of flat-rated local usage, because that would indicate that such package presented a viable option to customers.

31. We also seek comment on whether we should require eligible telecommunications carriers to include some fixed number of minutes of use per month as part of the basic universal service package, or whether we should require some minimum number of calls. We note that the cost of a call for wireless carriers may vary depending on its duration and on whether it is made during peak calling hours. These factors may be less significant for wireline carriers. Therefore, we seek comment on whether we should establish different requirements for different types of carriers, and whether we should give carriers the option of offering either a minimum number of minutes or a minimum number of calls in their basic service package.

32. We seek comment on how much, if any, local usage to require carriers to offer in such a basic service package in order to be eligible for universal service support. According to the Statistics of Common Carriers, telephone customers make, on average, 135 local calls per month per access line. This average varies from 52 local calls per month in Maine to 210 local calls per month in Louisiana. Other sources report that cellular customers average 150 minutes of use per month, and broadband PCS customers average 250 minutes of use per month. The cellular and broadband PCS numbers are expected to increase in the future. We seek comment on whether we should base the amount of local usage that a carrier must offer, at least in part, on average usage rates. Commenters that argue that no level of local usage should be required should explain why such a requirement would not be necessary to meet the goals of universal service. We encourage such commenters to suggest alternative approaches that will promote universal service goals.

33. We also seek comment on how we should determine what constitutes local usage. We note that wireless and wireline carriers may treat different sets of calls as ''local.'' The boundaries of the local calling areas for wireline carriers and service areas for eligible telecommunications carriers are set by the states, and the value of a particular local usage requirement will depend in part on the size of the area encompassed by the local calling area, which may vary from state to state. We seek comment on whether, and how, to account for differences in the size of local calling areas. We seek comment on whether we should vary the amount of local usage that carriers must offer depending on the size of their local calling areas. We note that the California PUC suggested in the initial rulemaking that we include a minimum of three dollars worth of local usage. We seek guidance from the states on the level of local usage that we should require from eligible carriers serving their residents, given the size of the local calling areas and the basic service packages that they have established, recognizing that local calling areas may be different for customers of wireline and wireless carriers. We further seek comment on whether the local usage requirement we establish should be the same for business and residential users.

## II. Procedural Matters and Ordering Clauses

*A. Ex Parte Presentations*

34. This is a permit-but-disclose notice-and-comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules.

*B. Initial Regulatory Flexibility Analysis*

35. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Further Notice. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of this Further Notice, and should have a separate and distinct heading designating them as responses to the IRFA. The Commission will send a copy of this Further Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA) in accordance with the RFA. See 5 U.S.C. 603(a).

36. *Need for and Objectives of the Proposed Rules.* In light of the concerns raised by wireless telecommunications providers regarding the difficulties associated with distinguishing their interstate and intrastate revenues for universal service reporting purposes, the Commission tentatively concludes that it should provide such providers with specific guidance on how to separate their interstate and intrastate revenues. Therefore, the Commission seeks comment in this Further Notice on

how wireless telecommunications providers should separate their interstate and intrastate revenues for purposes of universal service reporting. The Commission sets forth and seeks comment on proposed methodologies and simplifying assumptions that could be used by wireless telecommunications providers to distinguish between their interstate and intrastate revenues. Until we issue final rules regarding the mechanisms that wireless telecommunications providers should use in allocating their revenues between the interstate and intrastate jurisdictions, we provide such providers with interim guidelines for reporting on the Worksheet their percentage of interstate telecommunications revenues. The Commission also seeks comment on whether, from the perspective of wireless providers, which historically have not supplied services eligible for universal service support, our universal service rules are competitively neutral, especially with regard to the schools and libraries program. Finally, we seek comment on the definition of the basic service packages that carriers must offer in order to be eligible to receive universal service support.

37. *Legal Basis.* The proposed action is supported by §§ 4(i), 4(j), 201–205, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201–205, 254, and 403.

38. *Description and Estimate of the Number of Small Entities to which the Further Notice will Apply.*

39. *Radiotelephone (Wireless) Carriers.* The SBA has developed a definition of small entities for radiotelephone (wireless) companies. According to the SBA's definition, a small business radiotelephone company is one employing fewer than 1,500 persons. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992. The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. We do not have information on the number of carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the proposals included in this Further Notice.

40. *Cellular Service Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of cellular services. The closest applicable definition under the SBA rules is for radiotelephone (wireless) companies (SIC 4812). The most reliable source of information regarding the number of cellular service carriers nationwide of which we are aware is the data that the Commission collects annually in connection with the *TRS Worksheet.* According to the most recent data, 792 companies reported that they were engaged in the provision of cellular services. We have no information on the number of carriers that are not independently owned and operated, nor on those that have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 792 small entity cellular service carriers that may be affected by the proposals included in this Further Notice.

41. *Paging Providers.* The Commission has proposed a two-tier definition of small businesses in the context of auctioning geographic area paging licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. Under the proposal, a small business will be defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million; or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. Since the SBA has not yet approved this definition for paging services, the Commission will utilize the SBA definition applicable to radiotelephone companies, *i.e.,* an entity employing no more than 1,500 persons. At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to *Telecommunications Industry Revenue* data, there were 172 ''paging and other mobile'' carriers reporting that they engage in these services. Consequently, the Commission estimates that there are fewer than 172 small paging carriers. The Commission estimates that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

42. *Broadband PCS Licensees.* The broadband PCS spectrum is divided into six frequency blocks designated A through F. The Commission has defined ''small entity'' in the auctions for Blocks C and F as a firm that had average gross revenues of less than $40 million in the three previous calendar years. This definition of ''small entity'' in the context of broadband PCS auctions has been approved by the SBA. The Commission has auctioned broadband PCS licenses in blocks A through F. Of the qualified bidders in the C and F block auctions, all were entrepreneurs. Entrepreneurs was defined for these auctions as entities, together with affiliates, having gross revenues of less than $125 million and total assets of less than $500 million at the time the FCC Form 175 application was filed. Ninety bidders, including C block reauction winners, won 493 C block licenses and 88 bidders won 491 F block licenses. For purposes of this IRFA, the Commission assumes that all of the 90 C block broadband PCS licensees and 88 F block broadband PCS licensees, a total of 178 licensees, are small entities.

43. *Narrowband PCS Licensees.* The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the MTA and BTA narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded in the auctions. Given that nearly all radiotelephone companies have no more than 1,500 employees, and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, the Commission assumes, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

44. *220 MHz radio services.* Since the Commission has not yet defined a small business with respect to 220 MHz radio services, it will utilize the SBA definition applicable to radiotelephone companies, *i.e.,* an entity employing no more than 1,500 persons. With respect to the 220 MHz services, the Commission has proposed a two-tiered definition of small business for purposes of auctions: (1) for Economic Area (EA) licensees, a firm with average annual gross revenues of not more than $6 million for the preceding three years; and (2) for regional and nationwide

licensees, a firm with average annual gross revenues of not more than $15 million for the preceding three years. Given that nearly all radiotelephone companies employ no more than 1,500 employees, for purposes of this IRFA the Commission will consider the approximately 3,800 incumbent licensees as small businesses under the SBA definition.

45. *Rural Radiotelephone Service*. The Commission has not adopted a definition of small business specific to the Rural Radiotelephone Service, which is defined in Section 22.99 of the Commission's Rules. A subset of the Rural Radiotelephone Service is BETRS, or Basic Exchange Telephone Radio Systems. Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing fewer than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA's definition of a small business.

46. *Specialized Mobile Radio (SMR) Licensees*. Pursuant to 47 CFR 90.814(b)(1), the Commission has defined ''small entity'' in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than $15 million in the three previous calendar years. This definition of a ''small entity'' in the context of 800 MHz and 900 MHz SMR has been approved by the SBA. The proposals included in this Further Notice may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million.

47. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected by the rule adopted includes these 60 small entities. In the 800 MHz SMR auction, there were 524 licenses won by winning bidders, of which 38 licenses were won by small or very small entities.

48. *Wireless Communications Services (WCS)*. WCS is a wireless service, which can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the WCS auction as an entity with average gross revenues of $40 million for each of the three preceding years. The Commission auctioned geographic area licenses in the WCS service. There were seven winning bidders who qualified as very small business entities and one small business entity in the WCS auction. Based on this information, the Commission concludes that the number of geographic area WCS licensees affected include these eight entities.

49. *Description of Projected Reporting, Record keeping, and Other Compliance Requirements*. Section 254(d) states ''that all telecommunications carriers that provide interstate telecommunications services shall make equitable and nondiscriminatory contributions'' toward the preservation and advancement of universal service. Under the Commission's rules, all telecommunications carriers that provide interstate telecommunications services and some providers of interstate telecommunications are required to contribute to the universal service support mechanisms. Contributions for support for programs for high cost areas and low-income consumers are assessed on the basis of interstate and international end-user telecommunications revenues. Contributions for support for programs for schools, libraries, and rural health care providers are assessed on the basis of interstate, intrastate, and international end-user telecommunications revenues. Contributors are required to submit information on the Universal Service Worksheet regarding their end-user telecommunications revenues. Contributors are required to distinguish between their interstate and intrastate revenues.

50. *Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered*. Throughout this Further Notice, we seek comment on alternatives that will reduce the impact on entities affected by these proposals. We tentatively conclude that we should adopt a surrogate percentage that would represent the percentage of interstate telecommunications revenues reported by certain carriers. We believe that this tentative conclusion greatly minimizes the administrative burden on those small carriers that experience difficulty in identifying their interstate and intrastate revenues. We also seek comment on a number of other simplifying assumptions that certain carriers would apply in estimating their percentage of interstate telecommunications revenues. Some of these proposals may impose more administrative burdens on certain carriers than others. We therefore seek comment on the level of administrative burden that these proposals would impose and, in the event that such proposals were adopted, on ways in which to reduce the level of administrative burden that they may impose. We particularly encourage parties to submit proposals that will reduce the administrative burden on carriers in separating their interstate and intrastate revenues.

51. *Federal Rules That May Overlap, Duplicate or Conflict with the Proposed Rule*. None.

52. It is furthered ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

### *C. Instructions for Filing Comments*

53. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form <your e-mail address.'' A sample form and directions will be sent in reply. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to : Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 2100 M St., NW., Room 8611, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labelled with the commenter's name, proceeding (including the lead docket number in this case, Docket No. 96–45), type of

pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036.

*D. Ordering Clauses*

54. It is ordered, pursuant to sections 1, 4(i) and (j), 201–209, 218–222, 254, and 403 of the Communications Act, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–209, 218–222, 254, and 403 that this Further Notice of Proposed Rulemaking is hereby adopted and comments are requested as described above.

55. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects in 47 CFR Part 54**

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 98–32803 Filed 12–9–98; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

## 49 CFR Part 571

**[Docket No. NHTSA 98–4813; Notice 1]**

**RIN 2127–AF75**

## Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

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

**SUMMARY:** This document proposes amendments to Standard No. 108, the Federal motor vehicle safety standard on lighting, which are intended to harmonize the geometric visibility requirements of the United States for signal lamps and reflectors with those of the Economic Commission for Europe (ECE). Harmonization of motor vehicle safety regulations worldwide, without reducing safety, would allow manufacturers to produce products in compliance with a single world vehicle standard rather than several, thus reducing costs and improving the flow of trade.

The amendments proposed would adopt either the ECE geometric visibility specifications or those of the Society of Automotive Engineers (SAE), as an option to the present requirements. One of these specifications would be chosen for inclusion in the final rule. Mandatory compliance with the chosen specification would be required approximately five years after issuance of the final rule.

This action responds to comments to a notice of proposed rulemaking published on this subject in 1995, which implemented the grant of a petition for rulemaking submitted by the Groupe de Travail Bruxelles 1952.

**DATES:** Comments are due March 10, 1999.

**ADDRESSES:** Comments should refer to the docket number indicated above and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. (Docket hours are from 10:00 a.m. to 5:00 p.m.)

**FOR FURTHER INFORMATION CONTACT:** Rich Van Iderstine, Office of Safety Performance Standards, NHTSA (Phone: 202–366–5275; FAX: 202–366–4329).

**SUPPLEMENTARY INFORMATION:** This supplementary notice of proposed rulemaking is based upon a notice of proposed rulemaking (NPRM) published on October 26, 1995 (60 FR 54833, Docket No. 95–72; Notice 1). The reader is referred to that notice for further background on this rulemaking action.

### Harmonization of Geometric Visibility Requirements

As the NPRM explained, the Groupe de Travail Bruxelles 1952 (''GTB'') is composed of vehicle and lamp manufacturers from Europe, Japan, and the United States. GTB is an advisory group for the two organizations operating under the United Nations' Economic Commission for Europe (ECE) that are involved in establishing motor vehicle lighting standards: the Meeting of Experts on Lighting and Light Signalling (GRE) and the Working Party on the Construction of Motor Vehicles (WP29).

GTB is seeking to ''harmonize'' the geometric visibility requirements of the United States and Europe through petitioning NHTSA for an amendment to Standard No. 108, and petitioning GRE and WP29 for amendments to ECE Regulation No. 48 *Uniform Provisions Concerning the Approval of Vehicles With Regard to the Installation of Lighting and Light-Signalling Devices* (''ECE R48''), specifically ECE R48.01. Under present lighting regulations, motor vehicle manufacturers must produce four different lighting packages for the same vehicle in order for it to be sold in the United States, the United Kingdom, continental Europe, and Japan. Harmonizing these lighting requirements, without reducing safety, would reduce costs to manufacturers and purchasers, and improve the flow of trade.

In its petition of June 15, 1994, GTB asked NHTSA to amend or introduce geometric visibility requirements for the following lamps and reflectors: backup lamps, front and rear turn signal lamps, stop lamps including the center high-mounted stop lamp, parking lamps, taillamps, rear fog lamps, reflectors (front, intermediate, side, and rear), marker lamps (front, intermediate, and side), and daytime running lamps. The petition noted that rear fog lamps are not presently included in Standard No. 108, and that many items of lighting equipment are not presently subject to geometric visibility requirements.

The NPRM explained that ''geometric visibility'' is not a defined term in Standard No. 108. It refers to the visibility of a lamp or reflector mounted on a vehicle through a range of viewing angles from left to right, and from up to down, with reference to the lens centerpoint (e.g., from 45 degrees left to 45 degrees right). With the exception of the center high-mounted stop lamp (S5.1.1.27), the geometric visibility requirements for motor vehicle lamps are not set out in full in the text of Standard No. 108, but are contained in related SAE Standards that have been incorporated by reference in Standard No. 108. SAE requirements are not uniform and were adopted on an ad hoc basis.

The changes that GTB requested would affect passenger cars only, and would expand the range of visibility requirements for many lamps, especially turn signal lamps and parking lamps. GTB believed that a majority of vehicles being sold in the United States in 1994 already met the requirements. For those that do not, the petitioner suggested that ''the necessary design changes should not be difficult to implement, assuming that adequate lead time is provided.''

**The Amendments That NHTSA Proposed in 1995**

The NPRM proposed a new paragraph S5.1.1.30, applicable to the vehicles covered by Tables III and IV (i.e., those less than 2032 mm (80 inches) in overall width). Proposed S5.1.1.30 would allow continued conformance to any visibility requirements existing in Standard No. 108 or a requirement for the ''geometric visibility of at least 12.5 square centimeters for the light-emitting surface through a field of view as indicated in Table V, except for side marker lamps and reflex reflectors which have no area requirement.'' Although the petitioner did not request a phaseout of the existing requirements, the agency proposed that the existing requirements be phased out in favor of the harmonized requirements after two years, as part of its effort to promote the compatibility of standards worldwide. The definition of ''Light-emitting Surface'' that appears in SAE Standard J387 ''Terminology, Motor Vehicle Lighting'' would be added and defined to mean ''that part of the exterior surface of the lens that encloses the light source and is required for conformance with photometric and colorimetric requirements.'' This definition was deemed necessary because the term appeared in the proposed requirement.

The NPRM would have added new Table V to cover 15 items of lighting equipment (lamps and reflectors), including rear fog lamps. While a rear fog lamp is not required by Standard No. 108, if a manufacturer chooses to provide one, the lamp would be required to meet the geometric visibility requirements (but no other requirements would apply at the present time).

The visibility requirements were expressed with relation to the Horizontal (H) and Vertical (V) axes of the lamp or reflector. As an example, the geometric visibility requirement for a front turn signal lamp would be that it should be seen through a range from minus 45 degrees to plus 45 degrees at Horizontal, and minus 15 degrees to plus 15 degrees at Vertical.

NHTSA, however, did not propose to adopt ECE's backup lamp geometric visibility requirements because of a possibly adverse effect on safety. Standard No. 108 requires that the center of the backup lamp lens be seen from anywhere on a vertical transverse plane located 3 feet behind the vehicle and extending 3 feet on either side of the vehicle, starting from 2 feet and ending at 6 feet above the road surface. For a minivan whose backup lamps are about 33 inches above the road surface, Standard No. 108's requirements creates upward visibility angles greater than 45 degrees. For passenger cars with lower lamp heights, the angles are even larger. Allowing these angles to be as small as ECE's 15 degrees upward would allow a significant reduction in the ability of a pedestrian to see the lamp's signal.

In its efforts to promote worldwide compatibility of standards, NHTSA also proposed to allow amber as an optional color for rear side marker lamps and reflectors, in addition to the red which has been required for vehicles sold in the United States.

Another aspect of motor vehicle lighting that NHTSA thought could be appropriate for harmonization was the regulation of front and rear fog lamps. These are not items of motor vehicle equipment mandated by Standard No. 108. They are regulated by the States as each jurisdiction deems appropriate. NHTSA had no information as to the extent that European and Japanese manufacturers must modify the fog lamps and their installations on their vehicles in order to meet the regulations of the States. The NPRM asked whether NHTSA should assert its jurisdiction over that aspect of motor vehicle equipment performance and specify performance requirements (in addition to geometric visibility) for front and rear fog lamps as optional equipment, that would preempt State regulations and could afford windows of harmonization with the ECE standards. The performance requirements that appeared appropriate to NHTSA were those of SAE Standard J583 JUN93 ''Front Fog Lamps'' and SAE Standard J1319 JUN93 ''Fog Tail Lamp''.

**Responses to the 1995 Proposal; the 1998 SNPRM**

There were 25 commenters to the notice: GTB (the petitioner), Truck Safety Equipment Institute (TSEI), Nissan N.A., Osram-Sylvania (O–S), David Cameron of Embry-Riddle Aero. Univ. (Cameron), Chrysler Corporation (Chrysler), Advocates for Auto and Highway Safety (Advocates), Mercedes-Benz of N.A. (MBNA), GE Lighting (GE), Koito Mfg. Co. (Koito), Fiat Auto R&D U.S.A. (Fiat), Porsche Cars North America (Porsche), American Honda Motor Co. (Honda), Ichikoh Industries (Ichikoh), Wisconsin DOT (WDOT), United States Motorcycle Manufacturers Association (USMMA), Sierra Products (Sierra), Hella Inc. (Hella), Volvo Cars of N.A. (Volvo), Volkswagen (VW), G.J.M. Meekel (Chairman, GRE), and the American Automobile Manufacturers Association (AAMA).

*Front and rear fog lamps:* On the issue of federal regulation of front and rear fog lamps, those who commented were unanimous in their support for regulation. This issue has been addressed separately by a termination notice to assure NHTSA the freedom to pursue efforts with industry to achieve internationally harmonized performance that can be adopted in the future in the lighting standard (62 FR 8883, February 27, 1997).

*Amber color for rear side marker and reflex reflectors:* There was significantly mixed opinion on whether amber should be an alternative to red as a color for rear side marker and reflex reflectors. TSEI strongly opposed allowing amber for side-mounted devices at the rear, especially for large trucks. It argued that at night the only true indicator of the end of the vehicle is a red lamp at the end of a string of amber lamps down the side of the vehicle. The agency agrees that this is an important point and that it ought to be especially cautious in permitting a color change for rear side markers and reflex reflectors on large vehicles or trailers.

Cameron did not specifically comment for or against this proposal. However, he argued that the only red lamps on a vehicle should be stop lamps and that all other lamps could be white or amber. This infers he would support amber for the rear side marker lamps and reflectors.

AAMA agreed with amber as a rear marker color for light duty vehicles and saw no safety issues involved with the change.

Advocates strongly opposed allowing amber, stating that there are no data on which to make such a monumental change to safety policy, and suggested a supplemental NPRM that would discuss the issue in depth. The agency does not agree that there were no data presented supporting the proposal. There is a research report titled ''Side Marker Lamps for Passenger Cars'', TNO Defense Research, TM 1994 C–14, by Jan Theeuwes and J.W.A.M. Alferdink. The report supports the use of a system of front and rear amber side marker lamps. It studied the likelihood of vehicles with amber markers being recognized earlier than non-amber-equipped vehicles, and concluded that there would be a safety benefit.

Notwithstanding this report, NHTSA believes that a significant change in the standardized signals used by vehicles in the United States for many years should be accompanied by additional supportive data. The study cited above does not contain data indicating whether it is important for drivers to know which end of a vehicle is about to emerge into their path. That is the key issue here.

Additionally, the European system of all-amber side marker lamps and reflex reflectors is very different from the U.S. system of amber at the front (and at intermediate positions on long vehicles) and red at the rear. Only vehicles longer than 6 meters (19.5 ft.) in Europe are required to have side marker lamps and reflex reflectors. For all other vehicles, these devices are optional. Because of this, the European vehicle fleet has virtually no light duty vehicles with side marker lamps and reflectors. Even when fitted, the mounting location is appreciably different than in the U.S. In Europe, the devices must be located in the first third of the vehicle on the side and in the last third of the vehicle on the side. This contrasts significantly with the requirement of Standard No. 108 that the devices be located as far forward or as far rearward as practicable.

Given these major differences and the lack of data noted above, NHTSA has decided to terminate rulemaking that would allow an option of providing amber rear side marker lamps and reflectors.

**Geometric Visibility**

The NPRM proposed to add most of the harmonized geometric visibility requirements requested by GTB. However, the agency did not propose to incorporate the intensity measurement method for determining geometric visibility that is currently used in ECE Regulation 48. Instead, NHTSA proposed to determine geometric visibility based on a projected lens area measurement method, which is the approach long used in Standard No. 108. As noted above, the agency had decided not to reference Regulation 48 in its proposal.

All but one of the commenters agreed that the proposed GTB alternative geometric visibility requirements would be acceptable as an alternative. However, many commented that NHTSA should have proposed to have the ECE intensity measurement method as an alternative method to the proposed area measurement method as a way of determining geometric visibility. Others noted that the current SAE standards have different and smaller angles of geometric visibility for turn signal and parking lamps, and for reflex reflectors. Advocates did not agree with the proposal and asked for a supplemental NPRM that would discuss the issues in depth.

Mercedes, Koito, Fiat, Honda, Ichikoh, Sierra, GTB, Volvo, Volkswagen, Meekel, and AAMA all asked the agency to include the ECE intensity measurement method as an alternative method of determining geometric visibility. Essentially, this method determines the geometric visibility of a lamp by measuring the intensity of the lamp's illumination throughout the range of the defined geometric visibility angles. To determine compliance, a test of intensity is performed with the test lamp installed in the vehicle or an appropriate part thereof to assure that the intensity is available at the pertinent locations, irrespective of the remainder of the vehicle body design and its potential for blocking the signal. In Europe, this typically entails having a working prototype or production lamp and testing it on a real or simulated vehicle body. Testing cannot be conducted until after significant development and prototyping of both the lamp and vehicle are completed.

The intensity measurement method contrasts with the area measurement method, long used in Standard No. 108. This method specifies a minimum projected luminous lens area of the lamp as installed on the vehicle which must be seen throughout the prescribed visibility angles. While testing can be performed on a prototype vehicle as in the European method, the advantage of the American method is that compliance can be judged by the manufacturer by using only computer-generated engineering drawings at a time in the vehicle development stage long before any actual hardware is produced. This helps achieve a greater certainty of production compliance and fewer running changes than the use of the intensity measurement method.

TSEI recommended that NHTSA adopt the contemporary SAE standards for geometric visibility performance, instead of a version of the ECE requirements. The SAE standard permits the manufacturer to choose a geometric visibility either based on area or on intensity, but specifies an inboard (toward the center of the vehicle) angle for turn signals and parking lamps of 20 degrees and not 45 degrees as in the European standard and GTB's requested table (the comments of Nissan and O–S agreed). TSEI also recommended deletion of reflex reflectors from the proposal because it considers the 45 degree horizontal angle to be too large.

The issue of adopting contemporary standards is timely, because the agency intends to incorporate the latest versions of all currently referenced and subreferenced SAE standards in a comprehensive revision of Standard No. 108 to be proposed late in 1998. Consequently, the agency will need to decide whether to require the SAE angles or the GTB/ECE angles and whether or when they should become mandatory. It is not necessary for this supplemental NPRM to decide this issue, but only to propose that the SAE values be considered as well as the GTB/ECE values. The SAE values are similar to the GTB/ECE values except for the turn signal lamps, parking lamps, and reflex reflectors as mentioned above. With adequate lead time either the SAE values or the GTB/ECE values could become mandatory, with the GTB/ECE values for those lamps slightly more difficult to meet because of aerodynamically shaped front-ends of vehicles, but offering greater visibility to vehicles at intersections.

TSEI's comment that the reflex reflector angle of 45 degrees is too large is based upon the fact that Standard No. 108 requires reflex reflector performance only to angles of 20 degrees left and right. Thus requiring these devices to be seen at 45 degrees would, in TSEI's view, make the angle too large for visibility needs. However, current reflex reflectors provide light return at angles larger than 20 degrees, often out to 30 degrees. Thus, logic would suggest that geometric visibility should be something greater than just the photometric performance of the reflector. Also, it should be noted that the contemporary SAE Standard J2041 *Reflex Reflectors for use on Vehicles 2032 mm or More in Width*, specifies reflective performance to the left and right of 45 degrees. It would appear that the geometric visibility of reflex reflectors on wider vehicles would of necessity also be at least 45 degrees or larger to the left and right. While these J2041 devices are not yet specified for all wide vehicles, Standard No. 108 requires all trailers over 10,000 pounds GVWR to be equipped with conspicuity treatment that replaces normally required reflex reflectors and that provides retroreflective performance out to 45 degrees on the side and rear. In summary, geometric visibility angles larger than required for the specified photometric performance are appropriate for improving vehicle conspicuity. The ECE values are reasonable for all vehicles and TSEI's objection is not persuasive.

Nissan commented that 45 degree inboard geometric visibility for parking and front turn signal lamps is too large to be practicable and too costly. The fronts of vehicles are becoming more rounded and may present difficulty in meeting inboard (toward the vehicle center) visibility angles, especially if the design incorporates recessed lens faces for front park and turn lamps. The front fascia toward the center of the vehicle can become obstructive to a lamp's light

emission, and impair its geometric visibility. The 45-degree inboard requirement for parking lamps and front and rear turn signal lamps has existed in the ECE regulations for many years with the requirement being a minimum of 0.05 and 0.3 candela respectively. Only recently as a result of GTB action did the ECE regulation accept the area measurement method for the narrower geometric visibility angles typical of SAE standards. When the ECE regulations changed, the inboard angles became 45 degrees at a time when the SAE angles were zero inboard. More recently, the SAE changed inboard angles to 20 degrees. This is the angle in the current SAE standards and the angle that Nissan, and the other commenters on this issue, TSEI and O–S, prefer. Permitting the inboard angle to be 20 degrees would make the requirement less costly. However, the argument about practicability appears not well taken, since millions of cars are produced annually in Europe that meet the 45 degrees inboard requirement.

The GTB, Koito, Fiat and Ichikoh commented that for the rear turn signal lamps, there appeared to be an error in that the proposed values were −15 to +45 degrees instead of the more typical −45 to +45 degrees range. This has been corrected in the proposed tables.

The NPRM proposed a new definition of ''light-emitting surface.'' This is refined in the supplementary NPRM. NHTSA now proposes slightly different definitions of lens area and uses those definitions in the proposed specifications for geometric visibility. NHTSA also intends to use these definitions in its anticipated forthcoming administrative revision of Standard No. 108.

With respect to the first term, NHTSA proposes a redefinition of ''effective projected luminous lens area.'' This is currently defined as:

> that area of the projection on a plane perpendicular to the lamp axis of that portion of the light-emitting surface that directs light to the photometric test pattern, and does not include mounting hole bosses, reflex reflector area, beads or rims that may glow or produce small areas of increased intensity as a result of uncontrolled light from small areas ½ deg. radius around the test point).

Under the proposal, ''effective projected luminous lens area'' would be redefined as:

> the area of the projection of the effective light-emitting surface of a lamp on a plane specified to define the functional lighted lens area or the geometric visibility of the lamp.

This requires a definition of the term ''effective light-emitting surface.'' Under the proposal, this term would be defined to mean:

> that portion of the light-emitting surface of a lamp that directs light to the photometric test pattern, and does not include mounting hole bosses, reflex reflector area, beads or rims that may glow or produce small areas of increased intensity as a result of uncontrolled light from an area of ½ degree radius around a test point.

These two definitions are taken directly from the existing definition of ''effective projected luminous lens area'' quoted above. The revision is considered necessary to clarify what lamp parts constitute the measurable surface of a lamp lens and how the area of that surface is specified. Essentially, there is no substantive change.

The NPRM had proposed that any changes to geometric visibility be applied to vehicles of overall width less than 2032 mm (80 in.). This was in response to GTB which had asked that the changes apply to passenger cars. In the U.S., the present geometric visibility requirements apply to all motor vehicles. NHTSA decided to extend GTB's request to cover all vehicles that are like passenger cars in terms of required lighting (i.e., those covered by Tables III and IV of Standard No. 108, except for motorcycles). However, doing so would leave wider vehicles (those covered by Tables I and II of Standard No. 108) subject to the present requirement after the 5-year phase-in period. NHTSA views it as inconsistent and illogical to have different visibility requirements based on whether a vehicle's overall width is less or greater than 2032 mm (80 in.). Motorcycles and wider vehicles should be afforded the same safety and harmonization benefits that passenger car-like vehicles will have upon completion of this rulemaking. Having a single requirement for the geometric visibility of lighting devices installed on all vehicles, one that is more objective than the present requirement, should enhance safety and simplify the compliance responsibility of manufacturers. Consequently, the proposals in this notice cover wider vehicles as well as narrower ones.

In summary, the agency is requesting comments on two proposals for geometric visibility, but will adopt only one. The first proposal would amend Standard No. 108 to add S5.1.1.30 and Tables V and VI (the GTB/ECE specifications for lens area and luminous intensity). Alternatively, Standard No. 108 would be amended to add a different S5.1.1.31 and different Tables VII and VIII (the specifications of the SAE for lens area and luminous intensity). This nomenclature (S5.1.1.30, Tables V and VI or the alternative S5.1.1.31 and Tables VII and VIII) has been chosen for the NPRM to distinguish one proposal from the other. The final rule, of course, will adopt the new paragraph and Tables in the sequence that exists at the time of the final rule. For five years after adoption of the final rule, a manufacturer would be allowed to comply with either the lens area or luminous intensity geometric visibility specifications of the alternative adopted, or the visibility requirements that currently exist in Standard No. 108. The agency is proposing that the new requirements become mandatory approximately 5 years after the final rule is published, and that compliance with the current requirements would no longer be permitted after that date. Thus, after that 5-year period, manufacturers would be required to meet the geometric visibility requirements specified in the final rule for either lens area or luminous intensity of the alternative adopted.

The agency wishes to give notice that, once a manufacturer has chosen a visibility option and certifies compliance to it, the agency will regard that choice as irrevocable. Failure to comply with the option selected will constitute a noncompliance warranting notification and remedy as required by statute. However, if the manufacturer complies when its lamps are tested to another visibility option, that fact would afford a basis for seeking an inconsequentiality determination which, if granted, would relieve it from its obligation to notify and remedy.

**Lead Time**

Many did not comment on the issue of lead time. Of those who did, AAMA did not want a mandatory requirement, Chrysler asked for lead time enough for vehicle production life cycles. O-S and GTB requested at least four years; Nissan and Ichikoh wanted five years and TSEI asked for ten. Choosing to have alternatives added to the existing requirements would do little to improve the visibility of signals, unless it were in the best interest of manufacturers to build a single vehicle for the world market. The fact that some commenters do not want the newly harmonized requirements to be mandatory implies that they are not so much interested in harmonization as they are in being able to pick whatever requirement suits their needs. NHTSA believes that this rulemaking action presents an opportunity to provide better performance while helping to reduce costs through harmonization. For the reasons discussed above, NHTSA has decided to issue this supplemental NPRM which proposes to allow a manufacturer to choose one of two

methods to be used for determining compliance with the proposed geometric visibility requirements. Either method would achieve a lamp whose signal is visible at the requisite angles.

**Proposed Effective Date**

The amendments would be effective 30 days after publication of the final rule in the **Federal Register**. At that time, manufacturers would have the option until the fifth September 1st following the issuance of the final rule to conform to either the present or the harmonized geometric visibility requirements. On and after the fifth September 1st, manufacturers would have to comply with the harmonized specifications. As noted previously, it is likely that many of the proposed requirements are already being met by manufacturers selling in world markets.

However, when compliance with the final rule becomes mandatory, it will affect U.S. vehicle lines that are not sold in world markets. NHTSA therefore seeks comments on the appropriateness of a 5-year leadtime for mandatory compliance with the final rule, and a discussion of related costs or other impacts upon the commenter.

**Rulemaking Analyses and Notices**

*Executive Order 12866 and DOT Regulatory Policies and Procedures*

This rulemaking action was not reviewed under Executive Order 12866. Further, it has been determined that the rulemaking action is not significant under Department of Transportation regulatory policies and procedures. The purpose of the rulemaking action is to clarify an existing requirement and to harmonize regulations. It is anticipated that the costs of the final rule would be so minimal as not to warrant preparation of a full regulatory evaluation. Vehicles presently selling in world markets are presumed to comply with the proposed rule. NHTSA has asked for comments on the costs and other impacts associated with a 5-year leadtime for mandatory compliance of those vehicles not presently complying. This could involve relocation of certain lamps and reflectors and associated sheet metal changes, or redesign of lamps or reflectors. These could be easily accommodated within the present or next design cycle. If the comments received indicate that the impacts are more than minimal, NHTSA will prepare a full regulatory evaluation before issuing a final rule.

*National Environmental Policy Act*

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. It is not anticipated that a final rule based on this proposal would have a significant effect upon the environment. The composition of lighting equipment would not change from those presently in production.

*Regulatory Flexibility Act*

The agency has also considered the impacts of this rulemaking action in relation to the Regulatory Flexibility Act (5 U.S.C. Sec. 601 et seq). I certify that this rulemaking action would not have a significant economic impact upon a substantial number of small entities.

The following is NHTSA's statement providing the factual basis for the certification (5 U.S.C. Sec. 605(b)). The proposed amendment would primarily affect manufacturers of motor vehicles. Manufacturers of motor vehicles are generally not small businesses within the meaning of the Regulatory Flexibility Act.

The Small Business Administration's regulations define a small business in part as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)) SBA's size standards are organized according to Standard Industrial Classification Codes (SIC), SIC Code 3711 ''Motor Vehicles and Passenger Car Bodies'' has a small business size standard of 1,000 employees or fewer.

For manufacturers of passenger cars and light trucks, NHTSA estimates there are at most five small manufacturers of passenger cars in the U.S. Because each manufacturer serves a niche market, often specializing in replicas of ''classic'' cars, production for each manufacturer is fewer than 100 cars per year. Thus, there are at most 500 cars manufactured per year by U.S. small businesses.

In contrast, in 1998, there are approximately nine large manufacturers producing passenger cars, and light trucks in the U.S. Total U.S. manufacturing production per year is approximately 15 to 15 and a half million passenger cars and light trucks per year. NHTSA does not believe small businesses manufacture even 0.1 percent of total U.S. passenger car and light truck production per year.

Further, small organizations and governmental jurisdictions would not be significantly affected as the price of motor vehicles ought not to change as the result of a final rule based upon this supplemental NPRM.

*Executive Order 12612 (Federalism)*

This rulemaking action has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that this rulemaking action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. However, for the first time, Standard No. 108 would impose an affirmative compliance obligation upon fog lamps, that of geometric visibility. This means that, under 49 U.S.C. 30103(b), states would be preempted from having geometric visibility requirements for fog lamps that differ from those of Standard No. 108 under a final rule. Heretofore, regulation of fog lamps has been entirely a matter of state law (unless they impaired the effectiveness of lighting equipment required by Standard No. 108, in which event they were not allowed (S5.1.3, 49 CFR 571.108)).

*Civil Justice*

A final rule based on this proposal would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

*Unfunded Mandates Reform Act of 1995.*

The Unfunded Mandates Reform Act of 1995 (P.L. 104–4) requires agencies to prepare a written assessment of the cost, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because this proposed rule would not have a $100 million effect, no Unfunded Mandates assessment has been prepared.

**Request for Comments**

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

**List of Subjects in 49 CFR part 571**

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR Part 571 would be amended as follows:

## PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 would continue to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.108 would be amended by:

a. adding to paragraph S4, in alphabetical order, a new definition of ''Effective light-emitting surface,'' and revising the definition of ''Effective projected luminous lens area,'' and

b. adding new paragraph S5.1.1.30 and new Tables V and VI, the new Tables to follow Table IV and to precede the Note to the standard, or

c. adding new paragraph S5.1.1.31 and new Tables VII and VIII, the new Tables to follow Table IV and to precede the Note to the standard, to read as follows:

**§ 571.108 Standard No. 108; Lamps, reflective devices, and associated equipment.**

* * * * *

S4 *Definitions.*

* * * * *

*Effective light-emitting surface* means that portion of the light-emitting surface of a lamp that directs light to the photometric test pattern, and does not include mounting hole bosses, reflex reflector area, beads or rims that may glow or produce small areas of increased intensity as a result of uncontrolled light from an area of ½ degree radius around a test point.

*Effective projected luminous lens area* means the area of the projection of the effective light-emitting surface of a lamp on a plane specified to define the functional lighted lens area or the geometric visibility of the lamp.

* * * * *

S5.1.1.30. This paragraph specifies geometric visibility requirements that apply to each passenger car, multipurpose passenger vehicle, truck, trailer, bus, and motorcycle.

(a) Each vehicle to which this section applies shall have each lamp or reflex reflector installed in a location such that each lamp or reflex reflector complies with its individual photometric intensity requirements.

(b) Each vehicle to which this section applies that is manufactured on or after [the fifth September 1 following publication of the final rule] shall comply with the requirements of either paragraph (d) or of paragraph (e) of this section.

(c) Each vehicle to which this section applies that is manufactured before [the fifth September 1 following publication of the final rule] shall comply with the requirements of paragraph (d), paragraph (e) or with the requirements of S5.3.1.1 and S5.3.1.1.1 for geometric visibility.

(d) When a vehicle to which this section applies is equipped with any lamp listed in Table V, other than a side-marker lamp, not less than 12.5 square centimeters of the lamp's effective projected luminous lens area shall be visible when viewed from any point in the field of view indicated in Table V for each such lamp. Some portion of side marker lamps and reflex reflectors shall be visible when viewed from any point in the field of view indicated in Table V for each such side marker lamp and reflex reflector.

(e) When a vehicle to which this section applies is equipped with any lamp or reflector listed in Table VI, each such lamp or reflector shall provide, in accordance with Table VI, the minimum luminous intensity in candela through the field of view specified for it.

(f) The manufacturer of a vehicle shall certify to only one of the compliance options specified in paragraphs (a) through (e), and it may not thereafter choose a different option for that vehicle.

S5.1.1.31 This section specifies geometric visibility requirements that apply to each passenger car, multipurpose passenger vehicle, truck, trailer, bus, and motorcycle.

(a) Each motor vehicle to which this section applies shall have each lamp or reflex reflector installed in a location such that each lamp or reflex reflector complies with its individual photometric intensity requirements.

(b) Each vehicle to which this section applies that is manufactured on or after [the fifth September 1 following publication of the final rule] shall comply with the requirements of either paragraph (d) or of paragraph (e) of this section.

(c) Each vehicle to which this section applies that is manufactured before [the fifth September 1 following publication of the final rule] shall comply with the requirements of paragraph (d), paragraph (e), or with the requirements of S5.3.1.1 and S5.3.1.1.1 for geometric visibility.

(d) When a vehicle to which this section applies is equipped with any lamp listed in Table VII, other than a side-marker lamp, not less than 13 square centimeters of the lamp's effective projected luminous lens area shall be visible when viewed from any point in the field of view indicated in Table VII for each such lamp. Some portion of side marker lamps and reflex reflectors shall be visible when viewed from any point in the field of view indicated in Table VII for each such side marker lamp and reflex reflector.

(e) When a vehicle to which this section applies is equipped with any lamp or reflector listed in Table VIII, each such lamp or reflector shall provide, in accordance with Table VIII, the minimum luminous intensity in candela through the field of view specified for it.

(f) The manufacturer of a vehicle shall certify to only one of the compliance options specified in paragraphs (a) through (e), and it may not thereafter

choose a different option for that vehicle.

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# TABLE V

## Requirements for Geometric Visibility of Installed Lighting Devices Area Measurement Method (GTB/ECE derived)

| LIGHTING DEVICE | AXIS | GEOMETRIC VISIBILITY REQUIREMENT |
|---|---|---|
| Front Turn Signal Lamp | H<br>V | -45° TO +45°<br>-15° TO +15°[1] |
| Rear Turn Signal Lamp | H<br>V | -45° TO +45°<br>-15° TO +15°[1] |
| Stop Lamp | H<br>V | -45° TO +45°<br>-15° TO +15°[1] |
| Front Parking Lamp | H<br>V | -45° TO +45°<br>-15° TO +15°[1] |
| Tail Lamp | H<br>V | -45° TO +45°<br>-15° TO +15°[1] |
| Rear Fog Lamp | H<br>V | -10° TO +10°<br>-5° TO +5° |
| Rear Reflex Reflector | H<br>V | -30° TO +30°<br>-10° TO +10°[1] |
| Front Side Reflex Reflector | H<br>V | -45° TO +45°<br>-10° TO +10°[1] |
| Intermediate Side Reflex Reflector | H<br>V | -45° TO +45°<br>-10° TO +10°[1] |
| Rear Side Reflex Reflector | H<br>V | -45° TO +45°<br>-10° TO +10°[1] |
| Front Side Marker Lamp | H<br>V | -45° TO +45°<br>-10° TO +10°[1] |
| Intermediate Side Marker Lamp | H<br>V | -45° TO +45°<br>-10° TO +10°[1] |
| Rear Side Marker Lamp | H<br>V | -45° TO +45°<br>-10° TO +10°[1] |
| High Mounted Stop Lamp | H<br>V | -10° TO +10°<br>-5° TO +10° |
| Daytime Running Lamp | H<br>V | -20° TO +20°<br>-10° TO +10° |

[1]Angle below horizontal may be reduces to 5° if the lamp is less than 750 mm. above the ground.

# TABLE VI

## Requirements for Geometric Visibility of Installed Lighting Devices Intensity Measurement Method (GTB/ECE derived)

| LIGHTING DEVICE | AXIS | GEOMETRIC VISIBILITY REQUIREMENT | MINIMUM LUMINOUS INTENSITY (candela) |
|---|---|---|---|
| Front Turn Signal Lamp | H<br>V | -45° TO +80°<br>-15° TO +15°[1] | 0.3 |
| Rear Turn Signal Lamp | H<br>V | -45° TO +80°<br>-15° TO +15°[1] | 0.3 |
| Stop Lamp | H<br>V | -45° TO +45°<br>-15° TO +15°[1] | 0.3 |
| Front Parking Lamp | H<br>V | -45° TO +80°<br>-15° TO +15°[1] | 0.05 |
| Tail Lamp | H<br>V | -45° TO +80°<br>-15° TO +15°[1] | 0.05 |
| Rear Fog Lamp | H<br>V | -25° TO +25°<br>-5° TO +5° | 75 in the diamond shaped area contained by H,5U; V,10R; H,5D; and V,10L |
| Rear Reflex Reflector | H<br>V | none | Must comply with photometric intensity requirements as installed |
| Front Side Reflex Reflector | H<br>V | none | Must comply with photometric intensity requirements as installed |
| Intermediate Side Reflex Reflector | H<br>V | none | Must comply with photometric intensity requirements as installed |
| Rear Side Reflex Reflector | H<br>V | none | Must comply with photometric intensity requirements as installed |
| Front Side Marker Lamp | H<br>V | -45° TO +45°<br>-10° TO +10°[1] | 0.6 |
| Intermediate Side Marker Lamp | H<br>V | none | Must comply with photometric intensity requirements as installed |
| Rear Side Marker Lamp | H<br>V | -45° TO +45°<br>-10° TO +10°[1] | 0.6 (amber)<br>0.25 (red) |
| High Mounted Stop Lamp | H<br>V | none | Must comply with photometric intensity requirements as installed |
| Daytime Running Lamp | H<br>V | none | Must comply with photometric intensity requirements as installed |

[1]Angle below horizontal may be reduces to 5° if the lamp is less than 750 mm. above the ground.

# TABLE VII

## Requirements for Geometric Visibility of Installed Lighting Devices Area Measurement Method (SAE derived)

| LIGHTING DEVICE | AXIS | GEOMETRIC VISIBILITY REQUIREMENT |
|---|---|---|
| Front Turn Signal Lamp | H<br>V | -20° TO +45°<br>-15° TO +15°[1] |
| Rear Turn Signal Lamp | H<br>V | -20° TO +45°<br>-15° TO +15°[1] |
| Stop Lamp | H<br>V | -45° TO +45°<br>-15° TO +15°[1] |
| Front Parking Lamp | H<br>V | -20° TO +45°<br>-15° TO +15°[1] |
| Tail Lamp | H<br>V | -45° TO +45°<br>-15° TO +15°[1] |
| Rear Fog Lamp | H<br>V | signal from lamp be visible -45° TO +45° |
| Rear Reflex Reflector | H<br>V | Must comply with photometric intensity requirements as installed |
| Front Side Reflex Reflector | H<br>V | Must comply with photometric intensity requirements as installed |
| Intermediate Side Reflex Reflector | H<br>V | Must comply with photometric intensity requirements as installed |
| Rear Side Reflex Reflector | H<br>V | Must comply with photometric intensity requirements as installed |
| Front Side Marker Lamp | H<br>V | Must comply with photometric intensity requirements as installed |
| Intermediate Side Marker Lamp | H<br>V | Must comply with photometric intensity requirements as installed |
| Rear Side Marker Lamp | H<br>V | Must comply with photometric intensity requirements as installed |
| High Mounted Stop Lamp | H<br>V | signal from lamp be visible -45° TO +45° |
| Daytime Running Lamp | H<br>V | Must comply with photometric intensity requirements as installed |

[1]Angle below horizontal may be reduces to 5° if the lamp is less than 750 mm. above the ground.

# TABLE VIII

## Requirements for Geometric Visibility of Installed Lighting Devices Intensity Measurement Method (SAE derived)

| LIGHTING DEVICE | AXIS | GEOMETRIC VISIBILITY REQUIREMENT | MINIMUM LUMINOUS INTENSITY (candela) |
|---|---|---|---|
| Front Turn Signal Lamp | H<br>V | -45° TO +80°<br>-15° TO +15°[1] | 0.3 |
| Rear Turn Signal Lamp | H<br>V | -45° TO +80°<br>-15° TO +15°[1] | 0.3 |
| Stop Lamp | H<br>V | -45° TO +45°<br>-15° TO +15°[1] | 0.3 |
| Front Parking Lamp | H<br>V | -45° TO +80°<br>-15° TO +15°[1] | 0.05 |
| Tail Lamp | H<br>V | -45° TO +80°<br>-15° TO +15°[1] | 0.05 |
| Rear Fog Lamp | H<br>V | -45° TO +45° | signal must be visible |
| Rear Reflex Reflector | H<br>V | none | Must comply with photometric intensity requirements as installed |
| Front Side Reflex Reflector | H<br>V | none | Must comply with photometric intensity requirements as installed |
| Intermediate Side Reflex Reflector | H<br>V | none | Must comply with photometric intensity requirements as installed |
| Rear Side Reflex Reflector | H<br>V | none | Must comply with photometric intensity requirements as installed |
| Front Side Marker Lamp | H<br>V | none | Must comply with photometric intensity requirements as installed |
| Intermediate Side Marker Lamp | H<br>V | none | Must comply with photometric intensity requirements as installed |
| Rear Side Marker Lamp | H<br>V | none | Must comply with photometric intensity requirements as installed |
| High Mounted Stop Lamp | H<br>V | -45° TO +45° | signal must be visible |
| Daytime Running Lamp | H<br>V | none | Must comply with photometric intensity requirements as installed |

[1]Angle below horizontal may be reduces to 5° if the lamp is less than 750 mm. above the ground.

Issued on: November 24, 1998.

**L. Robert Shelton,**

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 98–32655 Filed 12–9–98; 8:45 am]

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# Notices

**Federal Register**

Vol. 63, No. 237

Thursday, December 10, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## AFRICAN DEVELOPMENT FOUNDATION

### Sunshine Act Meeting; Board of Directors Meeting

**TIME:** 9:00 a.m.–12:00 noon.

**PLACE:** ADF Headquarters.

**DATE:** Monday, 14 December 1998.

**STATUS:** Open.

**Agenda**

9:00 a.m. Chairman's Report

9:15 a.m. President's Report; New Business

11:00 a.m. Executive Session

12:00 noon Adjournment

If you have any questions or comments, please direct them to Paul Magid, General Counsel, who can be reached at (202) 673–3916.

**William R. Ford,**

*President.*

[FR Doc. 98–32943 Filed 12–8–98; 10:55 am]

**BILLING CODE 6116–01–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Revised Land and Resource Management Plans for Some National Forest System Lands in Nebraska, North Dakota, South Dakota, and Wyoming

**AGENCY:** USDA Forest Service.

**ACTION:** Revised Notice of Intent to Prepare an Environmental Impact Statement in conjunction with the revision of land and resource management plans and modifications to existing oil and gas leasing decisions for several National Grasslands (NG) and Forests (NF) on the Northern Great Plains.

The planning area includes these National Forest System lands:

| Administering unit | National Grassland/ Forest | State | County |
|---|---|---|---|
| Dakota Prairie Grasslands (formerly known as Custer NF). | Little Missouri NG ..... | ND | Billings, Dunn, Golden Valley, McHenry, McKenzie, Slope. |
| | Cedar River NG ..... | ND | Grant, Sioux. |
| | Sheyenne NG ..... | ND | Ransom, Richland. |
| | Grand River NG ..... | SD | Corson, Perkins. |
| Nebraska NF ..... | Oglala NG ..... | NE | Dawes, Sioux. |
| | Nebraska NF ..... | NE | Blaine, Dawes, Sioux, Thomas. |
| | Samuel R. McKelvie NF. | NE | Cherry. |
| | Buffalo Gap NG ..... | SD | Custer, Fall River, Jackson, Pennington. |
| | Fort Pierre NG ..... | SD | Jones, Lyman, Stanley. |
| Medicine Bowe-Routt NF ..... | Thunder Basin NG ..... | WY | Campbell, Converse, Crook, Niobrara, Weston. |

**SUMMARY:** This planning effort is called the ''Northern Great Plains Management Plans Revision.'' Land and Resource Management Plans (hereafter referred to as Management Plan or Plans) will be prepared for each participating administrative unit, while one environmental impact statement for all affected units will be issued. In conjunction with the Plan revisions, existing oil and gas leasing decisions will be modified based on the analysis in the environmental impact statement.

**DATES:** Comments concerning the scope of the analysis were requested to be received in writing by July 31, 1997. The agency expects to file a draft environmental impact statement with the Environmental Protection Agency (EPA) and make it available for public comment in February 1999. The agency expects to file the final environmental impact statement in May 2000.

**ADDRESSES:** Send written comments to: Dave Cawrse, Team Leader, Northern Great Plains Planning Team, USDA Forest Service, 125 North Main, Chadron NE 69337.

**FOR FURTHER INFORMATION CONTACT:**

Dave Cawrse, Planning Team Leader, (308) 432–0300.

**RESPONSIBLE OFFICIALS:** Dale Bosworth, Northern Regional Forester at 200 East Broadway, Missoula, MT 59807; and Lyle Laverty, Rocky Mountain Regional Forester at P.O. Box 25127, Lakewood, CO 80225–0127.

**COOPERATING AGENCIES:** Bureau of Land Management and National Park Service.

**SUPPLEMENTARY INFORMATION:** This is a revised Notice of Intent for the prior notice promulgated in the **Federal Register,** Vol. 62, No. 38, on Wednesday, February 25, 1997. The Notice of Intent is being revised for the following reasons:

(1) The draft EIS has been delayed more than six months. The original expected release date was June 1998; the new expected date is February 1999. The final EIS is expected to be published May 2000.

(2) Two cooperating agencies have been added. Bureau of Land Management (State offices in Montana and Wyoming) will cooperate on the preparation of the EIS and decisions regarding mineral leasing, and the National Park Service (Theodore Roosevelt National Park) will cooperate on the preparation of the EIS and decisions regarding federally designated Wild and Scenic Rivers (specifically the Little Missouri River).

(3) The Custer National Forest Management Plan will now be referred

to as the Dakota Prairie Grasslands Management Plan.

Pursuant to Part 36 Code of Federal Regulations (CFR) 219.10(g), the Regional Foresters for the Northern and Rocky Mountain Regions give notice of the agency's intent to prepare an environmental impact statement for the revision effort described above. According to 36 CFR 219.10(g), land and resource management plans are ordinarily revised on a 10- to 15-year cycle. The existing Management Plans were approved as follows:

Custer National Forest—June 10, 1987;

Medicine Bow-Routt National Forest—November 20, 1985;

Nebraska National Forest—December 14, 1984.

The Regional Foresters give notice that they are completing an environmental analysis and decision-making process for this proposed action so that interested or affected people can participate in the analyses and contribute to the final decisions. One environmental impact statement will be prepared. Separate decisions, documented in Records of Decision, will be issued for each administrative unit. The combined revision effort makes sense because of common issues and concerns, and similar ecological landscapes. This effort will enable the administrative units to share assessments, plan-related analyses, and resource expertise, and will reduce costs.

Management plans describe the intended management of National Grasslands and Forests. Agency decisions in these plans will do the following things:

- Establish multiple-use goals and objectives (36 CFR 219.11);
- Establish grasslandwide and forestwide management requirements (standards and guidelines) to fulfill the requirements of 16 U.S.C. 1604 applying to future activities (resource integration requirements, 36 CFR 219.13 to 219.27);
- Establish management areas and management area direction (management area prescriptions) applying to future activities in that management area (resource integration and minimum specific management requirements) 36 CFR 219.11(c);
- Establish monitoring and evaluation requirements (36 CFR 219.11(d));
- Determine suitability and potential capability of lands for producing forage for grazing animals and for providing habitat for management indicator species (36 CFR 219.20), designate lands not suited for timber production, and, where applicable, establish allowable timber sale quantity (36 CFR 219.14, 219.15, and 219.21);
- Where applicable to oil and gas resources, determine the planning area leasing decision (lands administratively available for leasing) and the leasing decision for specific lands [36 CFR 228.102(4)(d) & (e)]. Where applicable, BLM will issue a decision document on leasing for federal minerals, both under Forest Service administered surface and under private surface.
- Where applicable, recommend Wild and Scenic River designations, in cooperating with the National Park Service, in accordance with 16 U.S.C. 1274; and
- Where applicable, recommend non-Wilderness allocations or Wilderness recommendations for roadless areas (36 CFR 219.17).

The authorization of project level activities within the planning area occurs through project decision-making, the second stage of forest and grassland planning. Project-level decisions must comply with National Environmental Policy Act (NEPA) procedures and must include a determination that the project is consistent with the Management Plan.

**RELEASE AND REVIEW OF THE EIS:** The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public comment by February 1999. At that time, the EPA will publish a notice of availability for the DEIS in the **Federal Register.**

The comment period on the DEIS will be 90 days from the date the EPA publishes the notice of availability in the **Federal Register.**

Reviewers of the DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions; *Vermont Yankee Nuclear Power Com.* v. *NRDC.* 435 U.S. 519,553 (1978). Also, environmental objections that could be raised at the DEIS stage but are not raised until after completion of the Final Environmental Impact Statement (FEIS) may be waived or dismissed by the courts; *City of Angoon* v. *Hodel,* 803 F. 2d 1016, 1022 (9th Cir. 1986) and Wisconsin.

*Heritages, Inc.,* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the three-month comment period so that substantive comments and objects are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed actions, comments on the DIES should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statements. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the comment period ends on the DIES, comments will be analyzed, considered, and responded to by the Forest Service in preparing the Final EIS. The FEIS is scheduled to be completed in May 2000. The responsible officials will consider the comments, responses, environmental consequences discussed in the FEIS, and applicable laws, regulations and policies in making decisions regarding these revisions. The responsible officials will document their decisions and reasons for their decisions in the separate Record of Decision for each Management Plan. Each decision will be subject to appeal in accordance with 36 CFR 217.

The responsible official for each of the Management Plans is the appropriate Regional Forester.

Dated: November 19, 1998.

**Dale Bosworth,**

*Regional Forester, Northern Region.*

Dated: November 9, 1998.

**Lyle Laverty,**

*Regional Forester, Rocky Mountain Region.*

[FR Doc. 98–32860 Filed 12–9–98; 8:45 am]

BILLING CODE 3410–11–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 the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Vessel-Marking Requirements in Antarctic Fisheries.

*Agency Form Number(s):* None.

*OMB Approval Number:* None (previously cleared under 0648–0306).

*Type of Request:* New collection.

*Burden:* 1.

*Number of Respondents:* 1.

*Avg. Hours Per Response:* One hour.

*Needs and Uses:* Vessels participating in Antarctic fisheries must display the vessel's official identification number or international radio call sign in three locations. The information is used for enforcement purposes.

*Affected Public:* Businesses or other for-profit organizations, individuals.

*Frequency:* Other—this is a marking requirement.

*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: December 4, 1998.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 98–32795 Filed 12–9–98; 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:* Gear-Marking Requirements in Antarctic Fisheries.

*Agency Form Number(s):* None.

*OMB Approval Number:* None (previously cleared under 0648–0305).

*Type of Request:* Existing collection in use without an OMB control number.

*Burden:* 10.

*Number of Respondents:* 1.

*Avg. Hours Per Response:* 10 hours.

*Needs and Uses:* Vessels participating in Antarctic fisheries must mark the vessel's fishing gear with the official vessel identification number, Federal permit or tag number, or some other specified form of identification. The requirement 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, individuals.

*Frequency:* Other—this is a marking requirement.

*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: December 4, 1998.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 98–32796 Filed 12–9–98; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 112398H]**

### Marine Mammals; File No. 881–1443

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

**ACTION:** Issuance of permit amendment.

**SUMMARY:** Notice is hereby given that Permit No. 881–1443, issued to the Alaska SeaLife Center, P.O. Box 1329, Seward, AK 99664, was amended.

**ADDRESSES:** The amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130 Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Alaska Region, National Marine Fisheries Service, NOAA, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

**FOR FURTHER INFORMATION CONTACT:** Sara Shapiro or Ruth Johnson, 301/713–2289.

**SUPPLEMENTARY INFORMATION:** The subject amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Permit No. 881–1443, Project No. I authorizes the Alaska SeaLife Center to assess nutritional physiology, metabolic development, and clinical health under captive conditions of six harbor seals (*Phoca vitulina*) and three Steller sea lions (*Eumetopias jubatus*). Project II authorizes you to conduct stable isotope and lipid metabolism studies on the harbor seals.

Condition A.2.i. currently authorizes controlled dietary studies. As a component of this condition, this amendment (Project No. III) now authorizes the Holder to: (1) conduct a two-week fasting study on the Steller sea lions; (2) increase the frequency of blood-sampling during this period from one to three per week (previously authorized in Condition A.2.d.); and (3) inject $D_2O$ two times during this two-week period (previously authorized in A.2.g.).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: November 25, 1998.

**Ann D. Terbush,**

*Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 98–32900 Filed 12–9–98; 8:45 am]

**BILLING CODE 3510–22–F**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Announcement of Import Restraint Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

December 4, 1998.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing limits.

**EFFECTIVE DATE:** January 1, 1999.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. 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 import restraint limits for textile products, produced or manufactured in India and exported during the period January 1, 1999 through December 31, 1999 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

Effective on January 1, 1999, a visa will no longer be required for products integrated in the second stage of the integration of textiles and clothing into GATT 1994 from WTO member countries (see 63 FR 53881, published on October 7, 1998). A visa will continue to be required for non-integrated products. For quota purposes only, products remaining in categories partially integrated will continue to be designated by the designator ''pt.''

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1999 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997. Information regarding the 1999 CORRELATION will be published in the **Federal Register** at a later date.

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

December 4, 1998.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1999, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in India and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999, in excess of the following levels of restraint:

| Category | Twelve-month restraint limit |
|---|---|
| Levels in Group I | |
| 218 | 15,759,634 square meters. |
| 219 | 72,024,490 square meters. |
| 313 | 42,166,947 square meters. |
| 314 | 8,574,344 square meters. |
| 315 | 14,401,463 square meters. |
| 317 | 42,323,197 square meters. |
| 326 | 9,618,909 square meters. |
| 334/634 | 153,260 dozen. |
| 335/635 | 682,313 dozen. |
| 336/636 | 962,758 dozen. |
| 338/339 | 4,168,194 dozen. |
| 340/640 | 2,140,156 dozen. |
| 341 | 4,473,861 dozen of which not more than 2,684,315 dozen shall be in Category 341–Y [1]. |
| 342/642 | 1,381,686 dozen. |
| 345 | 210,686 dozen. |
| 347/348 | 677,845 dozen. |
| 351/651 | 292,062 dozen. |
| 363 | 49,249,693 numbers. |
| 369–D [2] | 1,429,609 kilograms. |
| 369–S [3] | 779,787 kilograms. |
| 641 | 1,608,636 dozen. |
| 647/648 | 934,120 dozen. |
| Group II | |
| 200, 201, 220–227, 237, 239pt. [4], 300, 301, 331–333, 350, 352, 359pt. [5], 360–362, 600–604, 606 [6], 607, 611–629, 631, 633, 638, 639, 643–646, 649, 650, 652, 659pt. [7], 666, 669pt. [8], 670, 831, 833–838, 840–858 and 859pt. [9], as a group. | 123,462,255 square meters equivalent. |

[1] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[2] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[3] Category 369–S: only HTS number 6307.10.2005.

[4] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[5] Category 359pt.: all HTS numbers except 6406.99.1550.

[6] Category 606: all HTS numbers except 5403.31.0040 (for administrative purposes Category 606 is designated as 606(1)).

[7] Category 659pt.: all HTS numbers except 6406.99.1510 and 6406.99.1540.

[8] Category 669pt.: all HTS numbers except 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[9] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1998 shall be charged to the applicable category limits for that year (see directive dated December 22, 1997) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Effective on January 1, 1999, a visa will no longer be required for products integrated in the second stage of the integration of textiles and clothing into GATT 1994 from WTO member countries (see directive dated September 30, 1998). A visa will continue to be required for non-integrated products. For quota purposes only, products remaining in categories partially integrated will continue to be designated by the designator ''pt.''

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 98–32797 Filed 12–9–98; 8:45 am]

**BILLING CODE 3510–DR–F**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Extension of Suspension of Group II Restriction for Certain Man-Made Fiber Textile Products Produced or Manufactured in India

December 4, 1998.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs extending suspension of the Group II restriction for certain products from India.

**EFFECTIVE DATE:** January 1, 1999.

**FOR FURTHER INFORMATION CONTACT:** Lori Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

**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.

A document published in the **Federal Register** on November 13, 1997 (62 FR 60826) announced the extension of the suspension of the Group II restriction for rayon filament yarn in HTS number 5403.31.0040 in Category 606 from India for the period January 1, 1998 through December 31, 1998.

The Committee for the Implementation of Textile Agreements has decided to extend the suspension for an additional twelve-month period beginning on January 1, 1999 and extending through December 31, 1999. A visa is still required for this product.

Anyone wishing to comment or provide data or information regarding the treatment of imports in HTS number 5403.31.0040 from India or to comment on domestic production or availability of products included in HTS number 5403.31.0040 is invited to submit 10 copies of such comments or information to Troy H. Cribb, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande.

Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute ''a foreign affairs function of the United States.''

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). Information regarding the 1999 CORRELATION will be published in the **Federal Register** at a later date.

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

December 4, 1998.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: Effective on January 1, 1999, man-made fiber textile products in HTS 5403.31.0040 in Category 606, in Group II, produced or manufactured in India and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999, shall not be subject to the Group II quota established for the 1999 period. A visa is still required for this product.

For U.S. Customs' administrative purposes, the remaining HTS numbers in Category 606 shall be designated Category 606(1)[1].

To facilitate implementation of the Uruguay Round Agreement on Textiles and Clothing, effective on January 1, 1999, entry/entry summary procedures shall be required, and you shall continue to count imports for consumption and withdrawals from warehouse for consumption of textile products in HTS number 5403.31.0040 in Category 606(2)[2], produced or manufactured in India and exported during the period January 1, 1998 through December 31, 1998.

Also effective on January 1, 1999, entry/entry summary procedures shall be required, and you shall count imports for consumption and withdrawals from warehouse for consumption of textile products in HTS number 5403.31.0040 in Category 606(2), produced or manufactured in India and exported during the period January 1, 1999 through December 31, 1999.

Inasmuch as these imports may later be charged against the Group II level, it is important that an accurate count be taken.

The Committee for the Implementation of Textile Agreements has determined that this action falls 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. 98–32798 Filed 12–9–98; 8:45 am]

**BILLING CODE 3510–DR–F**

[1] Category 606(1): all HTS numbers except 5403.31.0040 (Category 606(2)).

[2] Category 606(2): only HTS number 5403.31.0040.

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Submission for OMB review; comment request

*Action:* Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Title, Associated Form, and OMB Number:* Waiver/Remission of Indebtedness Application; DD Form 2789; OMB Number 0730—[To Be Determined].

*Type of Request:* New Collection.

*Number of Respondents:* 11,500.

*Responses Per Respondent:* 1.

*Annual Responses:* 11,500.

*Average Burden Per Response:* 2 hours.

*Annual Burden Hours:* 23,000.

*Needs and Uses:* Used by current or former DoD civilian employees or military members to request waiver or remission of an indebtedness owed to the Department of Defense. Under 5 U.S.C. 5584, 10 U.S.C. 2774, and 32 U.S.C. 716, certain debts arising out of erroneous payments may be waived. Under 10 U.S.C. 4837, 10 U.S.C. 6161, and 10 U.S.C. 9837, certain debts may be remitted. Information obtained through this form is used in adjudicating the request for waiver or remission. Remissions apply only to active duty military members, and thus are not covered under the Paperwork Reduction Act of 1995. Criteria for waiver of a debt includes a determination that there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the individual owing the debt or any other person interested in obtaining a waiver. Information obtained through the proposed collection is needed in order to adjudicate the waiver request under the law.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DoD Clearance Officer:* Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: December 1, 1998.

**Patricia L. Toppings,**

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

[FR Doc. 98–32753 Filed 12–9–98; 8:45 am]

**BILLING CODE 5000–04–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Submission for OMB review; comment request

*Action:* Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Title, Associated Form, and OMB Number:* Child Annuitant's School Certification; DD Form 2788; OMB Number 0730–0001.

*Type of Request:* Reinstatement.

*Number of Respondents:* 3,600.

*Responses Per Respondent:* 1.

*Annual Responses:* 3,600.

*Average Burden Per Response:* 12 minutes.

*Annual Burden Hours:* 720.

*Needs and Uses:* In accordance with 10 USC 1435 and 10 USC 1447 and DoD Financial Management Regulation, 7000.14–R, Volume 7B, a child annuitant between the age of 18 and 22 years of age must provide evidence of intent to continue study or training at a recognized educational institution. The certificate is required for the school semester or other period in which the school year is divided. The Child Annuitant's School Certification form is submitted to the child for completion and return to the Defense Finance and Accounting Service. The child will certify as to his or her intent for future enrollment and a school official must certify on the past or present school enrollment of the child. If information is not received after the end of each school enrollment, over-disbursements of an annuity would be made to a child who elected not to continue further training or study.

*Affected Public:* Individuals or households.

*Frequency:* Semi-Annually.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DoD Clearance Officer:* Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: December 1, 1998.

**Patricia L. Toppings,**

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

[FR Doc. 98–32754 Filed 12–9–98; 8:45 am]

**BILLING CODE 5000–04–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal No. 99–04]**

### 36(b)(1) Arms Sales Notification

**AGENCY:** Defense Security Cooperation Agency, Department of Defense.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 99–04, with attached transmittal, policy justification, sensitivity of technology, and Section 620C(d) of the Foreign Assistance Act of 1961.

Dated: December 2, 1998.

**L.M. Bynum,**

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

**BILLING CODE 5000–04–M**

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

16 NOV 1998
In reply refer to:
I-75112/98

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 99-04, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Turkey for defense articles and services estimated to cost $205 million. Soon after this letter is delivered to your office, we plan to notify the news media.

You will also find attached a certification as required by Section 620C(d) of the Foreign Assistance Act of 1961, as amended, that this action is consistent with Section 620C(b) of that statute.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 99-04

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Turkey

(ii) Total Estimated Value:

| | |
|---|---|
| Major Defense Equipment* | $ 133 million |
| Other | $ 72 million |
| TOTAL | $ 205 million |

(iii) Description of Articles or Services Offered:
Three FFG-7 PERRY class frigates and eight currently leased FF 1052 KNOX class frigates for service with the Turkish Navy. Also included are: 20,000 rounds of 20mm cartridges, other ammunition items, "cold ship" transfer reactivations, U.S. Government and contractor engineering and logistics personnel support services, publications, repair and calibration services for shipboard equipment, publications and technical data/drawings, training and training equipment, support equipment, spare and repair parts and other elements of logistics necessary to prepare the frigates for transfer to Turkey in a "Safe to Steam" condition with all shipboard and weapon systems operational.

(iv) Military Department: Navy (AHL, AHM, BIN, GHS, JBY, JKN, SCP, and SCQ)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
See Annex under separate cover.

(vii) Date Report Delivered to Congress: 16 NOV 1998

* as defined in Section 47(6) of the Arms Export Control Act.

## POLICY JUSTIFICATION

### Turkey - FFG-7 PERRY and FF-1052 KNOX Class Frigates

The Government of Turkey has requested a possible sale of three FFG-7 PERRY class frigates and eight currently leased FF 1052 KNOX class frigates for service with the Turkish Navy. Also included are: 20,000 rounds of 20mm cartridges, other ammunition items, "cold ship" transfer reactivations, U.S. Government and contractor engineering and logistics personnel support services, publications, repair and calibration services for shipboard equipment, publications and technical data/drawings, training and training equipment, support equipment, spare and repair parts and other elements of logistics necessary to prepare the frigates for transfer to Turkey in a "Safe to Steam" condition with all shipboard and weapon systems operational. The estimated cost is $205 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Turkey, while enhancing weapon system standardization and interoperability.

Turkey already has three U.S. Navy PERRY class frigates in its Navy fleet. Turkey needs these frigates to continue its naval modernization program and enhance its Anti-Submarine Warfare (ASW) capability. The frigates will be provided in accordance with, and subject to the limitation on use and transfer provided under the Arms Export Control Act, as embodied in the terms of sale. This sale will not adversely affect either the military balance in the region or U.S. efforts to encourage a negotiated settlement of the Cyprus question.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The PERRY vessels will be transferred on a "cold ship" basis because the decommissioning has occurred prior to approval of the enacting legislation. The primary efforts for transfer will be completed through the Naval Sea Systems Command by a contract crew. There are no prime contractors for provision of the weapon systems applicable to these platforms. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this proposed sale will require the assignment of contractor representatives for the purpose of providing engineering technical support to Turkey.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 99-04

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The PHALANX Close-In Weapon System crystals which contain the operating frequencies of the weapon system are considered critical technology and are classified Confidential. Select maintenance and operation publications are also classified Confidential.

2. The guidance and control system and the Target Detecting Device represent technology which if compromised could reveal areas of missile performance and potentially result in the development of countermeasures or equivalent systems capable of reducing weapon system effectiveness. This information could also be used in the development of a system with similar or advanced capabilities.

3. AN/SLQ-32A(V)3 Improved ECM Set: Secret hardware. Due to USN requirements, this system must be removed and replaced with the basic AN/SLQ-32(V)2 system. Removal includes hardware, software, and technical manuals. When replaced with the basic AN/SLQ-32(V)2, the following release considerations apply: (1) hardware is Secret, (2) software is Confidential, (3) U.S. threat libraries are Secret and will not be released, and (4) technical manuals are Confidential and need to be sanitized.

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software in this proposed sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advance capabilities. For this reason, the U.S. threat libraries will not be released.

5. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification. Moreover, the benefits to be derived from this proposed sale, as outlined in the Policy Justification, outweigh the potential damage that could result if the sensitive technology were revealed to unauthorized persons.

November 16, 1998

Certification Under Section 620C(d)
Of The Foreign Assistance Act of 1961, As Amended

Pursuant to section 620C(d) of the Foreign Assistance Act of 1961, as amended (the Act), Executive Order 12163 (sec. 1-201(a)(13)) and the Secretary of State's memorandum of December 15, 1997, I hereby certify that the furnishing to Turkey of three FFG-7 PERRY-class frigates and eight currently leased FF-1052 KNOX-class frigates for service with the Turkish Navy is consistent with the principles contained in section 620C(b) of the Act. Also included as part of the transfer are: 50 SM-1 BLOCK VI STANDARD missiles, 20,000 rounds of 20mm cartridges, other ammunition items, "cold ship" transfer reactivations, U.S. Government and contractor engineering and logistics personnel support services, publications, repair and calibration services for shipboard equipment publications and technical data/drawings, training and training equipment, support equipment, spare and repair parts and other elements of logistics necessary to prepare the frigates for transfer to Turkey in a "Safe to Steam" condition with all shipboard and weapons systems operational at an estimated cost of $205 million.

This certification will be made part of the notification to the Congress under section 36(b) of the Arms Export Control Act regarding the proposed sale of the above-named articles and services, and is based on the justification accompanying said notification, of which said justification constitutes a full explanation.

John D. Holum
Acting Under Secretary
for Arms Control and
International Security
Affairs and Director,
U.S. Arms Control and
Disarmament Agency

[FR Doc. 98–32750 Filed 12–9–98; 8:45 am]
BILLING CODE 5000–04–C

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

**AGENCY:** Department of Defense, Defense Intelligence Agency.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

**DATE:** 16 December 1998 (900 a.m. to 1600 p.m.).

**ADDRESS:** The Defense Intelligence Agency, Bolling AFB, Washington, DC 20340–5100.

**FOR FURTHER INFORMATION CONTACT:** Maj Donald R. Culp, Jr., USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, D.C. 20340–1328 (202) 231–4930.

**SUPPLEMENTARY INFORMATION:** The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(I), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: December 2, 1998.

**L.M. Bynum,**

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

[FR Doc. 98–32751 Filed 12–9–98; 8:45 am]

**BILLING CODE 5000–04–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Notice of Closed Meeting

**AGENCY:** Defense Intelligence Agency, Joint Military Intelligence College.

**ACTION:** Notice of closed meeting.

**SUMMARY:** Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Joint Military Intelligence College Board of Visitors has been scheduled as follows:

**DATES:** Tuesday, 12 January 1999, 0800 to 1800; and Wednesday, 13 January 1999, 0800 to 1200.

**ADDRESS:** Joint Military Intelligence College, Washington, DC 20340–5100.

**FOR FURTHER INFORMATION CONTACT:** Mr. A. Denis Clift, President, DIA Joint Military Intelligence College, Washington, DC 20340–5100 (202/231–3344).

**SUPPLEMENTARY INFORMATION:** The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed. The Board will discuss several current critical intelligence issues and advise the Director, DIA, as to the successful accomplishment of the mission assigned to the Joint Military Intelligence College.

Dated: December 2, 1998.

**L.M. Bynum,**

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

[FR Doc. 98–32752 Filed 12–9–98; 8:45 am]

**BILLING CODE 5000–04–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Science Board Task Force on Tactical Battlefield Communications

**ACTION:** Notice of Advisory Committee meetings.

**SUMMARY:** The Defense Science Board Task Force on Tactical Battlefield Communications will meet in closed session on December 17–18, 1998, January 11–12, February 18–19, March 18–19, April 22–23, May 20–21, June 24–25, July 22–23, and August 5–6, 1999 at Science Applications International Corporation, 4001 N. Fairfax Drive, Arlington, Virginia. In order for the Task Force to obtain time sensitive classified briefings, critical to the understanding of the issues, the meeting to be held on December 17–18, 1998, is scheduled on short notice.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will determine U.S. needs for wireless communications on future battlefields and the adequacy of communication architecture plans to fulfill those needs. The Task Force will specifically address the ability of digital and analog communications below the Corps-level to support predicted demands of joint tactical, intelligence, logistics and medical actions while assuring combatants' effectiveness and safety. In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: December 4, 1998.

**L.M. Bynum,**

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

[FR Doc. 98–32748 Filed 12–9–98; 8:45 am]

**BILLING CODE 5000–04–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Privacy Act of 1974; System of Records

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Notice to add a system of records.

**SUMMARY:** The Office of the Secretary proposes to add a system of records notice to its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on January 11, 1999, unless comments are received which result in a contrary determination.

**ADDRESSES:** Send comments to OSD Privacy Act Coordinator, Records Section, Directives and Records Division, Washington Headquarter Services, Correspondence and Directives, 1155 Defense Pentagon, Washington, DC 20301–1155.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Bosworth at (703) 695–0970 or DSN 225–0970.

**SUPPLEMENTARY INFORMATION:** The Office of the Secretary systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on November 24, 1998, to the House Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: December 4, 1998.

**L.M. Bynum,**

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

**DGC 19**

**SYSTEM NAME:**

DoD Final Personnel and General Claims and Waiver Files.

**SYSTEM LOCATION:**

Defense Office of Hearings and Appeals, Defense Legal Services Agency, Department of Defense, 4015 Wilson Boulevard, Suite 300, Arlington, VA 22203-1995.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

*Pay and Travel Claims:* Uniformed service members of DoD, the Coast Guard, National Oceanic and Atmospheric Administration, and the Public Health Service or their dependents, beneficiaries, agents, attorneys or other individuals who may benefit from the member's tenure and who have an unresolved dispute related to a claim for pay, allowances, travel, transportation, retired pay, or survivor benefits.

*Waiver Authority:* DoD civilian employees, uniformed service members of DoD, the Coast Guard, National Oceanic and Atmospheric Administration, and the Public Health Service or their dependents, beneficiaries, agents, attorneys or other individuals who may benefit from the member's tenure and who have an unresolved dispute related to a request for waiver of erroneous payments of pay and allowances.

*General Claims:* Any individuals with other general claims arising from activities within DoD.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Case files include administrative reports from DoD military and civilian employees, the Coast Guard, the National Oceanic and Atmospheric Administration, and the Public Health Service; claims, waiver applications, and all pertinent or supporting materials related to a claim or waiver application; written decisions of this Office, the Agency concerned, and the Deputy General Counsel (Fiscal); and such other matter as the claims adjudicators and attorneys may include in the record, including copies of precedents relied on in resolving a case.

Automated case status records for current cases and inactive cases are used to provide location and status and internal identification of cases, to prepare listings and internal statistical reports, and to monitor work flow and case handling actions.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 5584; 10 U.S.C. 140; 10 U.S.C. 2575; 10 U.S.C. 2771; 10 U.S.C. 2774; 24 U.S.C. 420; 31 U.S.C. 3529; 31 U.S.C. 3702; 32 U.S.C. 714; 32 U.S.C. 716; 37 U.S.C. 554; and E.O. 9397 (SSN).

**PURPOSE(S):**

Records are collected and maintained to support the resolution of a claim or waiver application and to provide decisions to those parties involved in:

a. Claims related to uniform services members' pay, allowances, travel, transportation, retired pay, and survivor benefits;

b. Claims by transportation carriers for amounts collected from them for loss and damage incurred to property incident to shipment at Government expense;

c. Claims for proceeds of sale of unclaimed property coming into the custody or control of the Army, Navy, Air Force or Coast Guard;

d. Final settlements of accounts of members of the Armed Forces, including the National Guard;

e. Reports on disposition of the effects of deceased members of the Army and Air Force for settlement under 10 U.S.C. 2771, 10 U.S.C. 4712 and 9712;

f. Claims for the proceeds of the sale of motor vehicles and items of household goods and personal property of members of the Uniformed Services reported dead, injured, ill or absent for a period of more than 29 days in a missing status;

g. Claims for the proceeds from the disposition of effects of deceased residents of the Armed Forces Retirement Home;

h. Claims arising from DoD activities cognizable under 31 U.S.C. 3702, not otherwise delegated by the Director, OMB.

i. Waivers of payment submitted by individuals who seek final adjudication of their requests for waiver of erroneous payments of pay and allowances. Waivers are submitted by:

(1) Uniformed service members of DoD, the Coast Guard, National Oceanic and Atmospheric Administration, and the Public Health Service, of individuals who may derive any benefit on account of such tenure who have an unresolved dispute relating to a claim for pay, allowances, travel, transportation, retired pay, or survivor benefits.

(2) DoD civilian employees who have an unresolved dispute related to a request for waiver of erroneous payments of pay.

Records also are collected and maintained to record processing steps taken and processing time; to prepare statistical listings and summaries; to monitor and control adjudicative actions and processes.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Coast Guard, the National Oceanic and Atmospheric Administration, and the Public Health Service for the purpose of obtaining and providing information relating to claims and waivers.

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records are maintained in file folders and electronic records are stored on magnetic or optical media.

**RETRIEVABILITY:**

Paper records are retrieved by case number. Computer data is retrieved by name, address, and Social Security Number, case number, or a combination of other personal identifying data.

**SAFEGUARDS:**

Records are stored in a secure area accessible only to DOHA authorized personnel. All records are stored, processed, transmitted and protected as the equivalent of For Official Use Only information. Records are accessed by the custodian of the record system and by persons responsible for using or servicing the system, who are properly screened and have a need-to-know. Computer hardware is located in controlled areas with access limited to authorized personnel. Computer access is via dedicated data circuits with password control. Individual passwords are changed periodically and upon departure of personnel. The dedicated data feature prevents access from standard dial-up telephones. Only DOHA personnel are given the security level on the computer system needed to amend, add, alter, change, or delete Claims and Waiver records.

**RETENTION AND DISPOSAL:**

Records are destroyed 6 years and 3 months after date of last DOHA action.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Defense Office of Hearings and Appeals, P0 Box 3656, Arlington, VA 22203-1995.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Defense Office of Hearings and Appeals, PO Box 3656, Arlington, VA 22203-1995.

Request should include the individual's full name, address, telephone number, Social Security Number and other information identifiable from the record.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Director, Defense Office of Hearings and Appeals, PO Box 3656, Arlington, VA 22203-1995.

Request should include the individual's full name, address, telephone number, Social Security Number and other information identifiable from the record. In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

Records may be made available for review at DOHA Headquarters upon appointment made with the Director. Individual must be able to provide picture identification, such as a valid driver's license.

**CONTESTING RECORD PROCEDURES:**

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Information is received from agency claims and waiver application files; from subject individuals, their attorneys or authorized representatives; or other documentary evidence made part of the record by the individual or the agency.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 98–32749 Filed 12–9–98; 8:45 am]

**BILLING CODE 5000–04–F**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Closed Meeting of the Board of Visitors to the U.S. Naval Academy

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice.

**SUMMARY:** The U.S. Naval Academy Board of Visitors will meet to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. During this meeting inquiries will relate to the internal personnel rules and practices of the Academy, may involve on-going criminal investigations, and include discussions of personal information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The executive session of this meeting will be closed to the public.

**DATES:** The meeting will be held on Friday, December 11, 1998 from 8:30 a.m. to 2:30 p.m. The closed Executive Session will be from 11:30 a.m. to 2:30 p.m.

**ADDRESSES:** The meeting will be held in the Bo Coppedge Room of Alumni Hall at the U.S. Naval Academy, Annapolis, MD.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Gerral K. David, U.S. Navy, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, telephone number: (410) 293–1503.

**SUPPLEMENTARY INFORMATION:** This notice of meeting is provided per the Federal Advisory Committee Act (5 U.S.C. App. 2). The executive session of the meeting will consist of discussions of information which pertain to the conduct of various midshipmen at the Naval Academy and Internal Board of Visitors matters. Discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. In accordance with 5 U.S.C. App. 2, section 10(d), the Secretary of the Navy has determined in writing that the special committee meeting shall be partially closed to the public because they will be concerned with matters as outlined in section 552(b)(2), (5), (6), and (7) of title 5, U.S. Code. Due to unavoidable delay in administrative processing, the normal 15 days notice could not be provided.

Dated: December 1, 1998.

**Ralph W. Corey,**

*Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 98–32978 Filed 12–9–98; 8:45 am]

**BILLING CODE 3810–FF–M**

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before February 8, 1999.

**ADDRESSES:** Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, 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 202–708–9346.

**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 Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, publishes that

notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment 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: December 4, 1998.

**Kent H. Hannaman,**

*Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.*

### Office of Bilingual Education and Minority Languages Affairs

*Type of Review:* New.
*Title:* Transfer of Reading Skills from Spanish to English: A Study of Young Learners.
*Frequency:* One time.
*Affected Public:* Individuals or households; Not-for-profit institutions.
*Reporting and Recordkeeping Burden:*
Responses: 366.
Burden Hours: 584.
*Abstract:* The Agency needs the information to help inform national policies and practices related to reading instruction for English-language learners. Respondents will be 180 English-language learners in 4–6 schools in El Paso, Chicago, and Boston.

[FR Doc. 98–32790 Filed 12–9–98; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request.

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Information Management Group, Office of the Chief Financial and 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 January 11, 1999.

**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 or should be electronically mailed to the internet address *Werfel d@al.eop.gov*. Requests for copies of the proposed information collection requests 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 Sherril@ed.gov*, or should be faxed to 202–708–9346.

**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 Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: December 4, 1998.

**Kent H. Hannaman,**

*Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.*

### Office of Postsecondary Education

*Type of Review:* New.
*Title:* Distance Education Demonstration Program Application and Annual Evaluation.
*Frequency:* One time.
*Affected Public:* Businesses or other for-profits; Not-for-profit institutions.
*Reporting and Recordkeeping Burden:*
Responses: 200.
Burden Hours: 6,000.
*Abstract:* Applications necessary to determine which entities are interested and eligible to participate in the Distance Education Demonstration Program. Annual evaluations of the Distance Education Demonstration Programs are required to statute.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, this 30-day public comment period notice will be the only public comment notice published for this information collection.

### Office of Educational Research and Improvement

*Type of Review:* New.
*Title:* Evaluation of the National Star Schools Program.
*Frequency:* One time.
*Affected Public:* Individuals or households.
*Reporting and Recordkeeping Hour Burden:*
Responses: 535.
Burden Hours: 201.
*Abstract:* The Star Schools program has the purpose of encouraging improvement in instruction in mathematics, science, and foreign languages as well as other subjects through modern telecommunications technology. The purpose of this evaluation is to independently examine the implementation and administration of the program as a whole and of individual projects, as well as the program's outcomes and impact on schools, teachers, and students. Clearance is requested for two data collection efforts (1) a site teacher survey of 500 respondents and (2) a production teacher survey of 35 respondents.

[FR Doc. 98–32789 Filed 12–9–98; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF EDUCATION

**[CFDA No.: 84.132A–1]**

### Centers for Independent Living; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1999

*Purpose of Program:* This program provides support for planning, conducting, administering, and evaluating centers for independent living (centers) that comply with the standards and assurances in section 725 of the Rehabilitation Act of 1973, as amended (Act), consistent with the State plan for establishing a statewide network of centers. Centers are consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agencies that are designed and operated within local communities by individuals with disabilities and provide an array of independent living (IL) services.

*Eligible Applicants:* To be eligible to apply, an applicant must—(a) be a consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agency as defined in 34 CFR 364.4(b); (b) have the power and authority to meet the requirements in 34 CFR 366.2(a)(1); (c) be able to plan, conduct, administer, and evaluate a center for independent living consistent with the requirements of section 725(b) and (c) of the Act and Subparts F and G of 34 CFR Part 366; and (d) either—(1) not currently be receiving funds under Part C of Chapter 1 of Title VII of the Act; or (2) propose the expansion of an existing center through the establishment of a separate and complete center (except that the governing board of the existing center may serve as the governing board of the new center) in a different geographical location. Eligibility under this competition is limited to entities that meet the requirements of 34 CFR 366.24 and propose to serve areas that are unserved or underserved in the States and territories listed under AVAILABLE FUNDS.

*Deadline for Transmittal of Applications:* February 26, 1999.

*Deadline for Intergovernmental Review:* April 27, 1999.

*Applications Available:* December 11, 1998.

*Available Funds:* $456,736 as distributed in the following manner:

| | |
|---|---|
| Georgia | $86,226 |
| New York | 104,652 |
| American Samoa | 154,046 |
| Guam | 55,906 |
| Commonwealth of N. Marianas | 55,906 |

*Estimated Average Size of Awards:* $55,906–$154,046.

*Estimated Number of Awards:* 1 per eligible State.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 60 months.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 364 and 366.

**FOR FURTHER INFORMATION CONTACT:** Merri Pearson, U.S. Department of Education, 400 Maryland Avenue, SW, Room 3316, Switzer Building, Washington, DC 20202–2741. Telephone: (202) 205–8484 (voice) and (202) 205–8243 (TDD).

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

**FOR APPLICATIONS CONTACT:** The Grants and Contracts Services Team (GCST), U.S. Department of Education, 400 Maryland Avenue, SW, Room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8351. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. The preferred method for requesting applications is to FAX your request to (202) 205–8717.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the GCST. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

#### 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 any of the following sites:

http://www.ed.gov/offices/OSERS/RSA/rsakits.html
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 http://www.adobe.com/prodindex/acrobat/readstep.html. If you have questions about using the pdf, call the U.S. Government Printing Office 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**.

**Program Authority:** 29 U.S.C. 721(c) and (e) and 796(f).

Dated: December 4, 1998.

**Judith E. Heumann,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 98–32814 Filed 12–9–98; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

**[FE Docket Nos. PP–195, EA–195]**

### Application for Presidential Permit and Electricity Export Authorization Wilson-7 Energy Systems, Inc.

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** Wilson-7 Energy Systems, Inc. (Wilson-7) has applied for a Presidential permit to construct, connect, operate and maintain electric transmission facilities across the U.S. border with Mexico. The proposed facility is a direct current (DC) transmission with an operating voltage of between 600 kilovolts (600 kV) and 1,200 kV. The facilities would originate at a new electric powerplant to be constructed in Hudspeth County, Texas, and cross the U.S.-Mexico border in the vicinity of either Fort Hancock, Arcala, or Indian Hot Springs, Texas. The proposed facilities would be used to supply electric energy to Mexico and unnamed countries south of Mexico. In addition, Wilson-7 seeks authorization to export 6,000 megawatts (MW) of electric power from the United States to Mexico.

**DATES:** Comments, protests, or requests to intervene must be submitted on or before January 11, 1999.

**ADDRESSES:** Comments, protests, or requests to intervene should be addressed as follows: Office of Coal & Power Import and Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0350.

**FOR FURTHER INFORMATION CONTACT:** Ellen Russell (Program Office) 202–586–9624 or Michael T. Skinker (Program Attorney) 202–586–6667.

**SUPPLEMENTARY INFORMATION:** The construction, connection, operation, and maintenance of facilities at the

international border of the United States for the transmission of electric energy between the United States and a foreign country is prohibited in the absence of a Presidential permit issued pursuant to Executive Order (EO) 10485, as amended by EO 12038. In addition, exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. § 824a(e)).

On October 14, 1998, Wilson-7 filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) for a Presidential permit and an electricity export authorization. The application was supplemented by another application filed on November 18, 1998. Wilson-7 proposes to construct a DC transmission line of either 600 kV, 800 kV, 1,000 kV, or 1,200 kV DC from a location in the vicinity of Fort Hancock, Hudspeth County, Texas, adjacent to the United States border with Mexico, to Mexico and to other unspecified countries located south of Mexico. The electric energy to be transmitted to Mexico and/or other countries will be generated by three (3) 2,000-MW gas-fired electric powerplants to be constructed by Wilson-7 in Hudspeth County, Texas.

The Wilson-7 application notes that there are no firm contracts in place for the sale of power to any foreign government or foreign private concerns.

**Procedural Matters**

Any person desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with section 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Fifteen copies of such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies of such petitions to intervene or protest also should be filed directly with: Mr. Frank H. Wilson, 62 Thicket Street, Irvine, California 92614.

Before a Presidential permit or electricity export authorization may be issued or amended, the DOE must determine that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system. In addition, DOE must consider the environmental impacts of the proposed action pursuant to the National Environmental Policy Act of 1969 (NEPA). DOE also must obtain the concurrence of the Secretary of State and the Secretary of Defense before taking final action on a Presidential permit application.

The NEPA compliance process is a cooperative, non-adversarial process involving members of the public, state governments and the Federal Government. The process affords all persons interested in or potentially affected by the environmental consequences of a proposed action an opportunity to present their views, which will be considered in the preparation of the environmental documentation for the proposed action. Intervening and becoming a party to this proceeding will not create any special status for the petitioner with regard to the NEPA process. Notice of upcoming NEPA activities and information on how the public can participate in those activities will appear in the **Federal Register**. Additional announcements will appear in local newspapers and public libraries and/or reading rooms in the vicinity of the proposed transmission line.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above. In addition, the application may be reviewed or downloaded from the Fossil Energy Home Page at: http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select ''Regulatory'' and then ''Electricity'' from the options menu.

Issued in Washington, D.C., on December 4, 1998.

**Anthony J. Como,**

*Manager, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Fossil Energy.*

[FR Doc. 98–32904 Filed 12–9–98; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

## DOE Response to Recommendation 98–2 of the Defense Nuclear Facilities Safety Board, Safety Management at the Pantex Plant

**AGENCY:** Department of Energy.

**ACTION:** Notice.

**SUMMARY:** The Defense Nuclear Facilities Safety Board published Recommendation 98–2, concerning safety management at the Pantex plant, on October 7, 1998 (63 FR 53884). Section 315(b) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(b) required the Department of Energy to transmit a response to the Defense Nuclear Facilities Safety Board by November 20, 1998. The Secretary's response follows.

**DATES:** Comments, data, views, or arguments concerning the Secretary's response are due on or before January 11, 1999.

**ADDRESSES:** Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC, 20004.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gene Ives, Deputy Assistant Secretary for Military Application and Stockpile Management, Defense Programs, Department of Energy, 1000 Independence Avenue, SW, Washington, DC, 20585.

Issued in Washington, DC, on December 3, 1998.

**Theodore Wyka,**

*Deputy to the Departmental Representative to the Defense Nuclear Facilities Safety Board.*

**The Secretary of Energy,**

*Washington, DC 20585*

November 20, 1998.

The Honorable John T. Conway,
*Chairman, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004.*

Dear Mr. Chairman: This letter acknowledges receipt of your Recommendation 98–2, issued on September 30, 1998, and published in the **Federal Register** on October 7, 1998, dealing with Safety Management at the Pantex Plant. The Department accepts Recommendation 98–2 and will develop an Implementation Plan to the following approach:

(1) The activities undertaken in the Implementation Plan will be aimed at simplifying and standardizing activity level safety management processes for all work involving nuclear explosives at the Pantex Plant. Implementation Plan activities involving Nuclear Explosive Safety Studies will also be focused on simplification and standardization of practices and processes. Overall, the objective of the Implementation Plan will be to ensure practical and timely implementation of safety improvements and will better allow for tailoring of SS–21 principles.

(2) The Department recognizes the need to modify the existing change control process in order to improve process efficiency and consistency. An efficient process to tailor the amount of rigor involved in implementing changes while maintaining an adequate safety margin will be pursued.

(3) Roles, responsibilities and authorities will be clarified so that the Pantex contractor is accountable for the adequacy of nuclear explosive operations and safety documentation at the Pantex Plant. In doing so, the Pantex contractor will have the ability to call on the technical expertise of the National Laboratories.

(4) The Department recognizes the need to clarify the independent role of the Nuclear Explosive Safety Studies Groups. The Nuclear Explosive Safety Studies should focus on a scope of work established by line management and approved by the

appropriate Department of Energy Authorization Official.

(5) The Department will develop and implement options necessary to sustain a technically competent Nuclear Explosive Safety Study Group talent pool.

(6) The Department recognizes the need to pursue the safety management enhancement sought in Recommendation 98–2 consistent with the development of the Pantex Integrated Safety Management System as part of the Implementation Plan for Recommendation 95–2.

The Deputy Assistant Secretary for Military Application and Stockpile Management, Defense Programs, is the Responsible Manager for the preparation of the Implementation Plan. He will work with you to develop an acceptable plan, meeting our mutual expectations.

Yours sincerely,

Bill Richardson.

[FR Doc. 98–32902 Filed 12–9–98; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### DOE Response to Recommendation 98–1 of the Defense Nuclear Facilities Safety Board, Integrated Safety Management and the Department of Energy (DOE) Facilities.

**AGENCY:** Department of Energy

**ACTION:** Notice

**SUMMARY:** The Defense Nuclear Facilities Safety Board published Recommendation 98–1, concerning integrated safety management and the Department of Energy (DOE) facilities, on October 6, 1998 (63 FR 53646). Section 315(b) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(b) required the Department of Energy to transmit a response to the Defense Nuclear Facilities Safety Board by November 20, 1998. The Secretary's response follows.

**DATES:** Comments, data, views, or arguments concerning the Secretary's response are due on or before January 11, 1999.

**ADDRESSES:** Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, N.W., Suite 700, Washington, D.C., 20004.

**FOR FURTHER INFORMATION CONTACT:** Ms. Ellen Livingston-Behan, Senior Program Advisor to the Secretary of Energy, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C., 20585.

Issued in Washington, DC on December 2, 1998.

**Theodore Wyka,**

*Departmental Representative to the Defense Nuclear Facilities Safety Board.*

November 20, 1998.

The Honorable John T. Conway, Chairman, Defense Nuclear Facilities Safety Board 625 Indiana Avenue, NW., Suite 700, Washington, D.C. 20004

Dear Mr. Chairman: Defense Nuclear Facilities Safety Board (Board) Recommendation 98–1, issued on September 28, 1998, recommends improvements to the Department's program for resolving the findings of its independent internal safety oversight organization. I agree that such improvements will enhance our ability to ensure safety. Thus, the Department accepts Board recommendation 98–1.

The Department is committed to having an effective internal, independent oversight function as part of an overall safety assurance approach that also includes line management self-assessments. The Department's policy on line environment, safety and health oversight clearly establishes our expectations that robust, rigorous and credible contractor self-assessments together with Department line management oversight provide the primary basis for ensuring safety. Concurrently, the Department's Office of Oversight is responsible for independent safety oversight. Its findings are communicated to line management through inspection reports (such as safety management evaluations), topical and issue reviews, special studies, and accident investigations. Adequate and timely resolution of safety findings is the responsibility of line management, which has overall responsibility for performing work safely, gathering and considering safety feedback, and making necessary improvements. By acting on the Board's recommendation, we expect to further clarify these roles and responsibilities, and promote effective communication between line management and the independent oversight organization. Both are essential to the effective resolution of identified oversight findings.

The Department has completed a preliminary analysis of the issues raised in the Board's recommendation, and has identified the following as the foundation and focus of our implementation plan.

- The plan will describe a consistent, disciplined framework for developing and implementing corrective action plans in response to oversight findings, tracking and reporting status of corrective actions, verifying the completion of corrective actions, and resolving differences or issues that may arise relative to corrective actions. Department directives will be revised to implement the necessary framework.
- The role of the Office of the Secretary in resolving differences or issues that may arise in response to independent oversight findings will be clarified through enhancements to existing Department directives.

I have asked Ms. Ellen Livingston-Behan, Senior Program Advisor to the Office of the Secretary, to serve as the responsible manager for this recommendation. As the principal point of contact with the Board for this recommendation, she will work with you and your staff to develop an acceptable implementation plan that meets our mutual expectations. If you have questions, please contact her at (202) 586–9500.

Yours sincerely,

Bill Richardson

[FR Doc. 98–32903 Filed 12–9–98; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Office of Science; Office of Science Financial Assistance Program Notice 99–04: Human Genome Program—Technological Advances

**AGENCY:** U.S. Department of Energy (DOE).

**ACTION:** Correction.

In notice document 98–31367 beginning on page 64944, in the issue of Tuesday, November 24, 1998, make the following correction:

On page 64945, in the third column, under the heading ''Program Funding'', in the second line the dollar amount should read ''$5,000,000''.

Issued in Washington, DC, on December 3, 1998.

**John Rodney Clark,**

*Associate Director of Science for Resource Management.*

[FR Doc. 98–32901 Filed 12–9–98; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

**RIN 1904–AA67**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

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

**ACTION:** Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Office of Codes and Standards (OCS) in the Office of Energy Efficiency and Renewable Energy (EE) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget (OMB) for review and approval.

**DATES:** Consideration will be given to comments submitted by January 11, 1999.

**ADDRESSES:** Written comments may be submitted to: Office of Management and Budget, Attn: OMB Energy Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503. A copy of the comments should also be submitted to: Department of Energy, Attn: Bryan Berringer, Office of Codes and Standards (EE–43), Room 1J–018/FORS, 1000 Independence Ave., SW, Washington, DC 20585–0121.

**FOR FURTHER INFORMATION CONTACT:** Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–431, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–0371, E-mail: Bryan.Berringer@HQ.DOE.GOV; Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–72, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9507; or the OMB Energy Desk Officer, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503, (202) 395–3087.

**SUPPLEMENTARY INFORMATION:**

*Collection title:* Proposed Clothes Washer Consumer Impact Analysis.

*Form(s) submitted:* OMB 83–I.

*OMB Number:* None.

*Expiration date of current OMB clearance:* N/A.

*Type of request:* Approval of new collection.

*Respondents:* Individuals or households.

*Estimated annual number of respondents:* 600.

*Estimated burden hours per respondent:* 2 hours.

*Frequency of response:* One time.

*Total annual reporting hours:* 1,200.

*Estimate cost burden to respondents:* No monetary burden.

*Collection description:* OCS is collecting consumer data to determine the value consumers' place on clothes washer attributes, such as rinse and wash cycle temperature, annual electricity and water bill savings, price of clothes washer, top or front loading, etc. Legislation requires that ''the Secretary consider, among other factors, * * * if any lessening of the utility or performance of the products is likely to result from the imposition of the standard'' (42 U.S.C. Sec. 6295(o)(2)(B)(I)(3)). OSC will analyze the data to determine if the new efficiency standard negatively impacts any of the attributes highly valued by consumers.

**ADDITIONAL INFORMATION:** Copies of the form and supporting documents can be obtained from: Bryan Berringer, Office of Codes and Standards (EE–43), Room 1J–018/FORS, 1000 Independence Ave., SW, Washington, DC 20585–0121.

Issued in Washington, DC, on December 7, 1998.

**Dan W. Reicher,**

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

[FR Doc. 98–32864 Filed 12–9–98; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Energy Information Administration

### Agency Information Collection Under Review by the Office of Management and Budget

**AGENCY:** Energy Information Administration, Department of Energy.

**ACTION:** Submission for OMB review; comment request.

**SUMMARY:** The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3507(d)(1)(A) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) Collection number and title; (2) summary of the collection of information (includes sponsor (the DOE component)), current OMB document number (if applicable), type of request (new, revision, extension, or reinstatement); response obligation (mandatory, voluntary, or required to obtain or retain benefits); (3) a description of the need and proposed use of the information; (4) description of the likely respondents; and (5) estimate of total annual reporting burden (average hours per response x proposed frequency of response per year x estimated number of likely respondents.)

**DATES:** Comments must be filed by January 11, 1999. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

**ADDRESSES:** Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW, Washington, D.C. 20503. (Comments should also be addressed to the Statistics and Methods Group at the address below.)

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Herbert Miller, Statistics and Methods Group, (EI–70), Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585. Mr. Miller may be telephoned at (202) 426–1103, FAX (202) 426–1081, or e-mail at hmiller@eia.doe.gov.

**SUPPLEMENTARY INFORMATION:** The energy information collection submitted to OMB for review was:

1. EIA–846(A), (B), and (C), ''Manufacturing Energy Consumption Survey'' (MECS).

2. Energy Information Administration; OMB No. 1905–0169; Reinstatement, with change, of a previously approved collection for which approval has expired; Mandatory.

3. EIA–846(A), (B), and (C) will be used to collect data on energy consumption and related subjects for the manufacturing sector of the U.S. economy. In addition to being used for the National Energy Modeling System, the MECS is used to augment a data base on the manufacturing sector. Respondents are manufacturing establishments.

4. Business or other for-profit.

5. 49,447 hours (18,000 respondents x 1 response per year x 8.24 hours per response) (The 148,340 hour burden is being prorated over a three-year period since the survey will be conducted only one time during this period.)

**Statutory Authority:** Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, D.C., December 4, 1998.

**Jay H. Casselberry,**

*Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.*

[FR Doc. 98–32905 Filed 12–9–98; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. MG99–7–000; MG99–6–000; MG99–9–000; and MG99–8–000]**

## Algonquin Gas Transmission Company, Algonquin LNG, Inc., Maritimes & Northeast Pipeline, L.L.C., Texas Eastern Transmission Corporation; Notice of Filing

December 4, 1998.

Take notice on that on November 25, 1998, Algonquin Gas Transmission Company, Algonquin LNG, Inc., Maritimes & Northeast Pipeline, L.L.C. and Texas Eastern Transmission Corporation each filed revised standards of conduct under Order Nos. 497 *et seq.*[1] Order Nos. 566 *et seq.*,[2] and Order No. 599.[3]

Each company states that it has served copies of its filing to each of its affected customers and state commissions.

Any person desiring to be heard or to protest said filings should file a motion to intervene or a protest in each proceeding with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before December 21, 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 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.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98–32781 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. and Regs. 1986–1990 ¶30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), FERC Stats. and Regs. 1986–1990 ¶30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), FERC Stats. and Regs. 1986–1990 ¶30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), FERC Stats. and Regs. 1991–1996 ¶30,934 (1991), *rehearing denied*, 57 FR 5815 (February 18, 1992), 58 FERC ¶61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date*, 57 FR 58978 (December 14, 1992), FERC Stats. and Regs. 1991–1996 ¶30,958 (December 4, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), FERC Stats. and Regs. 1991–1996 ¶30,987 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), FERC Stats. and Regs. 1991–1996 ¶30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. and Regs. 1991–1996 ¶30,997 (June 17, 1994); Order No. 566–A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶61,044 (October 14, 1994); Order No. 566–B, *order on rehearing*, 59 FR 65707, (December 21, 1994), 69 FERC ¶61,334 (December 14, 1994).

[3] Reporting Interstate Natural Gas Pipeline Marketing Affiliates on the Internet, Order No. 599, 63 FR 43075 (August 12, 1998), FERC Stats. and Regs. 31,064 (1998).

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. TM99–2–20–000]**

## Algonquin Gas Transmission Company; Notice of Tariff Filing

December 4, 1998.

Take notice that on December 1, 1998, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1 and Original Volume No. 2, the revised tariff sheets listed on Appendix A to the filing, to become effective January 1, 1999.

Algonquin states that the purpose of this filing is to revise the Gas Research Institute (GRI) surcharges to be effective January 1, 1999 in compliance with the January 21, 1998, Stipulation and Agreement Concerning GRI Funding approved by the Commission in Gas Research Institute, 83 FERC ¶ 61,093 (1998), order on reh g, 83 FERC ¶ 61,331 (1998). Specifically, Algonquin states that the filing complies with the surcharges set forth in Appendix A to the Stipulation and Agreement as follows: (1) a GRI volumetric surcharge of 0.75¢ per dekatherm will be charged on all non-discounted firm commodity and interruptible transportation services; (2) a 1.8¢ per dekatherm surcharge will be charged on all non-discounted firm commodity units delivered to small customers qualifying for service under Algonquin's Rate Schedules AFT–1S and AFT–ES; (3) a reservation surcharge of 23.0¢ per dekatherm per month will be charged on non-discounted firm high load factor customers, i.e., greater than 50% load factor; and (4) a reservation surcharge of 14.2¢ per dekatherm per month will be charged on non-discounted firm low load factor customers, i.e., less than or equal to 50% load factor.

Algonquin states that copies of the filing were mailed to all affected customers of Algonquin 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.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98–32837 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. TM99–1–48–000]**

## ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 4, 1998.

Take notice that on November 30, 1998, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet proposed to become effective Janaury 1, 1999:

Twenty-Fourth Revised Sheet No. 17

ANR states that the purpose of this filing is to establish the revised Gas Research Institute surcharges approved in the Commission's September 29, 1998 order at Docket No. RP98–235–000.

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 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.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98–32768 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP99–7–000]**

## ANR Pipeline Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Washington County Replacement Project and Request for Comments on Environmental Issues

December 4, 1998.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the replacement of about 0.55 mile of 20-inch-diameter pipeline, proposed in the Washington County Replacement Project.[1] The application and other supplemental filings in this docket are available for viewing on the FERC Internet website (www.ferc.fed.us). Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions.

This EA will be used by the Commission in its decisionmaking process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law. A fact sheet addressing a number of typically asked questions, including the use of eminent domain, is attached to this notice as appendix 1.[2]

### Summary of the Proposed Project

ANR Pipeline Company (ANR) seeks authority to:

- Abandoned and remove 0.6 mile of 20-inch-diameter pipeline (Line 1–301);
- Install in the same trench about 0.6 mile of 20-inch-diameter replacement pipeline, using the existing right-of-way (ROW) plus 25 feet on the western edge as part of the construction work area;
- Use, as temporary staging areas, 1.1 acres of land located outside the existing ROW;
- Extend Ash Road about 100 feet in an easterly direction for ROW access; and
- Use about 2.5 acres of its Germantown Compressor Station site as a contractor yard.

Line 1–301 was installed in 1956 as a loop to Line 301, a 14-inch-diameter pipeline. The recent and ongoing construction of Brookstone Crossing, a residential development, has increased the population density along a segment of Line 1–301. Consequently, ANR must upgrade this segment from a Class 2 to Class 3 pipeline to maintain compliance with the U.S. Department of Transportation (USDOT) regulations.

The location of the project facilities is shown in appendix 2. The proposed construction area would start about 820 feet south of Sherman Road and extend northward to Ash Drive. If you are interested in obtaining procedural information, please write to the Secretary of the Commission.

### Land Requirements for Construction

Construction of the proposed facilities would require about 9.4 acres of land. In addition, a 2.5-acre pipeyard would be used. No new permanent ROW would be acquired. All temporary construction areas would be allowed to revert to their former use.

### The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries, and wetlands
- Vegetation and wildlife
- Endangered and threatened species
- Land use
- Cultural resources
- Public Safety

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section on page 4 of this notice.

### Currently Identified Environmental Issues

We have already identified some issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by ANR. This preliminary list of issues may be changed based on your comments and our analysis.

- The crossing of Cedar Creek could potentially impact rare fish and mussel species.
- Construction may affect a residential area.

[1] ANR Pipeline Company's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

**Public Participation**

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE, Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.2
- Reference Docket No. CP99–007–000; and
- Mail your comments so that they will be received in Washington, DC on or before January 4, 1999.

**Becoming an Intervenor**

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3). Only intervenors have the right to seek rehearing of the Commission's decision.

You do not need intervenor status to have your environmental comments considered. Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the ''RIMS'' link to information in this docket number. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98–32778 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. SA99–10–000]**

## Burk Royalty Company; Notice of Petition for Adjustment

December 4, 1998.

Take notice that on December 2, 1998, Burk Royalty Company (Burk), filed a petition for adjustment, pursuant to section 502(c) of the Natural Gas Policy Act of 1978, for relief from paying Northern Natural Gas Company (Northern) the Kansas ad valorem tax refunds attributable to Melvin J. Smith (Smith), the only royalty interest owner in the lease for which refunds are now due under the Commission's September 10, 1997 order in Docket No. RP97–369–000 *et al.* [80 FERC ¶ 61,264 (1997); rehearing denied, 82 FERC ¶ 61,058 (1998)]. The Commission's September 10 order directed First Sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. Burk's petition is on file with the Commission and open to public inspection.

Northern served Burk with a Kansas ad valorem tax refund claim. With interest compounded through June 30, 1998, Northern's refund claim totals $15,811.32. Burk seeks to be relieved from having to pay the $667.00 in principal, plus the interest, that is attributable to Smith's royalty interest. Burk states that Smith is deceased, and that Smith owned all of the minerals on the lease, making Smith the only royalty interest owner, with a 12.5 percent royalty interest in the lease.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the Federal Register of this notice, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). 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.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98–32784 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP99–165–000]**

## Colorado Interstate Gas Company; Notice of Tariff Filing

December 4, 1998.

Take notice that on November 30, 1998, Colorado Interstate Gas Company (CIG), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Twenty-fifth Revised Sheet No. 11, with an effective date of January 1, 1999.

CIG states that the filing was made pursuant to CIG's FERC Gas Tariff, First Revised Volume No. 1, General Terms and Conditions, Article 21.5 (Account No. 858 Stranded Costs).

CIG states that copies of the filing were served upon the company's jurisdictional firm 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 Rules and 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.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98–32785 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. CP98–107–000 and CP98–109–000]**

## Continental Natural Gas, Inc.; Notice of Corporate Name Change

December 4, 1998.

Take notice that on December 2, 1998, Continental Natural Gas, Inc. (Continental), tendered for filing in the above-docketed proceedings a notice concerning a change in its corporate name.

Continental informs the Commission that effective October 16, 1998, the name of Continental Natural Gas, Inc. has been changed to CMS Continental Natural Gas, Inc. Continental requests that the Commission modify its records in the above-docketed proceedings, including the certificates granted to Continental to reflect the new name. Continental states that its corporate name change is a change in name only and does not reflect any substantive change in operation.

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 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions must be filed on or before December 21, 1998, 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. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98–32777 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. TM99–1–2–000]**

## East Tennessee Natural Gas Company; Notice of Tariff Filing

December 4, 1998.

Take notice that on December 1, 1998, East Tennessee Natural Gas Company (East Tennessee), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Fifteenth Revised Sheet No. 4, with an effective date of January 1, 1999.

East Tennessee states that it is submitting the revised tariff sheet pursuant to Section 33 of the General Terms and Conditions of its Tariff, the March 10, 1998 Stipulation and Agreement filed in Docket No. RP97–149, et al., and approved by the Commission on April 29, 1998, and the Commission's ''Order Approving the Gas Research Institute's 1999 Research, Development and Demonstration Program and 1999–2003 Five-Year Plan'' issued in Docket No. RP98–235. See Gas Research Institute, 83 FERC 61,093 (1998); Gas Research Institute, 84 FERC 61,326 (1998). East Tennessee further states that tariff sheet revises the Gas Research Institute surcharges for 1999.

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.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98–32834 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. TM99–3–23–000]**

## Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 4, 1998.

Take notice that on December 1, 1998, Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, certain revised tariff sheets in the above captioned docket bear a proposed effective date of November 1, 1998.

ESNG states that the purpose of this instant filing is to track rate changes attributable to storage services purchased from Transcontinental Gas Pipe Line Corporation (Transco) under its Rate Schedules GSS and LSS, the costs of which comprise the rates and charges payable under ESNG's Rate Schedules GSS and LSS. This tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedules GSS and LSS, respectively.

ESNG states that copies of the filing have been served upon its jurisdictional 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, 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.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98–32844 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP99–168–000]**

## El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 4, 1998.

Take notice that on December 1, 1998, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets to become effective January 1, 1999:

**Second Revised Volume No. 1–A**

Fifteenth Revised Sheet No. 20
Ninth Revised Sheet No. 22
Fifteenth Revised Sheet No. 23
Nineteenth Revised Sheet No. 24
Fifteenth Revised Sheet No. 26
Fifteenth Revised Sheet No. 27

**Third Revised Volume No. 2**

Forth-Fourth Revised Sheet No. 1–D.2

Thirty-Eighth Revised Sheet No. 1–D.3

El Paso states that the above tariff sheets are being filed to adjust its rates for inflation.

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.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98–32786 Filed 12–9–98; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. TM99–2–4–000]**

## Granite State Gas Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

December 4, 1998.

Take notice that on December 1, 1998, Granite State Gas Transmission, Inc. (Granite State) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the revised tariff sheets listed below for the effectiveness on January 1, 1999.

Sixteenth Revised Sheet No. 21
Seventeenth Revised Sheet No. 22
Twelfth Revised Sheet No. 23

According to Granite State the purpose of its filing is to revise the Gas Research Institute (GRI) surcharges in its firm and interruptible transportation rates to conform with the reduced surcharges to be effective during 1999 proposed by GRI in the settlement in Docket No. RP98–235–000 which was approved by the Commission in an order issued September 29, 1998.

Granite State further states that copies of its filing have been served on its firm and interruptible 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, 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.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98–32775 Filed 12–9–98; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. TM99–3–4–000]**

## Granite State Gas Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

December 4, 1998.

Take notice that on December 1, 1998, Granite State Gas Transmission, Inc. (Granite State) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the revised tariff sheets listed below for effectiveness on January 1, 1999:

Substitute Sixteenth Revised Sheet No. 21
Substitute Seventeenth Revised Sheet No. 22

According to Granite State, the foregoing tariff sheets propose a revised Power Cost Adjustment (PCA) surcharge applicable to its firm transportation services during the first quarter of 1999 to reimburse Granite State for certain electric power costs that it is obligated to pay Portland Pipe Line Corporation pursuant to the terms of a lease of a pipeline from Portland Pipe Line.

Granite State further states that the total surcharge of $0.5787 consists of the sum of two components: the Quarterly Forecast PCA factor of $0.7948 which is based on projected incremental electric power costs to be billed to Granite State during the first quarter of 1999 and the Reconcilable PCA factor of $<0.2161> which reconciles the accumulated over/under past surcharge collections in the Deferred Account on a quarterly basis. The method for developing the surcharge in the foregoing manner was approved by the Commission in orders issued in Docket Nos. RP98–155–003 and TM98–4–4–001, according to Granite State.

Granite State further states that copies of its filing have been served on 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.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98–32842 Filed 12–9–98; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 11597–000, AK]**

## Ketchikan Public Utilities; Notice of Ketchikan Public Utilities Request To Use Alternative Procedures in Filing a License Application

December 4, 1998.

The preliminary permit holder, Ketchikan Public Utilities (KPU), has asked to use an alternative procedure in filing an application for original license for the proposed Whitman Lake Hydroelectric Project No. 11597.[1] KPU has demonstrated that they have made an effort to contact all resource agencies, Indian tribes, nongovernmental organizations (NGOs), and others affected by their proposal, and that a consensus exists that the use of an alternative procedure is appropriate in

[1] The 4,500-kilowatt project would be located on Whitman Creek, in Ketchikan Gateway Borough Alaska, partially within the Tongass National Forest.

this case. KPU has also submitted a communication protocol that is supported by most interested entities.

The purpose of this notice is to invite any additional comments on KPU's request to use the alternative procedure, as required under the final rule for Regulations for the Licensing of Hydroelectric Projects.[2] Additional notices seeking comments on the specific project proposal, interventions and protests, and recommended terms and conditions will be issued at a later date.

The alternative procedure being requested here combines the prefiling consultation process with the environmental review process, allowing the applicant to complete and file an Environmental Assessment (EA) in lieu of Exhibit E of the license application. This differs from the traditional process, in which the applicant consults with agencies, Indian tribes, and NGOs during preparation of the application for the license and before filing it, but the Commission staff performs the environmental review after the application is filed. The alternative procedure is intended to simplify and expedite the licensing process by combining the prefiling consultation and environmental review processes into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants.

**Applicant Prepared EA Process and Whitman Lake Project Schedule**

On November 14, 1998, KPU distributed a schedule for the proposed project to state and federal resource agencies, Indian tribes, and NGOs. KPU scheduled a consultation meeting and site visit for all interested parties in early January 1999. Notices announcing the meeting and site visit would be published locally, as required by Commission regulations.

Public scoping meetings are planned for Spring 1999. Based on study requests from the January meetings, study plans would be developed early in 1999. Studies would be conducted during spring, summer, and fall 1999, as needed. The application, including the applicant-prepared EA, would be filed with the Commission on or before May 2000, the expiration date of KPU's preliminary permit is June 05, 2000.

**Comments**

Interested parties have 30 days from the date of this notice to file with the Commission, any comments on KPU's proposal to use the alternative procedures to file an application for the Whitman Lake Hydroelectric Project.

**Filing Requirements**

The comments must be filed by providing an original and 8 copies as required by the Commission's regulations to: Federal Energy Regulatory Commission, Office of the Secretary, Dockets—Room 1A, 888 First Street, NE, Washington, DC 20426.

All comment filings must bear the heading ''Comments on the Alternative Procedure,'' and include the project name and number (Whitman Lake Hydroelectric Project, No. 11597).

For further information, call Gaylord Hoisington of the Federal Energy Regulatory Commission at (202) 219–2756, or E-mail Gaylord.Hoisington@FERC.FED.US. Information is also available on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98–32832 Filed 12–9–95; 8:45 am]

BILLING CODE 6717–01–M

[2] 81 FERC ¶ 61,103 (1997).

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 11599–000, AK]**

## Ketchikan Public Utilities; Notice of Ketchikan Public Utilities Request To Use Alternative Procedures in Filing a License Application

December 4, 1998.

The preliminary permit holder, Ketchikan Public Utilities (KPU), has asked to use an alternative procedure in filing an application for original license for the proposed Connell Lake Hydroelectric Project No. 11599.[1] KPU has demonstrated that they have made an effort to contact all resource agencies, Indian tribes, nongovernmental organizations (NGOs), and others affected by their proposal, and that a consensus exists that the use of an alternative procedure is appropriate in this case. KPU has also submitted a communication protocol that is supported by most interested entities.

The purpose of this notice is to invite any additional comments on KPU's request to use the alternative procedure, as required under the final rule for Regulations for the Licensing of Hydroelectric Projects.[2] Additional notices seeking comments on the specific project proposal, interventions and protests, and recommended terms and conditions will be issued at a later date.

The alternative procedure being requested here combines the prefiling consultation process with the environmental review process, allowing the applicant to complete and file an Environmental Assessment (EA) in lieu of Exhibit E of the license application. This differs from the traditional process, in which the applicant consults with agencies, Indian Tribes, and NGOs during preparation of the application for the license and before filing it, but the Commission staff performs the environmental review after the application is filed. The alternative procedure is intended to simplify and expedite the licensing process by combining the prefiling consultation and environmental review processes into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants.

**Applicant Prepared EA Process and Connell Lake Project Schedule**

On November 12, 1998, KPU distributed a schedule for the proposed project to state and federal resource agencies, Indian tribes, and NGOs. KPU scheduled a consultation meeting and site visit for all interested parties in early January 1999. Notices announcing the meeting and site visit would be published locally, as required by Commission regulations.

Public scoping meetings are planned for Spring 1999. Based on study requests from the January meetings, study plans would be developed early in 1999. Studies would be conducted during spring, summer, and fall 1999, as needed. The application, including the applicant-prepared EA, would be filed with the Commission on or before June 2000, the expiration date of KPU's preliminary permit is July 25, 2000.

**Comments**

Interested parties have 30 days from the date of this notice to file with the Commission, any comments on KPU's proposal to use the alternative procedures to file an application for the Connell Lake Hydroelectric Project.

**Filing Requirements**

The comments must be filed by providing an original and 8 copies as required by the Commission's regulations to: Federal Energy Regulatory Commission, Office of the Secretary, Dockets—Room 1A, 888 First Street, NE, Washington, DC 20426.

[1] The 1,700-kilowatt project would be located on Connell Lake, owned by the Ketchikan Pulp Company, on Ward Creek, near the City of Ketchikan within the Tongass National Forest.

[2] 81 FERC ¶ 61,103 (1997).

All comment filings must bear the heading ''Comments on the Alternative Procedure,'' and include the project name and number (Connell Lake Hydroelectric Project, No. 11599).

For further information, call Gaylord Hoisington of the Federal Energy Regulatory Commission at (202) 219–2756, or E-mail Gaylord.Hoisington@FERC. FED.US. Information is also available on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98–32833 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. TM99–1–53–000]**

## KN Interstate Gas Transmission Company; Notice of Tariff Filing

December 4, 1998.

Take notice that on December 1, 1998, KN Interstate Gas Transmission Co. (KNI) tendered for filing to become a part of KNI's FERC Gas Tariff, the following revised tariff sheet(s) to be effective January 1, 1999:

**Third Revised Volume No. 1–A**

Sixth Revised Sheet No. 4–D

**First Revised Volume No. 1–C**

Eleventh Revised Sheet No. 4

KNI states that this filing is being submitted in compliance with the Gas Research Institute's (GRI) application seeking approval of its 1999 RD&D program recently approved by the Commission in Docket No. RP98–235.

KNI states that copies of the filing were served upon all affected firm customers of KNI and applicable state 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, 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.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98–32769 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. TM99–1–117–000]**

## KN Wattenberg Transmission Limited Liability Co.; Notice of Tariff Filing

December 4, 1998.

Take notice that on December 1, 1998, KN Wattenberg Transmission Limited Liability Co. (KNW) tendered for filing to become a part of KNW's FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet(s) to be effective January 1, 1999:

First Revised Sheet No. 6

KNW states that this filing is being submitted in compliance with the Gas Research Institute's application seeking approval of its 1999 RD&D program recently approved by the Commission in Docket No. RP98–235.

KNW states that copies of the filing were served upon all affected firm customers of KNW and applicable state 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.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98–32773 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. TM99–1–5–000]**

## Midwestern Gas Transmission Company; Notice of Tariff Filing

December 4, 1998.

Take notice that on December 1, 1998, Midwestern Gas Transmission Company (Midwestern), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Ninth Revised Sheet No. 5, with an effective date of January 1, 1999.

Midwestern states that it is submitting the revised tariff sheet pursuant to Article XVII of the General Terms and Conditions of its Tariff, the March 10, 1998 Stipulation and Agreement filed in Docket No. RP97–149, et al., and approved by the Commission on April 29, 1998, and the Commission's ''Order Approving the Gas Research Institute's 1999 Research, Development and Demonstration Program and 1999–2003 Five-Year Plan'' issued in Docket No. RP98–235. See Gas Research Institute, 83 FERC 61,093 (1998); Gas Research Institute, 84 FERC 61,326 (1998). Midwestern further states that tariff sheet revises the Gas Research Institute surcharges for 1999.

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.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98–32835 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP99–177–000]**

## National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 4, 1998.

Take notice that on December 1, 1998, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Ninth Revised Sheet No. 8, with a proposed effective date of January 1, 1999.

National states that the proposed tariff sheets reflect an adjustment to recover through National's EFT rate the costs associated with 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.

National further states that copies of this compliance filing were served upon the Company's jurisdictional customers and the regulatory commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

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 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.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98–32764 Filed 12–9–98; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. TM99–2–16–000]**

## National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 4, 1998.

Take notice that on December 1, 1998, National Gas Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets to become effective January 1, 1999:

8th Revised Sheet No. 8
13th Revised Sheet No. 9
3rd Revised Sheet No. 10
2nd Revised Sheet No. 11

National asserts that the purpose of this filing is to reflect the 1999 Gas Research Institute (GRI) unit surcharges approved by the Commission on April 29, 1998, at Docket No. RP97–149–003, et al.

The proposed tariff sheets reflect demand/reservation surcharges of 23.0 cents and 14.2 cents per Dth for ''high load factor and low load factor'' customers respectively, and a commodity/usage surcharge of .75 cents on firm service and one-part interruptible rates.

National further states that copies of this filing are being were served upon National'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, 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.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98–32776 Filed 12–9–98; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP99–91–000]**

## National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization

December 4, 1998.

Take notice that on November 24, 1998, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP99–91–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon, certain facilities located in Clarion County, Pennsylvania. National Fuel makes such request under its blanket certificate issued in Docket No. CP83–4–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission.

Specifically, National Fuel requests authorization to abandon in place approximately 4,053 feet of a 2-inch and 3-inch sales lateral designated Line M–W3202(T), because of its age and deteriorated condition. National Fuel also requests authorization to remove and abandon Station No. P–2796, located on Line M–W3202(T), and one point of delivery which previously provided service to one residential customer of National Fuel Gas Distribution Corporation (Distribution).

It is stated that Distribution has received approval from the Pennsylvania Public Utility Commission for the abandonment of the one residential customer affected by National Fuel's proposed abandonment. It is averred that the one residential customer has converted to an alternate fuel.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

authorization pursuant to Section 7 of the Natural Gas Act.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98–32780 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. TM99–3–16–000]**

### National Fuel Gas Supply Corporation; Notice of Tariff Filing

December 4, 1998.

Take notice that on December 1, 1998, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Fourteenth Sheet No. 9 and Second Revised Sheet No. 43 to its FERC Gas Tariff, Fourth Revised Volume No. 1, with a proposed effective date of January 1, 1999.

National states that pursuant to Article III, Section 1, of the approved settlement at Docket Nos. RP94–367–000, et al., National is required to recalculate the maximum Firm Gathering (FG) rate annually to reflect: (a) the changes in the FG reservation determinants based on the FG throughout for the prior 12 months ended October 31; (b) an annual reduction of 2.5 percent in direct Operation and Maintenance Costs; (c) the costs resulting from operation of Sections 2 and 3 of Article III of the settlement; and (d) changes in the IG revenues to be subtracted from the Gathering Cost-of-Service based on the maximum IG rate in effect each month during the prior 12 months ended October 31 times the IG throughput for the same period. The recalculation produced an FG rate of $7.9343 per dth.

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.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98–32843 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP99–176–000]**

### Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

December 4, 1998.

Take notice that on December 1, 1998, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain tariff sheets to be effective Janaury 1, 1999.

Natural states that the purpose of this filing is to implement a negotiated rate provision in its tariff consistent with the Federal Energy Regulatory Commission's (Commission): (1) ''Statement of Policy and Request for Comments'' issued January 31, 1996 in Docket Nos. RM95–6 and RM96–7, and (2) Order issued August 31, 1998, in Docket No. RP98–362.

Natural requested waiver of the Commission's Regulations to the extent neecessary to permit the tariff sheets submitted to become effective Janaury 1, 1999.

Natural states that copies of the filing are being mailed to its 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 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.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98–32763 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. OA97–237–000, ER97–1079–000 and ER97–3574–000]**

### New England Power Pool; Notice of Informal Settlement Conference

December 4, 1998.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 10:00 a.m. on Thursday, December 10, 1998, at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervener status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Joseph H. Long at (202) 208–2149 or Hyun S. Kim at (202) 208–2960.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98–32782 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. TM99–1–59–000]**

### Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 4, 1998.

Take notice that on December 1, 1998, Northern Natural Gas Company (Northern) tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1 and Original Volume No. 2, the following tariff sheets proposed to be effective January 1, 1999:

**Fifth Revised Volume No. 1**

48 Revised Sheet No. 50
48 Revised Sheet No. 51
18 Revised Sheet No. 52
44 Revised Sheet No. 53

**Original Volume No. 2**

156 Revised Sheet No. 1C
31 Revised Sheet No. 1C.a

Northern states that the above sheets are being filed to reflect the Gas Research Institute (GRI) funding surcharges for the 1999 calendar year.

Northern further states that copies of the filing have been mailed to each of its 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, 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.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98–32770 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP99–172–000]**

## Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 4, 1998.

Take notice that on December 1, 1998, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1 the following tariff sheets, proposed to be effective January 1, 1999:

47 Revised Sheet No. 50
47 Revised Sheet No. 51
43 Revised Sheet No. 53

Northern states that this filing establishes the 1998–1999 system Balancing Agreement (SBA) cost recovery surcharge to be effective January 1, 1999.

Northern further states that copies of the filing have been mailed to each of its 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, 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.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98–32787 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP99–173–000]**

## Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 4, 1998.

Take notice that on December 1, 1998, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised 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 46 Revised Sheet No. 50 and 51 and the 42 Revised Sheet No. 53 to be effective January 1, 1999.

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, NE., Washington, DC 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.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98–32847 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP99–175–000]**

## Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

December 4, 1998.

Take notice that on December 1, 1998, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective January 1, 1999.

Panhandle states that this filing removes from its currently effective rates the Miscellaneous Stranded Cost Reservation Volumetric Surcharge applicable to Rate Schedules IT and EIT for the reconciliation recovery period established in Docket No. RP98–75–000. The current volumetric surcharge was approved by a Commission letter order issued December 24, 1997. The reconciliation recovery period will terminate on December 31, 1998. Accordingly, Panhandle proposes to remove the 0.80¢ per Dt. Section 18.14 Miscellaneous Stranded Cost Volumetric Surcharge.

Panhandle further states that this filing reinstates the Carryover Second GSR Settlement Interruptible Rate Component applicable to interruptible transportation service provided under Rate Schedules IT and EIT. The Second GSR Settlement Interruptible Rate Component was established in a April 18, 1996 Stipulation and Agreement in Docket No. RP95–411–000 (April 18, 1996 Settlement). Accordingly, pursuant to Article I, Section 3(f)(ii) of the April 18, 1996 Settlement, Panhandle is proposing to implement a 1.11¢ per Dt. Carryover Second GSR Settlement Interruptible Rate Component to be in effect during the twelve month Second GSR Settlement Carryover Period commencing January 1, 1999.

Panhandle states that copies of this filing are being served on all affected customers and applicable 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.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98–32762 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. TM99–2–28–000]**

## Panhandle Eastern Pipe Line Company; Notice of Tariff Filing

December 4, 1998.

Take notice that on December 1, 1998, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective January 1, 1999:

Fifty-First Revised Sheet No. 4
Fifty-First Revised Sheet No. 5
Fifty-First Revised Sheet No. 6
Forty-Ninth Revised Sheet No. 7
Forty-Ninth Revised Sheet No. 8
Thirtieth Revised Sheet No. 15

Panhandle states that the purpose of this filing is to revise the Gas Research Institute (GRI) surcharges to be effective January 1, 1999 in compliance with the January 21, 1998, Stipulation and Agreement Concerning GRI Funding approved by the Commission in Gas Research Institute, 83 FERC ¶ 61,093 (1998), order on reh'g, 83 FERC ¶ 61,331 (1998). Specifically, Panhandle's filing complies with the surcharges set forth in Appendix A to the Stipulation and Agreement as follows: (1) a reservation surcharge of 23.0¢ per dekatherm per month will be charged on non-discounted firm high load factor customers, i.e., greater than 50% load factor; (2) a reservation surcharge of 14.2¢ per dekatherm per month will be charged on non-discounted firm low load factor customers, i.e., less than or equal to 50% load factor; (3) a GRI volumetric surcharge of 0.75¢ per dekatherm surcharge will be charged on all non-discounted firm commodity and interruptible transportation services; and (4) a 1.8¢ per dekatherm surcharge will be charged on all non-discounted firm commodity units delivered to customers qualifying for service under Panhandle's Rate Schedule SCT.

Panhandle states that copies of this filing are being served on all affected customers and applicable 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.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98–32838 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. TM99–1–86–000]**

## PG&E Gas Transmission, Northwest; Notice of Tariff Filing

December 4, 1998.

Take notice that on December 1, 1998, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A: Twenty-first Revised Sheet No. 5. PG&E GT–NW requests that the above-referenced tariff sheet become effective January 1, 1999.

PG&E GT–NW asserts that the purpose of this filing is to comply with Paragraph 37 of the terms and conditions of First Revised Volume No. 1–A of its FERC Gas Tariff, ''Adjustment for Fuel, Line Loss and Other Unaccounted For Gas Percentages.'' These tariff changes reflect that PG&E GT–NW's fuel and line loss surcharge percentage will increase to 0.0009% per Dth per pipeline-mile for the six-month period beginning January 1, 1999. Also included, as required by Paragraph 37, are workpapers showing the derivation of the current fuel and line loss percentage in effect for each month the fuel tracking mechanism has been in effect.

PG&E GT–NW further states that a copy of this filing has been served on PG&E GT–NW's jurisdictional customers 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, 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 pbulic inspection in the Public Reference Room.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98–32772 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. TM99–2–86–000]**

## PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing

December 4, 1998.

Take notice that on December 1, 1998, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, the following revised tariffs sheets: Twenty-Fifth Revised Sheet No. 4, Thirteenth Revised Sheet No. 4A and Tenth Revised Sheet No. 6C, with an effective date of January 1, 1999.

PG&E GT–NW states that these tariff sheets establish PG&E GT–NW's Gas Research Institute (GRI) surcharge for calendar year 1999. PG&E GT–NW proposes that these sheets be made effective January 1, 1999.

PG&E GT–NW further states that a copy of this filing has been served on PG&E GT–NW's jurisdictional customers 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, 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.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98–32841 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP99–98–000]**

## Southern Natural Gas Company, Texas Gas Transmission Corporation; Notice of Application To Abandon

December 4, 1998.

Take notice that on December 2, 1998, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama, 35202–2563, and Texas Gas Transmission Corporation (Texas Gas), P.O. Box 20008, Owensboro, Kentucky 42304 (jointly referred to as Applicants) filed under Section 7(b) of the Natural Gas Act, for authority to abandon, an interruptible transportation service which Applicants provided for Mississippi Valley Gas Company (MVG). The service was provided under Southern's Rate Schedule X–42 and Texas Gas' Rate Schedule X–76, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicants state that this transportation service is no longer needed and has been terminated by mutual agreement between Applicants and MVG.

Any person desiring to be heard or make any protest with reference to said application should on or before December 28, 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, 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 Applicants to appear or be represented at the hearing.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98–32831 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP99–164–000]**

## Southern Natural Gas Company; Notice of Revised Tariff Sheets

December 3, 1998.

Take notice that on November 30, 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, to become effective January 1, 1999:

Forty-Third Revised Sheet No. 14
Twenty-Ninth Revised Sheet No. 14a
Sixty-Fourth Revised Sheet No. 15
Thirty-Fifth Revised Sheet No. 15a
Forty-Third Revised Sheet No. 16
Twenty-Ninth Revised Sheet No. 16a
Sixty-Fourth Revised Sheet No. 17
Thirty-Fifth Revised Sheet No. 17a
Thirty-Fourth Revised Sheet No. 18
Sixteenth Revised Sheet No. 18a

Section 14.2 of Southern's Tariff provides for an annual reconciliation of Southern's storage costs to reflect differences between the cost to Southern of its storage gas inventory and the amount Southern receives for such gas arising out of (i) the purchase and sale of such gas in order to resolve shipper imbalances; and (ii) the purchase and sale of gas as necessary to maintain an appropriate level of storage gas inventory for system management purposes. In the instant filing, Southern submits the rate surcharge to the transportation component of is rates under Rate Schedules FT, FT–NN, and IT resulting from the fixed and realized losses it has incurred from the purchase and sale of its storage gas inventory.

Southern states that 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, 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. 98–32846 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. TM99–1–122–000]**

## TCP Gathering Company; Notice of Tariff Filing

December 4, 1998.

Take notice that on December 1, 1998, TCP Gathering Co. (TCP) tendered for filing to become a part of TCP's FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheet(s) to be effective January 1, 1999.

Third Revised Sheet No. 6

TCP states that this filing is being submitted in compliance with the Gas Research Institute's (GRI) application seeking approval of its 1999 RD&D program recently approved by the Commission in Docket No. RP98–235.

TCP states that copies of the filing were served upon all affected firm cutomers of TCP and applicable state 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.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98–32774 Filed 12–9–98; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. RP99–171–000 and TM99–1–9–000]**

## Tennessee Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 4, 1998.

Take notice that on December 1, 1998, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, the revised tariff sheets identified in Appendix A to the filing, in Original Volume No. 2 and Fifth Revised Volume No. 1. Tennessee requests an effective date of January 1, 1999.

Tennessee states that it is filing the revised tariff sheets pursuant to Article XXXV of the General Terms and Conditions of its FERC Gas Tariff and Article VI of the February 18, 1997 Stipulation and Agreement filed in Docket No. RP93–151, et al., and approved by the Commission on April 16, 1997 (the GSR Settlement). See Tennessee Gas Pipeline Company, 79 FERC 61,031 (1997). Tennessee is tendering the revised tariff sheets to eliminate the Firm Settlement Surcharges as specified in Article VI of the GSR Settlement.

In addition, Tennessee is tendering the revised tariff sheets identified above to revise the Gas Research Institute surcharges for 1999. Tennessee is revising these surcharges pursuant to Article XXII of the General Terms and Conditions of its Tariff, the March 10, 1998 Stipulation and Agreement filed in Docket No. RP97–149, et al., and approved by the Commission on April 29, 1998, and the Commission's ''Order Approving the Gas Research Institute's 1999 Research, Development and Demonstration Program and 1999–2003 Five-Year Plan'' issued in Docket No. RP98–235. See Gas Research Institute, 83 FERC 61,093 (1998); Gas Research Institute, 84 FERC 61,326 (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, 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.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98–32766 Filed 12–9–98; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. TM99–1–17–000]**

## Texas Eastern Transmission Corporation; Notice of Tariff Filing

December 4, 1998.

Take notice that on December 1, 1998, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2, the revised tariff sheets listed on Appendix A to the filing, to become effective January 1, 1999.

Texas Eastern states that the purpose of this filing is to revise the Gas Research Institute (GRI) surcharges to be effective January 1, 1999 in compliance with the January 21, 1998, Stipulation and Agreement Concerning GRI Funding approved by the Commission in Gas Research Institute, 83 FERC ¶ 61,093 (1998), order on reh g, 83 FERC ¶ 61,331 (1998).

Specifically, Texas Eastern states that the filing complies with the surcharges set forth in Appendix A to the Stipulation and Agreement as follows: (1) a GRI volumetric surcharge of 0.75¢ per dekatherm will be charged on all non-discounted firm commodity and interruptible transportation services; (2) a 1.8¢ per dekatherm surcharge will be charged on all non-discounted firm commodity units delivered to customers qualifying for service under Texas Eastern s Rate Schedule SCT; (3) a reservation surcharge of 23.0¢ per dekatherm per month will be charged on non-discounted firm high load factor customers, i.e., greater than 50% load factor; and (4) a reservation surcharge of 14.2¢ per dekatherm per month will be charged on non-discounted firm low load factor customers, i.e., less than or equal to 50% load factor.

Texas Eastern states that copies of the filing were mailed to all affected customers of Texas Eastern 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.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98–32767 Filed 12–9–98; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP99–178–000]**

## TransColorado Gas Transmission Company; Notice of Tariff Filing

December 4, 1998.

Take notice that on December 1, 1998, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective January 1, 1999.

In June 1997, El Paso TransColorado Company withdrew as a partner in TransColorado Gas Transmission Company, leaving K N TransColorado, Inc. and Questar TransColorado, Inc. as the two remaining partners. Effective January 1, 1999, El Paso will end its duties as operator and K N Energy, Inc. will become the operator of TransColorado. As a result, certain tariff provisions have been modified to fit the operating requirements of KN's Direct Access Request and Tracking System, which replaces the Electronic Bulletin Board provisions presently being used to operate the TransColorado pipeline system.

TransColorado states that a copy of this filing has been served upon its customers and the Colorado Public Utilities Commission and New Mexico Public Regulatory 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, 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.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98–32765 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. TM99–2–29–000]**

## Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 4, 1998.

Take notice that on December 1, 1998, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets which tariff sheets are enumerated in Appendix A attached to the filing. Such tariff sheets are proposed to be effective January 1, 1999.

Transco states that the purpose of the instant filing is to reflect the 1999 GRI surcharges approved by the Commission's Order issued on September 29, 1998, in Docket No. RP98–235–000. Also, in accordance with GRI's 1993 settlement, Transco has calculated the firm transportation service load factors on the actual volumes transported during the 12 month period October 1997 through September 1998. The only changes resulting are the reclassification of Baltimore Gas & Electric Company, PG Energy, Inc., South Jersey Gas Company and UGI Utilities, Inc. from the high load factor catagory to the low load factor category.

Transco states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to interevene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.W., 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.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98–32839 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. TM99–1–42–000]**

## Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 4, 1998.

Take notice that on December 1, 1998, Transwestern Pipeline Company (Transwestern), tendered for filing to become part of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1 the following tariff sheets, to be effective January 1, 1999:

121 Revised Sheet No. 5
26 Revised Sheet No. 5A
18 Revised Sheet No. 5A.02
18 Revised Sheet No. 5A.03
23 Revised Sheet No. 5B

Transwestern states that the purpose of this filing is to set forth the approved 1999 GRI demand surcharges to be effective January 1, 1999 in accordance with the Offer of Settlement dated January 21, 1998.

Transwestern states that copies of the filing were served upon Transwestern'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, 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.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98–32836 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. TM99–3–30–000]**

### Trunkline Gas Company; Notice of Tariff Filing

December 4, 1998.

Take notice that on December 1, 1998, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective January 1, 1999:

Twenty-Eighth Revised Sheet No. 6
Twenty-Seventh Revised Sheet No. 7
Twenty-Eighth Revised Sheet No. 8
Twenty-Eighth Revised Sheet No. 9
Tenth Revised Sheet No. 9A
Twenty-Seventh Revised Sheet No. 10
Thirteenth Revised Sheet No. 10A

Trunkline states that the purpose of this filing is to revise the Gas Research Institute (GRI) surcharge to be effective January 1, 1999 in compliance with the January 21, 1998, Stipulation and Agreement Concerning GRI Funding approved by the Commission in Gas Research Institute, 83 FERC ¶ 61,093 (1998), order on reh'g, 83 FERC ¶61,331 (1998). Specifically, Trunkline's filing complies with the surcharges set forth in Appendix A to the Stipulation and Agreement as follows: (1) a reservation surcharge of 23.0¢ per dekatherm per month will be charged on non-discounted firm high load factor customers, i.e., greater than 50% load factor; (2) a reservation surcharge of 14.2¢ per dekatherm per month will be charged on non-discounted firm low load factor customers, i.e., less than or equal to 50% load factor; (3) a GRI volumetric surcharge of 0.75¢ per dekatherm surcharge will be charged on all non-discounted firm commodity and interruptible transportation services; and (4) a 1.8¢ per dekatherm surcharge will be charged on all non-discounted firm commodity units delivered to customers qualifying for service under Trunkline's Rate Schedule SST.

Trunkline states that copies of this filing are being served on all affected customers and applicable 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, 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.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98–32845 Filed 12–9–98; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. TM99–1–82–000]**

### Viking Gas Transmission Company; Notice of Tariff Filing

December 4, 1998.

Take notice that on December 1, 1998, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Thirteenth Revised Sheet No. 6, and Seventh Revised Sheet No. 6A, to become effective January 1, 1999.

Viking states that the purpose of this filing is to change Viking's Gas Research Institute Adjustment (GRI Adjustment) as permitted by Sections 154.204 and 154.401 of the Commission's Rules and Regulations (18 CFR 154.204, 154.401), and in accordance with the Commission's September 29, 1998 ''Order Approving the Gas Research Institute's 1999 Research, Development and Demonstration Program and 1999–2003 Five Year Plan,'' issued in Docket No. RP98–235–000, 84 FERC ¶ 61,326 (September 29, 1998 Order). Viking's authority to make this filing is set forth in Article XVIII of the General Terms and Conditions of Viking's FERC Gas Tariff, First Revised Volume No. 1.

Accordingly, Viking's GRI Adjustment has been changed to reflect the Commission's September 29, 1998 Order as follows: a demand/reservation surcharge of 23 cents per Dth per month for ''high load factor customers;'' a demand/reservation surcharge of 14.2 cents per Dth per month for ''low load factor customers;'' and a volumetric commodity/usage surcharge of .75 cents per Dth.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected 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, 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.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98–32771 Filed 12–9–98; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP99–89–000]**

### Williams Gas Pipelines Central, Inc.; Notice of Request Under Blanket Authorization

December 4, 1998.

Take notice that on November 23, 1998, Williams Gas Pipelines Central, Inc. (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP99–89–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon in place by sale to Texaco Exploration and Production, Inc. (Texaco), approximately 7.4 miles of the Lindsay 16-inch pipeline (Line VOA), related service and facilities located in Garvin County, Oklahoma, under Williams' blanket certificate issued in Docket No. CP82–479–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Williams proposes to abandon in place by sale to Texaco approximately 7.4 miles of the Lindsay 16-inch lateral pipeline, consisting of 8-inch, 10-inch, and 16-inch pipeline, and equipment related to or used in connection with the operation of the pipeline, beginning in Section 1, Township 4 North, Range 4 West Garvin, County, Oklahoma, and extending to Section 5, Township 4 North, Range 2 West, Garvin County, Oklahoma.

Williams states that the Lindsay 16-inch pipeline was constructed to attach gas supplies in the Golden Trend area of central Oklahoma for further transmission on Williams' general system. Williams declares that in addition to providing a new source of major supplies of natural gas for Williams' system, the facilities enabled them to maintain gas inputs on the Blackwell-Oklahoma City portion of its system. Williams asserts it has determined that the Lindsay 16-inch pipeline is no longer required by Williams and will serve a more useful purpose as a part of the Texaco pipeline system. With the abandonment proposed herein, Williams declares that Texaco will own and operate the entire Lindsay 16-inch lateral pipeline.

Williams states that the sales price of the line is $450,000 and associated reclaim costs are $45,241.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98–32779 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP99–174–000]**

## Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

December 4, 1998.

Take notice that on December 1, 1998, William Gas Pipelines Central, Inc. (Williams), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with the proposed effective date of January 1, 1999:

First Revised Sheet No. 38

Original Sheet Nos. 39 and 40

Williams states that this filing is being made pursuant to Article 14.2 (g) and (h) of the General Terms and Conditions of its FERC Gas Tariff. Article 14.2(g) provides that Williams may file to recover through an alternate mechanism any GSR costs not recovered through the mechanism set forth in Article 14.2. Williams proposes herein to recover approximately $735,000 of GSR costs allocated to interruptible transportation service in Docket Nos. RP96–173 and RP96–303 but not recovered during the 24 months following the effective date of increased interruptible transportation rates reflecting such costs.

Williams states that a copy of its filing was served on all of Williams' jurisdictional 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, 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.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98–32788 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. TM99–2–43–000]**

## Williams Gas Pipelines Central, Inc., Notice of Proposed Changes in FERC Gas Tariff

December 4, 1998.

Take notice that on December 1, 1998, Williams Gas Pipelines Central, Inc. (Williams), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet, with the proposed effective date of January 1, 1999:

First Revised Sheet No. 6B

WNG states that this filing is being made pursuant to Article 13 of the General Terms and Conditions of its FERC Gas Tariff to reflect revised fuel and loss reimbursement percentages. The percentages are based on actual fuel and loss for the twelve months ended September 30, 1998.

WNG states that a copy of its filing was served on all jurisdictional 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.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98–32840 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER99–741–000, et al.]**

## Peco Energy Company, et al.; Electric Rate and Corporate Regulation Filings

December 3, 1998.

Take notice that the following filings have been made with the Commission:

### 1. PECO Energy Company

[Docket ER99–741–000]

Take notice that on November 27, 1998, PECO Energy Company (PECO), tendered for filing a Notice of Termination for all of the individual Retail Transmission Service Agency Agreements (Agency Agreements) that PECO executed with Electric Generation Suppliers (EGSs) participating in PECO's state-approved Retail Access Pilot Program. PECO is requesting that such agreements terminate as of 12:01 a.m. February 2, 1999, in order to accommodate the transitional process by which EGSs will stop taking service

under the Agency Agreements for their retail pilot load and start taking service directly under the PJM Open Access Transmission Tariff for said load as customer meter readings are completed.

A list of Agency Agreements being terminated, listed in accordance with their official FERC tariff designations and customer names, is attached to the filing and can be accessed through the Commission's Records Information Management System (RIMS).

Copies of this filing are being served on the Pennsylvania Public Utility Commission, the PJM Interconnection, L.L.C., and on all EGSs with whom PECO has executed an Agency Agreement.

*Comment date:* December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

**2. PECO Energy Company**

[Docket ER99–742–000]

Take notice that on November 27, 1998, PECO Energy Company (PECO), tendered for filing a Notice of Termination for all of the individual Installed Capacity Obligation Allocation Agreements that PECO executed with Electric Generation Suppliers (EGSs) participating in PECO's state-approved Retail Access Pilot Program. Given the termination of PECO's Pilot Program on December 31, 1998 and the PJM Interconnection, LLC's assumption as of January 1, 1999, of full responsibility for administering and/or overseeing such EGSs' load serving requirements and obligations, including installed capacity, PECO is requesting a December 31, 1998 termination date.

A list of the Installed Capacity Obligation Allocation Agreements being terminated, listed in accordance with their official FERC tariff designations and customer names, is attached to the filing and can be accessed through the Commission's Records Information Management System (RIMS).

Copies of this filing are being served on the Pennsylvania Public Utility Commission, the PJM Interconnection, L.L.C., and on all EGSs with whom PECO has executed an Installed Capacity Obligation Allocation Agreement.

*Comment date:* December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

**3. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company**

[Docket No. ER99–749–000]

Take notice that on November 30, 1998, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (collectively and each doing business as GPU Energy) filed amendments to the GPU Energy Market-Based Sales Tariff.

GPU Energy requests an effective date of December 1, 1998 for the amendments.

*Comment date:* December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

**4. Ameren Services Company**

[Docket No. ER99–750–000]

Take notice that on November 30, 1998, Ameren Services Company (ASC) tendered for filing a Service Agreement for Long-Term Firm Point-to-Point Transmission Services between ASC and Cargill-Alliant, LLC (Cargill). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to Cargill pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

*Comment date:* December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

**5. Ameren Services Company**

[Docket No. ER99–751–000]

Take notice that on November 30, 1998, Ameren Services Company (Ameren), tendered for filing Service Agreements for Market Based Rate Power Sales between Ameren and Cargill-Alliant, LLC, Columbia Energy Power Marketing Corporation, Merchant Energy Group of the Americas, Inc., Strategic Energy, Ltd., and Tractebel Energy Marketing, Inc. Ameren asserts that the purpose of the Agreements is to permit Ameren to make sales of capacity and energy at market based rates to the parties pursuant to Ameren's Market Based Rate Power Sales Tariff filed in Docket No. ER98–3285–000.

*Comment date:* December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

**6. Ameren Services Company**

[Docket No. ER99–752–000]

Take notice that on November 30, 1998, Ameren Services Company (ASC), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Services between ASC and Southwestern Public Service Company (SPS). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to SPS pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

*Comment date:* December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

**7. Ameren Services Company**

[Docket No. ER99–753–000]

Take notice that on November 30, 1998, Ameren Services Company (ASC), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service between ASC and Southwestern Public Service Company (SPS). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to SPS pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

*Comment date:* December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

**8. New England Power Company**

[Docket No. ER99–756–000]

Take notice that on November 30, 1998, New England Power Company (NEP), tendered for filing a Second Amendment to Amended and Restated Distribution Agreement between NEP's affiliate, Massachusetts Electric Company and the Massachusetts Bay Transportation Authority.

NEP requests an effective date of December 1, 1998, for the filing.

*Comment date:* December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

**9. Boston Edison Company**

[Docket No. ER99–757–000]

Take notice that on November 30, 1998, Boston Edison Company (Boston Edison), tendered for filing two service agreements between Boston Edison as the transmission provider and TransAlta Energy Marketing (U.S.) Inc., as the transmission customer. One service agreement provides for non-firm point-to-point transmission service; the other provides for firm point-to-point transmission service. Both services are to be provided under Boston Edison's Open-Access Transmission Tariff, FERC Volume No. 8.

Boston Edison requests an effective date of February 1, 1999.

Boston Edison states that copies of the filing have been served upon the affected customer and the Massachusetts Department of Telecommunications and Energy.

*Comment date:* December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

**10. Texas Utilities Electric Company**

[Docket No. ER99–758–000]

Take notice that on November 30, 1998, Texas Utilities Electric Company

(TU Electric), tendered for filing a Notice of Termination concerning an unexecuted Transmission Service Agreement with Destec Power Services, Inc., for certain transactions under TU Electric's Tariff for Transmission Service To, From and Over Certain HVDC Interconnections accepted for filing by FERC on February 20, 1998 in Docket No. ER98–1202–000.

TU Electric requests an effective date for the Notice of Termination effective October 31, 1998. Accordingly, TU Electric seeks waiver of the Commission's notice requirements.

Copies of the filing were served on Destec Power Services, Inc., as well as the Public Utility Commission of Texas.

*Comment date:* December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

**11. Northern Indiana Public Service Company**

[Docket No. ER99–759–000]

Take notice that on November 30, 1998, Northern Indiana Public Service Company tendered for filing an executed Sales Service Agreement and an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Potomac Electric Power Company (PEPCO).

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to PEPCO pursuant to the Open-Access Transmission Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Under the Sales Service Agreement, Northern Indiana Public Service company will provide general purpose energy and negotiated capacity to PEPCO pursuant to the Wholesale Sales Tariff field by Northern Indiana Public Service Company in Docket No. ER95–1222–000, as amended by the Commission's order in Docket No. ER97–458–000, and allowed to become effective by the Commission.

Northern Indiana Public Service Company has requested that the Service Agreements be allowed to become effective as of November 30, 1998.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

*Comment date:* December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

**12. Nevada Power Company**

[Docket No. ER99–760–000]

Take notice that on November 30, 1998, Nevada Power Company (Nevada Power), tendered for filing a Modification to an Agreement between Nevada Power and the United States Department of the Air Force, Nellis Air Force Base, Nevada (Nellis), Docket No. ER94–402–000. The Modification extends the term of the original agreement beyond its December 1, 1998, termination date. It also sets forth the terms under which Nevada Power will accept future, additional firm allocations of power that Nellis may obtain from Western Area Power Administration.

Nevada Power respectfully requests that the Commission waive all notice requirements for this Modification and approve an effective date of December 1, 1998.

In addition to the Parties to this Modification, copies of this filing have also been served on the Public Utilities Commission of Nevada and the Utility Consumer's Advocate.

*Comment date:* December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

**13. PP&L, Inc.**

[Docket No. ER99–761–000]

Take notice that on November 30, 1998, PP&L, Inc., tendered for filing notice that effective the January 31, 1999, Rate Schedule FERC No. 101, effective date February 1, 1994 and filed with the Federal Energy Regulatory Commission by PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon the Borough of Blakely and the Pennsylvania Public Utilities Commission.

*Comment date:* December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

**14. PP&L, Inc.**

[Docket No. ER99–762–000]

Take notice that on November 30, 1998, PP&L Inc., tendered for filing notice that effective January 31, 1999, Rate Schedule FERC No. 79, effective date February 1, 1994 and filed with the Federal Energy Regulatory Commission by PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon the Borough of Kutztown and the Pennsylvania Public Utility Commission.

*Comment date:* December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

**15. PP&L, Inc.**

[Docket No. ER99–763–000]

Take notice that on November 30, 1998, PP&L, Inc., tendered for filing notice that effective January 31, 1999, Rate Schedule FERC No. 69, effective date February 1, 1994 and filed with the Federal Energy Regulatory Commission by PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon the Borough of Hatfield and the Pennsylvania Public Utility Commission.

*Comment date:* December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

**16. PP&L, Inc.**

[Docket No. ER99–764–000]

Take notice that on November 30, 1998, PP&L, Inc., tendered for filing notice that effective January 31, 1999, Rate Schedule FERC No. 28, effective date February 1, 1994 and filed with the Federal Energy Regulatory Commission by PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon the Borough of Watsontown and the Pennsylvania Public Utility Commission.

*Comment date:* December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

**17. PP&L, Inc.**

[Docket No. ER99–765–000]

Take notice that on November 30, 1998, that effective January 31, 1999, Rate Schedule FERC No. 50, effective date February 1, 1994 and filed with the Federal Energy Regulatory Commission by PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon the Borough of Weatherly and the Pennsylvania Public Utility Commission.

*Comment date:* December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

**18. PP&L, Inc.**

[Docket No. ER99–766–000]

Take notice that on November 30, 1998, PP&L, Inc., tendered for filing notice that effective January 31, 1999, Rate Schedule FERC No. 518, effective date February 1, 1994 and filed with the Federal Energy Regulatory Commission by PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon Borough of Schuylkill Haven and the Pennsylvania Public Utility Commission.

*Comment date:* December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

**19. PP&L, Inc.**

[Docket No. ER99–767–000]

Take notice that on November 30, 1998, PP&L, Inc., tendered for filing notice that effective January 31, 1999, Rate Schedule FERC No. 86, effective date February 1, 1994 and filed with the Federal Energy Regulatory Commission by PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon the Borough of Olyphant and the Pennsylvania Public Utility Commission.

*Comment date:* December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

**20. PP&L, Inc.**

[Docket No. ER99–768–000]

Take notice that on November 30, 1998, PP&L, Inc., tendered for filing notice effective January 31, 1999, Rate Schedule FERC No. 56, effective date February 1, 1994 and filed with the Federal Energy Regulatory Commission by PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon the Borough of St. Clair and the Pennsylvania Public Utility Commission.

*Comment date:* December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

**21. PP&L, Inc.**

[Docket No. ER99–769–000]

Take notice that on November 30, 1999, PP&L, Inc., tendered for filing notice that effective January 31, 1999, Rate Schedule FERC No. 54, effective date February 1, 1994 and filed with the Federal Energy Regulatory Commission by PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon the Borough of Perkasie and the Pennsylvania Public Utility Commission.

*Comment date:* December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

**22. PP&L, Inc.**

[Docket No. ER99–770–000]

Take notice that on November 30, 1998, PP&L, Inc., tendered for filing notice that effective January 31, 1999, Rate Schedule FERC No. 71, effective date February 1, 1994 and filed with the Federal Energy Regulatory Commission by PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon the Pennsylvania Public Utility Commission and the Borough of Quakertown.

*Comment date:* December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

**23. PP&L, Inc.**

[Docket No. ER99–771–000]

Take notice that on November 30, 1998, PP&L, Inc., tendered for filing notice that effective January 31, 1999, Rate Schedule FERC No. 70, effective date February 1, 1994 and filed with the Federal Energy Regulatory Commission by PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon the Pennsylvania Public Utility Commission, and the Borough of Mifflinburg.

*Comment date:* December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

**24. PP&L, Inc.**

[Docket No. ER99–772–000]

Take notice that on November 30, 1998, PP&L, Inc., tendered for filing notice that effective January 31, 1999, Rate Schedule FERC No. 32, effective date February 1, 1994 and filed with the Federal Energy Regulatory Commission by PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon the Borough of Duncannon and the Pennsylvania Public Utility Commission.

*Comment date:* December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

**25. PP&L, Inc.**

[Docket No. ER99–773–000]

Take notice that on November 30, 1998, PP&L, Inc., tendered for filing notice that effective January 31, 1999, Rate Schedule FERC No. 63, effective date February 1, 1994 and filed with the Federal Energy Regulatory Commission by PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon the Borough of Lehighton and the Pennsylvania Public Utility Commission.

*Comment date:* December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

**26. PP&L, Inc.**

[Docket No. ER99–774–000]

Take notice that on November 30, 1998, PP&L, Inc., tendered for filing notice that effective January 31, 1999, Rate Schedule FERC No. 88, effective date February 1, 1994 and filed with the Federal Energy Regulatory Commission by PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon the Borough of Lansdale and the Pennsylvania Public Utility Commission.

*Comment date:* December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

**27. PP&L, Inc.**

[Docket No. ER99–775–000]

Take notice that on November 30, 1998, PP&L, Inc., tendered for filing notice that effective January 31, 1999, Rate Schedule FERC No. 57, effective date February 1, 1994 and filed with the Federal Energy Regulatory Commission by PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon the Borough of Catawissa and the Pennsylvania Public Utility Commission.

*Comment date:* December 18, 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.

**David P. Boergers**

*Secretary.*

[FR Doc. 98–32848 Filed 12–9–98; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Application Tendered for Filing With the Commission

December 4, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* P–1218–014.

c. *Date filed:* November 25, 1998.

d. *Applicant:* Georgia Power Company.

e. *Name of Project:* Flint River Hydroelectric Project.

f. *Location:* The project is located on the Flint River near the City of Albany, in Lee and Dougherty Counties, Georgia.

The project would not utilize any federal lands or facilities.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Mike Phillips, Georgia Power Company, Bin 10151, 241 Ralph McGill Boulevard, NE, Atlanta, GA 30308–3374.

i. *FERC Contact:* Any questions on this notice should be addressed to Allan E. Creamer, E-mail address allan.creamer@ferc.fed.us, or telephone (202) 219–0365.

j. *Description of Project:* The project consists of the following facilities: (1) The Muckafoonee Creek diversion dam, having (a) a 67-foot non-overflow section, (b) a 22-foot sluice section with two 6- by 8-foot sluices, and (c) a 133-foot gated spillway section with six 21- by 6-foot vertical lift gates; (2) a 500-foot-long reinforced concrete, free-crested auxiliary spillway and a 2,600-foot-long earthen dike; (3) the Flint River dam, having (a) a concrete intake structure, (b) a powerhouse (integral with the dam) containing three 1.8-megawatt (MW) generating units, for a total installed capacity of 5.4 MW, (c) a 464-foot-long spillway with 16 Taintor gates, and (d) a 1,700-foot-long earthen dike; (4) a 1,250-acre impoundment, impounding 10 miles of the mainstem Flint River and the lower reaches of the Kinchafoonee and Muckalee Creeks, at a water surface elevation of 181.8 feet plant datum, with a total storage capacity of 7,800 acre-feet; and (5) appurtenant facilities. The average annual generation is about 34.428 Gigawatt-hours.

k. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98–32783 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

## ENVIRONMENTAL PROTECTION AGENCY

**[OPPTS–140275; FRL–6048–9]**

### Access to Confidential Business Information by Optimus Corporation

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

**ACTION:** Notice.

**SUMMARY:** EPA has authorized its contractor Optimus Corporation (Optimus), of Silver Spring, Maryland, and its subcontractor Garcia Consulting, Incorporated (GCI) access to information which has been submitted to EPA under sections 4, 5, 6, 7 and 12 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

**DATES:** Access to the confidential data by Optimus and GCI occurred as a result of an approved waiver dated November 12, 1998, which requested granting Optimus and GCI immediate access to TSCA CBI. This waiver was necessary to allow Optimus and GCI to process 12(b) export notices submitted under sections 4, 5, 6, 7 and 12 of TSCA; and to issue notification letters to foreign governments.

**FOR FURTHER INFORMATION CONTACT:** Susan Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** Under contract number 68–W–98–232, contractor Optimus Corporation of 8601 Georgia Avenue, Suite 700, Silver Spring, MD and subcontractor Garcia Consulting Incorporated of 7927 Jones Branch Drive, Suite 400, McLean, VA, will assist the Office of Pollution Prevention and Toxics (OPPT) in processing 12(b) export notices submitted under sections 4, 5, 6, 7 and 12 of TSCA; and issuing notification letters to foreign governments.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–W–98–232, Optimus and GCI will require access to CBI submitted to EPA under sections 4, 5, 6, 7 and 12 of TSCA to perform successfully the duties specified under the contract. Optimus and GCI personnel will be given access to information submitted to EPA under sections 4, 5, 6, 7 and 12 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, 7 and 12 of TSCA that EPA may provide Optimus and GCI access to these CBI materials on a need-to-know basis only.

All access to TSCA CBI under this contract will take place at U.S. EPA Headquarters and at Optimus and GCI's Technical Assistance Information Service (TAIS) office, located at Waterside Mall, Garage Level, Room G0102, 401 M St., SW., Washington, DC 20460.

Optimus and GCI will be authorized access to TSCA CBI at their office under the EPA *TSCA Confidential Business Information Security Manual*. Before access to TSCA CBI is authorized at Optimus and GCI's office site, EPA will perform the required inspection of its facility and ensure that the facility is in compliance with the Manual. Upon completing review of the CBI materials, Optimus and GCI will return all transferred materials to EPA. Clearance for access to TSCA CBI under this contract may continue until March 31, 2003.

Optimus and GCI personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

### List of Subjects

Environmental protection, Access to confidential business information.

Dated: November 28, 1998.

**Oscar Morales,**

*Acting Director, Information Management Division, Office of Pollution and Prevention and Toxics.*

[FR Doc. 98–32885 Filed 12–9–98; 8:45 am]

BILLING CODE 6560–50–F

## ENVIRONMENTAL PROTECTION AGENCY

**[OPPTS–140277; FRL–6049–1]**

### Access to Confidential Business Information by Premier Incorporated

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

**ACTION:** Notice.

**SUMMARY:** EPA has authorized Premier Incorporated (Premier) of 6551 Loisdale Court, Springfield, Virginia, for access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI). Premier will assist the Office of Pollution Prevention and Toxics in operating the TSCA Confidential Business Information Center's computer system.

**DATES:** Access to the confidential data by Premier occurred as a result of an approved waiver dated November 13, 1998, which granted Premier immediate

access to TSCA CBI. This waiver was necessary to allow Premier to operate the TSCA Confidential Business Information Center's computer system.

**FOR FURTHER INFORMATION CONTACT:** Susan Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** Under contract number 68–W–98–045, Premier, Incorporated of 6551 Loisdale Court, Springfield, VA, will assist OPPT in managing and operating the TSCA Nonconfidential and Confidential Business Information Centers.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–W–98–045, Premier will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. Contract personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide Premier access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters. Premier will be authorized access to TSCA CBI at EPA Headquarters only, under the terms and provisions of the EPA *TSCA Confidential Business Information Security Manual.*

Clearance for access to TSCA CBI under this contract may continue until January 31, 2003. Premier personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

### List of Subjects

Environmental protection, Access to confidential business information.

Dated: December 2, 1998.

**Allan S. Abramson,**

*Director, Information Management Division, Office of Pollution and Prevention and Toxics.*

[FR Doc. 98–32886 Filed 12–9–98; 8:45 am]

**BILLING CODE 6560–50–F**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6198–5]**

## Notice of Final Decision to Grant Waste Management of Ohio, Inc. a Modification of an Exemption from the Land Disposal Restrictions of the Hazardous and Solid Waste Amendments of 1984 Regarding Injection of Hazardous Wastes

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

**ACTION:** Notice of final decision on a request to modify an exemption from the Hazardous and Solid Waste Amendments of the Resource Conservation and Recovery Act.

**SUMMARY:** Notice is hereby given by the Environmental Protection Agency (EPA or Agency) that modification of an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act (RCRA) has been granted to Waste Management of Ohio, Inc. (WMO) of Oakbrook, Illinois. This modification allows WMO to continue to inject four (4) RCRA-regulated hazardous wastes which will be banned from land disposal on February 8, 1999, as a result of regulations promulgated in the **Federal Register** (FR) on August 6, 1998 (63 FR 42110), into four Class I injection wells at the Vickery, Ohio facility. As required by 40 CFR part 148, WMO has demonstrated, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the injection zone utilized by WMO's waste disposal facility located near Vickery, Ohio, for as long as the newly exempted waste remains hazardous. This decision constitutes a final Agency action for which there is no administrative appeal.

**DATES:** This action is effective as of February 8, 1999.

**FOR FURTHER INFORMATION CONTACT:** Harlan Gerrish, Lead Petition Reviewer, USEPA, Region 5, telephone (312) 886–2939. Copies of the petition and all pertinent information relating thereto are on file and are part of the Administrative Record. It is recommended that you contact the lead reviewer prior to reviewing the Administrative record.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Chemical Waste Management (CWM), the predecessor of WMO, submitted a petition for an exemption from the restrictions on land disposal of hazardous wastes on January 19, 1988. Revised documents were received on December 4, 1989, and several supplemental submittals were subsequently made. The exemption was granted on August 7, 1990. On September 12, 1994, CWM submitted a petition to modify the exemption to include wastes bearing 23 additional RCRA wastes codes. Region 5 reviewed documents supporting the request and granted the modification of the exemption on May 16, 1995. A notice of the modification appeared on June 5, 1995, at 60 FR 29592 *et seq.* On April 9, 1996, CWM submitted a petition to again modify the exemption to allow 91 additional RCRA waste codes. Region 5 reviewed documents supporting the request and granted the modification on the exemption on June 24, 1996. A notice of the modification appeared on July 15, 1996, at 61 FR 36880 *et seq.* Again on May 13, 1997, CWM submitted a request to add 11 waste codes to the list. Region 5 reviewed the evidence submitted by CWM and granted the request. Notice of the approval appeared on August 12, 1997 (63 FR 43109). On August 28, 1998, WMO requested that two additional wastes codes be approved for injection. This proposed approval of this request is pending as a result of need for public comment on the decision.

The rule promulgated on August 6, 1998, bans K169, K170, K171, and K172 from injection after February 8, 1999, unless WMO's exemption is modified to allow injection of those wastes. After review of the material submitted, the EPA has determined, as required by 40 CFR 148.20(f), that there is a reasonable degree of certainty that the hazardous constituents contained in the wastes bearing the codes to be banned will behave hydraulically and chemically like wastes for which WMO was granted its original exemption and will not migrate from the injection zone in hazardous concentrations within 10,000 years. The injection zone is the Mt. Simon Sandstone and the Rome, Conasauga, Kerbel, and Knox Formations. The confining zone is comprised of the Wells Creek and Black River Formations.

LIST OF RCRA WASTE CODES APPROVED FOR INJECTION

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| D001 | F005 | K025 | K100 | K172 | P051 | P110 | U018 | U068 | U117 | U164 | U216 | U384 |
| D002 | F006 | K026 | K101 | P001 | P054 | P111 | U019 | U069 | U118 | U165 | U217 | U385 |
| D003 | F007 | K027 | K102 | P002 | P056 | P112 | U020 | U070 | U119 | U166 | U218 | U386 |
| D004 | F008 | K028 | K103 | P003 | P057 | P113 | U021 | U071 | U120 | U167 | U219 | U387 |
| D005 | F009 | K029 | K104 | P004 | P058 | P114 | U022 | U072 | U121 | U168 | U220 | U389 |
| D006 | F010 | K030 | K105 | P005 | P059 | P115 | U023 | U073 | U122 | U169 | U221 | U390 |
| D007 | F011 | K031 | K106 | P006 | P060 | P116 | U024 | U074 | U123 | U170 | U222 | U391 |
| D008 | F012 | K032 | K107 | P007 | P062 | P118 | U025 | U075 | U124 | U171 | U223 | U392 |
| D009 | F019 | K033 | K108 | P008 | P063 | P119 | U026 | U076 | U125 | U172 | U225 | U393 |
| D010 | F020 | K034 | K109 | P009 | P064 | P120 | U027 | U077 | U126 | U173 | U226 | U394 |
| D011 | F021 | K035 | K110 | P010 | P065 | P121 | U028 | U078 | U127 | U174 | U227 | U395 |
| D012 | F022 | K036 | K111 | P011 | P066 | P122 | U029 | U079 | U128 | U176 | U228 | U396 |
| D013 | F023 | K037 | K112 | P012 | P067 | P123 | U030 | U080 | U129 | U177 | U234 | U400 |
| D014 | F024 | K038 | K113 | P013 | P068 | P127 | U031 | U081 | U130 | U178 | U235 | U401 |
| D015 | F025 | K039 | K114 | P014 | P069 | P128 | U032 | U082 | U131 | U179 | U236 | U402 |
| D016 | F026 | K040 | K115 | P015 | P070 | P185 | U033 | U083 | U132 | U180 | U237 | U403 |
| D017 | F027 | K041 | K116 | P016 | P071 | P188 | U034 | U084 | U133 | U181 | U238 | U404 |
| D018 | F028 | K042 | K117 | P017 | P072 | P189 | U035 | U085 | U134 | U182 | U239 | U407 |
| D019 | F032 | K043 | K118 | P018 | P073 | P190 | U036 | U086 | U135 | U183 | U240 | U408 |
| D020 | F034 | K044 | K123 | P020 | P074 | P191 | U037 | U087 | U136 | U184 | U243 | U409 |
| D021 | F035 | K045 | K124 | P021 | P075 | P192 | U038 | U088 | U137 | U185 | U244 | U410 |
| D022 | F037 | K046 | K125 | P022 | P076 | P194 | U039 | U089 | U138 | U186 | U246 | U411 |
| D023 | F038 | K047 | K126 | P023 | P077 | P196 | U041 | U090 | U139 | U187 | U247 | |
| D024 | F039 | K048 | K131 | P024 | P078 | P197 | U042 | U091 | U140 | U188 | U248 | |
| D025 | K001 | K049 | K132 | P026 | P081 | P198 | U043 | U092 | U141 | U189 | U249 | |
| D026 | K002 | K050 | K136 | P027 | P082 | P199 | U044 | U093 | U142 | U190 | U271 | |
| D027 | K003 | K051 | K140 | P028 | P084 | P201 | U045 | U094 | U143 | U191 | U277 | |
| D028 | K004 | K052 | K141 | P029 | P085 | P202 | U046 | U095 | U144 | U192 | U278 | |
| D029 | K005 | K060 | K142 | P030 | P087 | P203 | U047 | U096 | U145 | U193 | U279 | |
| D030 | K006 | K061 | K143 | P031 | P088 | P204 | U048 | U097 | U146 | U194 | U280 | |
| D031 | K007 | K062 | K144 | P033 | P089 | P205 | U049 | U098 | U147 | U196 | U328 | |
| D032 | K008 | K069 | K145 | P034 | P092 | U001 | U050 | U099 | U148 | U197 | U353 | |
| D033 | K009 | K071 | K147 | P036 | P093 | U002 | U051 | U101 | U149 | U200 | U359 | |
| D034 | K010 | K073 | K148 | P037 | P094 | U003 | U052 | U102 | U150 | U201 | U364 | |
| D035 | K011 | K083 | K149 | P038 | P095 | U004 | U053 | U103 | U151 | U202 | U365 | |
| D036 | K013 | K084 | K150 | P039 | P096 | U005 | U055 | U105 | U152 | U203 | U366 | |
| D037 | K014 | K085 | K151 | P040 | P097 | U006 | U056 | U106 | U153 | U204 | U367 | |
| D038 | K015 | K086 | K156 | P041 | P098 | U007 | U057 | U107 | U154 | U205 | U372 | |
| D039 | K016 | K087 | K157 | P042 | P099 | U008 | U058 | U108 | U155 | U206 | U373 | |
| D040 | K017 | K088 | K158 | P043 | P101 | U009 | U059 | U109 | U156 | U207 | U375 | |
| D041 | K018 | K093 | K159 | P044 | P102 | U010 | U060 | U110 | U157 | U208 | U376 | |
| D042 | K019 | K094 | K160 | P045 | P103 | U011 | U061 | U111 | U158 | U209 | U377 | |
| D043 | K020 | K095 | K161 | P046 | P104 | U012 | U062 | U112 | U159 | U210 | U378 | |
| F001 | K021 | K096 | K169 | P047 | P105 | U014 | U063 | U113 | U160 | U211 | U379 | |
| F002 | K022 | K097 | K170 | P048 | P106 | U015 | U064 | U114 | U161 | U213 | U381 | |
| F003 | K023 | K098 | K171 | P049 | P108 | U016 | U066 | U115 | U162 | U214 | U382 | |
| F004 | K024 | K099 | | P050 | P109 | U017 | U067 | U116 | U163 | U215 | U383 | |

## II. Conditions

General conditions of this exemption are found at 40 CFR part 148. The exemption granted to WMO on August 7, 1990, included a number of specific conditions. Conditions numbered (1), (2), (3), (4), and (9) remain in force. Monitoring under condition 5, which called for construction and operation of a deep monitoring well, will continue through the life of the facility. Conditions numbered (5), (6), (7), and (8) have been satisfied. The results of the work carried out under these conditions confirms that the model used to simulate fluid movement within the injection zone for the next 10,000 years is valid and results of the simulation bound the region of the injection zone within which the waste will be contained.

**Timothy C. Henry,**

*Acting Director, Water Division, Region 5.*

[FR Doc. 98–32890 Filed 12–9–98; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6200–3]**

## Integrated Risk Information System (IRIS); Announcement of 1999 Program; Request for Information

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice; Announcement of IRIS 1999 Program and request for scientific information on chronic health effects of chemical substances.

**SUMMARY:** The Integrated Risk Information System (IRIS) is an EPA data base that contains EPA scientific consensus positions on potential human health effects from environmental contaminants. On January 2, 1998 EPA announced the 1998 IRIS agenda and solicited scientific information from the public for consideration in assessing the chronic health effects of a list of chemical substances (63 FR 75). Most of the assessments listed are complete or near completion, and EPA is preparing a new set of chemical health assessments for IRIS. This Notice describes the Agency's plans, and solicits scientific data and evaluations for consideration in EPA's new assessments.

**DATES:** Please submit information in response to this Notice by February 12, 1999.

**ADDRESSES:** Please send relevant scientific information to the IRIS Submission Desk in accordance with the instructions provided under ''Submission of Information'' in this Notice.

**FOR FURTHER INFORMATION:** For information on the IRIS program, contact Amy Mills, National Center for Environmental Assessment (mail code 8601D), U.S. Environmental Protection Agency, 401 M St. SW, Washington, DC 20460, or call (202) 564–3204, or send electronic mail inquiries to mills.amy@epa.gov. For general questions about access to IRIS, the content of IRIS, or how to submit information in response to this Notice, please call the Risk Information Hotline at (513) 569–7254.

**SUPPLEMENTARY INFORMATION:**

## Background

IRIS is an EPA data base containing Agency consensus scientific positions on potential adverse human health effects that may result from chronic (or lifetime) exposure to environmental contaminants. IRIS currently provides health effects information on over 500 specific chemical substances.

IRIS contains chemical-specific summaries of qualitative and quantitative health information in support of the first two steps of the risk assessment process, i.e., hazard identification and dose-response evaluation. IRIS information includes the reference dose for non-cancer health effects resulting from oral exposure, the reference concentration for non-cancer health effects resulting from inhalation exposure, and the carcinogen assessment for both oral and inhalation exposure. Combined with specific situational exposure assessment information, the summary health hazard information in IRIS may be used as a source in evaluating potential public health risks from environmental contaminants.

## The IRIS Program

EPA completed the IRIS Pilot Program, which focused on improving the scientific consensus and review process that precedes IRIS data base entries. A set of chemical assessments were developed (or updated, for existing entries) for IRIS utilizing the pilot process. This process has been adopted for the post-Pilot program and consists of, (1) an annual **Federal Register** announcement of EPA's IRIS agenda and call for scientific information from the public on the selected chemical substances, (2) a search of the current literature, (3) development of health assessments and draft IRIS summaries, (4) peer review within EPA, (5) peer review outside EPA, (6) EPA consensus review and management approval, (7) preparation of final IRIS summaries and supporting documents, and (8) entry of summaries and supporting documents into the IRIS data base.

## Assessments Completed in FY 1998

The following assessments were completed and entered into IRIS in FY 1998 and early FY 1999. These assessments were announced in the **Federal Register** notice of January 2, 1998. All health endpoints, cancer and non-cancer, were assessed unless otherwise noted. Where information was available, oral reference doses, inhalation reference concentrations, and cancer unit risks and slope factors were developed.

| Name | CAS No. |
|---|---|
| Arsenic [text added in carcinogenicity section]. | 7440–38–2 |
| Barium | 7440–39–3 |
| Bentazon | 25057–89–0 |
| Benzene [inhalation cancer assessment]. | 71–43–2 |
| Beryllium | 7440–41–7 |
| Chlordane | 12789–03–6 |
| Chromium (III ) | 16065–83–1 |
| Chromium (VI) | 18540–29–9 |
| Methyl methacrylate | 80–62–6 |
| Methylene diphenyl diisocyanate. | 101–68–8 |
| Naphthalene | 91–20–3 |

## Assessments in Progress—Completion Planned for FY 1999 or FY 2000

The following assessments are underway or generally complete, and are planned for entry into IRIS in FY 1999 or FY 2000. These assessments were announced in the January 2, 1998 **Federal Register** notice. All health endpoints, cancer and non-cancer, are being assessed unless otherwise noted. Where information is available, oral reference doses, inhalation reference concentrations, cancer unit risks and slope factors are being developed.

| Name | CAS No. |
|---|---|
| Acetonitrile | 75–05–8 |
| Benzene [non-cancer; oral cancer endpoints]. | 71–43–2 |
| Boron | 7440–42–8 |
| Bromate | 7758–01–2 |
| 1,3-Butadiene | 106–99–0 |
| Cadmium | 7440–43–9 |
| Chloral hydrate | 75–87–6 |
| Chloroethane | 75–00–3 |
| Chloroform | 67–66–3 |
| Dichloroacetic acid | 79–43–6 |
| 1,3-Dichloropropene | 542–75–6 |
| Diesel emissions | [N.A.] |
| Ethylene glycol butyl ether | 111–76–2 |
| Formaldehyde | 50–00–0 |
| Nitrobenzene | 98–95–3 |
| Pentachlorophenol | 87–86–5 |
| Polychlorinated biphenyls (PCBs)—[noncancer endpoints]. | 1336–36–3 |
| Styrene | 100–42–5 |
| Tetrachloroethylene [''perc''] | 127–18–4 |
| Tetrahydrofuran | 109–99–9 |
| Toxaphene | 8001–35–2 |
| Trichloroethylene | 79–01–6 |
| Vinyl acetate | 108–05–4 |
| Vinyl chloride | 75–01–4 |

The reassessment of Lindane [CAS No. 58–89–9 ] announced in the January 2, 1998 **Federal Register** notice has been postponed to begin in FY 2000 pending results from an ongoing cancer study.

The IRIS summaries and support documents for the substances listed above will be provided on the IRIS web site at www.epa.gov/iris. This publicly-available web site is EPA's primary location for IRIS documents.

## Information Requested on New Assessments for FY 1999

EPA will continue building and updating the IRIS data base. The Agency recognizes that many of the assessments on IRIS need updating to incorporate new scientific information and methodologies. Further, many additional substances are candidates for adding to IRIS. However, due to limited resources in the Agency to address the spectrum of needs, EPA developed a list of priority substances for attention beginning in FY 1999. The following list of substances are priorities for IRIS due to one or more of the following reasons: (1) Agency statutory, regulatory, or program implementation need; (2) new scientific information or methodology is available that might significantly change current IRIS information, (3) interest to other levels of government or the public, (4) most of the scientific assessment work has been completed while meeting other Agency requirements, and only a modest additional effort will be needed to complete the review and documentation for IRIS.

The following IRIS health assessments have recently begun or will be started in FY 1999, with completion expected between FY 2000 and FY 2001. It is for these substances that the Agency is primarily requesting information from the public for consideration in the assessment. Unless otherwise noted, noncancer and cancer endpoints will be assessed for each substance. Where information is available, oral reference doses, inhalation reference concentrations, and cancer unit risks and slope factors will be developed.

| Name | CAS No. |
|---|---|
| Acetaldehyde | 75–07–0 |
| Acetone | 67–64–1 |
| Ammonium perchlorate [and associated salts]. | 7790–98–9 |
| Benzo[a]pyrene | 50–32–8 |
| Chlorine dioxide | 10049–04–4 |
| Chlorite (sodium salts) | 7758–19–2 |
| Chloroprene | 126–99–8 |
| Copper | 7440–50–8 |
| Cyclohexane | 110–82–7 |
| Di(2-ethylhexyl)phthalate | 117–81–7 |
| Diflubenzuron | 35367–38–5 |
| Ethylbenzene | 100–41–4 |
| Ethylene oxide | 75–21–8 |
| Hexachlorocyclopentadiene | 77–47–4 |
| Isopropanol | 67–63–0 |
| Methyl chloride | 74–87–3 |
| Methyl isobutyl ketone (MIBK) | 108–10–1 |
| Methyl tert-butyl ether (MTBE) | 1634–04–4 |
| Nickel (various) | 7440–02–0 |
| Pendimethalin | 40487–42–1 |
| Phenol | 108–95–2 |
| Quinoline | 91–22–5 |
| Silica (quartz) | 14808–60–7 |
| Trichlopyr | 55335–06–3 |
| Uranium (natural) | 7440–61–1 |
| Xylenes | 1330–20–7 |
| Zinc and compounds | 7440–66–6 |

In addition to Benzo[a]pyrene, EPA will also be initiating in FY 1999 a literature review on health effects of other polynuclear aromatic hydrocarbons (PAHs). EPA welcomes scientific information from the public on health effects of PAHs. Additional health assessments on this class of chemicals will commence in FY 2000.

Follow-up annual **Federal Register** notices will address new starts for subsequent fiscal years. In the future, these notices will include chemical substances selected for assessment or reassessment under EPA's new guidelines for carcinogen risk assessment that are also planned for inclusion in IRIS (64 FR 32799, June 25, 1996).

**Submission of Information**

The IRIS program is providing an opportunity for public involvement on new assessments starting in FY 1999. While EPA conducts a thorough literature search for each chemical substance, there may be other articles or unpublished studies we are not aware of. We would greatly appreciate receiving scientific information from the public during the information gathering stage for the list of ''new assessments'' listed above. Interested persons should provide scientific comments, analyses, studies, and other pertinent scientific information. The most useful documents for EPA are unpublished studies or other primary technical sources that we may not otherwise obtain through open literature searches. Also note that if you have submitted certain information previously then there is no need to resubmit that information. Information from the public is being solicited for 60 days via this notice.

Similar to the process described in the January 2, 1998 **Federal Register** notice, submissions will be handled in a three-step process:

1. First, you should simply provide a list (submission inventory), briefly identifying all the information you wish to submit to the IRIS Submission Desk. The list should specify by name and CAS (Chemical Abstract Service) registry number the chemical substance(s) to which the information pertains, state the type of assessment that is being addressed (e.g., carcinogenicity), and describe briefly the information being submitted for consideration. Where possible, documents should be listed in scientific citation format, that is, author(s), title, journal, and date. Your cover letter should state that the correspondence is an IRIS Submission, describe in general terms the purpose of the submission, and include names, addresses, and telephone numbers of persons to contact for additional information on the submission. Mail three copies of the submittal to the IRIS Submission Desk, NCEA (MS–105), U.S. Environmental Protection Agency, 26 Martin Luther King Drive, Cincinnati, OH 45268.

Alternatively, you may submit the submission inventory and cover letter electronically to IRIS.comments@epa.gov. Electronic information must be submitted in WordPerfect or as an ASCII file. Information will also be accepted on 3.5'' floppy disks. All information in electronic form must be identified as an IRIS Submission.

2. In the second step, EPA will compare the submission inventory to existing files and identify the information that should be submitted. This step will help prevent an influx of duplicative information. You will receive notification requesting full submission of the selected material.

3. In the third step, you should send in the information requested by EPA within 30 days to ensure that EPA can consider it in the assessment. Submittals should include a cover letter addressing all of the points in item 1 above. In addition, when you submit results of new health effects studies concerning existing substances on IRIS, you should include a specific explanation of how and why the study results could change the information in IRIS.

Please send three copies, at least one of which should be unbound, to the IRIS Submission Desk, NCEA (MS–105), U.S. Environmental Protection Agency, 26 Martin Luther King Drive, Cincinnati, OH 45268. The IRIS Submission Desk will acknowledge receipt of your information.

Confidential Business Information (CBI) should not be submitted to the IRIS Submission Desk. CBI must be submitted to the appropriate EPA Office via established procedures for submission of CBI (see 40 CFR, Part 2, Subpart B). If you believe that a CBI submission contains information with implications for IRIS, please note that in the cover letter accompanying the submission to the appropriate office.

You may also request to augment your submission with a scientific briefing to EPA staff. Such requests should be made directly to Amy Mills, IRIS Program Manager (**ADDRESSEES**).

Dated: December 3, 1998.

**William H. Farland,**

*Director, National Center for Environmental Assessment.*

[FR Doc. 98–32892 Filed 12–9–98; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL 62006]**

## San Fernando Valley—Burbank Operable Unit Superfund Site, Proposed Notice of Administrative Settlement

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

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (''CERCLA''), 42 U.S.C. 9601 *et seq.*, notice is hereby given that a proposed Prospective Purchaser Agreement associated with the San Fernando Valley North Hollywood Superfund Site—Burbank Operable Unit was executed by the United States Environmental Protection Agency (''EPA'') on June 30, 1998. The proposed Prospective Purchaser Agreement would resolve certain potential claims of the United States under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and section 7003 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6973, against Howard L.L.C. (the ''Purchaser''). The Purchaser plans to acquire a 12.72 acre parcel located

within the Burbank Operable Unit in Burbank, California for the building of a multiple building development that would be suitable for commercial leasing to a motion picture production company. The proposed settlement would require the Purchaser to pay EPA a one-time payment of $150,000.

For thirty (30) calender days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement. If requested prior to the expiration of this public comment period, EPA will provide an opportunity for a public meeting in the affected area. EPA's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

**DATES:** Comments must be submitted on or before January 11, 1999.

**AVAILABILITY:** The proposed Prospective Purchaser Agreement and additional background documentation relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency, 74 Hawthorne Street, San Francisco, CA 94105. A copy of the proposed settlement may be obtained from Marie M. Rongone, Assistant Regional Counsel (ORC–3), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Comments should reference ''Howard L.L.C. Prospective Purchaser Agreement, San Fernando Valley Superfund Site, Burbank Operable Unit,'' and ''Docket No. 98–10'' and should be addressed to Marie M. Rongone at the above address.

**FOR FURTHER INFORMATION CONTACT:** Marie M. Rongone, Assistant Regional Counsel (ORC–3), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; E-mail: rongone.marie@epamail.epa.gov; Phone: (415) 744–1313.

**Keith Takata,**

*Director, Superfund Division, U.S. EPA, Region IX.*

[FR Doc. 98–32896 Filed 12–9–98; 8:45 am]

**BILLING CODE 6560–50–M**

## FEDERAL COMMUNICATIONS COMMISSION

**[DA 98–2415]**

### En Bancs Regarding Telecom Mergers

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission has released a Public Notice which announces two additional En Bancs to discuss recent consolidation activities in the telecommunications industry. The purpose of the merger En Banc series is to assist the Commission in determining whether certain proposed mergers are consistent with the goals of the 1996 Telecommunications Act, which include promoting competition in telecommunications markets and protecting the public interest.

**DATES:** Two En Bancs will take place on Monday, December 14, 1998. The first En Banc will take place from 9:30 a.m. to 12 noon. The second En Banc will take place from 1 p.m. to 2 p.m.

**FOR FURTHER INFORMATION CONTACT:** Florence Grasso, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1579.

**SUPPLEMENTARY INFORMATION:** In the first En Banc, from 9:30 a.m. to 12 noon, interested parties, including state, consumer, community and industry representatives, will discuss the impact on telecommunications markets of the proposed mergers between incumbent local exchange carriers SBC and Ameritech (CC Docket No. 98–141), and Bell Atlantic and GTE (CC Docket No. 98–184). In the second En Banc, from 1 p.m. to 2 p.m., interested parties, including consumer, community and industry representatives will discuss the impact on telecommunications markets of the proposed merger between AT&T and Tele-Communications, Inc. (CS Docket No. 98–178).

The En Bancs are open to the public, and seating will be available on a first come, first served basis. The En Bancs will also be carried live on the Internet. Internet users may listen to the real-time audio feed of the En Bancs by accessing the FCC Internet Audio Broadcast Home Page. Step-by-step instructions on how to listen to the audio broadcast, as well as information regarding the equipment and software needed, are available on the FCC Internet Audio Broadcast Home Page. The URL address for this home page is http://www.fcc.gov/realaudio/. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770.

A transcript of the En Bancs will be available 10 days after the event on the FCC's Internet site. The URL address for the FCC's Internet Home Page is http://www.fcc.gov. Transcripts may also be obtained from the FCC's duplicating contractor, International Transcription Service, 1231 20th Street, NW, Washington, DC 20036, by calling ITS at (202) 857–3800 or faxing ITS at (202) 857–3805. Audio and video tapes of the En Banc may be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, by calling Infocus at (703) 834–0100 or by faxing Infocus at (703) 834–0111.

Federal Communications Commission.

**Lawrence E. Strickling,**

*Chief, Common Carrier Bureau.*

[FR Doc. 98–32942 Filed 12–9–98; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 4, 1999.

**A. Federal Reserve Bank of Kansas City** (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

*1. Citizens Bancshares ESOP*, Farmington, New Mexico; to become a bank holding company by acquiring 30 percent of the voting shares of Citizens Bancshares, Inc., Farmington, New Mexico; and thereby indirectly acquire Citizens Bank, Farmington, New Mexico.

Board of Governors of the Federal Reserve System, December 4, 1998.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 98–32747 Filed 12–9–98; 8:45 am]

BILLING CODE 6210–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Draft Guidelines for HIV Case Surveillance, Including Monitoring HIV Infection and Acquired Immunodeficiency Syndrome (AIDS)

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice and Request for Comments.

**SUMMARY:** This notice announces the availability for public comment of a document entitled ''Draft Guidelines for HIV Case Surveillance, Including Monitoring HIV Infection and Acquired Immunodeficiency Syndrome (AIDS)''.

**DATES:** Comments must be submitted in writing on or before January 11, 1999. Comments should be submitted to the Technical Information and Communications Branch, Mailstop E–49, Division of HIV/AIDS Prevention, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), Atlanta, Georgia 30333; Fax: 404–639–2007; E-mail: hivmail@cdc.gov.

**FOR FURTHER INFORMATION CONTACT:** Requests for copies of the Draft HIV Case Surveillance Guidelines should be submitted to the CDC National Prevention Information Network, P.O. Box 6003, Rockville, Maryland 20849–6003; telephone (800) 458–5231; or copies can be obtained from the CDC website at http://www.cdc.gov/nchstp/hiv__aids/dhap.htm.

**SUPPLEMENTARY INFORMATION:** From 1995 to 1996, the incidence of both deaths and opportunistic infections (OIs) due to AIDS declined in the United States for the first time in the history of the epidemic (6 percent for OIs; 23 percent for deaths) as reported in the September 19, 1997, Morbidity and Mortality Weekly Report (MMWR) (Volume 46, pp. 861–867). These declines reflect recent advances in treatment of HIV infection and the provision of care and services that have slowed the progression of AIDS for HIV-infected persons on therapy and the success of HIV prevention and education efforts that have encouraged early diagnosis and have helped to reduce the number of Americans becoming infected with HIV.

In response to these changes in HIV treatment practices and new information needs of public health programs, CDC, the Council of State and Territorial Epidemiologists (CSTE), and most other public health and AIDS organizations have recommended that all States and territories conduct HIV case surveillance in addition to AIDS surveillance. In this manner, the AIDS/HIV epidemic can be tracked more accurately, and appropriate information about HIV/AIDS can be made available to policymakers. As of July 1998, a total of 32 States were conducting HIV case surveillance using the same methods as surveillance for AIDS. Because some States (many with large numbers of AIDS cases) do not report HIV case numbers, interpretations of available HIV data are difficult. To gain more reliable information about the prevalence, incidence, and future directions of HIV infection and the impact on specific populations such as racial and ethnic minorities and women, CDC is proposing that the current surveillance system be expanded to include HIV case reporting for all States and is publishing guidelines that States can use to implement HIV surveillance.

Dated: December 3, 1998.

**Jeffrey P. Koplan,**

*Director, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 98–32617 Filed 12–9–98; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 78G–0133]**

### Procter & Gamble Co.; Withdrawal of GRAS Affirmation Petition

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a petition (GRASP MF–3710) proposing affirmation that cellulose fines used as a feedstuff for livestock are generally recognized as safe (GRAS).

**FOR FURTHER INFORMATION CONTACT:** Sharon A. Benz, Center for Veterinary Medicine (HFV–228), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6657.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of May 19, 1978 (43 FR 21727), FDA announced that a petition (GRASP MF–3710) had been filed by the Procter & Gamble Co., 6100 Center Hill Rd., Cincinnati, OH 45224. The petition proposed to amend the GRAS regulations in 21 CFR part 582 to affirm that cellulose fines used as a feedstuff for livestock are GRAS.

Procter & Gamble Co. has now withdrawn the petition without prejudice to a future filing.

Dated: December 4, 1998.

**Stephen F. Sundlof,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 98–32812 Filed 12–9–98; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 98P–0221]**

### Zeneca, Inc.; Withdrawal of Approval of Portion of a New Drug Application Providing for a Formulation of Diprivan Injectable Emulsion Not Containing Disodium Edetate

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is withdrawing approval of those portions of a new drug application (NDA) held by Zeneca, Inc., (Zeneca) for Diprivan (propofol) Injectable Emulsion that provide for a formulation not containing the antimicrobial additive disodium edetate.

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

**FOR FURTHER INFORMATION CONTACT:** Virginia G. Beakes, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

**SUPPLEMENTARY INFORMATION:** By citizen petition dated April 7, 1998 (Docket No. 98P–0221/CP1), Zeneca, 1800 Concord Pike, Wilmington, DE 19850, requested that FDA withdraw approval of those portions of NDA 19–627 that provide for a formulation of Diprivan Injectable Emulsion that does not contain the antimicrobial additive disodium edetate, stating that the company discontinued marketing the product because of potential contamination problems observed after approval of the NDA. Zeneca waived its opportunity for a hearing.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of those portions of NDA 19–627 that provide for a formulation of Diprivan Injectable Emulsion that does not contain the antimicrobial additive disodium edetate is hereby withdrawn effective December 10, 1998.

Dated: November 16, 1998.

**Janet Woodcock,**

*Director, Center for Drug Evaluation and Research.*

[FR Doc. 98–32742 Filed 12–9–98; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Product, Establishment, and Biologics License Applications, Refusal to File; Meeting of Oversight Committee

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the 1999 meetings of its standing oversight committee in the Center for Biologics Evaluation and Research (CBER) that conducts a periodic review of CBER's use of its refusal to file (RTF) practices on product license applications (PLA's), establishment license applications (ELA's), and biologics license applications (BLA's). CBER's RTF oversight committee examines all RTF decisions that occurred during the previous quarter to assess consistency across CBER offices and divisions in RTF decisions.

**DATES:** The meetings will be held on February, 9, 1999; May 11, 1999; August 10, 1999; and November 9, 1999.

**FOR FURTHER INFORMATION CONTACT:** Stephen M. Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of May 15, 1995 (60 FR 25920), FDA announced the establishment and first meeting of CBER's standing oversight committee. As explained in the notice, the importance to the public health of getting new biological products on the market as efficiently as possible has made improving the biological product evaluation process an FDA priority. CBER's managed review process focuses on specific milestones or intermediate goals to ensure that a quality review is conducted within a specified time period. CBER's RTF oversight committee meetings continue CBER's effort to promote the timely, efficient, and consistent review of PLA's, ELA's, and BLA's.

FDA's regulations on filing PLA's, ELA's, and BLA's are found in 21 CFR 601.2 and 601.3. A sponsor who receives an RTF notification may request an informal conference with CBER, and thereafter may ask that the application be filed over protest, similar to the procedure for drugs described under 21 CFR 314.101(a)(3).

CBER's standing RTF oversight committee consists of senior CBER officials, a senior official from FDA's Center for Drug Evaluation and Research, and FDA's Chief Mediator and Ombudsman. Meetings, ordinarily, will be held once a quarter to review all of the RTF decisions. The purpose of such a review is to assess the consistency within CBER in rendering RTF decisions. If there are no RTF decisions to review, however, the meeting may be cancelled. FDA intends to post any meeting cancellation on the CBER home page at ''http://www.fda.gov/cber/confmeet.htm''.

Because the committee's deliberations will deal with confidential commercial information, all meetings will be closed to the public. The committee's deliberations will be reported in the minutes of the meeting. Although those minutes will not be publicly available because they will contain confidential commercial information, summaries of the committee's deliberations, with all confidential commercial information omitted, may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. If, following the committee's review, an RTF decision changes, the appropriate division will notify the sponsor.

Dated: November 30, 1998.

**William K. Hubbard,**

*Associate Commissioner for Policy Coordination.*

[FR Doc. 98–32743 Filed 12–9–98; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Veterinary Medicine Advisory Committee; Notice of Postponement of Meeting

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is postponing the meeting of the Veterinary Medicine Advisory Committee scheduled for December 10 and 11, 1998. The meeting was announced in the **Federal Register** of November 16, 1998 (63 FR 63740). FDA Center for Veterinary Medicine officials hope to reschedule the Committee meeting for early next year. The meeting will be announced in the **Federal Register** and on the Center for Veterinary Medicine Internet Home Page.

**FOR FURTHER INFORMATION CONTACT:** Jacquelyn L. Pace, Center for Veterinary Medicine (HFV–200), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6650, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12546.

Additional information about the new time and dates for the meeting will be provided on the Center for Veterinary Medicine Internet Home Page (http://www.fda.gov/cvm) as soon as they are set.

Dated: December 8, 1998.

**Michael A. Friedman,**

*Deputy Commissioner for Operations.*

[FR Doc. 98–33006 Filed 12–8–98; 2:56 pm]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[Document Identifier: HCFA–2088, and HCFA–2540]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed

collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Outpatient Rehabilitation Cost Report and Supporting Regulations in 42 CFR 413.20 and 413.24 *Form No.:* HCFA–2088 (0938–0037); *Use:* This form is used by Outpatient Rehabilitation Facilities to report their health care costs to determine the amount reimbursable for services furnished to Medicare beneficiaries. In addition, the fiscal intermediary uses the cost report to make settlement with the provider for the cost reporting period. *Frequency:* Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions, and State, Local or Tribal Government; *Number of Respondents:* 4,298; *Total Annual Responses:* 4,298; *Total Annual Hours:* 429,800.

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Skilled Nursing Facility (SNF) and Skilled Nursing Facility Health Care Complex Cost Report, 42 CFR 413.20 and 413.24; *Form No.:* HCFA–2540 (0938–0463); *Use:* The Skilled Nursing Facility and Skilled Nursing Facility Health Care Complex Cost Report is used by freestanding SNFs to submit annual information to achieve a settlement of costs for health care services rendered to Medicare beneficiaries. In addition, the fiscal intermediary uses the cost report to make settlement with the provider for the fiscal year. *Frequency:* Annually; *Affected Public:* Business or other for profit, Not for profit institutions, and State, Local, or Tribal government; *Number of Respondents:* 7,000; *Total Annual Responses:* 7,000; *Total Annual Hours Requested:* 1,372,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: December 3, 1998.

**John P. Burke III,**

*HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.*

[FR Doc. 98–32852 Filed 12–9–98; 8:45 am]

BILLING CODE 4120–03–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–005314

*Applicant:* Cornell University, Ithaca, NY

The applicant requests a permit to export and re-import non-living museum specimens of endangered and threatened species of insects previously accessioned into the permittee's collection for scientific research. This notification covers activities conducted by the applicant for a five year period.

PRT–005629

*Applicant:* The Elephant Sanctuary, Hohenwald, TN

The applicant requests a permit to buy one female Asian elephant (*Elephas maximus*) in interstate commerce for the purpose of enhancement of the survival of the species.

PRT–005532

*Applicant:* Omaha's Henry Doorly Zoo, Omaha, NE

The applicant requests a permit to export Western Lowland gorilla (*Gorilla gorilla gorilla*) semen to Johannesburg Zoo, South Africa for the purpose of captive propagation for the enhancement of the survival of the species.

PRT–004720

*Applicant:* American Museum of Natural History, New York, NY

The applicant requests a permit to import brown lemur subspecies (*Eulemur fulvus albocollaris, collaris, rufus, albifrons, and sanfordi*) blood samples from Madagascar for the purpose of enhancement of the survival of the species.

PRT–005708

*Applicant:* Praveen Karanth, Albany, NY

The applicant requests a permit to export samples taken from a captive-born gray langur (*Semnopithecus entellus*) for the purpose of scientific research.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: December 4, 1998.

**Mary Ellen Amtower,**

*Acting Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 98–32816 Filed 12–9–98; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Emergency Exemption: Issuance

On November 26, 1998, the Fish and Wildlife Service (Service) issued a permit (PRT–005319) to Wildlife Conservation Society, Bronx, New York to import 33 angulated/plowshare tortoises (*Geochelone ynipora*) into the United States at the request of the Management Authority of the Netherlands. The 30-day public comment period required by section 10(c) of the Endangered Species Act was waived. The Service determined that an emergency affecting the survival of these tortoises existed and that no reasonable alternative was available to

the applicant. The seized animals were at risk because of the immediate need for disease screening and health evaluation which could best be preformed in the United States and overcrowding in the Netherlands quarantine facility.

Dated: December 4, 1998.

**MaryEllen Amtower,**

*Acting Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 98–32817 Filed 12–9–98; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Issuance of Permit for Marine Mammals

On August 26, 1998, a notice was published in the **Federal Register**, Vol. 63, No. 165, Page 45511–12, that an application had been filed with the Fish and Wildlife Service by Joseph Crawley for a permit (PRT–001978) to import one polar bear *(Ursus maritimus)* trophy taken from the Lancaster Sound population, Canada prior to April 30, 1994 for personal use.

Notice is hereby given that on October 23, 1998, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On August 26, 1998, a notice was published in the **Federal Register**, Vol. 63, No. 165, Page 45512, that an application had been filed with the Fish and Wildlife Service by Kurt von Besser for a permit (PRT–001631) to import one polar bear *(Ursus maritimus)* trophy taken from the Viscount Melville population, Canada, taken prior to April 30, 1994, for personal use.

Notice is hereby given that on November 4, 1998, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On September 11, 1998, a notice was published in the **Federal Register**, Vol. 63, No. 176, Page 48751, that an application had been filed with the Fish and Wildlife Service by Ricardo E. Longoria for a permit (PRT–002446) to import one polar bear *(Ursus maritimus)* trophy taken from the McClintock Channel population, Canada, for personal use.

Notice is hereby given that on November 4, 1998, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On September 17, 1998, a notice was published in the **Federal Register**, Vol. 63, No. 180, Page 49707, that an application had been filed with the Fish and Wildlife Service by George Gard for a permit (PRT–002693) to import one polar bear *(Ursus maritimus)* trophy taken from the Foxe Basin population, Canada prior to April 30, 1994 for personal use.

Notice is hereby given that on November 10, 1998, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On September 23, 1998, a notice was published in the **Federal Register**, Vol. 63, No. 184, Page 50922, that an application had been filed with the Fish and Wildlife Service by Robert B. Ashton, Hanover, NH, for a permit (PRT–002869) to import a sport-hunted polar bear *(Ursus maritimus)* trophy, from the Southern Beaufort Sea population, Northwest Territories, Canada, for personal use.

Notice is hereby given that on November 18, 1998, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm 700, Arlington, Virginia 22203, phone (703) 358–2104 or Fax (703) 358–2281.

Dated: December 4, 1998.

**MaryEllen Amtower,**

*Acting Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 98–32815 Filed 12–9–98; 8:45 am]

**BILLING CODE [4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NM–910–09–1020–00]**

### New Mexico Resource Advisory Council Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Council Meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix 1, The Department of the Interior, Bureau of Land Management (BLM), announces a meeting of the New Mexico Resource Advisory Council (RAC). The meeting will be held on January 21 and 22, 1999 at the Doubletree Hotel, 3347 Cerrillos Road, Santa Fe, NM.

The meeting on Thursday January 21 starts at 8:30 a.m., and the meeting on Friday January 22 starts at 8 a.m. The draft agenda for the RAC meeting includes presentations and discussions on the following: agreement on the meeting agenda, any RAC comments on the draft summary minutes of the last RAC meeting on November 19 and 20, 1998 at Las Cruces, NM, check in with RAC members, the Rio Puerco watershed study, two different times for the public to address the RAC, Culp Canyon Wilderness Study Area and the NM/BLM Wilderness Study Area program, RAC recommendations follow up, Rio Grande Corridor Proposed Plan and Final EIS, Quivira Coalition, McGregor Range Withdrawal update, Standards and Guidelines RMPA/EIS update, BLM Field Office Managers presentations and discussion, selection of next RAC meeting location and development of draft agenda items for the next RAC meeting, and a RAC assessment on the meeting. Specific agenda items, dates and times may be adjusted with approval of the RAC.

The time for the public to address the RAC is on Thursday, January 21, from 10:00 a.m. to 12:00 noon and from 4:30 p.m. to 5:00 p.m. The RAC may reduce or extend the end time for public comment of 12:00 noon and of 5:00 p.m. depending on the number of people wishing to address the RAC. The length of time available for each person to address the RAC will be established at the start of the public comment period and will depend on how many people there are that wish to address the RAC. At the completion of the public comments the RAC may continue discussion on its agenda items. The meeting on January 22, 1999, will be

from 8:00 a.m. to 4:00 p.m. The end time of 4:00 p.m. for the meeting may be changed depending on the work remaining for the RAC.

**FOR FURTHER INFORMATION CONTACT:** Bob Armstrong, New Mexico State Office, Planning and Policy Team, Bureau of Land Management, 1474 Rodeo Road, P.O. Box 27115, Santa Fe, New Mexico 87502–0115, telephone (505) 438–7436.

**SUPPLEMENTARY INFORMATION:** The purpose of the Resource Advisory Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of public lands. The Council's responsibilities include providing advice on long-range planning, establishing resource management priorities and assisting the BLM to identify State and regional standards for rangeland health and guidelines for grazing management.

Dated: December 4, 1998.

**Gary A. Stephens,**

*Acting Deputy State Director.*

[FR Doc. 98–32799 Filed 12–9–98; 8:45 am]

**BILLING CODE 4310–FB–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY–921–41–5700; WYW139826]**

### Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW139826 for lands in Washakie County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW139826 effective September 1, 1998, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: November 30, 1998.

**Pamela J. Lewis,**

*Chief, Leasable Minerals Section.*

[FR Doc 98–32853 Filed 12–9–98; 8:45 am]

**BILLING CODE 4310–22–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY–921–41–5700; WYW139749]**

### Proposed Reinstatement of Terminated Oil and Gas Lease

November 30, 1998.

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW139749 for lands in Washakie County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW139749 effective September 1, 1998, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

**Pamela J. Lewis,**

*Chief, Leasable Minerals Section.*

[FR Doc 98–32854 Filed 12–9–98; 8:45 am]

**BILLING CODE 4310–22–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY–921–41–5700; WYW137207]**

### Proposed Reinstatement of Terminated Oil and Gas Lease

November 30, 1998.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW137207 for lands in Washakie County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW137207 effective September 1, 1998, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

**Pamela J. Lewis,**

*Chief, Leasable Minerals Section.*

[FR Doc. 98–32855 Filed 12–9–98; 8:45 am]

**BILLING CODE 4310–22–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[MT–924–5410–00–E029; MTM 88573]**

### Application for Conveyance of Mineral Interest; Montana

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Notice is given that, pursuant to section 209b of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719(b)), Ms. Anne M. Moreland and Mr. John L. Mayer have applied to purchase the mineral estate described as follows:

**Principal Meridian, Montana**
T. 5 S., R. 17 E., sec. 30, lots 3 and 4.
Containing 81.55 acres, more or less.

The mineral interest will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface mineral ownership where there are no known mineral values or in those instances where the United States mineral reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development.

**FOR FURTHER INFORMATION CONTACT:** Tami Lorenz, Legal Instruments Examiner, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2846.

**SUPPLEMENTARY INFORMATION:** Upon publication of this notice in the **Federal Register** as provided in 43 CFR 2720.1–1(b), the mineral interests within the legal description given above will be segregated to the extent that they will not be subject to appropriation under the mining and mineral leasing laws. The segregative effect of the application shall terminate upon issuance of a conveyance document, final rejection of the application, or 2 years from the date of filing of the application, July 31, 1998, whichever occurs first.

Dated: December 2, 1998.

**Randy D. Heuscher,**

*Acting Deputy State Director, Division of Resources.*

[FR Doc. 98–32861 Filed 12–9–98; 8:45 am]

**BILLING CODE 4310–DN–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[ID–040–1610–00]**

### Availability of the Challis Proposed Resource Management Plan (RMP) and Final Environmental Impact Statement (EIS)

**AGENCY:** Bureau of Land Management, Idaho.

**ACTION:** Notice.

**SUMMARY:** Pursuant to section 202 of the Federal Land Policy and Management Act of 1976, section102(2)(C) of the National Environmental Policy Act of 1969, and BLM Planning Regulations (43 CFR part 1600), the Bureau of Land Management (BLM), Upper Columbia—Salmon Clearwater Districts has prepared a Proposed Resource Management Plan/Final Environmental Impact Statement (Proposed RMP/Final EIS) for the Challis Resource Area. The Challis Proposed RMP/Final EIS has been published and is available for public review by requesting a copy from the address indicated in the **ADDRESSES** section below.

The Challis Proposed RMP/Final EIS describes and analyzes the BLM's proposed plan for managing approximately 792,657 acres of BLM public lands in the Challis Resource Area, located in Custer and Lemhi counties of east-central Idaho. When implemented, the Challis RMP would replace the three Management Framework Plans currently used by the Challis Resource Area. The Challis RMP would also amend the Little Lost-Birch Creek Management Framework Plan (BLM 1981) by designating the Donkey Hills Area of Critical Environmental Concern (ACEC), which includes 4,714 acres managed by the Upper Snake River District—BLM in Butte County, Idaho.

**DATES:** Written comments on the Final EIS for the Challis Proposed RMP must be submitted or postmarked no later than Tuesday, January 19, 1999. Written protests on the Challis Proposed RMP must also be submitted or postmarked no later than Tuesday, January 19, 1999.

**ADDRESSES:** Copies of the Challis Proposed RMP/Final EIS may be obtained upon request by contacting the Bureau of Land Management, Route 2, Box 610, Salmon, Idaho 83467; phone (208) 756–5400. Written comments on the Final EIS should be addressed to Kathe Rhodes, Planning and Environmental Coordinator, Bureau of Land Management, Route 2, Box 610, Salmon, Idaho 83467. Protests of the Challis Proposed RMP must be filed with the Director, Bureau of Land Management; Attention: Ms. Brenda Williams, Protests Coordinator; WO–210/LS–1075; Department of the Interior; Washington, DC 20240. A description of protest procedures may be obtained from Kathe Rhodes, Planning and Environmental Coordinator, Bureau of Land Management, Route 2, Box 610, Salmon, Idaho 83467; phone (208) 756–5440.

**FOR FURTHER INFORMATION CONTACT:** Kathe Rhodes, Planning and Environmental Coordinator, Bureau of Land Management, Route 2, Box 610, Salmon, Idaho 83467; phone (208) 756–5440. Documents relevant to the Challis Proposed RMP/Final EIS planning process are available for public viewing at the Salmon BLM office on Highway 93 South, Salmon, Idaho.

**SUPPLEMENTARY INFORMATION:** The Challis Proposed RMP/Final EIS describes and analyzes the BLM's proposed plan for addressing the planning issues and management concerns identified through public involvement and BLM input. The Proposed RMP proposes resource condition objectives, land use allocations, and management actions and direction to guide resource management of the Challis Resource Area on a long term, sustainable basis during the next 15 to 20 years.

The Proposed RMP/Final EIS describes changes from and corrections to the Challis Draft RMP/EIS (BLM, May 1996), updates the discussion of the affected environment, provides an analysis of environmental consequences for the Proposed RMP, records public comments on the Draft RMP/EIS, and documents the BLM's responses to those comments. The Proposed RMP is based on the Preferred Alternative (Alternative 2) described in the Challis Draft RMP/EIS, as modified in response to public and tribal comments and internal BLM recommendations. When compared with the Preferred Alternative, the Proposed RMP increases the level of protection to aquatic, riparian, and upland resources by limiting off-highway vehicle use to exisitng roads, vehicle ways, and trails thorughout the Resource Area. The Proposed RMP also clarifies numerous decisions, and thereby improves the BLM's ability to implement effective management in order to address resource concerns and improve resource conditions. Finally, the Proposed RMP includes an emphasis on integrated resource activity planning and watershed assessment, in order to ensure that individual project proposals are considered within the context of broader landscape issues.

The Proposed RMP includes decisions related to two types of designations: (a) The Proposed RMP describes the BLM's Wild and Scenic River suitability findings for rivers within the Challis Resource Area; and (b) the Proposed RMP designates public lands as Areas of Critical Environmental Concern (ACECs). The Proposed RMP would continue to designate approximately 13,968 acres within existing ACECs, in order to highlight unique plant communities, paleontological resources, fragile soils and a bighorn sheep population for management and protection; these existing ACECs include 5,975 acres of existing Research Natural Areas (RNAs). The Proposed RMP would expand one existing ACEC by 322 acres. The Proposed RMP would also designate approximately 73,916 acres within seven additional ACECs, in order to highlight the following resources for management and protection: unique plant communities; fragile soils; a geologic area of interest; unique riparian habitats; fisheries habitats; roadless primitive and scenic values; crucial bighorn sheep and elk habitats; and unique cultural resources. Approximately 3,871 acres of Research Natural Areas would be designated within these seven additional ACECs.

Following a 30-day public review period, a concurrent 30-day protest period, a concurrent 60-day Governor's review, and resolution of written protests or concerns raised during these protest and review periods, the BLM will prepare a Record of Decision for the approved RMP. The public will be notified in the **Federal Register** when the Record of Decision for the Challis RMP becomes available.

Comments on the protests of the Challis Proposed RMP/Final EIS, including the names and street addresses of respondents, will be

available for public review at the Salmon BLM Office on Highway 93 South in Salmon, Idaho during regular business hours (7:30 a.m. to 4:15 p.m.), Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment or protest. Such request will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made avaialble for public inspection in their entirety.

Dated: December 4, 1998.

**Fritz U. Rennebaum,**

*District Manager.*

[FR Doc. 98–32807 Filed 12–9–98; 8:45 am]

BILLING CODE 4310–GG–M

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Alcatraz Island Historic Structure Preservation-Construction Program; Golden Gate National Recreation Area, San Francisco County; Notice of Intent To Prepare an Environmental Impact Statement

**SUMMARY:** In accord with § 102(2)(C) of the National Environmental Policy Act, Golden Gate National Recreation Area is undertaking a conservation planning and impact analysis process to identify alternatives for (and assess potential impacts of) construction activities necessary to rehabilitate and preserve structures and sites which contribute to the island's National Historic Landmark status. Enhancing visitor and employee safety is also an objective. Notice is hereby given that the National Park Service will prepare an Environmental Impact Statement (EIS) to aid planning for and implementation of this program.

**Background**

Alcatraz Island is within the boundary of Golden Gate National Recreation Area, a unit of the National Park System comprised of coastal lands in Marin, San Francisco, and San Mateo counties, California. Alcatraz Island, prominently located in San Francisco Bay, is a National Historic Landmark and an important breeding site for several waterbird species and western gulls in San Francisco Bay. Facilities and recreational opportunities on Alcatraz Island attract more than 1.4 million visitors annually.

Recent management and use of Alcatraz Island has been guided by a Development Concept Plan (DCP) which was completed in 1993. An Environmental Assessment (EA) was prepared to evaluate forseeable effects of carrying out the DCP (among other considerations, potential impacts to historic resources, biological resources, human health and safety, and park visitation were addressed). A Finding of No Significant Impact was approved on August 3, 1993 by the Acting Regional Director, Western Region. Prescribed mitigations to safeguard breeding bird populations included timing and location restrictions for proposed construction activities foreseen at that time.

Although originally many elements of construction addressed in the DCP fit within the seasonal restrictions that were identified, several historic rehabilitation and related projects have recently been deemed necessary. These may require construction schedules which would extend beyond the seasonal restrictions. Also, the breeding and nesting seasons for Alcatraz avifauna have been found to fluctuate, sometimes extending as much as 2 months beyond previously known periods. Moreover, visitation has increased, and has the potential for further growth. The constrained construction periods, recently identified rehabilitation needs, possibility of undocumented archeological resources and artifacts, new information about avifaunal activity, and other factors necessitate undertaking a new conservation planning and impact analysis effort.

**Alternatives Identified to Date**

Proposed construction that would be outside the scope of the existing DCP will be detailed and evaluated. At this time its anticipated that the impact analysis would focus primarily on the effects of proposed construction activities on the island's breeding bird populations. The construction required to rehabilitate National Landmark contributing structures and features is envisioned to be phased over a 3–5 year period. To date, 12 projects are foreseen that could necessitate some degree of activity outside the currently prescribed seasonal restrictions—these include rehabilitation of the cellhouse, water tower and guard tower from the federal prison era, two civil war era structures, and the dock. Installation of photovoltaic electrical panels on the roof of a prison era building, stabilization of a failing slope, and reconstruction of a former greenhouse are also proposed.

In addition to the above construction needs, other alternatives currently envisioned include: no action; and adherence to existing mitigations and seasonal restrictions.

**Scoping/Decision Process**

The existing DCP/EA provides a useful baseline which must be corroborated or updated. The NPS encourages local and regional agencies, park partners, visitors, and other interested parties to assist in this effort. Anyone wishing to be incorporated on a mailing list may respond to: Alcatraz Preservation Construction Program EIS; Attn: Olivia Shinomoto; Golden Gate National Recreation Area; Building 201 Fort Mason; San Francisco, CA 94123.

As already highlighted in local and regional news media, a public scoping meeting will be held at park headquarters (Building 201 Fort Mason) on December 11 at 8:00 am; also on that date an information open house meeting will be held at the same location from 3–6 pm. For details about these meetings, contact Olivia Shinomoto at (415) 561–4821. Written comments conveying information or sharing issues and concerns are welcomed; these should be addressed to the Superintendent (address as above) and must be postmarked no later than January 9, 1999.

Availability of the Draft EIS (DEIS) for review and written comment will be announced by **Federal Register** notice, as well as via local and regional news media and direct mailing. At this time the DEIS is anticipated to be available for public review during winter 1999. In addition to written responses, a formal comment opportunity will be provided via public hearing held under the auspices of the GGNRA Advisory Commission (full details will be available after January 9, 1999 and may be obtained from the project contact noted above). If the focus of the EIS is substantiated through the public involvement and agency consultation process, then it is anticipated that a Final EIS (FEIS) could be released during summer 1999. Subsequently, Notice of any Record of Decision would be published in the **Federal Register** no sooner than thirty (30) days after the FEIS is distributed. The official responsible for the final decision is the Regional Director, Pacific West Region, National Park Service.

Dated: December 3, 1998.

**James R. Shevock,**

*Acting Regional Director, Pacific West.*

[FR Doc. 98–32756 Filed 12–9–98; 8:45 am]

**BILLING CODE 4310–70–P**

## DEPARTMENT OF JUSTICE

### Lodging of Consent Decree Pursuant to the Clean Air Act

Notice is hereby given that a proposed consent decree in *United States* v. *AES/Ntron, Inc.*, Civil Action No. 98–1983, was lodged on November 20, 1998 with the United States District Court for the Eastern District of Pennsylvania. The United States filed this action pursuant to the Clean Water Act to obtain penalties and injunctive relief for AES/Ntron, Inc.'s violations of the National Recycling and Emissions Reduction Program contained in 42 U.S.C. 7671g and 40 CFR part 82, Subpart F, and the requirements to provide information to the U.S. Environmental Agency in accordance with 42 U.S.C. 7614.

The Consent Decree requires AES-Ntron, Inc. to pay $80,000 in civil penalties for its violations. In addition, the Consent Decree requires AES-Ntron, Inc. to notify customers that the machines it sold were not certified as required by federal regulations and to test certain machines to determine whether they meet regulatory standards.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *AES/Ntron*, Inc., DOJ Ref. #90–5–2–1–2091.

The proposed consent decree may be examined at the office of the United States Attorney, 615 Chestnut Street, Twelfth Floor, Philadelphia, Pennsylvania 19106; the Region III Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $4.75 (25 cents per page reproduction costs) for each decree, payable to the Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 98–32858 Filed 12–9–98; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act

Notice is hereby given that a proposed consent decree in *United States* v. *ARCO*, Civil Action No. 89–039–BU–PGH (D. Mont.) and *Montana* v. *ARCO*, Civil Action No. 83–317–HLN–PGH (D. Mont.), was lodged on November 16, 1998 with the United States District Court for the District of Montana. The United States filed its action pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act to recover costs incurred and to be incurred in cleaning up three Superfund Sites in southwestern Montana. The State of Montana filed its action pursuant to CERCLA and State law to recover natural resource damages arising from the injury or destruction of natural resources within the same area. The Confederated Salish and Kootenai Tribes of the Flathead Reservation intervened in *Montana* v. *ARCO*, asserting claims for the recovery of natural resource damages as well.

The Consent Decree provides for the following: (1) ARCO's payment of $80 million toward the ongoing remediation of one operable unit (''the SST OU''), which represents 100% of the total projected costs of that work, with provisions for the payment of cost overruns by ARCO, the State of Montana, and EPA; (2) ARCO's payment of $3.9 million towards the United States' $14.7 million in past costs related to the SST OU; (3) ARCO's payment of a $1.8 million civil penalty for its failure or refusal to comply with the Administrative Order requiring it to perform the remedy at the SST OU; (4) payment of $2 million to the Superfund to settle ARCO's counterclaims against the United States related to the SST OU; (5) ARCO's commitment to a schedule to settle the rest of the United States' cost recovery claims for the three Sites, together with an ''earnest money'' deposit of $15 million towards past cost if settlement is not reached on the remainder of the case; (6) ARCO's payment of $1.7 million in cash and ARCO's creation of 400 acres of replacement wetlands in settlement of the U.S. Fish and Wildlife Service's claims for natural resource damages (work valued at approximately $3.3 million); (7) the creation of an additional 1,200 acres of wetlands by the State of Montana and the Confederated Salish and Kootenai Tribes of the Flathead Reservation to further compensate the U.S. Fish and Wildlife Service; (8) commitments by the State and the Tribes to perform restoration work related to the creation of bull trout habitat within the Clark Fork River Basin; and (9) ARCO's payment of $18.3 million to the Tribes in compensation for their natural resource damages claims. The proposed Consent Decree also provides that the United States covenants not to sue or take administrative action against ARCO, its officers, directors and employees to the extent such officers', directors', and employees' liability arises solely from their status as officers, directors, or employees, pursuant to Sections 106, 107(a) of CERCLA, 42 U.S.C. 9606, 9607(a) and Section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973 at the SST OU, except as specifically provided in the consent decree. This settlement is contingent upon entry of a State Consent Decree that was lodged on June 19, 1998 and settles the claims of the State of Montana for natural resource damages at certain locations within the Basin. The State Consent Decree provides for the recovery of $133 million in cash and $2 million in land. Together, therefore, the two settlements result in recovery of at least $100.9 million in response costs and $158.2 million in natural resource damages.

The Department of Justice will provide a RCRA public meeting in the affected area if requested and will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments and/or a request for a RCRA public meeting should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *ARCO*, DOJ Ref. #90–11–2–430.

The proposed consent decree may be examined at the office of the United States Attorney, Western Federal Savings and Loan Building, 2929 3rd Avenue, North, Suite 400, Billings, Montana 59101, the Montana Field Office, Environmental Protection Agency, Federal Building 301 South Park, Drawer 10096 Helena, MT 59626–0096, and at the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005, (202) 624–0892.

A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $31.00 for the consent decree and $47.50 for the attachments (25 cents per page reproduction costs) for each decree, payable to the Consent Decree Library.

**Bruce S. Gelber,**

*Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 98–32822 Filed 12–9–98; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 U.S.C. 50.7, notice is hereby given that a proposed Amendment to Consent Decree for Neal's Dump Remedial Action (the ''Amendment'') in *United States et al.* v. *CBS Corp.*, Civil Action Nos. IP 83–9–C and IP 81–448–C, was lodged on December 1, 1998, in the United States District Court for the Southern District of Indiana. The Amendment represents a change in the remedial action CBS Corp. is to perform at the Neal's Dump Superfund Site in Owen County, Indiana. Under this Amendment and pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 *et seq.*, CBS will excavate materials at the Site contaminated with polychlorinated biphenyls (''PCBs'') and dispose of such materials by off-site incineration or at a landfill in accordance with the Toxic Substances Controls Act, 15 U.S.C. 2601 *et seq.*

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *CBS Corp.*, DOJ Ref. #90–7–1–212A.

The proposed Amendment may be examined at the office of the United States Attorney, Southern District of Indiana, U.S. Courthouse, 46 East Ohio Street, Fifth Floor Indianapolis, Indiana 46204; the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Blvd, Chicago, Illinois, 60604, and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. In requesting a copy of the proposed Amendment, please enclose a check payable to the Consent Decree Library in the amount of $6.00 (25 cents per page reproduction cost) for a copy of the proposed Amendment.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 98–32823 Filed 12–9–98; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *CDMG Realty Co, et al.*, Case No. 89 Civ. 4246 (NHP), was lodged on *November 30,* 1998, in the United States District Court for New Jersey.

The Consent Decree resolves the United States' claims, pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9606 and 9607, for response costs incurred, or to be incurred by the United States at the Sharkey Landfill Superfund Site (the ''Site''), located in the Townships of Parsippany-Troy Hills and East Hanover, Morris County, New Jersey. Under the Consent Decree, CDMG Realty Co., a limited partnership that owns a portion of the Site, and the Estate of Helen Ringlieb, representing a former owner of a portion of the Site, will pay the United States $60,000, plus interest on this amount deposited in escrow. Together with a previous settlement entered on December 2, 1994, with forty-four defendants who agreed to perform the remediation of the Site, or who cashed-out as de minimis parties, the United States will have recovered $44.360 of the $45.220 million of the total costs associated with the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *CDMG Realty Co., et al.*, DOJ Ref. #90–11–2–470.

The proposed Consent Decree may be examined at the Office of the United States Attorney in Newark, New Jersey; the Region II Office of the Environmental Protection Agency, 290 Broadway, New York, New York; and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please refer to the referenced case and enclose a check made payable to the Consent Decree Library in the amount of $7.25 (25 cents per page reproduction costs).

**Joel M. Gross,**

*Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.*

[FR Doc. 98–32857 Filed 12–9–98; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Under 28 C.F.R. § 50.7, notice is hereby given that on November 24, 1998, a third round of settlements according to the terms of a partial Consent Decree (''Decree'') previously lodged in *United States v. Keystone Sanitation Company, Inc., et al.*, Civil Action No. 1:CV–93–1482, was lodged with the United States District Court for the Middle District of Pennsylvania.

On September 27, 1993, the United States filed a complaint pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9607(a) against the owners and operator of, and certain parties who arranged for the disposal or treatment of hazardous substances at the Keystone Landfill Superfund Site (the ''Site'') in Union Township, Adams County, PA. Several of the defendants sued approximately 180 third-party defendants, who in turn sued approximately 600 fourth party defendants, including the third and fourth-party defendants proposed for addition to the de micromis Consent Decrees lodged previously in this action.

The proposed settlement of an additional 34 parties is based upon the same Decree previously lodged with the United States District Court for the Middle District of Pennsylvania for public comment on April 5, 1996. 61 Fed. Reg. 18411 (April 25, 1996). Settlement of an additional 73 parties, based upon the same Decree, was lodged with the United States District Court. This proposed Decree, entered into under Section 122(g) of CERCLA, 42 U.S.C. § 9622(g) resolves the liability of parties determined by EPA to be ''de micromis'', which for purposes of this Site means that they contributed less than 1800 cubic yards of municipal solid waste, and within such amount, less than 55 gallons or 100 pounds of materials contain hazardous substances. The defendants will pay $1 each. With the April 5, 1996 and May 5, 1996 lodgings, the United States solicited public comment upon the proposed Decree's resolution of a total of 168 third and fourth party Defendant's liability for response costs incurred and to be incurred at the Site. With today's notice, the United States seeks comment on its settlement according to the terms of this Decree with an additional 34 more parties.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed settlement with an additional 34 parties according to the terms of the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530 and should refer to *United States v. Keystone Sanitation Company, Inc. et al.,* DOJ No. 90–11–2–656A.

The Decree may be examined at the Office of the United States Attorney, Middle District of Pennsylvania, Federal Building and Courthouse, 228 Walnut Street, Room 217, Harrisburg, Pennsylvania, 17108; Region III Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103; and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005 (202) 624–0892. A copy of the Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $10.00 (twenty-five cents per page reproduction costs) payable to the ''Consent Decree Library.'' In requesting a copy exclusive of defendants' signatures, please enclose a check in the amount of $1.50 payable to the Consent Decree Library.

In addition, copies of the Decree, as well as the record supporting EPA's eligibility determinations regarding the present 34 defendants proposed for addition to the Decree, are available at the following record repositories established by EPA near the Site pursuant to Section 117(d) of CERCLA, 42 U.S.C. § 9617(d):

U.S. EPA, Region III (address above) Contact: Anna Butch, 215–814–3157

Hanover Public Library, 2 Library Place, Hanover, PA 17331, Contact: Raymond Van de Castle, 717–632–5183

St. Mary's United Church of Christ, 1441 East Mayberry Road, Westminster, MD 21158, Contact: Jeanne Bechtel, 410–848–3862

The Decree and record are also available at Filias & McLucas, 4309 Linglestown Road, Harrisburg, PA 17112, the repository created to house documents produced during discovery in the present litigation. Persons wishing to view documents at Filias & McLucas should call 717–845–6418 to arrange an appointment.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.*

[FR Doc. 98–32865 Filed 12–9–98; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

Notice is hereby given that a consent decree in *United States* v. *Kingsford Manufacturing Company,* Civil Action No. 2:98–CV–22 (N.D.W. Va.) was lodged with the court on November 24, 1998.

The proposed decree resolves the claims of the United States against Kingsford Manufacturing Company under the Clean Air Act, 42 U.S.C. 7401, *et seq.,* for civil penalties and injunctive relief to redress violations occurring at Kingsford's Beryl, West Virginia char manufacturing facility. Under the decree, Kingsford is required to pay a civil penalty of $900,000 and is subjected to injunctive relief designed to ensure future compliance.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Kingsford Manufacturing Company,* Civil Action No. 2:98–CV–22 (N.D.W. Va.), DOJ Ref. #90–5–2–1–2209.

The proposed amendment to consent decree may be examined at the United States Department of Justice, Environment and Natural Resources Division, Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005, (202) 624–0892.

A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $6.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 98–32824 Filed 12–9–98; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Section 122(d) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9622(d), and the policy of the United States Department of Justice, as provided in 28 CFR 50.7, notice is hereby given that on November 24, 1998, a proposed Consent Decree in *United States* v. *North Carolina State University at Raleigh,* Civ. No. 5:98–CV–893–BO2, was lodged with the United States District Court for the Eastern District of North Carolina. This Consent Decree concerns the North Carolina State University Lot 86 Superfund Site in west Raleigh, North Carolina. Pursuant to Sections 106, 107(a) and 113(g)(2) of CERCLA, 42 U.S.C. 9606, 9607(a) and 9613(g)(2), the Complaint in this action seeks recovery of response costs incurred and to be incurred by the United States at and in connection with the Site, and injunctive relief to remedy contaminated soil and groundwater at the Site.

Defendant has agreed in the proposed Consent Decree to: (1) perform the remedy selected by EPA for the Site, namely, remediation of contaminated soils and contaminated groundwater; (2) pay $248,213.63 to the United States for its previously unreimbursed past response costs incurred at the Site; and (3) reimburse EPA for its future

response costs incurred in connection with the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC, 20044, and should refer to *United States* v. *North Carolina State University at Raleigh*, D.J. Ref. 90–11–2–1207.

The proposed Consent Decree may be examined at any of the following offices: (1) the Office of the United States Attorney for the Eastern District of North Carolina, 310 New Bern Ave., Ste. 800, Fed. Bldg., Raleigh, North Carolina; (2) the U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, Georgia; and (3) the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005 (telephone (202) 624–0892).

A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005. Please refer to the referenced case. There is a photocopying charge of $0.25 per page. For a copy of the Consent Decree without attachments (the ROD and Statements of Work), please enclose a check for $26.75 made payable to ''Consent Decree Library.'' For a copy of the Consent Decree with all attachments, please enclose a check for $60.75 made payable to ''Consent Decree Library.''

**Walker Smith,**

*Deputy Chief, Environmental Enforcement Section, Environment & Natural Resources Division.*

[FR Doc. 98–32859 Filed 12–9–98; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

**[AAG/A Order No. 156–98]**

## Privacy Act of 1974; Modified System of Records and New System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the Department of Justice, Office of Professional Responsibility (OPR), proposes to revise the following system of records last published in the **Federal Register** on December 11, 1987 (52 FR 47280):

''Office of Professional Responsibility Record Index, JUSTICE/OPR–001''

and proposes to establish the following new system of records:

''Freedom of Information/Privacy Acts (FOI/PA) Records, JUSTICE/OPR–002.''

The JUSTICE/OPR–001 system is maintained to provide for the resolution of allegations of misconduct made against Department of Justice employees and to advise complainants of the status of investigations and the results. OPR is revising this system to add two new routine use disclosures identified as routine uses (9) and (10); to modify routine use (1); and to make certain other non-substantive, editorial and clarifying changes to the system description. The proposed changes have been italicized for public convenience.

The new system of records, JUSTICE/OPR–002, will enable OPR to process requests for access to its records under the Freedom of Information and Privacy Acts.

Title 5 U.S.C. 552(e) (4) and (11) provide that the public be given a 30-day period in which to comment on proposed new routine use disclosures for both of these systems. The Office of Management and Budget (OMB), which has oversight responsibilities under the Act, requires that OMB and Congress be given a 40-day period in which to conduct its review. Therefore, please submit written comments to Patricia E. Neely, Program Analyst, Information Management and Security Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 850 WCTR Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress on the proposed modification of the existing system and the establishment of a new system of records.

Dated: November 20, 1998.

**Stephen R. Colgate,**

*Assistant Attorney General for Administration.*

### JUSTICE/OPR–001

**SYSTEM NAME:**

Office of Professional Responsibility Record Index.

**SYSTEM LOCATION:**

Office of Professional Responsibility (OPR), U.S. Department of Justice *(DOJ), 950 Pennsylvania Avenue* NW, Washington, DC 20530.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

(1) DOJ employees who are the subjects of complaints directed to, or inquiries or investigations conducted by, OPR; (2) individuals (complainants) who write to OPR; (3) individuals (complainants) who write to the Attorney General and other officials of the Department and whose correspondence is referred to OPR; and (4) employees of agencies of the Federal Government, other than DOJ, about whom information indicating possible criminal or administrative misconduct has been developed during the course of routine investigation by components of DOJ, when such information is furnished to OPR for referral—if warranted—to an appropriate investigative component of DOJ, or another government agency.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

This system of records consists of complaints filed against DOJ employees, the results of investigations into those complaints, and actions taken after completion of the investigations. This system also includes all records developed pursuant to special assignments given to OPR by the Attorney General or the Deputy Attorney General as well as records containing information indicating possible misconduct by employees of the Federal Government other than DOJ, which have been furnished to OPR for referral, if warranted, to the appropriate investigative authority.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

44 U.S.C. 3101 et seq., 28 CFR 0.39 et seq., and Attorney General Order No. 833–79.

**PURPOSE(S):**

*Information in this system is maintained to provide for the resolution of allegations of misconduct made against Department of Justice employees and to advise complainants of the status of investigations and the results.*

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

*A relevant record* may be disseminated as a routine use of such record as follows: (1) In any case in which there is an indication of a violation or a potential violation of law, *either on its face or in connection with other information,* whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the record may be referred to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto; (2) in the course of investigating the potential or actual

violation of any law, whether civil, criminal, or regulatory in nature, or during the course of a trial or hearing or the preparation for a trial or hearing for such violations, a record may be disseminated to a Federal, State, local or foreign agency, or to an individual or organization if there is reason to believe that such agency, individual, or organization possesses information relating to the investigation, trial or hearing and the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant; (3) a record relating to a case or matter may be disseminated in an appropriate Federal, State, local or foreign court or grand jury proceeding in accordance with established constitutional, substantive or procedural law or practice; (4) a record relating to a case or matter may be disseminated to a Federal, State, or local administrative or regulatory proceeding or hearing in accordance with the procedures governing such proceeding or hearing; (5) a record may be disseminated to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of security clearance or the reporting of an investigation of an employee; (6) information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy; (7) information not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests information on behalf of and at the request of the individual who is the subject of the record; (8) a record may be disclosed to the National Archives and Records Administration (NARA) and the General Services Administration in records management inspections conducted under 44 U.S.C. 2904 and 2906; *(9) information may be furnished to complainants to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of the investigation or case arising from the matters of which they complained; and (10) information may be furnished to professional organizations or associations with which individuals covered by this system of records may be affiliated, such as state bar disciplinary authorities, to meet their responsibilities in connection with the administration and maintenance of standards of conduct and discipline.*

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Information is stored manually in file jackets and electronically in office automation equipment.

**RETRIEVABILITY:**

Information is retrieved *in most instances by the name of the employee who is the subject of the complaint and in some instances by the name of the complainant.*

**SAFEGUARDS:**

The information is stored in safes, locked filing cabinets and office automation equipment in a limited access area and is maintained according to applicable departmental security regulations.

**RETENTION AND DISPOSAL:**

Records in the system are retained and disposed of in accordance with NARA *Job* #NCI–60–77–6.

**SYSTEM MANAGER(S) AND ADDRESS:**

Counsel on Professional Responsibility, Department of Justice, *950 Pennsylvania Avenue* NW, Washington, D.C. 20530.

**NOTIFICATION PROCEDURE:**

Address any inquiries to the System Manager listed above.

**RECORD ACCESS PROCEDURE:**

The major part of this system is exempted from this requirement under 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), or (k)(5). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received. A request for access to records contained in this system shall be made in writing, with the envelope and the letter clearly marked ''Privacy Access Request.'' *The request shall include the full name of the individual involved, his or her current address, date and place of birth, notarized signature, together with any other identifying information which may be of assistance* in locating the record. The requester will also provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above.

**CONTESTING RECORD PROCEDURES:**

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

**RECORD SOURCE CATEGORIES:**

Department officers and employees, and other Federal, State, local and foreign law enforcement and non-law enforcement agencies, private persons, witnesses, and informants.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(5) and (8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2). *In addition, the Attorney General has exempted this system from subsections (c)(3), (d), (e)(1), (e)(4)(G) and (H), and (f) pursuant to 5 U.S.C. 552a (k)(1), (k)(2) and (k)(5).* Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register**.

**JUSTICE/OPR–002**

**SYSTEM NAME:**

Freedom of Information/Privacy Acts (FOI/PA) Records.

**SYSTEM LOCATION:**

Office of Professional Responsibility (OPR), U.S. Department of Justice (DOJ), 950 Pennsylvania Avenue NW, Washington, DC 20530.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Persons who request disclosure of records pursuant to the Freedom of Information Act, and persons who request access to or correction of records pertaining to themselves contained in OPR systems of records pursuant to the Privacy Act.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The system of records contains copies of (1) FIO/PA requests received by OPR; (2) copies of OPR responses to requesters; (3) copies of the documents responsive to the requests; (4) copies of documents withheld; (5) internal memoranda and correspondence related to the requests; (6) records relating to appeals and/or litigation; and (7) disclosure accounting records.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

44 U.S.C. 3103 et seq., 28 CFR 0.39 et seq., and Attorney General Order No. 833–79.

**PURPOSE:**

This system has been established to enable OPR to receive, process and

respond to FOI/PA requests for its records. Employees of OPR may access the system to preform various receipt and response functions with regard to FIO/PA requests; to determine the status and content of responses to correspondence; to respond to inquiries for OPR personnel, the Department's Office of Legislative Affairs, and from Congressional offices regarding the status of correspondence; and to carry out any other similar or related duties.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

A record may be disclosed (1) to a Federal agency, which has furnished that record to the Department, to permit that agency to make a decision as to access or correction or to consult with that agency as to the propriety of access or correction; (2) to any appropriate Federal, State, local, or foreign agency to verify the accuracy of information submitted by an individual who has requested amendment or correction of records; (3) to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy; (4) as necessary to respond to inquiries by congressional offices on behalf of individual constituents who are subjects of OPR records; and (5) to the National Archives and Records Administration (NARA) and to the General Services Administration during a records management inspection conducted under the authority of 44 U.S.C. 2904 and 2906.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Information is stored manually in file jackets and electronically in office automation equipment.

**RETRIEVABILITY:**

Entries are arranged numerically and are retrieved from office automation equipment with reference both to the surnames of the individuals covered by this system of records and by an assigned number. Information may also be retrieved from file jackets by an assigned number.

**SAFEGUARDS:**

The information is stored in safes, locked filing cabinets and office automation equipment in a limited access area and is maintained according to applicable departmental security regulations.

**RETENTION AND DISPOSAL:**

Records in the system are retained and disposed of in accordance with the NARA General Records Schedule 14, items 11 and 21.

**SYSTEM MANAGER(S) AND ADDRESS:**

Counsel on Professional Responsibility, Department of Justice, 950 Pennsylvania Avenue NW, Washington, D.C. 20530.

**NOTIFICATION PROCEDURE:**

Address any inquiries to the System Manager listed above.

**RECORD ACCESS PROCEDURE:**

Part of this system is exempted from this requirement pursuant to 5 U.S.C. 552a (j)(2), (k)(1), and (k)(2). To the extent that this system of records is not subject to exemption, it is subject to access. A determination as to exemption shall be made at the time a request for access is received. A request for access to records contained in this system shall be made in writing, with the envelope and the letter clearly marked ''Privacy Access Request.'' The request shall include the full name of the individual involved, his or her current address, date and place of birth, notarized signature, together with any other identifying number or information which may be of assistance in locating the record, and a return address for transmitting the information. Access requests should be directed to the System Manager listed above.

**CONTESTING RECORD PROCEDURES:**

Part of this system is exempted from the requirement pursuant to 5 U.S.C. 552a (j)(2), (k)(1), and (k)(2). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for contest is received. Requesters shall direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information.

**RECORD SOURCE CATEGORIES:**

Sources of information contained in the system include (1) the individual covered by the system and (2) records responsive to the FOI/PA requests.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

The Attorney General has exempted this system from subsection (d) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2), (k)(1), and (k)(2). This exemption applies only to the extent that information in a record pertaining to an individual relates to official Federal investigations and matters of law enforcement. All other records are not being exempted. Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) have been published in the **Federal Register**.

[FR Doc. 98–32867 Filed 12–9–98; 8:45 am]

BILLING CODE 4410–28–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–34,993]**

### Alcoa Fujikura Ltd., Electro-Mechanical Products Owosso, Michigan; Notice of Revised Determination on Reopening

On October 20, 1998 the Department issued a Negative Determination Regarding Eligibility to apply for worker adjustment assistance, applicable to workers and former workers of Alcoa Fujikura Ltd., Owosso, Michigan. The notice was published in the **Federal Register** on November 10, 1998 (62 FR 63078).

By letter of November 16, 1998, the company requested administrative reconsideration regarding the Department's denial. New information provided by Alcoa Fujikura shows that company imports of radio frequency interference units increased during the time period relevant to the investigation.

Workers at the subject firm are engaged in employment related to the production of radio frequency interference units. The workers are not separately identifiable by product line.

Sales, production and employment at the Owosso, Michigan production facility declined during the relevant time period. The plant will close by the end of December, 1998.

**Conclusion**

After careful review of the additional facts obtained on reopening, I conclude that increased imports of articles like or directly competitive with radio frequency interference units contributed importantly to the declines in sales or production and to the total or partial separation of workers of Alcoa Fujikura Ltd., Electro-Mechanical Products, Owosso, Michigan. In accordance with the provisions of the Act, I make the following certification:

''All workers of Alcoa Fujikura, Electro-Mechanical Products, Owosso, Michigan, who became totally or partially separated from employment on or after August 27, 1997

are eligible to apply for worker adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed in Washington, DC this 23rd day of November 1998.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 98–32870 Filed 12–9–98; 8:45 am]

**BILLING CODE 4510–30–M**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–34,849]**

### Coats North America, Denver, Pennsylvania; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Correction

This notice corrects the notice of Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance applicable to TA–W–34,849 which was published in the **Federal Register** on August 28, 1998 (63 FR 46076) in FR Document 98–23256.

This revises the subject firm location for TA–W–34,849 on the nineteenth line in the appendix table on page 46076. On the nineteenth line in the third column, the subject firm (location) should read Denver, Pennsylvania.

Signed in Washington, DC, this 9th day of November 1998.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 98–32877 Filed 12–9–98; 8:45 am]

**BILLING CODE 4510–30–M**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 21, 1998.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 21, 1998.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 16th day of November, 1998.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

APPENDIX

[Petitions Instituted on 11/16/98]

| TA–W | Subject Firm (Petitioners) | Location | Date of Petition | Product(s) |
|---|---|---|---|---|
| 35,203 | Dan River, Inc (Wrks) | Spindale, NC | 11/05/98 | Woven Apparel Fabrics. |
| 35,204 | B.J. Services (Wrks) | Odessa, TX | 10/29/98 | Oilfield Services. |
| 35,205 | Northwest Alloys, Inc (Wrks) | Addy, WA | 10/30/98 | Pure Metal Magnesium. |
| 35,206 | Darby Lumber, Inc (Wrks) | Darby, MT | 10/27/98 | Lumber. |
| 35,207 | Saldan Bindery, Inc (Comp) | Brooklyn, NY | 11/03/98 | Filing Supplies—Expanding Envelopes. |
| 35,208 | A and J Design Corp (Wrks) | West New York, NJ | 11/02/98 | Ladies' Wool Coats. |
| 35,209 | J.E. Morgan Knitting (Wrks) | New Market, VA | 10/02/98 | Thermal Underwear. |
| 35,210 | Royal Brands Int'l (Wrks) | Los Angeles, CA | 05/10/98 | Yogurt, Sour Cream, Ice Cream. |
| 35,211 | Wilkins, Kaiser, Olsen (Comp) | Carson, WA | 11/04/98 | Dimension Lumber. |
| 35,212 | Herald Handbag Mfg Co (Wrks) | New York, NY | 11/02/98 | Ladies' Handbags. |
| 35,213 | Duryea Industries (UNITE) | Duryea, PA | 10/23/98 | Ladies' Dresses. |
| 35,214 | Owens-BriGam Medical Co (Comp) | Newland, NC | 11/02/98 | Stand-alone Anesthesia Circuits. |
| 35,215 | Irving Tanning Co (Comp) | Hartland, ME | 11/03/98 | Finished Leather. |
| 35,216 | Camp Hill Corp (USWA) | McKeesport, PA | 10/30/98 | Steel Pipe. |
| 35,217 | Technical Logging Systems (Wrks) | Houma, LA | 10/27/98 | Oilfield Services. |
| 35,218 | Hooper Trucking Co (Wrks) | Odessa, TX | 10/30/98 | Oilfield Services. |
| 35,219 | Precision Fabric Group (Wrks) | Vinton, VA | 10/22/98 | Weaving Yarn into Thread. |
| 35,220 | AMETEK—US Gauge Div (IAMAW) | Sellersville, PA | 10/27/98 | Gauges—Pressure, Temperature. |
| 35,221 | Spinnerin, Inc (Wrks) | S. Hackensack, NJ | 10/25/98 | Dyeing Garments. |
| 35,222 | Arrow/Ace Die Cutting Co (UPIU) | Bronx, NY | 10/27/98 | Molded Casings, Shirt Stays. |
| 35,223 | LTV Steel Co (USWA) | Aliquippa, PA | 10/29/98 | Flat Rolled Coated Products. |
| 35,224 | Betzdearborn (Comp) | Lake Zurich, IL | 09/22/98 | Industrial Water & Process Treatments. |
| 35,225 | Providence Metallizing Co (Wrks) | Pawtucket, RI | 10/30/98 | Vacuum Metallizing. |
| 35,226 | United Defense LP (GMPW) | Anniston, AL | 11/03/98 | Steel Castings. |
| 35,227 | Malone Manufacturing Inc (Wrks) | Champlain, NY | 11/04/98 | Distribution—Offshore Garments. |
| 35,228 | Crusader Engines (Comp) | Sterling Hgts, MI | 11/09/98 | Marine and Industrial Engines. |
| 35,229 | Getinge/Castle (Wrks) | Rochester, NY | 10/27/98 | Scientific and Laboratory Sterilizers. |
| 35,230 | Avery Dennision (Wrks) | Quakertown, PA | 11/03/98 | Pressure Sensitive Products. |
| 35,231 | Cyprus Thompson Creek (Comp) | Englewood, CO | 10/20/98 | Molybdenum Sulfide Concentrates. |
| 35,232 | Romart, Inc (UNITE) | Scranton, PA | 11/04/98 | Men's Suits, Sport, Dress Jackets. |

APPENDIX—Continued

[Petitions Instituted on 11/16/98]

| TA–W | Subject Firm (Petitioners) | Location | Date of Petition | Product(s) |
|---|---|---|---|---|
| 35,233 | Harbison-Walker (USWA) | Fulton, MO | 11/05/98 | Refractories Products. |
| 35,234 | P.D.N. Apparel, Inc (Wrks) | Garfield, NJ | 10/08/98 | Men's Apparel. |
| 35,235 | Dunn It (Comp) | Odessa, TX | 11/10/98 | Oil and Gas Exploration & Production. |
| 35,236 | US Label/Artistic Weaving (Wrks) | Clinton, NC | 11/02/98 | Woven Labels. |
| 35,237 | J.M. Huber Corp (Comp) | Houston, TX | 11/09/98 | Crude Oil, Natural Gas. |

[FR. Doc. 98–32873 Filed 12–9–98; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 21, 1998.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 21, 1998.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 23rd day of November, 1998.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

APPENDIX

[Petitions Instituted On 11/23/98]

| TA–W | Subject Firm (Petitioners) | Location | Date of Petition | Products(s) |
|---|---|---|---|---|
| 35,238 | Houston Atlas, Inc. (Co.) | Kingwood, TX | 11/12/98 | On-Line Analytical Instrumentation. |
| 35,239 | Bull HN Worldwide (Wkrs) | Phoenix, AZ | 11/12/98 | Large Computer Systems. |
| 35,240 | Siemens Energy (Wkrs) | Little Rock, AR | 11/10/98 | Integral Horsepower Motors. |
| 35,241 | L and D Dress Co., Inc. (UNITE) | Ridgewood, NY | 11/08/98 | Ladies' Dresses. |
| 35,242 | National Garment Co. (Co.) | Chanute, KS | 11/16/98 | Girl's and Boy's Playwear. |
| 35,243 | Carthage Company (The) (Wkrs) | Carthage, MS | 11/03/98 | Ladies' Slacks and Jeans. |
| 35,244 | Olin Brass Corp. (USWA) | Indianapolis, IN | 11/13/98 | Rod-Wire and Tube. |
| 35,245 | PL Industries, Inc (Co.) | Mayaguez, PR | 10/21/98 | Jeans. |
| 35,246 | Active Quilting (UNITE) | Plains, PA | 11/09/98 | Quilted Fabric. |
| 35,247 | Cooper Turbocompressor (IAMAW) | Buffalo, NY | 11/06/98 | Turbocompressors. |
| 35,248 | Kinross Delamar Mining (Co.) | Jordan Valley, OR | 11/05/98 | Gold Mining. |
| 35,249 | Fresenius Medical Care (Co.) | McAllen, TX | 11/06/98 | Venous & Arterial Bloodlines. |
| 35,250 | Stewart Well Service (Wkrs) | Hays, KS | 11/07/98 | Oilfield Services. |
| 35,251 | Apparel Mark (Co.) | El Paso, TX | 11/09/98 | Garment Patterns and Markers. |
| 35,252 | Newmont Gold Co. (OEU) | Carlin, NV | 11/06/98 | Gold Mining. |
| 35,253 | Hubbell Lighting, Inc. (Co.) | Christiansburg, VA | 11/09/98 | Lighting Fixtures. |
| 35,254 | Pastar, Inc. (Wkrs) | El Paso, TX | 11/11/98 | Denim Jeans. |
| 35,255 | U.S. Steel (USWA) | Dravosburg, PA | 11/10/98 | Carbon Steel Coils. |
| 35,256 | U.S. Steel Mining (Wkrs) | Pineville, WV | 11/04/98 | Coal Mining. |
| 35,257 | Georgia Pacific, CNS (Co.) | Baileyville, ME | 11/10/98 | Lumber Studs. |
| 35,258 | Habersham Metal Products (Wkrs) | Cornelia, GA | 11/02/98 | Hollow Metal Doors. |
| 35,259 | Pittsfield Woolen Mill (Wkrs) | Pittsfield, ME | 11/10/98 | Woolen Products. |
| 35,260 | Belden Wire and Cable (USWA) | Franklin, NC | 11/13/98 | Electrical Power Cords, Cable. |
| 35,261 | Crane Valves (Wkrs) | Rogers, AR | 11/10/98 | Steel Gate Valves. |
| 35,262 | Inter-National Childrens (Co.) | Ohatchess, AL | 11/13/98 | Children's Knit T-Shirts. |
| 35,263 | Wallet Works (The) (Co.) | West Bend, WI | 11/11/98 | Retail Store—Wallets. |
| 35,264 | Anvil Knitwear (Wkrs) | Whiteville, NC | 11/11/98 | Knit Tops. |
| 35,265 | Kentucky Apparel (Wkrs) | Jamestown, TN | 11/04/98 | Denim Jeans. |
| 35,266 | Perry Manufacturing Co. (Wkrs) | Mt. Airy, NC | 11/10/98 | Ladies' Outerwear. |
| 35,267 | Delta Apparel (Co.) | Decatur, TN | 10/28/98 | Fleece Apparel. |
| 35,268 | Nine West Group, Inc. (Co.) | Osgood, IN | 11/17/98 | Ladies' Shoes. |

APPENDIX—Continued

[Petitions Instituted On 11/23/98]

| TA–W | Subject Firm (Petitioners) | Location | Date of Petition | Products(s) |
|---|---|---|---|---|
| 35,269 ..... | Walls Industries, Inc. (Co.) ..... | Ashville, AL ..... | 11/17/98 | Overalls. |

[FR Doc. 98–32874 Filed 12–9–98; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–34,746]**

### Seagate Technology, Incorporated, 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 Seagate Technology, Incorporated, 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–34,746; Seagate Technology, Incorporated, Bloomington, Minnesota (November 27, 1998)*

Signed at Washington, DC this 1st day of December, 1998.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 98–32872 Filed 12–9–98; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–35,035]**

### Smith Corona Corporation, Cortland, New York; 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 Smith Corona Corporation, Cortland, New York. 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–35,035; Smith Corona Corporation, Cortland, New York, (November 23, 1998)*

Signed at Washington, DC this 24th day of November, 1998.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 98–32876 Filed 12–9–98; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–02720]**

### Clarion Manufacturing Corporation of America, Division of Clarion Corporation of America, Walton, Kentucky; Notice of Termination of Investigation

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 of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on October 30, 1998 in response to a petition filed on behalf of workers at Clarion Manufacturing Corporation of America, Walton, Kentucky.

Currently, there is a petition investigation (NAFTA–2713) in progress for the workers at the subject plant. Consequently, further investigation in this case would serve no purpose and the investigation has been terminated.

Signed at Washington, DC, this 20th day of November 1998.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 98–32875 Filed 12–9–98; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–34,744 and NAFTA–02482]**

### Lucas Varity North American Light Vehicle Braking Systems, Mount Vernon, Ohio; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of October 22, 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–34,744, and NAFTA transitional adjustment assistance, petition NAFTA–02482. The denial notices were signed on August 28, 1998 and published in the **Federal Register** on September 28, 1998 (63 FR 51605–06).

The petitioners allege that the subject firm shifted production of certain brake systems and that such systems 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 19th day of November 1998.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 98–32869 Filed 12–9–98; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–02749]**

### Mead Paper, Rumford Mill, Rumford, Maine; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182)

concerning transitional adjustment assistance, hereinafter called (NAFTA–QUITTAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on November 17, 1998 in response to a petition filed on behalf of workers at Mead Paper, Rumford Mill, Rumford, Maine.

Currently, there is a petition investigation (NAFTA–2745) in progress for the workers at the subject plant. Consequently, further investigation in this case would serve no purpose and the investigation has been terminated.

Signed at Washington, DC, this 3rd day of December 1998.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 98–32868 Filed 12–9–98; 8:45 am]

**BILLING CODE 4510–30–M**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Acting Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Acting Director of OTAA at the U.S. Department of Labor (DOL) in Washington, DC provided such request is filed in writing with the Acting Director of OTTA not later than December 21, 1998.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Acting Director of OTAA at the address shown below not later than December 21, 1998.

Petitions filed with the Governors are available for inspection at the Office of the Acting Director, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 1st day of December 1998.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

APPENDIX

| Subject firm | Location | Date received at Governor's office | Petition No. | Articles produced |
|---|---|---|---|---|
| Westinghouse Air Brake (Wkrs) | Foster City, CA | 11/16/1998 | NAFTA–2,734. | Pipe fittings. |
| Olin Brass (USWA) | Indianapolis, IN | 11/13/1998 | NAFTA–2,735. | Brass, copper, sheet, rod, tube and wire. |
| Pastar (Co.) | El Paso, TX | 11/17/1998 | NAFTA–2,736. | Denim jeans. |
| ApparelMark (Co.) | El Paso, TX | 11/16/1998 | NAFTA–2,737. | Garment patterns. |
| Talon (Co.) | Stanley, NC | 11/17/1998 | NAFTA–2,738. | Zipper equipment. |
| Pittsfield Woolen (Wkrs) | Pittsfield, ME | 11/17/1998 | NAFTA–2,739. | Wool. |
| Active Quilting—Rockville Fabrics (UNITE). | Plains, PA | 11/18/1998 | NAFTA–2,740. | Quilted fabric. |
| Compaq Computer (Wkrs) | Houston, TX | 11/17/1998 | NAFTA–2,741. | Computer. |
| Eaton Corporation (UAW) | Winamac, IN | 11/18/1998 | NAFTA–2,742. | Automotive switches, door lock, brakes. |
| Crane Valve (Wkrs) | Rogers, AR | 11/17/1998 | NAFTA–2,743. | Coat steel gate valves. |
| Rockwell Automation—Allen Bradley (UE) | Milwaukee, MI | 11/16/1998 | NAFTA–2,744. | Industrial controls, starters contractors. |
| Mead Paper (Wkrs) | Rumford, ME | 11/17/1998 | NAFTA–2,745. | Publishing & specialty paper. |
| Georgia Pacific (Co.) | Baileyville, ME | 11/17/1998 | NAFTA–2,746. | Studs. |
| Aeroquip—Vickers (Co.) | Clinton Township, MI | 11/04/1998 | NAFTA–2,747. | Air conditioning connectors. |
| Thermo Power (UAW) | Sterling Heights, MI | 01/04/1998 | NAFTA–2,748. | Marine & industrial engines. |
| Mead Paper (Wrks) | Rumford, ME | 11/17/1998 | NAFTA–2,749. | Publishing Specialty Paper. |

APPENDIX—Continued

| Subject firm | Location | Date received at Governor's office | Petition No. | Articles produced |
|---|---|---|---|---|
| National Garment Co (Comp) | St. Louis, MO | 11/20/1998 | NAFTA–2,750. | Children's Clothing. |
| AR Accessories Group, Inc (Wrks) | West Bend, WI | 11/20/1998 | NAFTA–2,751. | Retail Selling of Wallets. |
| Asarco, Inc () | Omaha, NE | 11/20/1998 | NAFTA–2,752. | Refined Lead, Bismuth. |
| Nortel (Wrks) | Nashville, TN | 11/20/1998 | NAFTA–2,753. | Repair Telephones. |
| AG-Chem Equipment Co (Wrks) | Jackson, MN | 11/17/1998 | NAFTA–2,754. | Farming Spray Equipment. |
| J.M. Huber Corp (Comp.) | Houston, TX | 11/23/1998 | NAFTA–2,755. | Oil and Gas Exploration and Production. |
| Anvil Knitwear, Inc (Wrks) | Whiteville, NC | 11/24/1998 | NAFTA–2,756. | T-Shirts. |
| Wundles (Wrks) | Williamsport, PA | 11/30/1998 | NAFTA–2,757. | Daywear, vests, camisoles, underpants. |
| Siebe (Co.) | Kendallville, IN | 11/30/1998 | NAFTA–2,758. | Infinite switches and pressure switches. |
| Tokyo Electron Oregon (Wrks) | Hillsboro, OR | 11/20/1998 | NAFTA–2,759. | Silicon wafers. |
| International Paper (AWPPW) | Gardiner, OR | 11/24/1998 | NAFTA–2,760. | Linerboard. |
| Bend Door (Wrks) | Bend, OR | 11/24/1998 | NAFTA–2,761. | Door parts. |
| Tycom (Wrks) | Adden Hills, MN | 12/01/1998 | NAFTA–2,762. | Drill bits. |

[FR Doc. 98–32871 Filed 12–9–98; 8:45 am]
**BILLING CODE 4510–30–M**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. NRTL–1–98]**

### National Technical Systems, Recognition as an NRTL

**AGENCY:** Occupational Safety and Health Administration; Labor.

**ACTION:** Notice.

**SUMMARY:** This notice announces the Agency's final decision on the application of National Technical Systems for recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

**EFFECTIVE DATE:** This recognition becomes effective on December 10, 1998 and will be valid until December 10, 2003, unless terminated or modified prior to that date, in accordance with 29 CFR 1910.7.

**FOR FURTHER INFORMATION CONTACT:** Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3653, Washington, DC 20210, or phone (202) 693–2110.

**SUPPLEMENTARY INFORMATION:**

### Notice of Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice of its recognition of National Technical Systems (NTS) as a Nationally Recognized Testing Laboratory, for testing and certification of the equipment or materials, and use of the site and the supplemental programs, listed below. OSHA recognizes an organization as an NRTL, and processes applications related to such recognitions, following requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Appendix A to this section requires that OSHA publish this public notice of its final decision on an application.

NTS applied for recognition as an NRTL, pursuant to 29 CFR 1910.7, and OSHA published the required notice in the **Federal Register** (63 FR 46079, 8/28/98) to announce the application. The notice included a preliminary finding that NTS could meet the requirements for recognition detailed in 29 CFR 1910.7, and invited public comment on the application by October 27, 1998. OSHA received no comments concerning this application for recognition.

You may obtain or review copies of all public documents pertaining to the application by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N2625, Washington, DC 20210. You should refer to Docket No. NRTL–1–98, the permanent record of public information on the NTS recognition.

The address of the testing facility (site) that OSHA recognizes for NTS is: National Technical Systems, 533 Main Street, Acton, Massachusetts 01720.

### Background on the Applicant and the Application

National Technical Systems, according to its application, is headquartered in Calabasas, California, and became established in 1963. Also, NTS became a public company in 1968 and is listed in the NASDAQ exchange. The applicant asserts it is an independent testing, engineering, research, and support services organization, with more than 30 years of product testing experience. NTS also states that it has provided testing services to the military/aerospace, commercial, and power industry, and has conducted qualification testing for the nuclear power industry for more than 20 years. The engineering services that NTS provides include design of instrumentation and specialized hardware, and electrical and mechanical engineering.

NTS submitted an application for recognition, dated September 30, 1994

(see Exhibit 2A). It separately submitted a Quality Manual (QM), dated June 24, 1997, and Quality Assurance Procedures (QAPs), dated December 22, 1997, specifically for the activities it plans to undertake as an NRTL (see Exhibits 2C and 2E). In this notice, these two documents are referred to as ''NRTL QM'' and ''NRTL QAPs,'' respectively. The NRTL QM replaced the Quality Manual submitted by NTS in the original application. The QAPs were marked confidential by the applicant. The applicant originally requested recognition for a facility in Acton and for another facility in Boxborough, both in Massachusetts. The applicant also originally requested recognition to test and certify to more than 90 test standards.

OSHA performed an on-site assessment (review) of the Acton and Boxborough facilities, on January 23–26, 1995. The review determined that NTS did not meet all the requirements for recognition under 29 CFR 1910.7, and the applicant was so informed. After OSHA completed the review, NTS eliminated the Boxborough facility from consideration. In response to the findings of the review, the applicant also submitted amendments to OSHA, dated April 10, and September 22, 1997 (see Exhibits 2B and 2D). Through these amendments, NTS reduced the number of test standards it requested for recognition to 13. Also, it developed and submitted the previously mentioned NRTL QM and NRTL QAPs.

In the submittal covering the NRTL QM, NTS also applied to OSHA for recognition to use the supplemental programs, under which an NRTL may use outside parties to perform some of the activities involved in testing and certification of products. OSHA's approval to use any of these programs is based on criteria first detailed in a March 9, 1995 **Federal Register** notice (60 FR 12980). Finally, in response to OSHA's request for clarification, dated March 18, 1998 (see Exhibit 2F), NTS submitted amendments to its NRTL QAPs and to its NRTL QM, dated April 8, 1998 (see Exhibit 2G). It also eliminated one test standard since the standards organization had withdrawn it. As a result, the recognition covers 12 test standards.

According to the applicant, the NRTL QM is the first tier document that will direct its NRTL activities. The NRTL QAPs provide more detailed policies, processes, and steps for those activities. In addition, the on-site review report references other procedures and practices that NTS uses for the parts of its operations that can be designated ''non-NRTL'' activities. However, the recognition will not apply to any aspect of the non-NRTL activities, except to those product testing or certification procedures and practices that are incorporated in the NRTL QM and NRTL QAPs, and are in conformance with the requirements of 29 CFR 1910.7.

The requirements for recognition are presented below, along with examples that illustrate how NTS has met each of these requirements.

**Capability**

Section 1910.7(b)(1) states that for each specified item of equipment or material to be listed, labeled or accepted, the laboratory must have the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform appropriate testing.

According to the on-site review report, NTS has adequate space and utilities to perform the testing required. It has security measures in place to restrict or control access to its facility. The report also indicates that NTS has, available in the laboratory, all general test equipment required to perform testing to the test standards requested, and that it maintains records of repair, routine maintenance, and calibrations. The NRTL QAPs cover the general processes and practices NTS will use for its equipment calibrations, and NTS has detailed procedures for the calibration of specific items of equipment.

The application and revisions address personnel qualifications and training, and identify NTS staff involved with product testing, along with a summary of their education and experience. Also, the on-site review report indicates that NTS personnel have the necessary education, training, technical knowledge, and experience specified by their position descriptions.

According to the review report, the NRTL QM and NRTL QAPs, and NTS' Internal Audit Program are the primary means of quality assurance. Other aspects of quality assurance will be the individual testing procedures and standard operating procedures. Also, the report indicates that the engineer assigned to handle the testing for a customer writes a unique procedure for each product that NTS tests in its ''non-NRTL'' activities, and that this approach may be used for the NTS operations as an NRTL. Such an approach would not meet the requirement in 29 CFR 1910.7 (b)(1) for ''written testing procedures,'' which, like any other procedure, are intended to be a general set of instructions that are applicable to each test. These procedures must cover the steps and methods that recur in examining and testing products.

The review report indicates that NTS has done only partial testing to portions of the test standards, as required for compliance of nuclear facility products and other testing programs. The applicant submitted samples of written testing procedures in its original application. These procedures illustrate how some requirements of the standard will be verified, but did not address all the requirements of the standard in all cases. NTS will need to develop and/or identify written testing procedures that will be applicable over the broad range of products that it plans to test and certify as an NRTL. These procedures will need to be in place when OSHA performs its first review of NTS after it has been recognized. Therefore, OSHA has not yet evaluated the testing and reporting procedures that NTS will utilize for purposes of certifying to a complete test standard, and OSHA needs to investigate this aspect of NTS operations when these procedures are in use.

**Control Programs**

Section 1910.7(b)(2) requires that the NRTL provide certain controls and services, to the extent necessary, for the particular equipment or material to be listed, labeled, or accepted. They include control procedures for identifying the listed or labeled equipment or materials, inspections of production runs at factories to assure conformance with test standards, and field inspections to monitor and assure the proper use of identifying marks or labels.

According to the onsite review report, NTS currently applies a mark to components used in the nuclear power industry. The report also mentions that NTS has applied for a registered certification mark that it will use in its operations as an NRTL. NTS must obtain approval from the U.S. Patent and Trademark Office for this mark before it can issue any certifications in its capacity as an NRTL. NTS has not listed or labeled any products under the NRTL Program. Therefore, OSHA has not evaluated the actual listing and labeling procedures NTS will use as an NRTL.

The NRTL QM and NRTL QAPs contain general descriptions of the certification processes that NTS will utilize. They also contain policies for the contents of the legal agreements, and outline the processes that will define and control the way NTS implements its certification schemes. These documents also include a description of the process for selecting products for evaluation,

which may include NTS purchasing a commercial sample. NTS also submitted a draft of a sample certification agreement.

For the certification schemes that NTS proposes to use, it will conduct follow-up inspections of products at the manufacturing facilities at least once every three months. The NRTL QAPs also contain more detailed descriptions of the processes to qualify and then audit a manufacturer. According to the review report, NTS plans to utilize the approach it currently uses for its vendor surveillance and audits to perform manufacturer site inspections. The report further indicates that the process reviewed during the onsite review was similar to an NRTL follow-up program. However, NTS has just developed its NRTL follow-up program and OSHA needs to investigate this new program when it is in use. Therefore, OSHA has been unable to evaluate the actual use of the NTS follow-up program.

**Independence**

Section 1910.7(b)(3) requires that the NRTL be completely independent of employers subject to the tested equipment requirements, and of any manufacturers or vendors of equipment or materials being tested for these purposes.

In its original application, NTS states that it performs all testing and certification activities independently of all NTS clients, and that no clients have any significant ownership position in NTS, or any influence on NTS activities. The application further states that NTS employees are not under the influence or control of manufacturers or suppliers, and that NTS is not under the influence of any manufacturer or producer of hardware items. NTS also submitted a detailed listing of ''beneficial owners'' of 5% or more of NTS common stock.

NTS could conceivably perform its design and engineering services, previously mentioned, for manufacturers or vendors of the products it may test and certify as an NRTL. Financial considerations could give these outside parties significant influence on the results of the NTS testing and certification activities. For example, assume that NTS sells design services for products to a manufacturer, and certifies the same or different products for that manufacturer. Such a relationship would violate the requirement for complete independence of an NRTL.

Since NTS is a public company, it is also conceivable that manufacturers or vendors could acquire ownership of NTS. If such an acquisition were to control or influence NTS in its NRTL testing and certification activities, it would no longer be ''completely independent'' with respect to those manufacturers or vendors.

**Creditable Reports/Complaint Handling**

Section 1910.7(b)(4) provides that an NRTL must maintain effective procedures for producing credible findings and reports that are objective and without bias, as well as for handling complaints and disputes under a fair and reasonable system.

The NRTL QAPs contain the steps that the laboratory will use to set up and inspect test apparatus, and record test data. Regarding the handling of complaints and disputes, the NRTL QAPs describes some of the process steps to handle a complaint either from a manufacturer or user of the products NTS certifies.

**Supplemental Programs**

As previously mentioned, National Technical Systems applied for recognition to use the supplemental programs, based upon the criteria first detailed in a March 9, 1995 **Federal Register** notice (60 FR 12980). This notice lists nine (9) programs and procedures (collectively, programs), eight of which an NRTL may use to control and audit, but not actually to generate, the data relied upon for product certification. An NRTL's initial recognition automatically includes the first, or basic, program, which requires that all product testing and evaluation be performed in-house by the NRTL that will certify the product.

Based on the recommendation of the staff of the NRTL Program, the programs that OSHA recognizes for NTS are limited to the three listed under Final Decision and Order.

The on-site review report and the application indicate that NTS meet the criteria for use of three supplemental programs. At this time, OSHA does not intend to recognize NTS for the other programs it requested. NTS must have documented procedures and practices in place providing much greater detail, before OSHA can approve the use of the remaining programs. The NRTL QAPs that are applicable to these programs are, in many cases, minimal in nature, some of which just restate the criteria in the March 9, 1995 notice that must be met. As such, they constitute more policies than procedures. In addition, NTS needs to develop certain experience to obtain recognition to use the programs involving use of manufacturers to perform tests or evaluations (Programs 5, 6, and 7). The March 9 notice specifies the need for a confidence-building period with the manufacturer that can only result after NTS has gained experience as an NRTL in certifying products for those manufacturers. An additional consideration is that NTS does not have experience in testing and certification to a complete standard, and may have less opportunity to develop the required experience if it uses others to do these activities. This experience is essential for its continued recognition as an NRTL. Finally, OSHA will need to review the actual implementation of certain key aspects of NTS'' operations as an NRTL, which, as already noted, were not formally evaluated since they were not yet in place at the time OSHA performed its on-site reviews of NTS.

**Additional Conditions**

As described above, OSHA has concerns about NTS because it has not had the opportunity to evaluate the actual testing and reporting procedures, and use of the follow-up program, since these have not yet been implemented. OSHA has also identified issues related to the ownership and commercial relationships that could affect the independence of NTS. Unless NTS meets certain conditions imposed by OSHA, it cannot retain its recognition as an NRTL under 29 CFR 1910.7.

OSHA's approach in imposing conditions is consistent with past recognition of other organizations as NRTLs who, like NTS, were mainly experienced in testing products to specific customer or partial test standard requirements. OSHA indicated in the **Federal Register** notice for those recognitions that the procedures to be used were new to the organization (for example, see 56 FR 28581, 6/21/91; and 58 FR 15511, 3/23/93). OSHA will require NTS to take steps to correct any deficiencies that OSHA may find during its initial audit of the NRTL. If deficiencies are not corrected, then OSHA will commence its process to revoke the recognition of the NRTL.

Many procedures and practices for its NRTL testing and certification processes will be new to NTS. Those that exist or are incorporated in the NRTL QAPs may need to be supplemented by more detailed specific instructions on the many activities involved in testing and certifying products to a complete test standard. Also, the proposed NTS approach of developing a unique test procedure for each test makes it difficult for OSHA to evaluate its testing capabilities. OSHA will therefore need to evaluate NTS when it implements the detailed procedures and practices it plans to use to test and certify products as an NRTL, and will conditionally recognize NTS subject to a later

assessment of the process once it is in place.

Regarding independence, NTS has or could potentially have relationships that eliminate its complete independence, and OSHA intends to impose conditions to assure this will not occur. Such relationships may be the normal result of the NTS ownership structure, and its financial and commercial transactions. However, as an NRTL, those relationships could adversely influence the results of its testing and certification processes, such that NTS may no longer be, intentionally or not, impartial and objective. As a result, NTS would no longer be completely independent, which is a requirement fundamental to assuring that the products tested and certified are safe for use by workers and employers.

Therefore, OSHA has included appropriate conditions below to address its concerns. These conditions apply solely to the NTS operations as an NRTL, and are in addition to the other conditions listed below, which OSHA normally imposes in its recognition of an organization as an NRTL.

**Final Decision and Order**

The NRTL Program staff has examined the complete application, the amendments to the application, the supporting documentation, and the OSHA staff finding including the on-site review report, dated December 22, 1997 (see Exhibit 3). Based upon this examination, OSHA finds that National Technical System has met the requirements of 29 CFR 1910.7 to be recognized as a Nationally Recognized Testing Laboratory to test and certify certain equipment or materials, subject to the limitations and conditions listed below. Pursuant to the authority in 29 CFR 1910.7, National Technical System is hereby recognized as a Nationally Recognized Testing Laboratory, subject to the limitations and conditions listed below.

*Limitations*

This recognition is limited to equipment or materials (products) for which OSHA standards require third party testing and certification before use in the workplace. OSHA's recognition is further limited to the site listed above, and to the use of the following 12 test standards for the testing and certification of products included within the scope of these standards. OSHA has determined these standards are appropriate, within the meaning of 29 CFR 1910.7(c).

ANSI/UL 465 Central Cooling Air Conditioners
ANSI/UL 484 Room Air Conditioners
ANSI/UL 489 Molded-Case Circuit Breakers and Circuit-Breaker Enclosures
ANSI/UL 499 Electric Heating Appliances
ANSI/UL 1012 Power Supplies
ANSI/UL 1459 Telephone Equipment
ANSI/UL 1778 Uninterruptible Power Supply
UL 1863 Communication Circuit Accessories
ANSI/UL 1950 Information Technology Equipment Including Electrical Business Equipment
UL 2601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety
UL 3101–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3111–1 Electrical Measuring and Test Equipment, Part 1: General

The designations and titles of the above standards were current at the time of the preparation of the notice of the preliminary finding.

This recognition is also limited to the use of the following 3 supplemental programs. Recognition of these programs is contingent on continued adherence to the criteria for their use.

Program 4: Acceptance of witnessed testing data
Program 8: Acceptance of product evaluations from organizations that function as part of the International Electrotechnical Commission Certification Body (IEC–CB) Scheme
Program 9: Acceptance of services other than testing or evaluation performed by subcontractors or agents.

*Conditions*

National Technical Systems must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

Within 30 days of certifying its first products under the NRTL Program, NTS will notify the OSHA NRTL Program Director so that OSHA may review NTS' adoption and implementation of its NRTL Quality Manual, NRTL Quality Assurance Procedures, and other procedures from other NTS Program areas for use in the NRTL Program;

NTS must not test and certify products for a client to whom it primarily sells design or similar services;

NTS must not test and certify products for a client if an owner of NTS also owns more than two percent (2%) of that client's stock;

OSHA must be allowed access to NTS' facility and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If NTS has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

NTS must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, NTS agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

NTS must inform OSHA as soon as possible, in writing, of any change of ownership or key personnel, including details;

NTS will meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition;

NTS will continue to meet the requirements for recognition in all areas where it has been recognized; and

NTS will always cooperate with OSHA to assure compliance with the spirit as well as the letter of its recognition and 29 CFR 1910.7.

Signed at Washington, DC, this 2d day of December 1998.

**Charles N. Jeffress,**

*Assistant Secretary.*

[FR Doc. 98–32879 Filed 12–9–98; 8:45 am]

BILLING CODE 4510–26–P

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. NRTL–2–98]**

### NSF International, Recognition as an NRTL

**AGENCY:** Occupational Safety and Health Administration (OSHA); Labor.

**ACTION:** Notice.

**SUMMARY:** This notice announces the Agency's final decision on the application of NSF International for recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

**EFFECTIVE DATE:** This recognition becomes effective on December 10, 1998 and will be valid until December 10, 2003, unless terminated or modified prior to that date, in accordance with 29 CFR 1910.7.

**FOR FURTHER INFORMATION CONTACT:** Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3653, Washington, DC 20210, or phone (202) 693–2110.

**SUPPLEMENTARY INFORMATION:**

### Notice of Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice of its recognition of NSF International (NSF) as a Nationally Recognized Testing Laboratory (NRTL), for testing and certification of the equipment or materials, and use of the site and the supplemental programs, listed below. OSHA recognizes an organization as an NRTL, and processes applications related to such recognitions, following requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Appendix A to this section requires that OSHA publish this public notice of its final decision on an application.

NSF applied for recognition as an NRTL, pursuant to 29 CFR 1910.7, and OSHA published the required notice in the **Federal Register** (63 FR 46082, 8/28/98) to announce the application. The notice included a preliminary finding that NSF could meet the requirements for recognition detailed in 29 CFR 1910.7, and invited public comment on the application by October 27, 1998. OSHA received no comments concerning this application for recognition.

You may obtain or review copies of all public documents pertaining to the application by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N2625, Washington, DC 20210. You should refer to Docket No. NRTL–2–98, the permanent record of public information on the NSF recognition.

The address of the testing facility (site) that OSHA recognizes for NSF is: NSF International, 3475 Plymouth Road, Ann Arbor, Michigan 48105.

### Background on the Applicant and the Application

According to its application, NSF International (NSF) has its headquarters in Ann Arbor, Michigan, and was incorporated in that state in 1990. The applicant asserts it has been a not-for-profit developer of test standards and a third party certifier for more than fifty years. The Bylaws of NSF state that it ''shall be operated exclusively for charitable, educational, and scientific purposes and for the purpose of testing for public safety . . . as a nonprofit corporation.'' The Bylaws and other documentation submitted by NSF indicate that NSF develops ''third-party consensus standards'' covering the areas of safety, health, sanitation, and environment. The application documents that NSF currently engages in conformity assessment activities connected with several certification programs that it operates in those areas.

NSF submitted an application for recognition, dated July 6, 1997 (see Exhibit 2A), and later submitted three amendments. On July 29, 1997, NSF amended its application to add two additional test standards to the proposed scope of recognition (see Exhibit 2B). On December 9 and 16, 1997, NSF amended its application to replace one test standard it previously requested and to request recognition to use certain supplemental programs (see Exhibits 2C and 2D). Under these programs, an NRTL may use outside parties to perform some of the activities involved in testing and certification of products.

The applicant submitted several documents in support of its application. These documents include its Corporate Quality Assurance Manual (CQAM) and its Laboratories Quality Assurance Manual (LQAM). The CQAM describes the overall quality system used at NSF, and includes an explanation and reference to the Standard Operating Procedures (SOPs), which ''detail the actions necessary to accomplish a particular task.'' The LQAM provides detailed policies, processes, and steps for the activities performed by NSF's laboratories. The LQAM also references the more specific SOPs. The CQAM and LQAM provide part of the overall framework that will govern many of the activities NSF would have to perform as an NRTL. NSF also submitted an example of an application and contract for its certification services, and the detailed Certification Policies that form part of this contract (see Exhibit 2E). These items are applicable to all products certified by NSF, and will be applicable to the certification of products for electrical safety.

The requirements for recognition are presented below, along with examples that illustrate how NSF has met each of these requirements.

### Capability

Section 1910.7(b)(1) states that for each specified item of equipment or material to be listed, labeled or accepted, the laboratory must have the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform appropriate testing.

The LQAM provides overall descriptions of NSF's laboratories, and details facilities and equipment available in each of these laboratories. According to the application, NSF has security measures in place to restrict or control access to its facility, to sections within its facility, and to confidential information. The LQAM contains a listing or references to listings of equipment available for each laboratory. It also addresses the maintenance program for equipment, the calibration procedures and frequency, and the types of records maintained for or supportive of many laboratory activities. NSF addresses testing, sample handling, sampling, and test methods in its CQAM or its LQAM. It also has documented the specific equipment it plans to use for testing to the standards it has requested for recognition.

In addition, NSF has submitted for OSHA review samples of the test and evaluation procedures it plans to use. However, the test standard information that NSF provided in its application indicates many test procedures it plans to use are not yet in place. As a result, OSHA has not performed an actual evaluation of the specific testing, evaluation and reporting methods that NSF will utilize in certifying to any of the requested test standards. OSHA needs to investigate how these methods will work when NSF implements them.

The CQAM and LQAM cover personnel qualifications and training; other materials identify NSF staff that will be involved with the NRTL operations, along with a summary of their education and experience. According to OSHA's on-site review report, NSF has sufficient personnel with education, training, technical knowledge, and experience to undertake the functions needed as an NRTL. Also, the report indicates NSF's quality control, partially embodied in the CQAM and LQAM, is adequate.

### Control Programs

Section 1910.7(b)(2) requires that the NRTL provide certain controls and services, to the extent necessary, for the particular equipment or material to be listed, labeled, or accepted. They include control procedures for identifying the listed or labeled equipment or materials, inspections of production runs at factories to assure conformance with test standards, and field inspections to monitor and assure the proper use of identifying marks or labels.

The CQAM addresses the conformity assessment operations of NSF, including the steps involved in the listing and certification of products. NSF has submitted documentation showing it has a registered certification mark. In addition, the NSF's certification policies provide further details regarding the authorization of certifications, and audits of facilities. The audits apply to both the initial assessment and the follow-up inspection of manufacturers' facilities. NSF provided further details regarding the procedures for authorizing the use of the NSF mark, and the listings that NSF issues or revises in connection with its current certification programs.

According to the on-site review report, NSF will perform follow-up inspections at manufacturing sites four times a year. The certification policies, and corresponding detailed procedures, contain many elements that NSF will adapt for use in its NRTL operations. NSF has not yet certified or listed any products for which it requests recognition, and the follow-up inspection program it will use as an NRTL is a new program for NSF. Therefore, OSHA will need to evaluate this new program, and the actual certification and listing procedures when NSF uses them for its NRTL operations.

**Independence**

Section 1910.7(b)(3) requires that the NRTL be completely independent of employers subject to the tested equipment requirements, and of any manufacturers or vendors of equipment or materials being tested for these purposes.

As previously mentioned, NSF's Bylaws indicate it is a ''nonprofit corporation.'' The Bylaws also state that NSF is a ''nonstock, directorship basis'' corporation and that ''the Board of Directors shall establish policies and oversee management of the Corporation,'' and ''elect Directors [and] . . . officers.'' In addition, the ''Conflicts of Interest'' section of the Bylaws contains self-disclosure and disqualification requirements for directors and officers in matters involving contracts and transactions in which they are ''interested.''

**Creditable Reports/Complaint Handling**

Section 1910.7(b)(4) provides that an NRTL must maintain effective procedures for producing credible findings and reports that are objective and without bias, as well as for handling complaints and disputes under a fair and reasonable system.

The LQAM references the test data sheets and other documents used to record test data, and indicates that results from tests are recorded in an information management system. The information in this system is then used to generate preliminary test reports that NSF personnel review and check before completing them. Specific referenced procedures are used for the direct measurement of data, and for the review and authorization of preliminary and final test reports. As for the handling of complaints and disputes, the CQAM and LQAM describe aspects of the NSF customer feedback systems, and contain references to the specific procedures that apply. In addition, the certification policies specifically address customer complaints, which could apply either to a user or a manufacturer of the products NSF certifies.

**Supplemental Programs**

NSF applied for recognition to use three (3) supplemental programs, based upon the criteria first detailed in the March 9, 1995 **Federal Register** notice (60 FR 12980). This notice lists nine (9) programs and procedures (collectively, programs), eight of which an NRTL may use to control and audit, but not actually to generate, the data relied upon for product certification. An NRTL's initial recognition automatically includes the first, or basic, program, which requires that all product testing and evaluation be performed in-house by the NRTL that will certify the product. The on-site review report indicates that NSF appears to meet the requirements for use of the supplemental programs for which it has applied.

**Additional Condition**

As described above, OSHA has concerns about NSF because it has not had the opportunity to evaluate the actual testing and reporting procedures, and use of the follow-up program, since NSF has not yet implemented them. OSHA will therefore need to evaluate NSF when it implements the detailed procedures and practices it plans to use to test and certify products as an NRTL, and will conditionally recognize NSF subject to a later assessment of the process once it is in place.

Therefore, OSHA has included an appropriate condition below to address its concerns. This condition applies solely to the NSF operations as an NRTL, and is in addition to the other conditions listed below, which OSHA normally imposes in its recognition of an organization as an NRTL.

**Final Decision and Order**

The NRTL Program staff has examined the complete application, the amendments to the application, the supporting documentation, and the OSHA staff finding including the on-site review report, dated December 22, 1997 (see Exhibit 3). Based upon this examination, OSHA finds that NSF International has met the requirements of 29 CFR 1910.7 to be recognized as a Nationally Recognized Testing Laboratory to test and certify certain equipment or materials, subject to the limitations and conditions listed below. Pursuant to the authority in 29 CFR 1910.7, NSF International is hereby recognized as a Nationally Recognized Testing Laboratory, subject to the limitations and conditions listed below.

*Limitations*

This recognition is limited to equipment or materials (products) for which OSHA standards require third party testing and certification before use in the workplace. OSHA's recognition is further limited to the site listed above, and to the use of the following 3 test standards for the testing and certification of products included within the scope of these standards. OSHA has determined these standards are appropriate, within the meaning of 29 CFR 1910.7(c).

ANSI/UL 197 Commercial Electric Cooking Appliances
ANSI/UL 471 Commercial Refrigerators and Freezers
ANSI/UL 921 Commercial Electric Dishwashers

The designations and titles of the above standards were current at the time of the preparation of the notice of the preliminary finding.

This recognition is also limited to the use of the following 3 supplemental programs. Recognition of these programs is contingent on continued adherence to the criteria for their use.

Program 4: Acceptance of witnessed testing data
Program 8: Acceptance of product evaluations from organizations that function as part of the International Electrotechnical Commission Certification Body (IEC–CB) Scheme
Program 9: Acceptance of services other than testing or evaluation performed by subcontractors or agents

*Conditions*

NSF International must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

Within 30 days of certifying its first products under the NRTL Program, NSF will notify the OSHA NRTL Program Director so that OSHA may review NSF's implementation of procedures for

testing and follow-up inspections of products covered within the scope of the above-listed test standards;

OSHA must be allowed access to NSF's facility and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If NSF has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

NSF must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, NSF agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

NSF must inform OSHA as soon as possible, in writing, of any change of ownership or key personnel, including details;

NSF will meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition;

NSF will continue to meet the requirements for recognition in all areas where it has been recognized; and

NSF will always cooperate with OSHA to assure compliance with the spirit as well as the letter of its recognition and 29 CFR 1910.7.

Signed at Washington, DC this 2nd day of December, 1998.

**Charles N. Jeffress,**

*Assistant Secretary.*

[FR Doc. 98–32878 Filed 12–9–98; 8:45 am]

BILLING CODE 4510–26–P

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Advisory Committee on Preservation Meeting

Notice is hereby given that the National Archives Advisory Committee on Preservation will meet Wednesday, January 13, 1999, from 9 a.m. to 4 p.m. in lecture room B of the National Archives at College Park, 8601 Adelphi Rd., College Park, MD 20740–6001.

The agenda for the meeting will be the Charters of Freedom re-encasement design.

This meeting will be open to the public. For further information, contact Alan Calmes at (301) 713–7403.

Dated: December 7, 1998.

**Mary Ann Hadyka,**

*NARA Committee Management Officer.*

[FR Doc. 98–32809 Filed 12–9–98; 8:45 am]

BILLING CODE 7515–01–P

## NATIONAL SCIENCE FOUNDATION

### Proposed Data Collection: Public's Views and Comments; Title of Proposed Collection: Public Attitudes About Technology

The National Science Foundation, an independent federal agency, is interested in obtaining the public's views and attitudes toward year 2000 computer readiness.

Specifically, we are seeking input and comments from all interested persons on their views of the value of computer technology in their lives, and in their familiarity with and level of comfort when using computers and their familiarity with problems that may result from year 2000 computer conversion issues.

In an effort to obtain the public's input and useful information, the National Science Foundation has developed the questions that follow. Responses from the public will be used only in the aggregate, and only to help NSF in its efforts to better explain itself and its activities to the American public.

We hope you will provide us with your thoughts on the following questions. Detailed comments are also welcome and greatly appreciated.

Responses and comments can be mailed to Public Attitudes about Year 2000 Conversion, c/o Office of Legislative and Public Affairs, National Science Foundation, 4201 Wilson Blvd., Room 1245, Arlington, VA 22230. Comments can also be sent via email to *nstw@nsf.gov,* or faxed to (703) 306–1057.

All comments should be received by Monday, December 21, 1998.

Dated: December 4, 1998.

**Julia Moore,**

*Director, Office of Legislative and Public Affairs.*

### Y2K Millennium Readiness Poll

December 9–13, 1998

1. As you may know, most computer systems around the world have to be reprogrammed so that they can accurately recognize the date once we reach the Year 2000. Do you think that computer mistakes due to the Year-2000 issue will cause major problems, minor problems, or no problems at all?

1 Major problems
2 Minor problems
3 No problems at all
4 CATASTROPHE/REALLY BIG PROBLEMS (vol.)
5 DON'T KNOW/REFUSED

2. Do you think that computer mistakes due to the Year-2000 issue will cause major problems, minor problems or no problems at all for you personally?

1 Major problems
2 Minor problems
3 No problems at all
4 CATASTROPHE/REALLY BIG PROBLEMS (vol.)
5 DON'T KNOW/REFUSED

3. How much have you seen or heard about the Year 2000 computer bug problem, sometimes called the Millennium Bug or the Y–2–K bug, before now— a great deal, some, not much, or nothing at all?

1 A great deal
2 Some
3 Not much
4 Nothing at all
5 DON'T KNOW/REFUSED

The rest of the questions on this survey will deal with Year 2000 computer issue. For convenience we will refer to it throughout the survey as the ''Y2K'' computer bug.

4. Overall, how concerned are you about the Y2K computer bug problem—[READ 1–4]?

1 Very concerned
2 Somewhat concerned
3 Not too concerned
4 Not at all concerned
5 DON'T KNOW/REFUSED

5. To the extent Y2K computer problems occur, how long do you think they will last—[FORM A: READ 1–4; FORM B: READ 4–1]?

1 For only a few days around January 1, 2000
2 For several weeks (or)
3 For several months to a year (or)
4 For more than a year
5 DON'T KNOW/REFUSED

6. For each of the following, please say whether that is something you probably will or will not do in order to protect yourself against problems associated with the Y2K computer bug. How about... READ AND ROTATE A–F

1 Yes
2 No
3 DON'T KNOW/REFUSED

a. Obtain special confirmation or documentation of your bank account balances, retirement funds, or other financial records
b. Stockpile food and water

c. Buy a generator or wood stove
d. Withdraw all your money from the bank
e. Withdraw and set aside a large amount of cash
f. Avoid travelling on airplanes on or around January 1, 2000

7. Thinking about the U.S. economy, which of the following statements best describes the possible effect you think the Y2K bug will have on the economy—[FORM A: READ 1–4; FORM B: READ 4–1]?

1 It will cause a total economic breakdown or catastrophe
2 It will cause serious problems in the economy such as slowing production or creating a recession (or)
3 It will cause only minor problems in the economy (or)
4 It will have no negative impact on the economy
5 OTHER (vol.)
6 DON'T KNOW/REFUSED

8. Thinking more generally about the kind of problems which could possibly be created by the Y2K computer bug, which of the following best describes how serious these problems will be in the United States—[FORM A: READ 1–4; FORM B: READ 4–1]?

1 Y2K will result in disasters which could cause the loss of human life
2 Y2K will cause economic and social disruptions, but will not be life threatening
3 Y2K will cause only minor disruptions and inconveniences
4 Y2K will have no negative impact on people's lives
5 OTHER (vol.)
6 DON'T KNOW/REFUSED

9. Next I'm going to read some specific problems. As I read each one, please say whether you think it likely or unlikely to occur as a result of Y2K. First, ... Next, ... READ AND ROTATE A–H:

1 Likely
2 Unlikely
3 DON'T KNOW/REFUSED
a. Air traffic control systems will fail, putting air travel in jeopardy
b. Banking and accounting systems will fail, possibly causing errors in employee paychecks, government payments, and other automated financial transactions
c. Food and retail distribution systems will fail, possibly causing grocery and other store shortages
d. Household appliances such as VCR's, video cameras and air conditioning systems will fail to turn on or work properly
e. Hospital equipment and services will fail, putting patients at risk
f. City or county emergency ''911'' communication systems will fail, putting citizens at risk
g. Passenger cars and trucks will fail to work properly, possibly causing social and economic disruption
h. Nuclear power or defense systems could fail, causing a major accident

10. As you may know, efforts are currently underway throughout the country to upgrade computer systems in order to correct the Y2K computer problem. We'd like to know whether you are generally confident or NOT confident that each of the following levels of government and business will have upgraded their computer systems before any Y2K problems can occur. = How about... READ AND ROTATE A–G:

1 Yes, confident they will have upgraded
2 No, not confident
3 DON'T KNOW/REFUSED
a. The U.S. government, including all federal offices and agencies
b. Your state government
c. Your local government
d. U.S. corporations and large businesses
e. Small U.S. businesses
f. Foreign governments of other developed and industrialized countries
g. Foreign governments of Third World and other less developed countries

11. Do you have a personal computer in your household, or not?

1 Yes continue
2 No skip to q. 13
3 DON'T KNOW/REFUSED

12. If have computer in household (Q. 11 '1'): Do you, personally, use your home computer to connect to the Internet or an online service such as Prodigy or America Online?

1 Yes
2 No
3 DON'T KNOW/REFUSED

13. Do you use a computer at work or school?

1 Yes continue
2 No
3 DON'T WORK/GO TO SCHOOL skip to note before q. 15
4 DON'T KNOW/REFUSED

14. If use computer at work or school (Q. 13 '1'): Do you, personally, use the Internet or other computer on-line service at your place of work or school?

1 Yes
2 No
3 DON'T KNOW/REFUSED

If Q. 11 '1' continue; all others skip to Q. 17

15. Do you know for sure whether your home computer or computers are programmed to comprehend the Year 2000 date field correctly, or are you unsure?

1 Yes, programmed correctly skip to q. 17
2 No, unsure continue
3 DON'T KNOW/REFUSED

16. If not sure about home computer (Q. 15 '2,3'): Do you plan to take steps to make sure your computer is programmed correctly or are you going to wait and see what happens?

1 Yes, going to take steps
2 No, wait and see what happens
3 DON'T KNOW/REFUSED

17. Which of the following currently applies to you—Are you READ 1–5:

1 Employed for pay continue
2 Unemployed
3 Retired
4 A Homemaker, or skip to demographics
5 A Student
6 NONE/OTHER (vol.)
7 DON'T KNOW/REFUSED

18. Is your employer or place of business taking sufficient steps to correct any problems it might face because of Y2K problems, is it NOT taking sufficient steps, or are you unsure?

1 Yes, taking sufficient steps
2 No, not taking sufficient steps
3 Unsure
4 REFUSED

(DEMOGRAPHICS START HERE)

That completes the interview. I'd just like to ask you a few questions for background and statistical purposes only.this is the same

PLEASE RECORD AND VERIFY PHONE NUMBER: +_____+ +_____+ +_____+ =A632=A633=A634=A6 - =A635=A636=A637=A6 - =A638=A639=A640=A641=A6 +_____+ +_____+ +_____+

AREA CODE EXCHANGE NUMBER

D1. CHECK RESPONDENT'S SEX:

1 Male=20
2 Female

D2. What is your age? =20

1 1 =20
2 2
3 3
4 4
5 5
6 6
7 7
8 8
9 9
0=3D Don't know

D3. What is the last grade or class that you completed in school?=09

1 None, or grade 1–4
2 Grades 5, 6 or 7=20
3 Grade 8

4 High school incomplete (Grades 9–11)
5 High school graduate, Grade 12
6 Technical, trade, or business after high school
7 College/university incomplete
8 College/university graduate or more
9 DON'T KNOW/REFUSED

D3a. If College grad (D3 '8') Do you have any post-graduate education beyond a 4-year bachelors degree?

1 Yes (includes masters degree, doctorate, law degree, etc.)
2 No
3 DON'T KNOW/REFUSED

D4. Are you, yourself of Hispanic origin or descent, such as Mexican, Puerto Rican, Cuban, or other Spanish background?

1 Yes
2 No
3 DON'T KNOW
4 REFUSED

D4a. What is your race? Are you white, African-American, or some other race?

01 Other (list)
02 (DK)
03 (Refused)
04 HOLD
05 HOLD
06 White
07 African-American/Black
08 (Hispanic)—(Continue)

D4b. (If code ''08'' in D4a, ask:) Do you consider yourself to be white-Hispanic, or black-Hispanic?

01 Other (list)
02 (DK)
03 (Refused)
04 HOLD
05 HOLD
06 White-Hispanic
07 Black-Hispanic
08 (Hispanic/Respondent refuses to discriminate)

D5. Is your total annual household income before taxes $20,000 or more or is it less than $20,000?

(IF ''UNDER'' ASK:) Is it over or under $15,000?
(IF ''UNDER'' ASK:) Is it over or under $10,000?
(IF ''OVER'' ASK:) Is it over or under $30,000?
(IF ''OVER'' ASK:) Is it over or under $50,000?
(IF ''OVER'' ASK:) Is it over or under $75,000?

01 Less than $10,000 05 $30,000–49,999
02 $10,000–14,999 06 $50,000–74,999
03 $15,000–19,999 07 $75,000 and over
04 $20,000–29,999 08 DON'T KNOW/REFUSED

D6. How important would you say religion is in your own life—extremely important, very important, fairly important, or not very important?

1 Extremely important
2 Very important
3 Fairly important
4 Not very important
5 DON'T KNOW/REFUSED

D7. Next, we need to record how many different residential phone lines you have in your household—that is, the number of different phone numbers that are used by adult members of your household. Please do not count phone lines that are used primarily for business purposes, for children, or for electronic equipment—such as computers and fax machines. How many residential phone numbers are there in your household?

1 One
2 Two
3 Three
4 Four
5 Five or more
6 DON'T KNOW
7 REFUSED

**Programmer Note: Collect 50 Names**

D8. This completes the interview, however, Gallup is working with USA Today on this poll and they would like to talk further with a few survey participants about the topics we've discussed. So that reporters can choose from a cross-section of people, Gallup would provide them with background information which may include any or all of the answers you've given in this poll. Would you be willing to talk with a reporter at a later date?

1 Yes
2 No/(Ref)

IF YES TO BE RE-INTERVIEWED READ:

So that a reporter might reach you more easily, may I please have your name?

[FR Doc. 98–32863 Filed 12–9–98; 8:45 am]
BILLING CODE 7555–01–P

## NATIONAL SCIENCE FOUNDATION

### Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

**AGENCY:** National Science Foundation.

**ACTION:** Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Pub. L. 95–541

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to these permit applications by January 4, 1999. Permit applications may be inspected by interested parties at the Permit Office, address below.

**ADDRESSES:** Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

**FOR FURTHER INFORMATION CONTACT:** Nadene G. Kennedy at the above address or (703) 306–1030.

**SUPPLEMENTARY INFORMATION:** The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the ''Agreed Measures for the Conservation of Antarctic Fauna and Flora'' for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The applications received are as follows.

[Permit Application No. 99–017]

1. *Applicant:* Charles R. Stearns, Department of Atmospheric and Oceanic Sciences, University of Wisconsin, 1225 West Dayton Street, Madison, Wisconsin 52706.

*Activity for Which Permit is Requested:* Enter Antarctic Specially Protected Areas.

The applicant proposes to install an Antarctic Weather Station (AWS) at Cape Bird, Ross Island. Studies of weather in the vicinity of McMurdo indicate an AWS at this location will help provide valuable data for forecasting weather in the Ross Island region. The applicant intends to install the AWS outside Antarctic Specially Protected Area #116, New College Valley, however, due to unfamiliarity with the terrain it may be necessary to place the AWS within site. The applicant also proposes to return to the site on occasion to service the AWS.

*Location: ASPA* #116—New College Valley, Caughley Beach, Cape Bird, Ross Island.

*Dates:* January 1, 1999–February 15, 2001.

[Permit Application No. 99–018]

2. *Applicant:* Gary Klinkhammer, College of Atmospheric Sciences, Oregon State University, 104 Ocean Administration Building, Corvallis, Oregon 97331–5503.

*Activity for Which Permit is Requested:* Enter Antarctic Specially Protected Areas.

The applicant proposes to visit several hydrothermal sites at Deception Island and in the Bransfield Strait for purposes of collecting sediment and rock samples. These samples will be gathered by TV grab, dredging and gravity coring. Some of the hydrothermal sites exist in Antarctic Specially Protected Area (ASPA) #145, Port Foster, Deception Island, and in ASPA #152, the Western Bransfield Strait, off Low Island. The applicant proposes to collect any biological specimens that are accidentally retrieved during the sediment and rock sampling and return them to the university for use in scientific studies.

*Location: ASPA* #145—Port Foster, Deception Island, and *ASPA* #152—Western Bransfield Strait, off Low Island.

*Dates:* April 14, 1999–May 10, 1999.

[Permit Application No. 99–019]

3. *Applicant:* Lars Wikander, President, Quark Expeditions, Inc., 980 Post Road, Darien, Connecticut 06820.

*Activity for Which Permit is Requested:* Enter Antarctic Specially Protected Area.

The applicant conduct educational visits, for passengers, staff and crew of the icebreaker, Kapitan Khlebnikov, to the following Ross Island areas: Cape Evans Historic Site (ASPA #154), Hut and associated artifacts, Backdoor Bay, Cape Royds (ASPA #156), Discovery Hut, Hut Point (ASPA #157), and Huts and associated artifacts, Cape Adare (ASPA #158). Visits will be conducted in accordance with the relevant Management Plans for each site. Access to the sites may be by zodiac or helicopter as appropriate.

*Location:*

*ASPA* #154—Evans Historic Site

*ASPA* #156—Hut and associated artifacts, Backdoor Bay, Cape Royds, Ross Island

*ASPA* #157—Discovery Hut, Hut Point, Ross Island

*ASPA* #158—Huts and associated artifacts, Cape Adare

*Dates:* January 1, 1999–March 31, 2003.

**Nadene G. Kennedy,**

*Permit Officer, Office of Polar Programs.*

[FR Doc. 98–32739 Filed 12–9–98; 8:45 am]

**BILLING CODE 7555–01–M**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–286]**

## Power Authority of the State of New York; Indian Point Nuclear Generating Unit No. 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations for Facility Operating License No. DPR–64, issued to the Power Authority of the State of New York (the licensee), for operation of the Indian Point Nuclear Generating Unit No. 3, located in Westchester County, New York.

### Environmental Assessment

*Identification of Proposed Action*

The proposed action would exempt the licensee from the requirements of 10 CFR 70.24, which requires a monitoring system that will energize clear audible alarms if accidental criticality occurs in each area in which special nuclear material is handled, used, or stored. The proposed action would also exempt the licensee from the requirements to maintain emergency procedures for each area in which this licensed special nuclear material is handled, used, or stored to ensure that all personnel withdraw to an area of safety upon the sounding of the alarm, to familiarize personnel with the evacuation plan, and to designate responsible individuals for determining the cause of the alarm, and to place radiation survey instruments in accessible locations for use in such an emergency.

The proposed action is in accordance with the licensee's application for exemption dated September 24, 1998.

*The Need for the Proposed Action*

The purpose of 10 CFR 70.24 is to ensure that if a criticality were to occur during the handling of special nuclear material, personnel would be alerted to that fact and would take appropriate action. At a commercial nuclear power plant the inadvertent criticality with which 10 CFR 70.24 is concerned could occur during fuel handling operations. The special nuclear material that could be assembled into a critical mass at a commercial nuclear power plant is in the form of nuclear fuel; the quantity of other forms of special nuclear material that is stored on site is small enough to preclude achieving a critical mass. Because the fuel is not enriched beyond 5.0 weight percent Uranium-235 and because commercial nuclear plant licensees have procedures and design features that prevent inadvertent criticality, the staff has determined that it is unlikely that an inadvertent criticality could occur due to the handling of special nuclear material at a commercial power reactor. The requirements of 10 CFR 70.24, therefore, are not necessary to ensure the safety of personnel during the handling of special nuclear materials at commercial power reactors.

*Environmental Impacts of the Proposed Action*

The Commission has completed its evaluation of the proposed action and concludes that inadvertent or accidental criticality will be precluded through compliance with the Indian Point Unit No. 3 Technical Specifications, through the design of the fuel storage racks, and through administrative controls imposed on fuel handling procedures.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed exemption.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other nonradiological environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

*Alternatives to the Proposed Action*

As an alternative to the proposed exemption, the staff considered denial of the proposed action (i.e., the no action alternative). Denial of the request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statement related to the Indian Point Unit 3, dated February 1975.

*Agencies and Persons Consulted*

In accordance with its stated policy, on October 28, 1998, the staff consulted with the New York State Official, Jack Spath, of the New York State Research and Development Authority regarding the environmental impact of the proposed action. The State official had no comments.

**Finding of No Significant Impact**

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment, Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated September 24, 1998, which is available for public inspection at the Commission's Public Document Room, which is located at The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the 100 Martine Avenue, White Plains Public Library, White Plains, New York, 10601.

Dated at Rockville, Maryland, this 8th day of December, 1998.

For the Nuclear Regulatory Commission.

**Alexander W. Dromerick,**

*Acting Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 98–32945 Filed 12–9–98; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No.: 070–3085]**

## Notice of Consideration of Amendment Request for the Babcock and Wilcox Shallow Land Disposal Area in Parks Township, Pennsylvania, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission is considering issuance of an amendment to Special Nuclear Materials License SNM–2001(SNM–2001) issued to the Babcock and Wilcox Company (B&W) establishing the date that B&W will submit a decommissioning plan for the Shallow Land Disposal Area (SLDA) to NRC. This amendment does not pertain to NRC's substantive review of the decommissioning plan itself or the merits of any decommissioning alternative that has been proposed for the site in past. Once B&W has submitted a decommissioning plan for NRC review, NRC will publish a separate notice and opportunity for a hearing on the decommissioning plan itself. In addition, the amendment, and opportunity for a hearing, does not pertain to the adjacent Parks Operating facility, which is administered under a separate license (SNM–414).

The SLDA is located in Armstrong County, PA, approximately 23 miles east-northeast of Pittsburgh. The SLDA consists of ten waste disposal trenches comprising approximately 1.2 acres surrounded by a 40-acre fenced buffer area. The SLDA was formerly owned by Nuclear Materials and Equipment Corporation (NUMEC) which also operated the nearby Apollo Nuclear Fuel Fabrication Facility. In the 1960s and 1970s, the SLDA was used by NUMEC to dispose of radioactively contaminated (primarily uranium and thorium) and non-radioactive wastes in accordance with NRC regulations at 10 CFR 20.304. NRC rescinded 10 CFR 20.304 in 1981. In 1967, Atlantic Richfield Company (ARCO) purchased stock in NUMEC and then sold it to B&W in 1971. In September 1994, B&W submitted several remediation alternatives for the SLDA to NRC. B&W's preferred alternative was to stabilize the waste in place by covering the buried waste with a soil and synthetic cover and isolating the waste from the groundwater with slurry walls, grout curtains and other engineered barriers. Based on B&W's proposed alternative for decommissioning the SLDA, NRC published a notice in the **Federal Register** announcing NRC's intent to develop an Environmental Impact Statement (EIS) for the decommissioning of the site. In August 1997, NRC completed development of a draft EIS (DEIS) and published a Notice of Availability in the **Federal Register** on September 4, 1997. NRC withdrew the DEIS on September 24, 1997, so that NRC staff could develop additional information regarding the alternatives presented in the DEIS.

On July 9, 1998, B&W submitted a request to NRC to amend its license, SNM–2001, to require that B&W submit a decommissioning plan for the SLDA to NRC by December 6, 2000. On August 3, 1998, NRC staff informed B&W that it would need to provide NRC with justification for this date. On October 13, 1998, B&W provided this justification. Therefore, NRC has determined that B&W's July 9 1998, and October 13, 1998, constitute a complete request to amend SNM–2001. However, NRC has not made a final determination on whether the request is acceptable and NRC will continue to review the request in accordance with the criteria in NRC regulations at 10 CFR 70.38(g)(2).

The NRC hereby provides notice that this is a proceeding on an application for amendment of a license falling within the scope of Subpart L ''Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings,'' of NRC's rules and practice for domestic licensing proceedings in 10 CFR Part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to the U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738 between 7:45 am and 4:15 pm Federal workdays; or

2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemaking and Adjudications Branch.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, BWX Technologies, P.O. Box 11165, Lynchburg, Va. 24506–1165 Attention: Mr. Philip Rosenthal; and

2. The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail,

addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

For further details with respect to this action, the license amendment request is available for inspection at the NRC's Public Document Room, 2120 L Street N.W., Washington, D.C. 20555.

**FOR FURTHER INFORMATION CONTACT:** Dominick A. Orlando, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, telephone (301) 415–6749.

Dated at Rockville, Maryland, this 4th day of December, 1998.

For the Nuclear Regulatory Commission.

**John W.N. Hickey,**

*Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 98–32813 Filed 12–9–98; 8:45 am]

**BILLING CODE 7590–01–P**

## RAILROAD RETIREMENT BOARD

### Notice of Public Meeting; Sunshine Act Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on December 16, 1998, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois 60611. The agenda for this meeting follows:

(1) Semiannual Report on the Status of Consolidation as Required by Office of Management and Budget Bulletin 96–02, Consolidation of Agency Data Centers.

(2) Report on the White House Conference on Social Security.

(3) Surviving Divorced Spouses.

(4) Year 2000 Issues.

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312–751–4920.

Dated: December 7, 1998.

**Beatrice Ezerski,**

*Secretary to the Board.*

[FR Doc. 98–32944 Filed 12–8–98; 11:00 am]

**BILLING CODE 7905–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. IC–23587; File No. 812–11338]**

### UNUM Life Insurance Company of America, et al.; Notice of Application

December 3, 1998.

**AGENCY:** The Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of application for an order pursuant to Section 26(b) of the Investment Company Act of 1940 (the ''1940 Act'') approving certain substitutions of securities.

**SUMMARY OF APPLICATION:** Applicants request an order to permit certain registered unit investment trusts to substitute shares of Fidelity Variable Insurance Products Fund II Asset Manager Portfolio and Fidelity Variable Insurance Products Fund Growth Portfolio for shares of Calvert Social Balanced Portfolio of Calvert Variable Series and shares of American Century VP Capital Appreciation of American Century Variable Portfolios Inc. currently held by those unit investment trusts.

**APPLICANTS:** UNUM Life Insurance Company of America (''UNUM''), UNUM's VA–I Separate Account (the ''UNUM Account''), First UNUM Life Insurance Company (''First UNUM''), and First UNUM's VA–I Separate Account (the ''First UNUM Account'') (the UNUM Account, together with the First UNUM Account, the ''Accounts'').

**FILING DATE:** The application was filed on October 2, 1998.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 28, 1998, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Rosemary Moore, Esq., UNUM Life Insurance Company of America, 2211 Congress Street, Portland, Maine 04122. Copies to William R. Galeota, Esq., Shea & Gardner, 1800 Massachusetts Avenue, NW., Washington, DC 20036 and Kimberly J. Smith, Esq., Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, NW., Washington, DC 20004–2415.

**FOR FURTHER INFORMATION CONTACT:** Ethan D. Corey, Senior Counsel, at (202) 942–0675, or Kevin M. Kirchoff, Branch Chief, at (202) 942–0672, Office of Insurance Products, Division of Investment Management.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application; the complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 5th Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

### Applicants' Representations

1. UNUM is a life insurance company originally chartered under Maine law in 1966. UNUM is a subsidiary of UNUM Holding Company and its wholly-owned parent company, UNUM Corporation. UNUM is the depositor and sponsor of the UNUM Account.

2. First UNUM is stock life insurance company organized under New York law in 1978. First UNUM is a subsidiary of UNUM Holding Company and its wholly-owned parent company, UNUM Corporation. First UNUM is the depositor and sponsor of the First UNUM Account.

3. On October 1, 1996, UNUM completed the sale of its tax-sheltered annuity business to the Lincoln National Life Insurance Company (''Lincoln National''), pursuant to an acquisition agreement with Lincoln National (the ''Acquisition Agreement''). Under the Acquisition Agreement, Lincoln National assumed UNUM's obligations under contracts previously issued through the UNUM Account, and Lincoln Life & Annuity Company of New York (''LLANY'') assumed First UNUM's obligations under contracts previously issued through the First UNUM Account, other than in each case those obligations under contracts held by contractowners and/or participants who neither consented nor were

deemed to have consented to the assumption (''Unassumed Contracts'').

4. Separate account assets relating to the Unassumed Contracts continue to be maintained in the UNUM Account or the First UNUM Account, respectively. Unassumed Contracts are administered by Lincoln National (if issued by UNUM) or LLANY (if issued by First UNUM).

5. The Unassumed Contracts are group flexible premium deferred variable annuity contracts issued by UNUM (for the UNUM Account) or First UNUM (for the First UNUM Account). Currently, transfers of cash value can be made in unlimited amounts each contract year among and between the sub-accounts available as investment options under the Contracts without the imposition of a transfer charge. All of the Unassumed Contracts reserve to UNUM or First UNUM, as applicable, the right to restrict transfer privileges.

6. The UNUM Account is registered under the 1940 Act as a unit investment trust (File No. 811–5803). The UNUM Account currently consists of nine sub-accounts. Each sub-account currently invests its assets exclusively in shares of the following series of the following open-end management investment companies (''Portfolios''): Dreyfus Stock Index Fund; Calvert Social Balanced Portfolio of Calvert Variable Series; Small Cap Portfolio of Dreyfus Variable Investment Fund; Fidelity Variable Money Market Portfolio; Fidelity Variable Insurance Products Fund II (''VIP II'') Asset Manager Portfolio, American Century VP Capital Appreciation and American Century VP Balanced of American Century Variable Portfolios Inc.; and International Stock Portfolio of T. Rowe Price International Series.

7. The First UNUM Account is registered under the 1940 Act as a unit investment trust (File No. 811–6455). The First UNUM Account currently consists of nine sub-accounts. Since inception, each sub-account of the First UNUM Account has invested in the same Portfolios as those available under the UNUM Account.

8. The investment objective of the Calvert Social Balanced Portfolio, a non-diversified fund, is to achieve a total return greater than the rate of inflation through an actively managed, non-diversified portfolio of common and preferred stocks, bonds, and money market instruments which offer income and capital growth opportunity and which satisfy the social concern criteria established for the Portfolio. The Portfolio invests in enterprises that make a significant contribution to society through their products and services and through the way they do business. The Calvert Social Balanced Portfolio's investment objective is not fundamental and may be changed at any time with 60 days notice to shareholders. The Calvert Asset Management Company, Inc. serves as the Fund's investment adviser.

9. The investment objective of the VIP II Asset Manager Portfolio, a diversified fund, is to achieve high total return with reduced risk over the long term. It seeks to achieve this objective by diversifying its investments across stocks, bonds, and short-term and money market instruments, both in the U.S. and abroad. It may invest in all types of equity securities and short-term and money market instruments, and all types of fixed income securities with maturities greater than one year. Fidelity Management & Research Company (''FMR'') is the manager of the VIP II Asset Manager Portfolio.

10. The investment objective of American Century VP Capital Appreciation is to seek capital growth. It seeks to achieve its investment objective by investing in common stocks (including securities and convertibles into common stocks and other equity equivalents) and other securities that meet certain fundamental and technical standards of selection and have, in the opinion of its investment manager, better than average potential for appreciation. It seeks to stay fully invested in such securities, regardless of the movement of stock prices generally. American Century Investment Management, Inc. manages American Century VP Capital Appreciation.

11. The investment objective of the VIP Growth Portfolio is capital appreciation. It pursues its objective by investing primarily in common stocks. It is not restricted to any one type of security and may pursue capital appreciation through the purchase of bonds and preferred stocks. FMR is the manager of the VIP Growth Portfolio.

12. Applicants assert that the performance of the VIP II Asset Manager Portfolio and the VIP Growth Portfolio (collectively, the ''Substitute Funds'') has been better than the performance of the Calvert Social Balanced Portfolio and the American Century VP Capital Appreciation (collectively, the ''Replaced Funds'') on a historical basis. Applicants also assert that the expenses of the Substitute Funds have been lower than those of the Replaced Funds.

13. The following chart shows the standard average annualized total returns for the Replaced Funds for the past two years as well as the total return for each Replaced Funds since its date of inception.

| Replaced funds | Standard total return | | |
|---|---|---|---|
| | Inception of portfolio through 12/31/97 (percent) | 1997 (percent) | 1996 (percent) |
| Calvert Social Balanced: (Inception date: September 27, 1982) | 11.20 | 20.08 | 12.62 |
| American Century VP Capital: Appreciation (Inception date: November 20, 1987) | 4.34 | −3.26 | −4.32 |

14. The chart below provides the average annual total returns for the Substitute Funds for the past two years as well as standard total return since date of inception. Each Substitute Fund has outperformed the corresponding Replaced Fund during each period shown.

| Substitute funds | Total return of substitute portfolios | | |
|---|---|---|---|
| | Inception of fund through 12/31/97 (percent) | 1997 (percent) | 1996 (percent) |
| VIP II Asset Manager Portfolio: | | | |
| (Inception date: September 6, 1989) | 12.73 | 20.65 | 14.60 |
| VIP Growth Portfolio: | | | |
| (Inception date: October 9, 1986) | 17.55 | 23.48 | 14.71 |

15. The chart below shows the approximate size and expense ratios for each of the Replaced Funds for the past two years. Expense ratios include management fees and operating expenses. Each Fund currently pays a monthly management fee based on its average daily net assets at the following annual rates: Calvert Social Balanced Portfolio, 0.70% (plus or minus a fee adjustment of 0.05% to 0.15%) and American Century VP Capital Appreciation, 1.00%. As of October 1, 1998, the management fee for the American Century VP Capital Appreciation will be: 1.00% of the first $500 million, 0.95% of the next $500 million, and 0.90% of the excess over $500 million.

| Replaced funds | Net assets at December 31 (in thousands) | Expense ratio (percent) |
|---|---|---|
| Calvert Social Balanced: | | |
| 1996 | $161,473 | 0.81 |
| 1997 | 227,834 | 0.80 |
| June 30, 1998 (inception date: September 27, 1982) | 275,385 | 0.77 |
| American Century VP Capital Appreciation: | | |
| 1996 | $1,313,865 | 1.00 |
| 1997 | 593,698 | 1.00 |
| June 30, 1998 (inception date: November 20, 1987) | 515,262 | 1.00 |

16. The next chart provides the approximate size and expense ratios for each of the Substitute Funds for the past two and one-half years. Expense ratios include management fees and operating expenses. Each Substitute Fund currently pays a monthly management fee. The management fee for each Substitute Fund is calculated by adding a group fee rate to an individual fund fee rate, multiplying the result by the Fund's monthly average net assets, and dividing by twelve. The group fee rate is based on the average net assets of all the mutual funds advised by FMR, and cannot rise above 0.52%. For December 1997, the group fee rate for each of the VIP II Asset Manager Portfolio and the VIP Growth Portfolio was 0.29%. The individual fund fee rate for the VIP II Asset Manager Portfolio is 0.25% and for the VIP Growth Portfolio is 0.30%. The management fee for each Substitute Fund for the fiscal year ended December 31, 1997 was as follows: VIP II Asset Manager Portfolio—0.55%; and VIP Growth Portfolio—0.60%. Each Substitute Fund has lower expense ratios, and is significantly larger in size than the corresponding Replaced Fund for the periods shown.

| Substitute funds | Net assets at December 31 (in thousands) | Expense ratio[1] (percent) |
|---|---|---|
| VIP II Asset Manager Portfolio: | | |
| 1996 | $3,641,194 | 0.74 |
| 1997 | 4,399,948 | 0.65 |
| June 30, 1998 (inception date: September 6, 1982) | 4,965,445 | 0.65 |
| VIP Growth Portfolio: | | |
| 1996 | $6,086,424 | 0.69 |
| 1997 | 7,729,147 | 0.69 |
| June 30, 1998 (inception date: October 9, 1986) | 9,398,758 | 0.69 |

[1] FMR, the VIP II Asset Manager Portfolio or the VIP Growth Portfolio has entered into varying arrangements with third parties who either paid or reduced a portion of the Funds' expenses. With these arrangements, the VIP II Asset Manager Portfolio's expense ratio for 1996 and 1997 was 0.73% and 0.64%, respectively, and the VIP Growth Portfolio's expense ratio for each of the 1996 and 1997 was 0.67%.

17. The charts below show a comparison of the Replaced Funds' and the Substitute Funds' total return, standard deviation and expense ratios for the three years ended June 20, 1998.

| Replaced funds | 3-year total return (percent) | 3-year standard deviation (percent) | Expense ratio for 3 years ending 6/30/98 (percent) |
|---|---|---|---|
| Calvert Social Balanced | 16.7 | 14.9 | 0.77 |
| American Century VP Capital Appreciation | −0.4 | 20.3 | 1.00 |

| Substitute Funds | 3-year total return (percent) | 3-year standard deviation (percent) | Expense ratio for 3 years ending 6/30/98 (percent) |
|---|---|---|---|
| VIP II Asset Manager Portfolio | 17.4 | 7.7 | 0.65 |
| VIP Growth Portfolio | 21.5 | 14.4 | 0.69 |

18. The Calvert Social Balanced Portfolio is restricted in the investments it may make by its social concern criteria. While the VIP II Asset Manager Portfolio does not duplicate these criteria, the Applicants assert that the VIP II Asset Manager Portfolio offers an investment program sufficiently similar to that of the Calvert Social Balanced Portfolio so that Unassumed Contract Owners will be able to pursue the same long-term investment objectives (albeit without social criteria) through the VIP II Asset Manager Portfolio, with lower fees and expenses and lower volatility.

19. The Calvert Social Balanced Portfolio's investment objective (total return above the rate of inflation) and the VIP II Asset Manager Portfolio's investment objective (high total return with reduced risk over the long-term) are substantially similar. While the policies that they follow to achieve their objectives are not identical, they are both domestic hybrid funds that invest in the same types of instruments. Applicants assert that an investor in the Calvert Social Balanced Portfolio is attempting to achieve the same long term goals as those sought by the VIP II Asset Manager Portfolio.

20. The investment objectives of the American Century VP Capital Appreciation (capital growth) and the VIP Growth Portfolio (capital appreciation) are substantially similar. While each of these Funds seeks to achieve its objective through somewhat different investment strategies, Applicants assert that an investor in the American Century VP Capital Appreciation is attempting to achieve the same long-term goals as those sought by the VIP Growth Portfolio, and through the same type of investments (equity securities).

21. As part of an overall business plan of Lincoln National and LLANY to make the Unassumed Contracts more competitive and more efficient to administer and oversee, Lincoln National and LLANY have proposed to replace the Replaced Funds with the Substitute Funds. The proposed substitutions are consistent with this business plan, involve Portfolios with compatible investment objectives, and after the substitution, Unassumed Contracts will be invested in Portfolios whose performance has been better on a historical basis.

22. UNUM and First UNUM have concurred with the determination by Lincoln National and LLANY that the Replaced Funds are good candidates for substitution. Applicants propose that UNUM and First UNUM replace: (a) shares of the Calvert Social Balanced Portfolio with shares of the VIP II Asset Manager Portfolio; and (b) shares of the American Century VP Capital Appreciation with shares of the VIP Growth Portfolio (the ''Proposed Substitution''). Applicants propose to have UNUM and First UNUM redeem shares of each Removed Fund in cash and purchase with the proceeds shares of the Substitute Fund identified above.

23. All owners and prospective owners of the Unassumed Contracts will be notified of UNUM's and First UNUM's intention to take the necessary actions, including seeking the requested order, to substitute portfolios. The supplements will advise owners and prospective owners that they will be unable to allocate net purchase payments to, or transfer cash values to, the sub-accounts of the Accounts corresponding to each of the Replaced Funds after April 30, 1999, and that on the date of the proposed substitution (on or about April 30, 1999, after the relief requested has been obtained and all necessary systems support changes have been made), the Substitute Funds will replace the Replaced Funds as the underlying investments for such sub-accounts. In addition, the supplements will apprise owners and prospective owners that neither UNUM nor First UNUM will exercise any rights reserved by it under any of the Unassumed Contracts to impose restrictions or fees on transfers until at least thirty days after the proposed substitutions.

24. At least sixty days before the date of the proposed substitutions, affected owners will also be provided with a prospectus for each Substitute Fund which includes complete current information concerning the Substitute Funds. Thus, any owner affected by the substitutions will have received current prospectus disclosure for each Substitute Fund at least 60 days or more in advance of the proposed substitutions.

25. The proposed substitutions will take place at relative net asset value with no change in the amount of any Unassumed Contract owner's cash value or death benefit or in the dollar value of his or her investment in any of the Accounts. Unassumed Contract owners will not incur any additional fees or charges as a result of the proposed substitutions nor will their rights or UNUM's and First UNUM's obligations under the Unassumed Contracts be altered in any way. All expenses incurred in connection with the proposed substitutions, including legal, accounting and other fees and expenses, will be paid by UNUM and First UNUM or Lincoln National and LLANY. In addition, the proposed substitutions will not impose any tax liability on Unassumed Contract owners. The proposed substitutions will not cause the Unassumed Contract fees and charges currently paid by existing Unassumed Contract owners to be greater after the proposed substitutions than before the proposed substitutions. Neither UNUM nor First UNUM currently impose any restrictions or fees on transfers under the Unassumed Contracts, and neither will exercise any right it may have under the Unassumed Contracts to impose restrictions on transfers under any of the Unassumed Contracts for a period of at least thirty days following the proposed substitutions.

**Applicants' Legal Analysis**

1. Section 26(b) of the 1940 Act requires the depositor of a registered unit investment trust holding the securities of a single issuer to obtain Commission approval before substituting the securities held by the trust. Specifically, Section 26(b) states:

It shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution. The Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title.

2. Applicants state that the Proposed Substitution appears to involve a substitution of securities within the meaning of Section 26(b) of the 1940 Act and request that the Commission issue an order pursuant to Section 26(b) of the 1940 Act approving the Proposed Substitution.

3. The Contracts all provide to UNUM or First UNUM the right, subject to Commission approval, to substitute shared of another open-end management investment company for shares of an open-end management investment company held by a subaccount of the relevant Account. Applicants assert that the prospectuses for the Unassumed Contracts contain appropriate disclosure of this right.

4. Applicants assert that, although there are differences in the objectives and policies of the Replaced Funds and the Substitute Funds, their objectives and policies are sufficiently consistent to assure that, following the Proposed Substitution, the achievement of the core investment goals of the affected owners invested in the Replaced Funds will not be frustrated.

5. Applicants assert that the performance of the Calvert Social Balanced Portfolio was lower than that of a comparable securities index that had lower volatility (or risk), and was lower than the median of its peer group (domestic hybrid funds) over the three year period ending June 30, 1998. Applicants assert that the VIP II Asset Manager Portfolio has, however, performed better than its comparable securities index and ranks in the top decile of a similar peer group (large blend equities) over the three-year period ending June 30, 1998.

6. Applicants assert that the performance of American Century VP Capital Appreciation was lower than that of a comparable securities index that had lower volatility (or risk), and was lower than the median of its peer group (mid-cap growth equities) over the three-year period ending June 30, 1998. Applicants assert that while the VIP Growth Portfolio performed below the comparable securities index and the median of its peer group (large cap equities) over the same time period, its performance was better than that of the comparable securities index and the median of its peer group for the one and five year periods ending June 30, 1998, and has substantially outperformed American Century VP Capital Appreciation in 1996, 1997 and since the inception of the VIP Growth Portfolio.

7. Each Substitute Fund has performed favorably over the past two years in comparison to the Replaced Fund. While past performance is not necessarily indicative of future performance, applicants assert that the Proposed Substitution is appropriate in light of the performance of the Replaced Funds.

8. Applicants assert that the Proposed Substitution would effectively consolidate the UNUM and First UNUM assets of each Substitute Fund with those of the corresponding Replaced Fund, with the goal of each Substitute Fund having lower future expense ratios than the past expense ratios of the Replaced Fund. The VIP II Asset Manager Portfolio is a larger Fund and has a lower expense ratio than the Calvert Social Balanced Portfolio. Moreover, the Calvert Social Balanced Portfolio is a small Fund, which has not grown significantly, and, Applicants assert, likely does not have prospects of significant growth. Based on these trends, the Applicants believe that the VIP II Asset Manager Portfolio is likelier to achieve economics of scale in the near and long term.

9. The VIP Growth Portfolio is a larger fund and has a lower expense ratio than American Century VP Capital Appreciation. Moreover, Applicants assert that American Century VP Capital Appreciation has diminished in size over the past two and one-half years, while the VIP Growth Portfolio has gained in size over the past two and one-half years. Based on these trends, the Applicants believe that the VIP Growth Portfolio is likelier to achieve economies of scale in the near and long term. With the addition of the UNUM and First UNUM assets, the size of each Substitute Fund is expected to further increase.

**Conclusion**

Applicants assert that, for the reasons summarized above, the Proposed Substitution is 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. 98–32826 Filed 12–9–98; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–40737; File No. SR–CBOE–98–46]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Evaluation of Trading Crowd Performance

December 2, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 23, 1998, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The CBOE is proposing to modify CBOE Rule 8.60, *Evaluation of Trading Crowd Performance*, to provide limited remedial actions for members, individually or collectively as trading crowds, who have failed to meet minimum performance standards. The proposed rule also modifies procedures relating to the administration and enforcement of the Rule.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The Exchange is proposing to modify CBOE Rule 8.60 to clarify and improve the market performance evaluation of members and trading crowds on the Exchange. The proposed rule change accomplishes this by giving the appropriate Market Performance Committee [3] (''appropriate Committee'') greater procedural flexibility to address the issue of member performance, while at the same time providing a clearer description of the due process safeguards that apply to the exercise of the appropriate Committee's authority.

1. Generally

The purpose of CBOE Rule 8.60 is to provide the appropriate Committee with a means to work with trading crowds and individual members to improve market quality and competition among members. The crowd evaluation process has significantly assisted the appropriate Committee in working with trading crowds and members to improve performance. The proposed changes will allow the appropriate Committee to take certain remedial actions after an informal meeting with members or crowds who have been identified through the evaluations. Currently, under CBOE Rule 8.60, the appropriate Committee must hold a formal hearing to impose more serious sanctions such as (i) suspension, (ii) termination or (iii) restriction of a market-maker's registration, appointments to option classes or right to trade at a particular trading station, but does not explicitly have the right to take limited remedial actions.

2. The Proposed Changes

One of the proposed amendments to CBOE Rule 8.60(a) is to identify the Exchange rather than the appropriate Committee as the entity that prepares, administers and distributes the results of the member evaluation. The results of the member evaluation are provided by the Exchange's Market Procedures and Planning staff to the appropriate Committee for their review. Paragraph (a) of CBOE Rule 8.60 is being amended to provide that the appropriate Committee, in connection with its evaluation of member performance, may take into consideration factors other than the four factors currently enumerated in the Rule.[4] To assist the Exchange in gathering market performance data in a timely manner, the proposed rule change moves language from paragraph (c) to paragraph (a). This language requires that members, persons associated with a member, or member firms answer market performance survey questions by the date specified and to the best of their ability and knowledge. In addition, the term market-maker is being replaced with the terms member or trading crowd to provide the appropriate Committee with more discretion in enforcing market performance standards.

The Exchange is rewording paragraph (b) of CBOE Rule 8.60 to enable the appropriate Committee to determine whether there has been a failure to meet minimum performance standards based on the totality of factors considered, including whether a member or trading crowd is ranked in the bottom 10% of trading crowds.

The language in paragraph (c) of CBOE Rule 8.60 as to the distribution of a Questionnaire on a six month periodic basis is being deleted. The Evaluation will be done as needed. Paragraph (c) of CBOE Rule 8.60 also will incorporate the existing language from paragraph (d). This incorporated language gives the appropriate Committee discretion to have an informal meeting with one or more members to discuss their performance.

Paragraph (d) of CBOE Rule 8.60 is being amended to clarify that the appropriate Committee is authorized to take certain remedial actions against a member or trading crowd if the appropriate Committee believes that certain performance standards are not being met. These remedial actions are of a less serious nature than those provided for in paragraph (a). Paragraph (d) of CBOE Rule 8.60 is intended to provide the appropriate Committee with greater flexibility to take limited actions to improve overall market performance in those cases where more severe actions are not warranted, and without incurring the expense and delay associated with a formal evidentiary-type hearing which is required in cases where more severe actions are taken. The following measures are proposed as limited remedial actions that the appropriate Committee may take:

(1) require that the trading crowd submit a business plan to the Committee detailing those steps that the crowd intends to take to improve its performance;

(2) require that one or more members execute 100% of their opening transactions in that crowd in person;

(3) restrict crowd members' ability to participate on the Retail Automatic Execution System;

(4) restrict the eligibility of the crowd to be allocated new option classes or other securities;

(5) require that one or more members attend a meeting or series of meetings as the Committee shall require for the purpose of education or improving the performance of the members;

(6) require that all bookable orders be booked if not executed immediately upon presentation in the crowd; or

(7) take any other limited remedial action which is comparable to the foregoing.

Paragraph (d) would provide members an opportunity to be heard by the appropriate Committee, prior to the appropriate Committee taking remedial action.

Paragraph (e) of CBOE Rule 8.60 clarifies and expands on the due process requirements to be fulfilled if the appropriate Committee deems that the actions listed in paragraph (a) are to be imposed. It will also be made clear that all affected members will be provided a written decision.

The Exchange is also amending Paragraph (f) to provide the appropriate Committee with the authority to impose the proposed limited remedial sanctions of paragraph (d) for members who fail to appear before the committee when asked to do so under paragraph (c), without reasonable justification. The amended language also states that the appropriate Committee may refer any member's failure to appear to the Business Conduct Committee.

Finally, the Exchange is amending Paragraph (g) to provide that any actions taken by the appropriate Committee, whether under paragraph (a) or (d), may be appealed according to the procedures of Chapter XIX of Exchange Rules. This change would have a member's appeal go directly to the Appeals Committee rather than the Board of Directors. This change would make the appeal procedure consistent with the appeal rights of most other Exchange committee decisions. Members would retain the right to appeal the Appeals Committee decision to the Board.

Interpretation and Policy .01 under CBOE Rule 8.60 would be amended to provide some flexibility as to how the appropriate Committee defines whether a market-maker is a member of a trading crowd. The proposed rule change also

[3] The appropriate Committee is the Market Performance Committee, the Index Market Performance Committee or the Modified Trading System Appointments Committee.

[4] The four factors are (i) quality of markets; (ii) competition among market-makers; (iii) observance of ethical standards, and (iv) administrative factors.

makes certain editorial changes to clarify CBOE Rule 8.60 without affecting its substance.

The Exchange believes the proposed rule change is consistent with and promotes the objectives of Section 6(b)(5) of the Act [5] in that it is designed to enhance the ability of the appropriate Market Performance Committee to regulate standards of member performance on the Exchange, while providing due process standards to members who appear before the appropriate Committee, thereby promoting just and equitable principles of trade and protecting investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–98–46 and should be submitted by December 31, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98–32827 Filed 12–9–98; 8:45 am]

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[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–40736; File No. SR–CBOE–98–37]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change To Allow the Chairman of the Equity Floor Procedure Committee, or the Chairman's Designee, To Increase the Eligible Order Size for Entry into RAES

December 1, 1998.

On August 21, 1998, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] a proposed rule change to permit the Chairman of the appropriate Floor Procedure Committee (''Committee''), or the Chairman's designee, to exercise the authority of the Committee to increase the size of orders eligible for entry into CBOE's Retail Automatic Execution System (''RAES'') in certain circumstances.[2] The Exchange amended the proposed rule change on October 5, 1998.[3]

The proposed rule change was published for comment in the **Federal Register** on October 30, 1998.[4] The Commission received no comments on the proposal. This order approves the proposal, as amended.

**Description of the Proposal**

The Exchange is proposing to amend Exchange Rule 6.8, by adding Interpretation and Policy .05, to permit the Chairman of the Committee, or the Chairman's designee, to exercise the authority of the Committee to increase the size of orders eligible for entry into RAES when the Chairman or his or her designee believes that the action could alleviate a potential backlog of unexecuted orders where an options class is experiencing a large influx of orders. This decision may not extend for longer than one trading day. If the situation extends into a second day, the Chairman or his or her designee would have to make an independent decision to increase the RAES eligible order size for that subsequent day. The Equity Floor Procedure Committee (''EFPC'') will review any decision to approve an increase for consecutive days. Pursuant to its discretion under Exchange Rule 6.8, the EFPC has established an eligible RAES order size of ten contracts for most equity options traded on the floor.

The EFPC has discovered through experience in overseeing the operation of RAES in equity options, however, that it is often beneficial to temporarily raise the eligible order size to the allowable limit of twenty contracts in situations where a particular class of equity options is experiencing a large influx of orders. By increasing the eligible order size, a large percentage of the order flow can be filled immediately at the Exchange's quotes or at the National Best Bid or Offer (''NBBO'').[5] The Exchange notes that such increase will allow the trading crowd to concentrate on filling the non-RAES eligible orders in a more expeditious manner.

**Discussion**

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 of the Act [6] and the rules and regulations

[1] 15 U.S.C. 78s(b)(1).

[2] RAES accepts, through the Exchange's Order Routing System, small public customer market or marketable limit orders for automatic execution. An Exchange marketmaker on RAES is assigned as the contraparty to these trades.

[3] Letter from Timothy H. Thompson, Director, Regulatory Affairs, CBOE, to Sonia Patton, Attorney, Division of Market Regulation, Commission, dated September 15, 1998 (''Amendment No. 1'').

[4] *See* Exchange Act Release No. 40596 (Oct. 23, 1998), 63 FR 58434 (Oct. 30, 1998).

[5] The Commission recently approved a proposed rule change that provides that in classes designated by the EFPC, RAES orders will be executed at the NBBO to the extent the NBBO is no more than one tick better than the CBOE quote. Exchange Act Release No. 40096 (June 16, 1998), 63 FR 34209 (June 23, 1998) (approving SR–CBOE–98–13).

[6] 15 U.S.C. 78f(b).

thereunder.[7] Section 6(b) of the Act states that the rules of an exchange must be designed to facilitate securities transactions and to remove impediments to and perfect the mechanism of a free and open market. The Commission believes that permitting the Exchange to allow the Chairman of the Committee, or the Chairman's designee, to exercise the authority of the Committee to determine the size of orders eligible for entry into RAES will help to expedite the execution of orders for more than 10 contracts, which should free market makers to handle more complex or larger orders that are not RAES eligible. The Commission believes that EFPC review of decisions to increase the size of orders eligible for entry into RAES for consecutive days will help to ensure that the Chairman or his or her designee only uses the discretion in those limited circumstances set forth in the Interpretation.

**Conclusion**

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CBOE–98–37) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98–32828 Filed 12–9–98; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–40745; File No. SR–NASD–09–75]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change and Amendment No. 1 Thereto by National Association of Securities Dealers, Inc. Requiring Certain NASD Member Firms To Participate in the Integrated, Industry-Wide, Year 2000 Tests

December 3, 1998.

On December 3, 1998, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary, NASD Regulation, Inc. (''NASD Regulation''), submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] Amendment No. 1 to a proposed rule change described in Items I, II, and III below, which Items have been prepared by NASD Regulation.[3] The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposal and Amendment No. 1 thereto.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation proposes to add a new rule, NASD Rule 3410, to the Conduct Rules of the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), to require certain NASD members to conduct or participate in computer tests designed to address the Year 2000 problem. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

**3400. COMPUTER SYSTEMS**

**3410. Mandatory Year 2000 Testing**

[*This rule will expire automatically on January 1, 2001*]

*(a) Members of the Association that determine their minimum net capital requirement according to paragraphs (a)(2)(i) and/or (a)(4) of Securities Exchange Act Rule 15c3–1, or are registered with the Securities and Exchange Commission as government securities brokers or dealers under Section 15C of the Securities Exchange Act of 1934 must conduct or participate in such testing of computer systems as the Association may prescribe.*

*(b) Every member required by the Association to conduct or participate in testing of computer systems shall provide to the Association such reports relating to the testing as the Association may prescribe.*

*(c) Every member of the Association that clears securities transactions on behalf of other broker-dealers must take reasonable measures to ensure that each broker-dealer for which it clears securities transactions conducts testing with such member.*

* * * * *

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(a) Purpose

The NASD is proposing to adopt a rule that would establish with NASD's specific authority to require certain members to participate in Year 2000 tests and to require reporting on the tests.[4] The NASD is proposing that the rule will expire in the year 2001 so that the NASD will have specific authority to mandate testing and reporting, as necessary, to correct problems that are not resolved prior to January 1, 2000, or to collect problems that arise after January 1, 2000.

On January 1, 2000, the internal date in computers should roll-over from ''12/31/99'' to ''01/01/00.'' At that moment, if corrective measures have not been taken, the program logic in the vast majority of these computer systems will begin to produce erroneous results because the systems will read the date as beginning in the year 1900 rather than 2000. This problem, known as the ''Year 2000 Problem,'' could cause significant disruption in the securities industry. There are several stages involved in correcting the Year 2000 Problem, including: assessing the problem; implementing corrective measures; conducting internal, point-to-point, and integrated or industry-wide testing; and establishing contingency plans.

The testing stage of correcting the Year 2000 Problem will be critical to ensuring that the markets will operate with minimal disruption after January 1, 2000. To facilitate testing on an

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[7] In approving this rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The initial filing, which was received on October 5, 1998, was not noticed in the **Federal Register**.

[4] The proposed rule is not intended to limit the NASD's existing authority by rule, contract, or otherwise, to mandate testing or require reports from members. For example, the Nasdaq Workstation II® Subscriber Agreement, Section 1 states that Nasdaq agrees to provide services to a subscriber on the terms and conditions set forth in the agreement, which could include testing.

integrated, industry-wide basis, the Securities Industry Association (''SIA'') has undertaken the task of coordinating such a test. Test participants will include, among others, Nasdaq, the exchanges, registered clearing corporations and depositories, data processors, and broker-dealers. The first day of the integrated, industry-wide test is scheduled for March 6, 1999.[5]

The NASD believes it is essential that the firms that could cause the most disruption in the market, if these firms have not corrected the Year 2000 problem, conduct tests of all of their critical computer systems that relate to their different types of businesses (*e.g.*, equities, options, government securities, mortgage-backed securities). Consequently, the NASD is proposing to require all market makers and clearing firms to conduct tests to address the Year 2000 Problem. The proposed rule also would require government securities brokers or dealers that are not subject to the SEC's net capital rule, but are NASD members, to conduct Year 2000 tests.

Some firms will be able to satisfy at least part of their testing obligations by participating in the SIA-coordinated test or by tests sponsored by self-regulatory organizations (''SROs''). The Government Securities Clearing Corporation (''GSCC'') will test for government securities. In addition, the Participants Trust Company (''PTC'') and the MBS Clearing Corporation (''MBSCC'') will test for mortgage-backed securities. Therefore, portions of the members' testing obligations will be satisfied by participation in the tests offered by GSCC, PTC, or MBSCC.

The proposed rule would provide specific authority to require participation in organized, industry-sponsored tests, and require ''point-to-point'' testing between member firms and the NASD or other systems, or internal tests of member systems. These other tests may be particularly significant for smaller market makers and clearing firms that may not be able to participate in the industry-sponsored tests.

Some members may be able to satisfy their testing obligation without actually conducting tests themselves. For example, it is likely that market makers that are not clearing firms and that only use Nasdaq Workstation II® (NWII) terminals for their market-making activity will not be required to participate in mandatory testing because the NASD has completed testing of the NWII system. Also, members that use computer systems provided by service bureaus are not likely to have to perform any additional tests of the systems provided by the service bureaus if the service bureaus participate in the SIA coordinated test, the members have conducted point-to-point testing with their service bureaus, the service bureaus have conducted point-to-point testing with the NASD, and the tests do not indicate any problems. In the circumstances described above, the NASD and service bureaus will act as proxies for the members for purposes of compliance with the rule. Following approval of this rule proposal and Amendment No. 1 thereto, the NASD will issue a Notice to Members describing the types of tests that will be required for different types of market makers and clearing firms, and the types of situations in which members will be able to satisfy the testing requirement by proxy.

The NASD also believes that test results should be reported to the Association. These reports will enable the NASD to identify those members that have not adequately prepared for the Year 2000 so that appropriate action can be taken to address these members' deficiencies, including, for example, providing assistance to or easing the transition of business to other firms. Accordingly, the proposal would require members to file reports with the NASD about the tests. To simplify the reporting requirement, the NASD will design a standardized format firms will use to report to the NASD. In addition, to avoid duplicative and burdensome reporting, the NASD will coordinate its reporting requirements with other SROs as much as possible. For example, the NASD may exclude from its reporting requirement those firms for which the NASD is not the designated examining authority.

The NASD will issue Notices to Members specifying members' reporting and testing obligations sufficiently in advance of specific events, such as SIA-coordinated industry-wide tests, that members will reasonably be able to comply. Regardless of when such Notices are issued, nothing in this rule relieves member firms of their obligation to take all necessary steps so that they may function properly—both their internal systems and their ability to communicate and transact business with other firms—on and after January 1, 2000.

Further, although the NASD is not proposing to require all members of the Association (*e.g.*, introducing firms that do not make markets) to conduct external testing, such testing is a key element of Year 2000 compliance for all firms.[6] Specifically, the NASD still wants all member firms to test their computer systems and take whatever remedial measures are necessary to deal with Year 2000 issues. NASD Regulation staff has held 35 Year 2000 seminars in 14 cities and has been told by introducing firms that their computer systems are dependent upon, and in some cases provided by, their clearing firms and that cooperation by and coordination with the clearing firms is necessary. Based on these comments, the NASD is proposing that clearing firms must take reasonable measures to ensure that their introducing firms test with them. The NASD expects that ''reasonable measures'' in this context would include providing reasonable notice of the existence of tests that are scheduled as well as such access to the systems and personnel of the clearing firm as may be necessary. The NASD wants clearing firms to give it the results of the tests conducted with the introducing firms.

Finally, there is no more significant issue confronting the financial industry than the Year 2000 Problem, and the NASD thus will respond decisively to members' failure to respond to initiatives designed to determine their readiness. The NASD informed members that failure to respond to the NASD Year 2000 survey could result in disciplinary action. Similarly, disciplinary actions have been and will be instituted against members that fail to file SEC Form BD–Y2K. In addition, members will be subject to disciplinary action if they fail to conduct the required tests, fail to report the results of the tests to the NASD, or fail to take reasonable measures to ensure that their introducing firms have an opportunity to test with them.

(b) Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Exchange Act, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and

[5] The exact number of firms that will be able to participate in the SIA test has not been conclusively determined.

[6] Member firms that choose—or are required—to participate in external testing should recognize that internal testing is a prerequisite for external testing and participation in SIA-coordinated tests and should act accordingly.

open market and a national market system, and, in general, to protect investors and the public interest. NASD Regulation believes the proposed rule is necessary to protect investors and the public interest. The NASD rule requiring certain members to conduct or participate in Year 2000 tests, and to file reports about the tests, will enable NASD Regulation, those participating in the tests, and others to evaluate the readiness of securities industry for the Year 2000. The firms that would be required to conduct testing perform critical functions in the markets and these firms' inability to perform these functions beyond January 1, 2000 could cause disruptions in the markets and cause harm to investors.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act, as amended.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

After careful consideration, the Commission has concluded, for the reasons set forth below, that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder. Mandating Year 2000 testing and reporting is consistent with Section 15A(b)(6)[7] of the Exchange Act. Section 15A(b)(6) of the Exchange Act requires that the NASD's rules be designed, among other things, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change will facilitate the NASD's efforts to ensure the securities markets' continued smooth operation on and after January 1, 2000.

The Commission finds good cause for approving the proposal and Amendment No. 1 thereto prior to the 30th day after the date of publication of notice of the filing in the **Federal Register.** It is vital that SROs have the authority to mandate that their member firms participate in Year 2000 testing and that they report test results (and other Year 2000 information) to their SRO's. The proposed rule change will help the NASD participate in coordinating industry-wide and other testing. This, in turn, will help ensure that the SIA's tests and the NASD's Year 2000 efforts are successful. The proposed rule change will also help the NASD work with its member firms, the SIA, and other SROs to minimize any possible disruptions the Year 2000 may cause.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by December 31, 1998.

**V. Conclusion**

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Exchange Act,[8] that the proposal, SR–NASD–98–75, including Amendment No. 1 thereto, be and hereby is approved on an accelerated basis.[9]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98–32825 Filed 12–9–98; 8:45 am]

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[7] 15 U.S.C. 78o–3(b)(6).

[8] 15 U.S.C. 78s(b)(2).

[9] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

### Data Collection Available for Public Comments and Recommendations

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

**DATES:** Comments should be submitted on or before February 8, 1999.

**FOR FURTHER INFORMATION CONTACT:** Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, SW, Suite 5000, Washington, DC. 20416. Phone Number: 202–205–6629.

**SUPPLEMENTARY INFORMATION:**

*Title:* ''Supplemental Loan Guarantee Agreement''.
*Type of Request:* New Collection.
*Form No.:* SBA Form 1918.
*Description of Respondents:* SBA Express Lenders.
*Annual Responses:* 200.
*Annual Burden:* 50.

*Title:* ''SBA Express Borrower Information''.
*Type of Request:* New Collection.
*Form No.:* SBA Form 1919.
*Description of Respondents:* Proprietor, Partner, Holder with 20% or more voting stock of a corporate.
*Annual Responses:* 12,000.
*Annual Burden:* 1,000.

*Title:* ''Request for SBA Express Loan Number''.
*Type of Request:* New Collection.
*Form No.:* SBA Form 1920.
*Description of Respondents:* SBA Express Lenders.
*Annual Responses:* 10,000.
*Annual Burden:* 833.

*Title:* ''Lender Checklist for PLP/SBA Express, Notification and Request''.
*Type of Request:* New Collection.
*Form No.:* SBA Form 2091.
*Description of Respondents:* SBA Express Lenders.
*Annual Responses:* 10,000.
*Annual Burden:* 833.

*Title:* ''Eligibility Information Required for SBA Express Submission''.
*Type of Request:* New Collection.
*Form No.:* SBA Form 2092.
*Description of Respondents:* SBA Express Lenders.
*Annual Responses:* 10,000.

*Annual Burden:* 2,500.

*Title:* ''Supplemental Information for PLP/SBA, Express Processing''.

*Type of Request:* New Collection.

*Form No:* SBA Form 2093.

*Description of Respondents:* SBA Express Lenders.

*Annual Responses:* 10,000.

*Annual Burden:* 2,500.

Comments: Send all comments regarding these information collections to, Charles Thomas, Financial Analyst, Pilot Operations Branch, Office of Financial Assistance, Small Business Administration, 409 3rd Street SW, Suite 8300, Washington, DC 20416. Phone No.: 202–205–6656.

Send comments regarding whether these information collections are necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize these estimates, and ways to enhance the quality.

**Jacqueline K. White,**

*Chief, Administrative Information Branch.*

[FR Doc. 98–32761 Filed 12–9–98; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3146]**

### State of Kansas; Amendment #3

In accordance with information received from the Federal Emergency Management Agency, the above-numbered Declaration is hereby amended to include the Counties of Johnson, Leavenworth, Marion, and Wyandotte in the State of Kansas as a disaster area due to damages caused by severe storms and flooding beginning on October 30, 1998 and continuing through November 15, 1998.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Atchison, Dickinson, and Saline Counties in the State of Kansas, and Cass, Clay, Jackson, and Platte Counties in the State of Missouri. Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

The number for economic injury in the State of Missouri is 9A5800.

All other information remains the same, i.e., the deadline for filing applications for physical damage is January 4, 1999 and for economic injury the termination date is August 5, 1999.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 2, 1998.

**Bernard Kulik,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 98–32760 Filed 12–9–98; 8:45 am]

BILLING CODE 8025–01–P

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### World Trade Organization (WTO)

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Solicitation of Public Comment Regarding U.S. Preparations for Multilateral Negotiations on Government Procurement Issues.

**SUMMARY:** The Trade Policy Staff Committee (TPSC) is providing notice of the U.S. intention to develop proposals and positions related to negotiations on government procurement issues under the auspices of the World Trade Organization (WTO). The Committee of Participants of the WTO Government Procurement Agreement (GPA) are engaged in negotiations on the potential improvement of that Agreement, as provided for in Article XXIV.7(b) of that Agreement. The current text of the GPA is available on the WTO world wide web site, at www.wto.org/wto/govt/agreem.htm. Currently, there are 26 participants in the GPA (see the supplementary information, below).

As previously noted in section IV of the TPSC's August 19, 1998 notice of preparations for the third Ministerial Conference of the WTO (**Federal Register**, Volume 63, number 160, pages 44500–44502), the TPSC is also developing proposals and positions related to WTO consultations and negotiations on transparency in government procurement under the ongoing WTO work program agreed at the December 1996 WTO Ministerial Conference in Singapore.

The TPSC invites public comment regarding the development of the agenda, scope, content and timetables for these negotiations. The Administration seeks views on the broadest possible range of issues for consideration, including the content of international rules relating to government procurement and specific U.S. market access interests. The deadline for written comments is Friday, January 15, 1999.

Decisions on the potential improvement of the GPA will be based on consensus among the 26 participants to the Agreement. Decisions related to the development of a potential WTO Agreement on Transparency in Government Procurement will be based on consensus among WTO Members. This solicitation is intended to facilitate the Administration's preparation of U.S. proposals and positions for these negotiations, and acceptance of such proposals by participants.

**FOR FURTHER INFORMATION CONTACT:** For procedural questions on the provision of public comments, contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, (202) 395–3475. For questions relating to the substance of WTO negotiations on transparency in government procurement or of negotiations on the improvement of the GPA, contact John Ellis, Director for Government Procurement, at 202/395–3063.

**SUPPLEMENTARY INFORMATION:**

#### I. The WTO Working Group on Transparency in Government Procurement

At the December 1996 WTO Ministerial Conference in Singapore, WTO members agreed to ''establish a working group to conduct a study on transparency in government procurement practices, taking into account national policies, and, based on this study, to develop elements for inclusion in an appropriate agreement.'' Taking into account the significant progress that has been made to date in the study phase of the Working Group's mandate, the trade ministers of the United States, the European Union, Japan, and Canada have called for the conclusion of a WTO agreement on transparency in government by the time of the Third WTO Ministerial Conference, scheduled for late 1999 in the United States.

#### II. The WTO Government Procurement Agreement (GPA)

The GPA, which entered into force on January 1, 1996, is a ''plurilateral'' agreement included in Annex 4 to the WTO Agreement. As such, it is not part of the WTO ''single undertaking'' and its Membership is limited to WTO Members that specifically signed it in Marrakesh or that subsequently accede to it. The GPA's current Membership include the United States, the member states of the European Union (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Liechtenstein, Luxembourg, Netherlands, Portugal, Spain, Sweden, United Kingdom), the Kingdom of the Netherlands with respect to Aruba, Canada, Hong Kong China, Israel, Japan, the Republic of Korea, Norway, Singapore, and Switzerland. Iceland,

Panama and Chinese Taipei are in the process of negotiating accession. Under their protocols of accession to the WTO, Bulgaria, Mongolia and Slovenia have committed to join the GPA.

The GPA is the successor to the first international Agreement on Government Procurement, also known as the Government Procurement Code, which was negotiated during the 1975–1979 Tokyo Round and entered into effect on January 1, 1981. the GPA made important improvements to the Code, including prohibition on the use of offsets (unless specifically provided for in the GPA annex) and a requirement that each Party establish independent review bodies to rule on bid challenges. The GPA also provided significantly greater market access coverage, including the addition of commitments relating to a wide range of service sectors and the inclusion of sub-central (i.e., state) governments and government-owned enterprises. State procurement entities of 37 U.S. states are currently covered by the GPA.

The WTO Secretariat estimates that the value of government procurement opportunities covered under the GPA exceeds $400 billion annually. The export opportunities for U.S. products and services are immense, ranging from basic agricultural and other commodities to sophisticated services and manufactured goods and technologies.

To ensure that the rules of GPA remain up to date and to maintain progress in creating new trade opportunities in this area, Article XXIV.7 of the GPA specifically called for renewed negotiations within three years of the entry into force of the Agreement, i.e., by January 1, 1999. Many current GPA participants view these negotiations as an opportunity to simplify the Agreement in a way that will make it more accessible to a wider range of international participants.

*A. Modalities for Negotiations*

At its June 1998 meeting, the Committee of GPA Participants agreed to proceed with the negotiations called for under Article XXIV.7 on the following basis:

(1) The Committee will aim to complete negotiations on the simplification and improvement of the Agreement by the third WTO Ministerial at the end of 1999, with a view, in particular, to increasing the attractiveness of the Agreement to new members; and

(2) The Committee will, in parallel, continue work on the removal of discriminatory measures and practices incorporated in the individual members' annexes to the Agreement and on the expansion of the market access coverage.

The Committee agreed that Participants' formal proposals on the simplification and improvement of the Agreement should be submitted to the Committee no later than April 1999.

*B. Substantive Issues*

Issues for the review process that have been highlighted to date by GPA participants, and on which public comment is solicited, include:

(1) Whether the text of the GPA should be re-organized or simplified in order to make the Agreement more understandable to officials responsible for its implementation, while maintaining its effectiveness in ensuring open and competitive procurement procedures;

(2) Whether the Agreement should be updated to accommodate electronic communications and other emerging technologies used in modern procurement systems, while ensuring equitable access for potential suppliers with different technological capabilities;

(3) Whether the use of electronic communications and other emerging technologies allows for greater flexibility in the minimum time periods for submission of bids established under the Agreement, while ensuring that all international bidders have adequate time to participate;

(4) Whether the GPA's statistical reporting requirements can be simplified, while preserving participants' ability to effectively monitor implementation of the Agreement;

(5) Whether there should be greater flexibility for developing country participants in implementing GPA requirements and whether GPA participants' procuring entities should be more flexible in assessing developing country suppliers' bids on covered procurements;

(6) Whether specific conditions and exceptions to GPA participants' current market access commitments (in Appendix 1 to the Agreement) should be removed in order to provide more uniform and understandable GPA market access coverage; and

(7) Whether GPA participants' market access commitments should be expanded to cover additional goods and service sectors and additional central and sub-central government entities.

In the context of the GPA review process, the TPSC also seeks public comments on:

(1) Any specific GPA-participant procurement entities or markets not currently covered by the Agreement which, if covered, might be expected to offer significant new trade opportunities for U.S. suppliers and workers; and

(2) Any policies or practices of GPA participants or covered procuring entities which unfairly restrict U.S. suppliers' ability to participate in procurements covered by the Agreement, including discriminatory technical requirements and offset measures such as those listed in the footnote to Article XVI of the GPA.

**Public Comments Requested**

The TPSC invites written comments on U.S. objectives with respect to the various categories of issues identified above, including the agenda, scope, content and timetables for work and negotiations. Comments submitted should clearly indicate the category or categories of issues outlined in the submission.

**Submission of Written Comments**

Those persons wishing to submit written comments should provide ten (10) copies (in English) no later than January 15, 1999, to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, Room 122, 600 17th Street Northwest, Washington, D.C., 20508. Comments should state clearly the position taken and should describe the specific information supporting that information.

If the submission contains business confidential information, ten copies of a confidential version, and ten copies of a public version that does not contain confidential information, must be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, any submissions containing business confidential information must be clearly marked ''Confidential'' at the top and bottom of the cover page (or letter) and each succeeding page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, ''public version'' or ''non-confidential.''

Written comments submitted in connection with this request, except for information granted ''business confidential'' status pursuant to 15 CFR 2003.6, will be available for public inspection in the USTR Reading Room, Room 101, Office of the United States Trade Representative, 600 17th Street NW, Washington, DC. An appointment to review the file may be made by calling Brenda Webb at (202) 395–6186. The Reading Room is open to the public

from 9:30 a.m. to 12 noon, and from 1 p.m. to 4 p.m. Monday through Friday.

**Frederick L. Montgomery,**

*Chairman, Trade Policy Staff Committee.*

[FR Doc. 98–32862 Filed 12–9–98; 8:45 am]

BILLING CODE 3190–01–M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

**[CGD08–98–072]**

### Houston/Galveston Navigation Safety Advisory Committee

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of charter renewal.

**SUMMARY:** The Secretary of Transportation has renewed the charter for the Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC) to remain in effect for a period of two years from October 1, 1998, until October 1, 2000. HOGANSAC is a federal advisory committee constituted under 5 U.S.C. App. 1. Its purpose is to provide consultation and advice on matters relating to the transit of vessels and products to and from Galveston Bay, Texas, and the ports of Galveston, Texas City and Houston.

**FOR FURTHER INFORMATION CONTACT:** Captain Wayne D. Gusman, Executive Director of HOGANSAC, telephone (713) 671–5199, or Commander Paula Carroll, Executive Secretary of HOGANSAC, telephone (713) 671–5164.

Dated: November 19, 1998.

**Paul J. Pluta,**

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

[FR Doc. 98–32819 Filed 12–9–98; 8:45 am]

BILLING CODE 4910–15–M

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement: Baltimore County, MD

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Baltimore County, Maryland.

**FOR FURTHER INFORMATION CONTACT:** Mr. George K. Frick, Jr. Assistant Division Administrator, Federal Highway Administration, The Rotunda Suite 220, 711 West 40th Street, Baltimore, Maryland 21211, Telephone: (410) 962–4342.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Maryland State Highway Administration, will prepare an environmental impact statement (EIS) for a proposal to provide improved highway access to the Middle River Employment Center (MREC) in Baltimore County, Maryland. The Middle River Employment Center is a designated growth area within Baltimore County intended for industrial and commercial development. The undeveloped portions of the MREC are not accessible at present. A roadway to access these properties is needed in order for the planned development of these properties to occur. The proposed roadway will provide more direct access to interstate commerce routes, promoting the economic growth of the existing businesses within the MREC.

A full range of alternates, which address the need to improve access to the MREC while minimizing impacts to environmental resources, are being considered. The project limits are from existing MD 43 and US 40 to MD 150, a distance of approximately three miles. Alternatives which have been retained for detailed study include a no-build alternative, as well as several build alternatives, all proposing a four-lane, partially access controlled roadway on new location. Modifications and improvements to the existing roadway network were initially considered. However, these improvements were unable to provide the access necessary to adequately promote the development of the MREC without extensive residential relocations and impacts to community facilities.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens and citizen groups who have previously expressed or are known to have an interest in this proposal. It is anticipated that a Public Hearing will be held in the Spring of 1999. The draft EIS will be available for public and agency review and comment prior to a Public Hearing. Public notice will be given of the availability of the Draft EIS for review and of the time and place of this hearing. An Alternates Public Workshop was held in June 1998.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestion are invited from all interested parties. Comments or questions concerning these proposed actions and EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The regulation implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program).

Issued on: December 4, 1998.

**George K. Frick, Jr.,**

*Assistant Division Administrator, Baltimore, Maryland.*

[FR Doc. 98–32856 Filed 12–9–98; 8:45 am]

BILLING CODE 4910–22–M

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement; Bernalillo County, NM

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Revised notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public of a revision to the project boundaries of the Gibson East Transportation Corridor Study. The western terminus of this project has been changed from Interstate 25 to Louisiana Boulevard and the eastern terminus has been changed from Interstate 40 to Central Avenue. The original corridor was 12.9 kilometers or 8.0 miles in length. The revised corridor is 6.1 kilometers or 3.8 miles in length. This revision represents logical termini for the proposed improvements since it basically connects the existing segment from Interstate 25 to Louisiana Boulevard with the existing segment from Central Avenue to Interstate 40. An Environmental Impact Statement will be prepared for the proposed transportation project in Bernalillo County.

**FOR FURTHER INFORMATION CONTACT:** Gregory D. Rawlings, Environmental Specialist, Federal Highway Administration, 604 W. San Mateo Road, Santa Fe, New Mexico 87505, Telephone: (505) 820–2027.

**SUPPLEMENTARY INFORMATION:**

*Electronic Access:* An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Federal Register's home page at: *http://www/nara/gov./fedreg* and the Government Printing Offices database at: *http//www.access.gpo.gov/nara*

*Background:* On March 5, 1997, at 63 FR 10109, the FHWA issued a notice of intent that an environmental impact statement would be prepared for proposed improvements to Gibson Boulevard in Bernalillo County, New Mexico. The project termini were identified as Interstate 25 on the west and Interstate 40 on the east, a corridor of 12.9 kilometers or 8.0 miles in length.

The notice published today revises the 1997 notice of intent by revising the project termini. The western terminus of the project has been changed from Interstate 25 to Louisiana Boulevard. The eastern terminus has been changed from Interstate 40 to Central Avenue. The revised corridor is 6.1 kilometers or 3.8 miles in length. This revision represents logical termini for the proposed improvements since it basically connects the existing segment from Interstate 25 to Louisiana Boulevard with the existing segment from Central Avenue to Interstate 40.

A corridor Analysis Report which constitutes the major investment study for the corridor was prepared by the City of Albuquerque. Based on that report and extensive agency and public input received through numerous outreach efforts, the Urban Transportation Planning Policy Board of the Middle Rio Grande Council of Governments (UTPPB), the designated Metropolitan Planning Organization for the Albuquerque, New Mexico urban area concluded by resolution that the preferred transportation investment strategy for the Gibson Boulevard corridor from Interstate 25 to Interstate 40 will include: An access controlled arterial roadway that will have provision for automobiles, bus transit, and bicycles; Off-street bicycle transit, and pedestrian facilities; and Other as yet unidentified high capacity transit strategies such as light rail, dedicated busways, or expressbus service for the portion of the corridor between I–25 and Eubank Boulevard. In addition, the UTPPB recommended that only the portion of the Gibson Corridor between Louisiana Boulevard and Central Avenue be advanced for detailed analysis and environmental clearance. The FHWA, in cooperation with the Department of the Air Force, New Mexico State Highway and Transportation Department and the City of Albuquerque is preparing an Environmental Impact Statement for proposed improvements in the Gibson Corridor between Louisiana Boulevard and Central Avenue.

The draft EIA will consider the preferred transportation investment strategy and the No-Build Alternative. The draft EIS will be available for public and agency review, and a public hearing will be held to receive comments. Public notice will be given as to the time and place of the public hearing. Comments and/or suggestions from all interested parties are requested to ensure that the full range of all issues are identified and reviewed. Comments or questions concerning this proposed action and/or its EIS should be directed to the FHWA at the address listed previously.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities and 23 U.S.C. 315; 49 CFR 1.48 apply to this program)

Issued on: November 30, 1998.

**Gregory D. Rawlings,**

*Environmental Specialist, Santa Fe, New Mexico.*

[FR Doc. 98–32850 Filed 12–9–98; 8:45 am]

**BILLING CODE 4910–22–M**

## DEPARTMENT OF TRANSPORTATION

### FTA Fiscal Year 1999 Apportionments, Allocations and Program Information; Notice of Correction

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

**ACTION:** Correction.

**SUMMARY:** This notice corrects the Department of Transportation, Federal Transit Administration Notice entitled 1999 Apportionments, Allocations and Program Information, printed in the **Federal Register** on November 6, 1998:

On page 60058, third column, *Section F. Fiscal Year 1999 Operating Assistance*, the last paragraph should read: ''The Omnibus Appropriations Act amended Section 3027 of TEA–21 (which in turn amended 49 U.S.C. 5336 regarding use of operating assistance in large urbanized areas) to allow transit providers of services to the elderly and disabled that operate 20 or fewer vehicles and are located in urbanized areas with a population of a least 200,000 to use Federal funds to finance the operating costs of equipment and facilities used by the transit provider in providing mass transit services to elderly persons and persons with disabilities, providing that such assistance to all entities should not exceed $1,000,000 annually.'' The November 6, 1998, notice mistakenly read $1,000,000,000 rather than $1,000,000 in the last line.

Issued on: December 7, 1998.

**Gordon J. Linton,**

*Administrator.*

[FR Doc. 98–32899 Filed 12–9–98; 8:45 am]

**BILLING CODE 4910–57–M**

## DEPARTMENT OF THE TREASURY

### Commission To Study Capital Budgeting (Advisory Commission to the President of the United States)

**ACTION:** Notice of meeting.

**SUMMARY:** The agenda for the next meeting on Friday, December 18, 1998, of the Commission to Study Capital Budgeting includes the review and discussion of the third draft of its final report. The final report on capital budgeting is scheduled for release in January 1999. Meetings are open to the public. Limited seating capacity is available.

### Date, Time and Place of the Next Commission Meeting

*December 18, 1998, 9:00 a.m. to 5:00 p.m.*

White House Conference Center, Truman Room (9:00 a.m. to Noon), Lincoln Room (Noon to 5:00 p.m.), 726 Jackson Place, NW, Washington, DC 20503

The Commission is seeking all views on capital budgeting. Interested parties may submit their views to:

Dick Emery, Executive Director, President's Commission to Study Capital Budgeting, Old Executive Office Building (Room 258), Washington, DC 20503

Voice: (202) 395–4630

Fax: (202) 395–6170

E-Mail: capital__budget@omb.eop.gov

Website: http://www.whitehouse.gov/WH/EOP/OMB/PCSCB/

Please check the Commission Website for notice to cancel or change the date of the Commission meeting, time of meeting, or venue.

**FOR FURTHER INFORMATION CONTACT:** E. William Dinkelacker, Ph.D., Designated Federal Official, Room 4456, Main Treasury, Washington, DC 20220

Voice: (202) 622–1285

Fax: (202) 622–1294

E-Mail: william.dinkelacker@treas.sprint.com

**Angel E. Ray,**

*Committee Management Officer.*

[FR Doc. 98–32805 Filed 12–9–98; 8:45 am]

**BILLING CODE 4810–25–P**

## UNITED STATES INFORMATION AGENCY

### Training Programs in Central and Eastern Europe; Notice: Request for Proposals

**SUMMARY:** The Office of Citizen Exchange of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. U.S. public and private non-profit organizations meeting the provision described in IRS regulation 26 CFR 1.501(C) may submit proposals to develop training programs. Grants are submit to the availability of funds.

**Program Information**

*Overview*

USIA is interested in proposals that encourage the growth of democratic institutions in Albania, Bosnia, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Macedonia, Poland, Romania, Serbia, Slovakia, and Slovenia. Exchanges and training programs supported by Office of Citizen Exchanges institutional grants should operate at two levels: they should enhance institutional relationships, and they should offer practical information to individuals to assist them with their professional responsibility. Strong proposals usually have the following characteristics: an existing partner relationship between an American organization and an in-country institution in one of the countries targeted in this announcement; a proven track record of conducting program activity; cost-sharing from American or in-country sources, including donations of air fares, hotel and/or housing costs; experienced staff with language facility; and a clear, convincing plan showing how permanent results and continuing activity will be implemented as a result of the activity funded by the grant. USIA wants to see tangible forms of time and money contributed to the project by the prospective American and Central/Eastern European grantee institutions, as well as funding from third party sources.

Unless otherwise specified below, project activities may include: internships; study tours; short-term training; consultations; and extended, intensive workshops taking place as a two-way exchange in the United States and in Albania, Bosnia, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Macedonia, Poland, Romania, Serbia, Slovakia, and Slovenia. Proposals should reflect the applicants' understanding of the political, economic, and social environment in which the program activity will take place. Program designs based on a one-way exchange will be considered under circumstances where the proposal outlines an exceptional program.

USIA is interested in proposals whose designs take into account the need for ongoing sharing of information, training and concrete plans for self-sustainability. Examples include: support for training centers in the target countries; plans to create professional networks or professional associations to share information; establishing ongoing Internet communication; and/or ''train the trainers'' models.

USIA recommends that programs with a U.S. component include letters of commitment from host institutions, even if tentative. Letters of commitment from any in-country partners should also be provided. Applicants are strongly encouraged to consult with USIS offices regarding program content and partner institutions before submitting proposals. Award-receiving applicants will be expected to maintain contact with the USIS post(s) throughout the grant period.

USIA will consider proposals that respond to the following country-specific topics for the countries listed below. Themes have been developed in consultation with the Central and Eastern European USIS offices and USIA's Office of Eastern European and NIS Affairs.

For the following project, priority will be given to single country proposals; however, proposals for projects in both Bosnia and Serbia will also be considered. A total of $500,000 has been set aside for both countries. $200,000 is for Bosnia. $300,000 is for Serbia, out of which $100,000 is designated for activities in Kosovo.

1. For Bosnia and Serbia

INTERNET training for journalists.

The goal of this project is to create Internet access in newsrooms of major media outlets (both print and broadcast) and to provide training from a U.S. expert or experts on how to include Internet-based information in local reporting. The program should include training on how to set up Web sites for newspapers and broadcast outlets. The U.S. team could also work with interested broadcasters to develop public-service programs on the Internet. The project budget may include costs to cover equipment purchases and Internet access, if necessary.

For the following project, priority will be given to proposals in the range of $160,000 to $210,000.

1. For Bosnia, Bulgaria, Macedonia, and Serbia Media Internships. Applicants must submit proposals that include all of the countries listed above.

The development of a free and open media has been described as fundamental in the development of democratic societies in Central and Eastern Europe. USIA is looking for proposals that will provide media training for journalists and media managers. The program should include a week-long orientation, an internship program of approximately six weeks in small to medium-sized media organizations, and a three-day debriefing. Participants should be from print, radio and television. USIS posts reserve the right to nominate participants for the media internships. Please note the following requirements for individual posts:

BOSNIA: 6 participants
BULGARIA: 1 participant
MACEDONIA: 10 10 12 participants
SERBIA: 2 participants

For the following six projects, priority will be given to proposals in the range of $80,000 to $120,000.

1. For Czech Republic, Hungary, Romania, Slovakia and Slovenia

Reform of Court Administration. Applicants must submit proposals that include all of the countries listed above.

Judicial reform has become increasingly important throughout Central Europe as governments, legal professionals, and concerned citizens recognize the need for a modern, efficient court system to keep pace with the social, economic, and political changes in their countries. Legal experts note that courts throughout the region are overburdened, inefficient, and unresponsive to citizens. This exchange should focus on promoting an independent judiciary in Central Europe by exposing judicial and legal practitioners from the five Central European countries listed above to U.S. court structures, to functions, practices and characteristics of the American judiciary, and to U.S. court management and administration practices. Two participants from each country—one lawyer and one judge, both fluent English speakers—should spend approximately two weeks in the U.S. The first week should consist of training and the second week should be in a U.S. city other than Washington, where participants would visit courts at all levels, bar associations and prisons. In

phase two of the program American experts would visit the five countries to address in more detail topics identified by the participants. Rather than expecting all members of the U.S. group to visit all five countries, we recommend that the American participants split up according to their expertise and the requests of the Central European hosts.

2. For Poland

Strategic planning for universities.

The concept of strategic planning for universities is just now developing in Poland. USIA welcomes proposals on how to use more effectively the universities' resources (financial, human, and physical) to implement their mission and reach their long-term goals. Project activities could include a country-wide workshop for Polish university rectors, vice rectors and deans on how to implement strategic planning. A second phase could consist of a U.S. program for a selected number of participants. The program should be geared to non-English speakers. Priority will be given to proposals from U.S. institutions with existing links with Poland.

3. For Slovenia and Bosnia

Intellectual Property Rights. Single and multi-country projects are eligible.

Although some Central and Eastern European countries have made strides in upholding intellectual property rights, there remain significant problems regarding software piracy, illegal cable retransmission of satellite broadcasts, illegal photocopying of protected works, illegal reproduction of protected works for direct commercial gain, and intellectual property and the Internet. Proposals should focus on intellectual property rights (IPR), with a special concentration on copyright protection for films/videos, music recordings, computer software, and similar products subject to piracy. USIA is interested in proposals that help local organizations develop advocacy skills for intellectual property rights issues through training and consultations by American experts. Proposals might also provide expertise and training in how to set up indigenous NGOs in the field of Intellectual Property Rights that would have as their goal that of promoting the awareness and respect of Intellectual Property Rights. Participants should include: (1) government officials responsible both for drafting and enforcing laws and regulations; (2) lawyers, judges and distributors or licensing organizations involved with presenting and deciding infringement cases; and (3) press and media, to engage them in raising public consciousness about IPR protection.

4. For Bosnia, Poland and Lithuania

Media Training for Government Spokespersons. Single and multi-country projects are eligible.

As governments in Central and Eastern Europe begin to communicate more openly with their citizens, the role of the government spokesperson takes on greater importance. USIA is interested in proposals that focus on public affairs and public information as they are handled by government institutions. Program activities should cover such topics as spokesperson skills and the government's responsibility to provide accurate, timely information to the public, especially to journalists. For the Polish participants, the emphasis should be on spokespersons for local government institutions.

5. For Slovakia

Fundraising for universities.

Universities in Slovakia are entirely funded by the national budget. Because any fees the universities may receive are taken by the central government, there is little to no incentive for universities to make money selling services. At the same time the government is under great pressure to provide a college education to more young people without increased budget resources for education. USIA is interested, therefore, in proposals that will assist Slovakian universities in developing a healthier funding base. Proposals should examine various strategies for universities to gain financial autonomy. Public-private financing of higher education and its legislative underpinning might also be discussed. Proposals should engage Slovak institutions with an interest in higher education. Participants might include university administrators; members of the national association of rectors, the Slovak Academic Information Agency, or other education-focused organizations; the Ministry of Education; and/or relevant members of parliament.

6. For Albania, Bosnia, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Macedonia, Poland, Romania, Serbia, Slovakia, and Slovenia

Fundraising for NGOs. Single and multi-country projects are eligible.

Non-governmental organizations in Central and Eastern Europe have lessened their dependency on foreign donors and are beginning to raise money from in-country sources. USIA is interested in proposals that encourage local businesses to support community development. Proposals should demonstrate the benefits of corporate giving not only to worthy causes but to the businesses themselves. Proposals should offer fundraising training such as grant writing to non-governmental organizations. The reform of tax codes to encourage charitable donations by businesses and individuals could also be addressed.

For the following project, priority will be given to proposals in the range of $60,000 to $100,000.

1. For Albania, Bosnia, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Macedonia, Poland, Romania, Serbia, Slovakia, Slovenia

Women's Leadership Training Programs. Proposals for single and multi-country projects are eligible.

Proposals should offer leadership training skills to representatives of women's organizations who are active in their own communities. The focus of the training programs should be on how to identify priorities, organize and form coalitions and conduct advocacy training regarding specific issues important to local communities and regions. Media and public relations training could also be included. Proposals are not limited to a one-country focus but may address how to build networks among women's organizations in several countries. Prospective grantee institutions should identify the Central and Eastern European local organizations and individuals with whom they are proposing to collaborate and describe in detail previous cooperative programming and contacts. Program activity may take place in Central and Eastern Europe or in the United States. Applicants should consider developing action plans during the project so that activities may be continued after the expiration of the grant. USIA welcomes projects for non-English speakers and for participants outside of the capital cities.

**Selection of Participants**

Successful applications should include a description of how participants will be recruited and selected. In the selection of foreign participants, USIA and USIS posts abroad retain the right to nominate participants and to approve or reject participants recommended by the grantee institution. Priority will be given to foreign participants who have not traveled to the United States.

**Visa Regulations**

Foreign participants on programs sponsored by the Office of Citizen Exchanges are granted J–1 Exchange Visitor visas by the U.S. Embassy in the spending country. All programs must comply with J–1 visa regulations. Please refer to the Solicitation Package for further information.

**Budget Guidelines**

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants are invited to provide both an all-inclusive budget as well as separate sub-budgets for each program components, phase, location, or activity in order to facilitate USIA decisions on funding. While a comprehensive line item budget based on the model in the Solicitation Package must be submitted, separate component budgets are optional.

Allowable costs for the program include the following:

1. International and domestic air fares; foreign visa fees for outbound Americans; transit costs; ground transportation costs.

2. Per diem. For the U.S. program, organizations have the option of using a flat $160/day for program participants or the published U.S. Federal per diem rates for individual U.S. cities. For activities outside of the U.S., the published Federal per diem rates must be used.

**Note:** U.S. escorting staff must use the published Federal per diem rates, not the flat rate. Per diem rates may be accessed at http://www.policyworks.gov/.

3. Interpreters. If needed, interpreters for the U.S. program are provided by the U.S. State Department Language Services Division. Typically, a pair of simultaneous interpreters is provided for every four visitors who need interpretation. USIA grants do not pay for foreign interpreters to accompany delegations from their home country. Grant proposal budgets should contain a flat $160/day per diem for each Department of State interpreter, as well as home-program-home air transportation of $400 per interpreter plus any U.S. travel expenses during the program. Salary expenses are covered centrally and should not be a part of the applicant's proposed budget.

4. Book and cultural allowance. Participants are entitled to and escorts are reimbursed a one-time cultural allowance of $150 per person, plus a participant book allowance of $50. U.S. staff do not receive these benefits.

5. Consultants. Consultants may be used to provide specialized expertise or to make presentations. Daily honoraria generally do not exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal.

6. Room rental. Room rental should not exceed $250 per day.

7. Materials development. Proposals may contain costs to purchase, develop and translate materials for participants.

8. One working meal per project. Per capita costs may not exceed $5–$8 for a lunch and $14–$20 for a dinner, excluding room rental. The number of invited guests may not exceed participants by more than a factor of two-to-one.

9. A return travel allowance of $70 may be provided to each participant to be used for incidental expenditures during international travel.

10. All USIA-funded delegates will be covered under the terms of the USIA-sponsored health insurance policy. The premium is paid by USIA directly to the insurance company.

11. Administrative Costs. Other costs necessary for the effective administration of the program including salaries for grant organization employees, benefits and other direct and indirect costs as described in the detailed instructions in the application package. While this announcement does not proscribe a rigid ratio of administrative to program costs, in general, priority will be given to proposals whose administrative costs are less than twenty-five (25) percent of the total requested from USIA. Proposals should show cost-sharing, including both contributions from the applicant and from other sources.

Please refer to the Application Package for complete budget guidelines.

*Announcement Title and Number:* All correspondence with USIA concerning this RFP should reference the above title and number E/P–99–20.

**FOR FURTHER INFORMATION, CONTACT:** The Office of Citizen Exchanges, E/PE, Room 220, U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547, attn: Christina Miner, tel.: (202) 401–7342, fax: (202) 619–4350, or Internet address: cminer@usia.gov, to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify USIA Program Officer Christina Miner on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition with applicants until the proposal review process has been completed.

*To Download a Solicitation Package via Internet:* The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

*To Receive a Solicitation Package via Fax on Demand:* The entire Solicitation Package may be requested from the Bureau's ''Grants Information Fax on Demand System,'' which is accessed by calling 202/401–7616. The ''Table of Contents'' listing available documents and order numbers should be the first order when entering the system.

*Deadline for Proposals:* All proposal copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Tuesday, February 23, 1999. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and twelve copies of the application should be sent to: U.S. Information Agency, Ref.: E/P–99–20, Office of Grants Management, E/XE, Room 326, 301 4th Street, SW, Washington, DC 20547.

**Diversity, Freedom and Democracy Guidelines**

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Pub. L. 104–319 provide that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' USIA ''shall take appropriate steps to provide

opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

**Year 2000 Compliance Requirement (Y2K Requirement)**

The Year 1000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with USIA. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

USIA therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

**Review Process**

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the USIA Office of NIS and Eastern European Affairs and the USIA posts overseas, where appropriate. Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Final funding decisions are at the discretion of USIA's Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA Grants Officer.

**Review Criteria**

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Program Planning and Ability to Achieve Objectives

Program objectives should be stated clearly and precisely and should reflect the applicant's expertise in the subject area and the region. Objectives should respond to the priority topics in this announcement and should relate to the current conditions in the included countries. Objectives should be reasonable and attainable. A detailed work plan should explain step by step how objectives will be achieved, including a timetable for completion of major tasks and activities and an outline of the selection process. The substance of the seminars, presentations, workshops, consulting, internships and itineraries should be spelled out in detail. Responsibilities of in-country partners should be clearly described. A plan for the recruitment and selection of participants should also be included.

2. Multiplier Effect/Impact

Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

3. Support of Diversity

Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selections of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

4. Institutional Capacity

Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. The narrative should demonstrate proven ability to handle logistics. Proposals should reflect the institution's expertise in the subject area and knowledge of the conditions in the targeted country of counties.

5. Follow-on Activities

Proposals should provide a plan for continued follow-on activity (without USIA support) ensuring that USIA supported programs are not isolated events.

6. Project Evaluation

Proposals should include a plan to evaluate the program's success, both as activities unfold and at the end of the program. USIA recommends that the proposal include a draft survey questionnaire or other technique plus description and/or plan for use of another measurement technique (such as a focus group) to link outcomes to original project objectives.

7. Cost-Effectiveness and Cost Sharing

Overhead and administrative costs in the proposal, including salaries, subcontracts for services and honoraria, should be kept low. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

**Authority**

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations* * *and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through the Fulbright-Hays Act and Support for Eastern European Democracy Act (SEED).

**Notice**

The terms and conditions published in this RFP are binding and may not be modified by an USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

**Notification**

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: November 28, 1998.

**William B. Bader,**

*Associate Director for Educational and Cultural Affairs.*

[FR Doc. 98–32640 Filed 12–9–98; 8:45 am]

**BILLING CODE 8230–01–M**

## UNITED STATES INFORMATION AGENCY

### NIS Secondary School Partnership Program; Notice: Request for Proposals

**SUMMARY:** The Office of Citizen Exchange, Youth Programs Division, of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for the NIS Secondary School Partnership Program. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501© may submit proposals to either enhance or expand existing partnerships or develop new school partnership programs with Armenia, Azerbaijan, Belarus, Georgia, Moldova, Russia, or Ukraine. All submissions must have a thematic focus and feature on-going joint project activity between the schools, a student exchange component, and an educator (teacher/administrator) exchange component. The maximum grant award will be $200,000.

**Program Information**

The U.S. recipient of the grant is responsible for recruiting, selecting, and organizing a minimum of two U.S. secondary schools to form the U.S. network; strengthening an existing working relationship with an organization or agency of government in the NIS responsible for a network of at least two schools there; and linking the two networks through a thematic project and substantive exchange activities.

*Overview:* The short-term goal of the school partnership program is to provide partial funding for linkages between U.S. and NIS schools featuring collaborative substantive projects and student and educator exchanges. Grant-funded exchanges must have a thematic focus and have tangible outcomes, such as the development of educational materials.

The long-term goals are to: (1) advance mutual understanding between the U.S. and the NIS; (2) develop lasting institutional ties between U.S. and NIS schools and communities; and (3) promote partnerships developed through governmental, educational, and not-for-profit sector cooperation that hold promise for a sustainable program beyond the grant term and serve the needs and interests of the schools.

The linked network of secondary schools in the United States and network of schools in the NIS must establish or expand ties between the schools in the network through joint project activity and two sets of exchange programs: 1) the exchange of secondary school students, from 14 to 18 years of age, between the U.S. and participating NIS countries, and 2) the exchange of secondary school educators (teachers and/or administrators) between the U.S. and NIS countries.

*Guidelines:* A competitive proposal will present a project that builds upon previous contacts and interaction between the proposed schools to help ensure a solid foundation for the partnership. Partnerships should have an existence beyond the scope of this intitative; that is, there should be an inherent reason for their linkage apart from the availability of grant funds.

In general, USIA seeks school partnerships that target under-served countries or regions. For programs with Russia, priority will be given to partnerships with schools located outside of the Moscow and St. Petersburg regions. Proposals that feature networks in the cities and regions noted below will be given priority consideration. These cities are former nuclear and/or chemical weapon manufacturing locations in Russia: Gorny, Kambarka, Kizner, Leonidovka, Lesnoy, Maradykovsky, Novouralisk, Ozersk, Pochep, Sarov, Seversk, Shchuchye, Snezhninsk, Trekhgnornyy, Zarechnyy, Zelenogorsk, Zheleznogorsk.

Russian Regional Investment Initiative sites: Novgorod, Samara, and the Russian Far East (Khabarovsk and Sakhalin).

Organizers and school networks in the U.S. and NIS should collaborate in planning and preparation. Applicants must have an NIS organizational partner that has its base of operation in the partner country and not in another country. Proposals should support a working relationship that will produce something tangible and lasting in addressing the interests of both sides, beyond the confines of the funded project. The proposal should specify up front what the measurable goals and objectives of the program will be. Each school partnership must also provide a statement of goals and objectives for their exchange.

USIA funding may not be used to supplant existing private sector funding. Applicants must indicate how activities have been funded in the past and how the activities will be expanded with assistance from USIA. Competitive proposals must demonstrate a solid and comprehensive follow-on plan to continue after the grant has expired.

Proposals must clearly describe and define substantive thematically-based projects for each school partnership that are the focus of the exchange for both students and educators and on-going joint project activity between the two schools. Applicants should present a program that succeeds in linking the greater school community. All participating schools must be identified. Proposals should describe the selected theme, its importance to the schools and communities, the specific academic activities, and the expected outcome or product of the project. Possible themes include but are not limited to the following: civic education, health education, environmental issues, youth leadership training, volunteerism/community service, conflict resolution, computer technology, multicultural education, agriculture, and business management.

Proposals must clearly present independent educator programs for teachers/administrators. These programs could include curriculum development seminars, ''shadowing'' of host peers in the classroom, university-level courses, or other substantive activities, with an emphasis on such themes as parent-teacher cooperation, model schools, teacher training, and collaboration with local businesses. A program that relies on the educator to act as just an escort will not be competitive. Although educators can certainly travel with student groups, a group of educators could travel separately if an organization developed such a program.

The U.S. recipient of the grant will (1) design the overall plan that integrates the joint project activity and the exchange components of the partnership; (2) ensure quality control for all program elements; (3) keep USIA/USIS informed of its progress; (4) manage all travel arrangements, logistics, passports, visas, etc.; (5) provide competent and informed escorts for student groups; and (6) disburse and account for grant funds. Recipients of the assistance award are responsible for ensuring the selection of exchange participants who are most suited for the program and for providing them with a meaningful pre-departure orientation. Selection of individual participants from the U.S. and the NIS in the exchange components of the program must be merit-based; the proposal should describe the mechanisms used for participant selection. Participants (both Educators and Students) from the U.S. and the NIS countries should represent a diversity of backgrounds

(racial, geographic, economic status, religious, etc.) to give greater understanding to the culture and society as a whole.

Because the ultimate goal of this program is self-sufficiency, school partnerships that have received USIA funding under the NIS Secondary School Initiative for a total of three years are only eligible to receive up to $20,000 for NIS participant travel costs, per diem, and allowances.

Significant cost-sharing is mandatory in all proposals and those that show more generous and creative cost-sharing will be more favorably viewed. Proposals that contain non-USIA funded items such as additional students and/or educators on the exchange, U.S. participants paying for some of their own costs, computer software purchases, cultural excursions, state/national capital civics programs, and other significant items will be more competitive proposals than those that do not. However, NIS participants may not be charged to participate in the program, aside from paying for in-country costs (such as transportation to the point of departure), the costs of hosting the U.S. students and educators, and miscellaneous expenses such as pocket money.

Programs must comply with J–1 visa regulations. The Agency will process the IAP–66 forms for travel to the United States. Applicant organizations are required to use the USIA Accident and Sickness Program for Exchanges (ASPE) for participants in USIA-funded exchanges. Applicants who choose not to use the USIA plan must demonstrate that an alternative plan (1) provides comparable or better coverage, and (2) costs less. Please refer to the Program Objectives, Goals, and Implementation (POGI) section of the Solicitation Package for greater detail regarding the design of the component parts as well as other program information.

**Budget Guidelines**

Applicants must submit a comprehensive budget for the entire program. Awards may not exceed $200,000. The Agency has set country allocations for this competition and all proposals must adhere to these maximum amounts per country.

Only partnerships between secondary schools in the United States and these countries are eligible for this competition.

These amounts are approximate: Armenia $100,000; Azerbaijan $150,000; Belarus $200,000; Georgia $100,000; Moldova $100,000; Russia $350,000; Ukraine $250,000.

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. All program costs should clearly indicate whether they cover U.S. or NIS participants. The cost per NIS student, NIS educator, U.S. student, and U.S. educator should be listed separately. Be sure to note the statement on cost-sharing in the Guidelines section. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

*Announcement title and number:* All correspondence with USIA concerning this RFP should reference the above title and number E/PY–99–26.

**FOR FURTHER INFORMATION CONTACT:** The Youth Programs Division, E/PY, Room 568, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, telephone: (202) 619–6299; fax: (202) 619–5311; E-mail: clantz@usia.gov to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify USIA Program Officer Carolyn Lantz on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition with applicants until the proposal review process has been completed.

*To download a solicitation package via internet:* The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

*To receive a solicitation package via fax on demand:* The entire Solicitation Package may be requested from the Bureau's Grants Information Fax on Demand System, which is accessed by calling (202) 401–7616. The Table of Contents listing available documents and order numbers should be the first order when entering the system.

*Deadline for proposals:* All proposal copies must be received at the U.S. Information Agency by 5:00 p.m. Washington, DC time on Friday, February 12, 1999. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and 10 copies of the application should be sent to: U.S. Information Agency, Ref.: E/PY–99–26, Office of Grants Management, Room 568, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5″ diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

**Diversity, Freedom and Democracy Guidelines**

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy, USIA shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries. Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

**Year 2000 Compliance Requirement (Y2K Requirement)**

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with USIA. The inability to process

information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

USIA therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

**Review Process**

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the USIA Office of East European and NIS Affairs and the USIA posts overseas. Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Final funding decisions are at the discretion of USIA's Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA Grants Officer.

**Review Criteria**

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

*1. Programmatic planning, objectives, and quality:* The program should demonstrate originality, substance, precision and relevance to the Agency's mission. Applicant organizations should demonstrate sound judgment in all aspects of the program design and a thorough understanding of the NIS. A detailed agenda and relevant work plan should adhere to the program overview and guidelines described. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

*2. Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages. Proposals should also include creative ways to involve project participants in their host schools and communities.

*3. Institutional Capacity and Record:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants. An organization's track record will be evaluated based on the achievement of stated goals and impact on schools in the U.S. and NIS.

*4. Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants and host families, program venue, and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

*5. Cost-effectiveness/cost-sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Overall per-participant costs will be a factor in the review of the proposal. Proposals should maximize cost-sharing through U.S. participant contributions and other private sector support as well as institutional direct funding contributions. Applicants should indicate sources of funds for cost-sharing.

*6. Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without USIA support) ensuring that USIA supported programs are not isolated events.

*7. Project Evaluation:* Proposals must include a plan to evaluate the project, both as the activities unfold and at the end of the program. USIA recommends that the proposal include a draft survey questionnaire or other technique plus a description of a methodology to use in linking outcomes to original project objectives for each school partnership. Successful applicants will be expected to submit reports on each partnership.

**Authority**

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through the FREEDOM Support Act of 1992.

**Notice**

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

**Notification**

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: December 5, 1998.

**William B. Bader,**

*Associate Director for Educational and Cultural Affairs.*

[FR Doc. 98–32829 Filed 12–9–98; 8:45 am]

BILLING CODE 8230–01–M

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## UNITED STATES INFORMATION AGENCY

### Summer Institute in Social Science Research and Public Policy for Ukrainian Social Scientists; Notice: Request for Proposals (RFP)

**SUMMARY:** The Branch for the Study of the United States of the U.S. Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(C) may apply to develop and implement a post-graduate level academic institute and related programs

for a group of 18 Ukrainian social scientists.

The U.S. Information Agency proposes to assist Ukraine through a joint initiative with the European Union (EU) to train young Ukrainian social scientists through an intensive six-week academic Summer Institute in the United States and through joint follow-on activities in Ukraine. Additionally, the EU plans to award a grant to a European ''partner'' organization that will implement a parallel academic institute in Europe. The program is intended to provide participants with a deeper understanding of contemporary social science theory and research methods, together with an understanding of how theoretical and empirical research informs the development and implementation of public policy in the United States in the fields of economics, political science and public administration. USIA-funded activities will include a U.S.-based academic institute in the Summer of 1999; joint follow-on workshops in Ukraine during the 1999–2000 academic year; and, a wrap-up conference in Ukraine in Fall of 2000. The EU-funded academic institute will be held in the Summer of 2000 at a European site yet to be determined.

USIA is seeking detailed proposals from colleges, universities, consortia of colleges and universities, and other not-for-profit academic organizations that have an established reputation in one or more of the following fields: public policy, public administration, political science, economics, and/or other disciplines or sub-disciplines related to the program theme. Applicant institutions must demonstrate expertise in conducting post-graduate programs for foreign educators, and *must have a minimum of four years experience in conducting international exchange programs.* The project director of one of the key program staff responsible for the academic program must have an advanced degree in one of the fields listed above. Staff escorts traveling under the USIA cooperative agreement must have demonstrated qualifications for this service.

Programs must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA programs are subject to the availability of funds.

**Program Information**

*Overview:* The U.S. Information Agency, in cooperation with the European Union, proposes to assist Ukraine through a joint initiative aimed at Ukrainian social scientists. Envisioned is a program on social science research methods and public policy that will offer Ukrainian faculty in the early stages of their careers the opportunity for an intensive program on how contemporary social science theory and methods in the fields of political science, economics and public administration are brought to bear on public policy issues.

The program will proceed in five separate phases. Proposals for USIA funding should present a program plan and tentative budget for each of the activities below:

(1) In the first phase, a representative from the U.S. grantee institution will travel to Ukraine with a colleague from the European grantee institution that will be designated as the ''partner'' organization (to be identified by the EU). These individuals will survey the current status of social science research at Ukrainian universities and make a preliminary identification of candidates for the Summer Institute programs in the U.S. and Europe. The proposal for USIA funding should estimate the travel and subsistence costs of U.S. staff for this trip.

(2) In the second phase, the U.S. grantee institution will conduct an intensive U.S.-based academic Summer Institute of six weeks' duration, the elements of which are outlined in detail below. From the perspective of the U.S. grantee institution, this second phase will be the central activity of the grant award, and a detailed program proposal and comprehensive budget should be submitted.

(3) In the third phase, to be implemented during the 1999–2000 academic year, the U.S. grantee institution and European partner organization will conduct approximately five days of joint follow-on workshops in Ukraine. The exact focus of these workshops will be determined at a later date, based on issues and interests identified during the U.S.-based Summer Institute, and on consultations with the European partner organization. The proposal for USIA funding should estimate all of the costs associated with these workshops, including local administrative and venue costs, as well as travel and subsistence for U.S. staff and 18 Ukrainian participants. However, costs for participation of staff from the European partner organization need not be included.

(4) In the fourth phase, which will take place in the Summer of 2000, the European partner organization will plan and implement an academic institute in Europe for a separate group of 18 Ukrainian social scientists. This Institute will be fully funded by the European Union, and the U.S. grantee organization will not be directly involved. However, a representative of the U.S. grantee institution should plan to travel to Europe to observe at least one week of this activity, and estimated travel and subsistence costs associated with this trip should be included in the budget submission.

(5) The fifth phase of the project will take place in the Fall of 2000, and will consist of a joint U.S.-European Union wrap-up conference in Ukraine, approximately three days in length. The proposal for USIA funding should estimate all of the costs associated with the conference, including local administrative costs and venue costs, and travel and subsistence for U.S. staff and a total of 36 Ukrainian participants. However, costs for participation of staff from the European partner organization need not be included.

*Objectives:* In the United States, public policy issues are debated within an institutional framework that is informed by the theoretical and empirical findings of social science scholarship—in economics, political science and public administration—thus impacting the daily work of officials in the public policy arena, be they elected officials, government managers, or public policy professionals, who are required to make decisions and implement concrete courses of action on a range of issues.

Public policy issues often resist easy solution—partly because of the difficulty in bringing scholarly research (whether theoretical or empirical) to bear on daily institutional practice; partly because of the complex nature of the issues themselves, which frequently involve political, economic and management elements that overlap in complex and often unexpected ways; and, partly by the constraints inherent in democratic decision-making.

The purpose of the six-week Summer Institute is to offer 18 Ukrainian social scientists the opportunity to explore current theory in the social sciences and to examine how the available theoretical models and empirical methodologies can be brought to bear on contemporary public policy issues. In so doing, the program should illuminate how social science scholarship influences the way in which public policy issues are framed, addressed, debated, and resolved.

The program should proceed thematically by examining selected concrete problems, or case studies, in public policy at various levels of government. Among the possible areas that might be examined through the case studies presented are Education, Labor, Banking and Financial markets,

Economic Development, Trade, Macroeconomic Policy, the Environment, Security and Public Safety, Health and Welfare, and Media and Communications. For each case studied, attention should be given to current models used by researchers in political science, economics, and public administration.

The Summer Institute program must be at least six weeks in length, and must include an academic residency segment of at least five weeks at a U.S. college or university campus (or other appropriate location). In addition, a study tour segment of up to one week in length may be added at the discretion of organizers. If so, the study tour segment should, directly and substantively complement the academic program and should, ideally, entail a visit to at least one other region of the United States. Alternately, the program might include shorter, occasional site visits throughout the program.

The Summer Institute should be designed as an intensive, academically rigorous program that is organized through an integrated series of lectures, readings, seminar discussions, research and independent study opportunities, faculty consultations, site visits and, if appropriate, regional travel.

Institutions submitting proposals are encouraged to design thematically coherent programs in ways that draw upon the particular strengths and resources of their institutions as well as upon the nationally recognized expertise of scholars and other experts throughout the United States. Within the limits of the program's organizing framework, the grantee institution should:

A. Ensure that the program's introductory sessions, as well as any pre-departure materials sent to grantees, provide a broad historical and intellectual context for the program that will follow. In addition, opening lectures should provide an overview of the program in its entirety, delineating the Institute's overarching theme as well as the way in which the program's various topics will be integrated into the program and explicitly illuminate that theme;

B. Provide participants with a survey of current scholarship and scholarly trends within the social sciences, with particular attention to current research methods and models in political science, economics, and public administration;

C. Bring an interdisciplinary or multi-disciplinary perspectives to bear on each case study undertaken;

D. Give participants a multi-dimensional view of U.S. social science and the complexity of public policy issues by reflecting a broad range of academic perspectives as well as a broad range of views from experts outside the university, such as government officials, public intellectuals, think tank representatives, and other professionals in the public policy arena; and,

E. Ensure access to extensive bibliographic and material resources that will enable grantees to continue their research and study after returning to their home institutions. In addition, the bibliography for the program as a whole must include at least one major survey text for each of the Summer Institute's governing disciplines as well as a number of broad interpretive works directly related to the program's central theme.

*Program Dates:* The initial trip to Ukraine to survey social science research at local universities (phase one) should be tentatively planned to take place during April-May of 1999. Tentative program dates for the U.S.-based academic Summer Institute program (phase two) are any six-week period between June 1 and August 15, 1999. USIA is willing to consider adjustment of these programs dates, based on the needs of the host institution. However, the Institute must be a minimum of 42 program days in length, and a major portion of the program should take place within the above period. The follow-on workshops in Ukraine should be planned to take place during the 1999–2000 academic year, and the wrap-up conference in Ukraine should take place in the Fall of 2000.

*Participants:* Program activities should be designed for a total of 18 highly-motivated and experienced Ukrainian social scientists who are interested in acquiring knowledge about how public policy issues are studied and addressed in the U.S. Participants will use the knowledge gained from the Institute to assist them with their own professional research and development, to improve social science instruction in universities in the Ukraine, and to advise government officials at various levels of government on public policy issues.

Most participants can be expected to come from educational institutions where the social sciences are not well-developed. Most will be younger faculty members who are eager to participate in an intensive program on how social science research can be applied to pressing problems and issues in the public policy arena. Most will have had limited study or travel experience in the United States. Participants will be fluent in English.

Participants will be nominated by U.S. Information Service in Kiev. USIA will cover all international travel costs for Ukrainian participants directly.

*Program Guidelines:* The conception, structure and content of the program is entirely the responsibility of the organizers. However, given the multiple possibilities for the successful design of such a program, potential grant recipients are expected to submit proposals that articulate in concrete and specific detail how they intend to organize and implement it.

Programs must comply with J–1 visa regulations. Please refer to the Solicitation Package for further details on program design and implementation, as well as additional information on all other requirements.

*Budget Guidelines:* Unless special circumstances warrant, based on a group of 18 participants, the total USIA-funded budget (program and administrative) should not exceed $264,000, and USIA-funded administrative costs as defined in the budget details section of the solicitation package should not exceed $80,000.

Justifications for any costs above these amounts must be clearly indicated in the proposal submission. Any grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. Applicant proposals should try to maximize cost-sharing in all facets of the program and to stimulate U.S. private sector, including foundation and corporate, support. Applicants must submit a comprehensive budget for the entire program. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program, and availability of U.S. government funding.

Please note that these figures do not include costs for international travel of the Ukrainian grantees in Phase Two of the program (the U.S.-based Summer Institute). However, they do include costs for domestic and international travel and subsistence of U.S. personnel for all phases of the program. They also include all administrative and program costs associated with the Phase Three workshops and the Phase Five conference in Ukraine, including the subsistence and estimated in-country travel costs for Ukrainian participants.

Please refer to the ''POGI'' in the Solicitation Package for complete budget guidelines and formatting instructions.

*Announcement name and number:* All communications with USIA concerning this announcement should refer to the following title and reference

number: Summer Institute in Social Science Research (E/AES–99–13).

**FOR FURTHER INFORMATION CONTACT:** To request a Solicitation Package containing more detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation, applicants should contact: U.S. Information Agency, Office of Academic Programs, Branch of the Study of the United States, E/AES—Room 252, 301 4th Street, S.W., Washington, D.C. 20547, Attention: William Bate; Telephone number: (202) 619–4557; Fax number: (202) 619–6790; Internet address: wbate@usia.gov.

Please specify USIA Program Officer William Bate on all inquiries and correspondence. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the office listed above or submitting their proposals. Once the RFP deadline has passed, USIA staff may not discuss this competition in any way with applicants until after the proposal review process has been completed.

To download a solicitation package via internet: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To receive a solicitation package via fax on demand: The entire Solicitation Package may be requested from the Bureau's ''Grants Information Fax on Demand System,'' which is accessed by calling 202/401–7616. The ''Table of Contents'' listing available documents and order numbers should be the first order when entering the system.

*Deadline for Proposals:* All proposal copies must be received at the U.S. Information Agency by 5:00 p.m. Washington, D.C. time on Monday, February 22, 1999. Faxed documents will not be accepted, nor will documents postmarked February 22, 1999 but received at a later date. It is the responsibility of each applicant to ensure that proposal submissions arrive by the deadline.

*Submissions:* Applicants must follow all instructions in the Solicitation Package. The original and 13 copies of the complete application should be sent to: U.S. Information Agency, Reference: E/AES–99–13, Office of Grants Management, E/XE, Room 326, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants should also submit the ''Executive Summary'' and Proposal Narrative'' sections of the proposal on a 3.5″ diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters.

**Diversity, Freedom and Democracy Guidelines**

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal. Public law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' USIA ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

**Year 2000 Compliance Requirement (Y2K Requirement)**

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program-specific requirements, including data exchange with USIA. The inability to process information in accordance with Federal requirements could result in grantees being required to return funds that have not been accounted for properly.

USIA therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

*Review process:* USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the USIA Geographic Area Offices. Eligible proposals will then be forwarded to panels of senior USIA officers for advisory review. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Final funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA Grants Officer.

*Review criteria:* Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered, and all carry equal weight in the proposal evaluation:

*1. Overall Quality:* Proposals should exhibit originality and substance, consonant with the highest standards of American teaching and scholarship. Program design should reflect the main currents as well as the debates within the subject discipline of the institute. Program should reflect an overall design whose various elements are coherently and thoughtfully integrated. Lectures, panels, field visits and readings, taken as a whole, should offer a balanced presentation of issues, reflecting both the continuity of U.S. scholarship as well as its leading edge.

*2. Program Planning:* Proposals should demonstrate careful planning. The organization and structure of the institute should be clearly delineated and be fully responsive to all program objectives. A program syllabus (noting specific sessions and topical readings supporting each academic unit) should be included, as should a calendar of activities. The travel component, if included, should not simply be a tour, but should be an integral and substantive part of the program, reinforcing and complementing the academic segment.

*3. Institutional Capacity:* Proposed personnel, including faculty and administrative staff as well as outside presenters, should be fully qualified to achieve the project's goals. Library and media resources should be accessible to participants; housing, transportation and other logistical arrangements should be fully adequate to the needs of participants and should be conducive to a collegial atmosphere.

*4. Support for Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. This can be accomplished through

documentation, such as a written statement, summarizing past and/or on-going activities and efforts that further the principle of diversity within the organization and its activities. Program activities that address this issue should be highlighted.

5. *Experience:* The proposal should demonstrate an institutional record of successful exchange program activity, indicating the experience that the organization and its professional staff have had in working with foreign educators. Experience in working in the Ukraine or conducting Ukrainian exchanges is a positive factor.

6. *Evaluation and Follow-up:* The proposal should include a plan for evaluating activities during the Summer Institute and at its conclusion. Proposals should comment on provisions made for follow-up with returned grantees as a means of establishing longer-term individual and institutional linkages.

7. *Administration and Management:* The proposals should indicate evidence of continuous on-site administrative and managerial capacity as well as the means by which program activities will be implemented.

8. *Cost Effectiveness*: The proposals should maximize cost-sharing through direct institutional contributions, in-kind support, and other private sector support. Overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible.

*Authority:* Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries. * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.''

*Notice:* The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

*Notification:* Final awards cannot be made until funds have been appropriated by Congress, and allocated and committed through internal USIA procedures.

Dated: December 5, 1998.

**William Bader,**

*Associate Director for Educational and Cultural Affairs.*

[FR Doc. 98–32830 Filed 12–9–98; 8:45 am]

BILLING CODE 8320–01–M

# Corrections

**Federal Register**

Vol. 63, No. 237

Thursday, December 10, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP99–80–000]**

### Natural Gas Pipeline Company of America; Notice of Application

*Correction*

In notice document 98–32162, appearing on page 66792, in the issue of Thursday, December 3, 1998, the docket number is corrected to read as set forth above.

**BILLING CODE 1505–01–D**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 332–399]**

### General Agreement on Trade in Services: Examination of the Schedules of Commitments Submitted by African Trading Partners

*Correction*

In notice document 98–30886, beginning on page 64274, in the issue of Thursday, November 19, 1998, make the following correction:

On page 64275, in the second column, in the eighth line from the bottom, after ''business on'', remove ''4''.

**BILLING CODE 1505–01–D**

Thursday
December 10, 1998

# Part II

# Department of Defense
# General Services Administration
# National Aeronautics and Space Administration

**48 CFR Parts 11 and 52**

**Federal Acquisition Regulation; OMB Circular A–119; Proposed Rule**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 11 and 52**

**[FAR Case 98–004]**

**RIN 9000–AI12**

## Federal Acquisition Regulation; OMB Circular A–119

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to address the use of voluntary consensus standards in accordance with the requirements of Office of Management and Budget (OMB) Circular A–119.

**DATES:** Comments should be submitted on or before February 8, 1999 to be considered in the formulation of a final rule.

**ADDRESSES:** Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), Attn: Ms. Laurie Duarte, 1800 F Street, NW, Room 4035, Washington, DC 20405.

E-mail comments submitted over Internet should be addressed to: farcase.98–004@gsa.gov. Please cite FAR case 98–004 in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAR case 98–004.

**SUPPLEMENTARY INFORMATION:**

### A. Background

On February 19, 1998, a newly revised OMB Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,'' was published in the **Federal Register** at 63 FR 8545, February 19, 1998. This proposed rule amends FAR Subparts 11.1 and 11.2, and provides a new solicitation provision at 52.211–XX to implement the revised OMB circular.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

### B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely amends the FAR to reflect the Government's preference for the use of voluntary consensus standards in accordance with OMB Circular A–119, and permits, but does not require, offerors to propose alternatives to Government-unique standards when responding to Government solicitations. An Initial Regulatory Flexibility Analysis has not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subparts also will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR Case 98–004), in correspondence.

### C. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) is deemed to apply because the proposed rule contains information collection requirements. Accordingly, a request for review of a new information collection requirement concerning OMB Circular A–119 will be submitted to OMB under 44 U.S.C. 3501, *et seq.*

*Annual Reporting Burden*

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: *Respondents:* 100; *Responses per respondent:* 1; *Total annual responses:* 100; *Preparation hours per response:* 1; and *Total response burden hours:* 100.

### D. Request for Comments Regarding Paperwork Burden

Members of the public are invited to comment on the recordkeeping and information collection requirements and estimates set forth above. Please send comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Mr. Peter N. Weiss, FAR Desk Officer, New Executive Office Building, Room 10102, 725 17th Street, NW. Washington, DC 20503.

Also send a copy of any comments to the FAR Secretariat at the address shown under **ADDRESSES**. Please cite FAR Case 98–004 in all correspondence.

### List of Subjects in 48 CFR Parts 11 and 52

Government procurement.

**Victoria Moss,**

*Acting Director, Federal Acquisition Policy Division.*

Therefore, it is proposed that 48 CFR Parts 11 and 52 be amended as set forth below:

1. The authority citation for 48 CFR Parts 11 and 52 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

## PART 11—DESCRIBING AGENCY NEEDS

2. Section 11.101 is amended by adding paragraph (c) to read as follows:

**11.101 Order of precedence for requirements documents.**

* * * * *

(c) In accordance with OMB Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,'' agencies shall use voluntary consensus standards, when they exist, in lieu of Government-unique standards, except where inconsistent with law or otherwise impractical. Voluntary consensus standards are developed and administered by the private sector and are not mandated by law (*e.g.* industry standards such as ISO 9000).

3. Section 11.10X is added to read as follows:

**11.10X Solicitation provision.**

The contracting officer shall insert the provision at 52.211–XX, Alternatives to Government-Unique Standards, in solicitations that use Government-unique standards instead of voluntary consensus standards, when the agency uses the transaction-based reporting method to report their use of voluntary consensus standards to the National Institute of Standards and Technology (see OMB Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities''). Agencies that report their use of voluntary consensus standards to

the National Institute of Standards and Technology using the categorical reporting method do not need to include the provision at 52.211–XX. The transaction based method of reporting is used by agencies that manage their specifications on a contract-by-contract basis. The categorical method of reporting is used by agencies that manage their specifications centrally. Agency regulations regarding specification management describe which method is used.

4. Section 11.201 is amended by revising paragraph (e) to read as follows:

**11.201 Identification and availability of specifications.**

* * * * *

(e) DoD activities may obtain from the DoDSSP those nongovernment standards, including voluntary consensus standards, adopted for use by defense activities. Other activities may obtain nongovernment standards from the National Institute of Standards and Technology, Government libraries, activities subscribing to document handling services or the organization responsible for the preparation, publication or maintenance of the standard.

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 52.211–XX is added to read as follows:

**52.211–XX Alternatives to Government-Unique Standards.**

As prescribed in 11.10X, insert the following provision:

**Alternatives to Government—Unique Standards [Date]**

(a) Offerors are responsible for reviewing all requirements of this solicitation, including all standards.

(b) Offerors may propose alternatives to Government-unique standards that meet the Government's requirements. If an alternative is proposed, the offeror must furnish data and/or information regarding the alternative standard in sufficient detail for the Government to determine if the alternative meets the Government's requirements. The Contracting Officer will have sole discretion to determine whether it is in the Government's best interest to apply any proposed alternative to this acquisition.

(End of clause)

[FR Doc. 98–32794 Filed 12–9–98; 8:45 am]

BILLING CODE 6820–EP–P

Federal Register

Thursday
December 10, 1998

Part III

# Department of Transportation

**Request for Participation in the Bus Rapid Transit Demonstration Program; Notice**

## DEPARTMENT OF TRANSPORTATION

## Request for Participation in the Bus Rapid Transit Demonstration Program

**AGENCY:** Federal Transit Administration (FTA).

**ACTION:** Notice.

**SUMMARY:** In this Notice, FTA announces it is soliciting Requests for Participation in its Bus Rapid Transit Demonstration Program. This solicitation is extended to public agencies responsible for developing, implementing, operating and maintaining public transportation in the U.S. The Federal Transit Administration encourages partnerships with other local and state stakeholders and private companies involved in public transportation.

**DATES:** Responses to this solicitation must be submitted by 4 p.m., Eastern Time, on or before February 8, 1999. Requests for Participation shall not exceed thirty (30) pages in length, including title, index, tables, maps, and exclusive of appendices, abstracts, resumes and other supporting materials. A page is defined as one side of an 8½ by 11-inch paper, line spacing no smaller than 1.5 with a type font 12 pt. The transmittal letter shall include the name, address and telephone number of the individual to whom correspondence and questions may be directed.

A conference for prospective participants in the Bus Rapid Transit Demonstration Program will be held on January 8, 1999 from 1:00 PM to 5:00 PM at the Federal Transit Administration, 400 7th Street, SW, Washington, DC 20590. The purpose of this conference is to answer questions about the Federal Transit Administration's Bus Rapid Transit Demonstration Program and the statement of participation in the program. Persons and organizations planning to attend this conference should register their intentions with Joseph Goodman, Office of Mobility Innovations at (202) 366–0240 or *joseph.goodman@fta.dot.gov*. Teleconference capabilities will be available for those unable to attend in person. Please indicate your desire to participate by telephone to Joseph Goodman.

**ADDRESSES:** Three copies of the Requests for Participation shall be submitted to the appropriate FTA Regional Office listed below, and five copies shall be submitted to Edward L. Thomas, Associate Administrator for Research, Demonstration and Innovation, Federal Transit Administration, 400 7th Street SW, Room 9401, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Bert Arrillagea, Chief, Service Innovation Division, Office of Mobility Innovation (TRI–12) at (202) 366–0240 and e-mail address at bert.arrillaga@fta.dot.gov.

**SUPPLEMANTARY INFORMATION:**

**Contents:**

I. Introduction
II. Background
III. Goals and Objectives
IV. Definitions
V. Program Elements
VI. Planning and Project Development
VII. Funding
VIII. Request for Participation Content
IX. Demonstration Project Selection
X. Schedule
XI. Y2K Compliance
XII. FTA Regional Offices

### I. Introduction

The Federal Transit Administration (FTA) announces a Request for Participation in the Bus Rapid Transit (BRT) Demonstration Program. Today, advancements in bus vehilce technology, simulation systems, traffic engineering, intelligent transportation systems (ITS) [fleet management, electronic fare payment and passenger information systems] and other customer service innovations provide major opportunities to improve bus transit service across the United States similar to model bus systems in Curitiba, Brazil; Adelaide, Australia; and Ottawa, Canada. Bus service is now, more than ever, capable of performing like rapid tranist. Some communities are considering BRT as an incremental improvement to rail transit. Given these opportunities, the primary goal of a BRT Program is to work with a group of localities in demonstrating approaches for increasing the level and quality of bus service in major investment corridors comparable to rapid tranist.

The program is designed to encourage transit agencies, local and State governments and metropolitan planning organizations engaged in coordinating infrastructure improvements, technology deployment and operations to consider the benefits of BRT. Consistent with the Department of Transportation and FTA Strategic Plans, the outcome of the BRT Program is to improve mobility and accessibility, advance econmic growth and trade, and enhance environmental quality. Bus Rapid Transit promises to improve travel time, service reliability and customer convenience, foster livable communities and introduce cost-effective, environmentally friendly technology. Regarding the mobility goal, for example, research already shows that expediting the movement of transit vehicles on local arterials can produce improved traffic flow for all vehicles.

The FTA will select multiple projects to participate in a multi-year national demonstration program to be completed within the six year life of the Transportation Equity Act for the 21st Century (TEA–21). The sponsors of selected projects will form a consortium of transit agencies and other local and State partners to share experiences and to receive expert assistance in expediting project implementation in areas such as design technology, vehicle technology, ITS architecture, procurement, project financing, and operating strategies. A demonstration project would highlight the situations, problems, and opportunities that might occur while implementing the BRT concept in the United States (U.S.).

### II. Background

Bus systems provide a versatile form of public transportation with the flexibility to serve a variety of access needs and an unlimited range of locations throughout an area. Bus service can be implemented cost-effectively on routes where ridership may not be sufficient or where the capital investment may not be available to implement rail transit systems.

Traffic congestion, urban sprawl, central city decline, and air pollution are all problems associated with excessive dependence on automobiles. Increasing recognition of the need for high-quality transit service to alleviate these conditions has fueled growing demand for new rail services throughout the U.S. However, in numerous cities buses also provide an attractive and effective alternative to automobiles, reaching into central cities, local neighborhoods, suburbs and rural areas to meet the mobility needs of millions of people.

Despite the inherent advantages of bus service, the traveling public frequently finds the quality of bus service provided in urban centers to be wanting. Conventional urban bus operations often are characterized by sluggish vehicles inching their way through congested streets, delayed not only by other vehicles and traffic signals, but also by frequent and time-consuming stops to pick up and discharge passengers. Buses travel on average at only around 60 percent of the speeds of automobiles and other private vehicles using the same streets due to the cummulative effects of traffic congestion, traffic signals, and passenger boarding. Moreover, the advantageous flexibility and

decentralization of bus operations also result in a lack of system visibility and permanence that contributes to public perceptions of unreliability and disorganization.

Low-cost investments in infrastructure, equipment, operational improvements, advanced bus technologies, and ITS can provide the foundation for Bus Rapid Transit systems that substantially upgrade bus system performance. Conceived as an integrated, well-defined system, Bus Rapid Transit would provide for significantly lower bus travel time, greater service reliability, and increased convenience, matching the quality of rail transit when implemented in appropriate settings. A decrease of bus travel time would reduce operating costs and improve bus operating efficiency by allowing more trips per platform hour. Advanced bus technologies and other intelligent technologies could further reduce operating and maintenance costs, improve safety, and enhance intermodal transfers.

## III. Goals and Objectives

The goals for the Bus Rapid Transit Demonstration Program are designed to achieve the strategic goals of the DOT and FTA Strategic Plans addressing safety and security, mobility and accessibility, economic growth and trade, and the human and natural environment. The specific goals are as follows:

1. Increase intermodal physical, informational and service connectivity.
2. Ensure that all transit systems are accessible.
3. Reduce bus travel times through deployment of new technology and other innovations.
4. Improve the reliability of the delivery of people, goods, and services to their destinations.
5. Encourage regional and local economic development through joint development.
6. Build professional capacity and promote the education of individuals in transportation related fields.
7. Expand opportunities and promote economic growth for all businesses.
8. Improve the sustainability and livability of communities.
9. Reduce the amount of transportation-related pollutants released into the environment.
10. Integrate consideration of BRT and advanced bus systems in corridor analysis for major transportation investments.

There are four primary objectives of the demonstration program. They are to: (1) identify and address the issues involved in implementing a Bus Rapid Transit system; (2) show how the integration of advanced bus technologies, ITS and services can contribute to a bus rapid transit system; (3) provide data on derived benefits and costs, particularly whether improved service and increased visibility due to Bus Rapid Transit can increase transit ridership, and (4) transfer lessons learned to other areas evaluating major investment options or implementing bus rapid transit projects.

## IV. Definitions

*Bus Rapid Transit* refers to coordinated improvements in a transit system's infrastructure, equipment, operations, and technology that give preferential treatment to buses on urban roadways. The intention of Bus Rapid Transit is to reduce bus travel time, improve service reliability, increase the convenience of users, and ultimately, increase bus ridership. BRT typically contains the following features:

☐ *Exclusivity:* Exclusivity occurs when buses and stations are physically separated from non-exclusive traffic lanes or where the level and quality of service are comparable to that achieved on a wholly exclusive facility.

☐ *Advanced Bus Technology:* A variety of vehicle technologies available for improving access, maneuverability, operating efficiency of transit buses, and reduces the emissions and the weight of transit buses. These technologies include clean fuels propulsion systems powered by natural gas, batteries, hybrid electricity, alcohol fuels, and fuel cells; highly durable light weight composite materials; low-floor configurations; on-board vehicle computer management systems and advanced communication systems.

☐ *Fleet management improvements:* Comprises infrastructure and ITS technology elements to improve travel time and reliability of bus service. Some of these elements may also improve traffic flow for other vehicles. These measures may include: (1) bus turnouts or curb realignments; (2) use of automated vehicle location systems for improved real time management and dispatching; and (3) traffic signal priority for preferential treatment of buses at signalized intersections.

☐ *Faster fare collection and boarding:* The objective is to speed the boarding process through the use of (1) fare collection innovations, such as prepayment methods and smart cards; and (2) changes in bus and platform design for easier and faster access by the elderly, persons with disabilities, shoppers, parents with children in strollers or passengers with baggage.

☐ *Integration of transit development with land use policy:* Bus Rapid Transit and high density Transit-oriented development (TOD) can be mutually reinforcing. TODs may include areas or corridors developed with building site and street designs favoring transit and pedestrian usage.

☐ *Intelligent Transportation Systems (ITS) technologies* refers to hardware and software systems, such as, computer-assisted dispatching software, wireless communications, mobile data terminals, map displays, transit fleet management, maintenance management software, geographical information displays, computerized voice recognition, automated voice response, emergency management, freeway management systems, electronic fare payment systems, automated traveler information, reservation and billing systems. TEA–21 requires conformity with the ITS National Architecture and Critical Standards, and FTA and FHWA have issued Interim Guidance on these requirements. The ITS National Architecture is a framework for integrating various user service systems and for ensuring interoperability between systems. Critical standards ensure inter-operability or ''plug and play'' between hardware and software systems. ITS technologies are designed to improve customer service and the operating efficiency and safety of the transportation infrastructure and vehicle systems.

☐ *Project Delivery Methods* refers to various innovative approaches for procuring, designing, constructing, operating, and maintaining transit systems. These approaches might include various types of turnkey approaches or methods including: design/build, design-build-operate-maintain, or super turnkey, where the contractor participates in project financing.

A paper entitled ''Issues in Bus Rapid Transit'' gives further insight into the Bus Rapid Transit concept and its implementation. It can be obtained from Bert Arrillaga, the FTA information source identified above.

## V. Program Elements

The FTA will select multiple projects to participate in a multi-year national demonstration program to be completed within the six years of the Transportation Equity Act for the 21st Century (TEA–21). The selected project sponsors will form a consortium of transit agencies and other local and State partners to share experiences and to receive expert assistance in expediting project implementation. This assistance may occur in such areas as

virtual reality simulation technology for system design and operations planning, vehicle technology, ITS architecture, procurement, project financing, and operating strategies. A demonstration project would highlight the situations, problems, and opportunities that might occur while implementing the BRT concept in the United States. With the assistance of an evaluation contractor, the FTA plans to assess the effects of the demonstration project through a scientific evaluation of the project. A carefully constructed evaluation accomplishes a number of purposes: (1) to document what happened and why; (2) to measure benefits, costs, and impacts of the demonstration on affected populations; (3) to reveal both successful and unsuccessful aspects of the demonstration; (4) to determine if the demonstration met the goals of its sponsors; and (5) to assess the applicability of the demonstration to other sites. An evaluation not only helps others learn from the demonstration, but also helps the involved parties to improve their own systems.

In order to help expedite demonstration project implementation, FTA will consider requests to waive administrative requirements that are not regulatory. The demonstration program is designed to provide the rest of the nation with information for considering BRT in the planning process and for engineering, designing, and implementing bus rapid transit projects. The program will:

1. Assess technology of common interest to the demonstration consortium members;
2. Provide expert assistance in design and operations, perhaps using simulation systems; ITS integration and interoperability; advanced bus technology; financing strategy; or project delivery methods;
3. Fund local demonstration project administration including project monitoring, data collection, progress reporting and other logistical support;
4. Evaluate and report on best practices; and
5. Support technology transfer involving a variety of lessons-learned workshops and an internet website.

*A. Technology Assessments*

FTA will assess the state-of-the-art and best practices in transit operations, infrastructure design, vehicle technology, system integration, or other areas of interest to the demonstration consortium.

*B. Expert Assistance*

FTA will provide industry peers or other experts to advise consortium members on such considerations as the choice of appropriate vehicle and ITS technologies, concurrent engineering, exclusive bus lane design issues, traffic engineering issues, bus operations and planning issues, bus stop and terminal design, innovative financing strategies, transit-oriented development, and innovations in project delivery such as turnkey procurement. Expert panels will be organized at the request of consortium members.

*C. Demonstration Project Administration*

The demonstration program will support a project administrator for each of the projects. This administrator will coordinate with the FTA demonstration program office, provide logistical support for the demonstration project sponsors, and conduct quarterly demonstration project reviews. A key objective of this position is to permit the implementation of the project to proceed unencumbered by the requirements of the demonstration program.

*D. Documentation and Evaluation*

With the assistance of an evaluation contractor, the FTA plans to assess Bus Rapid Transit through an evaluation of the Bus Rapid Transit demonstrations. A carefully constructed evaluation accomplishes a number of purposes: (1) to document what happened and why; (2) to measure benefits, costs, and impacts of the demonstration on affected populations; (3) to reveal both successful and unsuccessful aspects of the demonstration; (4) to determine if the demonstration met the goals and objectives of its sponsors; and (5) to assess the applicability of the demonstration to other sites. An evaluation not only helps others learn from the demonstration, but also helps the involved parties to improve their own systems. Specifically, FTA would like to examine the:

☐ Degree to which bus travel time, schedule adherence and service integration improve;
☐ Degree to which transit efficiency and productivity improve;
☐ Degree to which ridership increases due to improved bus travel time, transfers, schedule adherence, and service coverage;
☐ Effect on other traffic;
☐ Effect on each of the components of Bus Rapid Transit on bus speed and other traffic
☐ Benefits of integrated vehicle and ITS technologies to the demonstration; and
☐ Effect of Bus Rapid Transit on land use.

*E. Technology Transfer*

FTA will arrange ''scanning tours,'' where local officials and designers visit operational bus rapid transit sites. Periodic workshops and seminars will be organized for presentations or discussion about technical issues of interest to each of the demonstration project sponsors. FTA and consortium members will participate in conferences and other meetings sponsored by interested professional organizations for mutual sharing of information and ideas. Demonstration results and other research technical reports will be produced and made available on World Wide Web sites.

The roles of the demonstration program participants are outlined below:

☐ The Federal Transit Administration will:
■ Provide overall guidance on the conduct of the demonstration program.
■ Monitor the demonstration program.
■ Organize and conduct the expert assistance panels, technology transfer workshops, and conference sessions.
■ Provide guidance to demonstration sponsors regarding resources from other programs listed under Section II General Authority.
■ Publish and communicate information on the demonstration projects.
■ Secure and manage contractors conducting the project evaluations, and provide program support.
■ Provide guidance on the planning and project development process.

☐ The Project Sponsor will:
■ Implement project as proposed.
■ Monitor demonstration projects and keep FTA appraised of events, issues, and problems.
■ Conduct quarterly reviews of the demonstration project.
■ Collect data according to evaluation plan and schedule.
■ Participate in the technology transfer activities of the demonstration program.

☐ The Contractors will:
■ Develop the evaluation plan and the data collection schedule.
■ Guide data collection.
■ Analyze evaluation data.
■ Write final evaluation reports.
■ Provide overall program support.

**VI. Planning and Project Development Process**

Bus rapid transit projects selected for participation in this Bus Rapid Transit Demonstration Program are expected to be a product of the metropolitan planning and programming process. A

proposed bus rapid transit project should be compatible with existing transportation plans or exist in a corridor where extensive planning has been performed and a recommendation for a major transit capital investment made. If the project proposals contain ITS elements of regional significance, the conformity requirements of the National ITS Architecture apply. The architecture defines the functions that must be performed to implement a given user service, the physical entities or subsystems where these functions reside, the interfaces and information flows between the physical subsystems, and the communication requirements for the information flows. Interim Guidance on ITS Architecture is available from the FTA Regional Offices or the Headquarters Office of Research, Demonstration and Innovation.

Bus Rapid Transit projects are developed in several ways. First, transit service planning efforts may produce low-cost operational improvements like advanced technology vehicles and ITS user services. Such strategies must be consistent with the regional transportation plans and are included in a transportation improvement program. In this instance, a project may proceed into the design and implementation phase. Second, bus rapid transit projects may emerge from the multi-modal metropolitan transportation planning process as a major capital investment. Where FTA New Starts funding is sought, such projects are subject to the New Starts and environmental documentation requirements. These requirements involve project ratings for a FTA decision to advance a project into preliminary engineering. Subsequent to completion of preliminary engineering and the environmental process, a project receives a rating for a FTA decision on final design and construction. Additional information on these requirements is available from the FTA Regional Offices or Headquarters Office of Planning at (202) 366–2360.

## VII. Funding

The FTA is supporting the Bus Rapid Transit Demonstration Program with approximately $2 million in Fiscal Year 1999. A similar level of annual funding is planned over the life of the demonstration program. Demonstration project sponsors may seek implementation funding from the FTA Capital Investment (Section 5309), Urbanized Area Formula (Section 5307), Clean Fuels Formula Grant (Section 5308), Federal-Aid Highway flexible funding programs in accordance with the requirements of those programs, and other funding programs identified in the General Authority Section such as Title I, Subtitle E, Chapter 1, Transportation Infrastructure Finance and Innovation and Chapter 2, State Infrastructure Bank Pilot Program.

## VIII. Requests for Participation Contents

A Request for Participation (proposal) shall not exceed thirty (30) pages in length including title, index, tables, maps, and exclusive of appendices, abstracts, resumes and other supporting materials. A page is defined as one (1) side of an 8½ by 11-inch paper, line spacing no smaller than 1.5 with a type font of 12 pt. Three (3) copies of the Request fore Participation (proposal) should be sent to the respective Regional Office listed in Section XII of this Notice. Five (5) copies of the Request for Participation (proposal) plus an unbound reproducible copy of the proposal shall be forwarded to Edward Thomas, Associate Administrator for Research, Demonstration and Innovation, FTA, 400 7th Street, S.W., Room 9401, Washington, DC 20590. The transmittal letter shall include the name, address and phone number of an individual to whom correspondence and questions about the application may be directed. The proposals shall include Technical, Management and Financial Plans as described below.

### *A. Technical Plan*

General Requirements

1. Describe the proposed Bus Rapid Transit corridor, including such things as cost, location, service frequency and ridership, roadways, bus stops and terminals, traffic management practices, vehicles, dispatching and operating systems, and use of ITS technologies.

2. Describe the land use policies and any transit-oriented development that exist in the proposed corridor, and plans to change them to capitalize on Bus Rapid Transit.

3. Describe the proposed project's service area including its size, population density, demographics, and regional transportation environment.

4. Also describe what ''problems'' the Bus Rapid Transit project will address, prior and ongoing planning in support of BRT, and consistency with the regional transportation plan.

Technical Approach

1. Describe measurable performance goals of the Bus Rapid Transit project. These should at a minimum address the FTA outcome goals. Some examples are improved customer service, improved bus travel time, and improved operating efficiency.

2. Describe the Bus Rapid Transit project, its physical systems and operational features including designs, service types, service levels, fare collection methods, fare transfer policy, and hours of operation.

3. Describe the anticipated effects, efficiencies, and impacts of the proposed project including ridership, service levels, traffic impacts, environmental impacts, and land use impacts.

4. Describe implementation of the Bus Rapid Transit project including engineering and design activities, procurement strategy, and phasing approach if incremental development is specified.

5. Describe the approach by which any advanced technologies involved in the demonstration project will be refined, tested, and documented before deployment.

6. Document assumptions and technical uncertainties, and propose specific approaches to resolve any uncertainties.

### *B. Management Plan*

1. Identify key management responsibilities for the demonstration project sponsor and other participating organizations. Describe all necessary arrangements and institutional agreements to support the project, and include evidence of agreement among participating agencies.

2. The demonstration project administrator would be expected to have full responsibility for the demonstration project throughout its duration and to serve as the point of contact for interactions with FTA and the rest of the transit industry.

3. Provide a schedule of work including a time line, key milestones, and deliverables for the project.

4. Provide a preliminary staffing plan. For the staffing plan, FTA encourages proposing agencies to work with Universities and Colleges under the University Transportation Centers Program (Section 5110 of TEA–21) to provide opportunities for student professional development and to exchange information on new technology, human factors issues, land use planning, travel demand modeling, or simulation of operations.

### *C. Financial plan*

1. The proposal shall provide a description of the total cost and finances for implementing, operating, and maintaining the Bus Rapid Transit project. The implementation costs would include the costs for system design, project management, vehicle and system acquisition and facility

construction. Provide cost estimates by phase as defined in the Technical Plan.

2. The Financial Plan should break down funding sources by the following categories: (1) Local; (2) State; (3) Private; and (4) Federal. All financial commitments to the project from both public and private sectors should be documented and included in the proposal.

### IX. Demonstration Project Selection

The FTA will select several projects for participation in the demonstration program. The evaluation criteria are:

☐ The significance of the project in terms of the expected improvement in bus travel times and reliability due to Bus Rapid Transit;

☐ The comprehensiveness of the project—the range of features included in the demonstration and the inclusion of plans for congestion, signals, boarding and fare collection, delay reduction, and land use considerations;

☐ The readiness of the applicant to implement the demonstration—greater consideration will be given to those agencies closer to implementation of Bus Rapid Transit, who have gone through the local planning and approval process, and have funds committed;

☐ Evidence that adequate planning has been completed, and there is local commitment involving the partnering of the transit agency, city, county or state governments, and the private sector, if appropriate;

☐ The identification and commitment of funds for capital-intensive elements. Significant consideration will be given to those projects with greater levels of non-Federal funding; and

☐ Degree to which innovation is reflected in the project—including vehicle technology, ITS technologies, procurement strategy, and professional capacity building involving students as reflected in the Department of Transportation Garrett A. Morgan Technology and Transportation Futures Program.

Proposals should be forwarded to the appropriate FTA Regional Office. Regional offices will screen the proposals and recommend a subset for further review by an FTA headquarters' interoffice Working Group. The Working Group will recommend projects to the FTA Administrator.

### X. Schedule

The Bus Rapid Transit Demonstration Program will last over the six-year life of TEA–21. The selected demonstration projects are expected to be implemented and in operation within this period. Project review meetings will be conducted along with quarterly progress review meetings held by the FTA regional offices. Expert assistance panels will occur as requested by the project sponsors. Scanning tours, lessons learned workshops and participation in conferences are anticipated each year. The evaluation effort will start with data collection from three to six months prior to the demonstration period and will continue for a minimum of twelve (12) months from the time that the project is put into operation. After a six (6) month period of analysis, a Best Practices Report will be completed.

### XI. Y2K Compliance

Any technology containing computer system capabilities, purchased with grant program funds and expected to be used for a period of time that goes beyond December 31, 1999 must be year 2000 compliant. Applicants' Technical Proposal, Management Plan, and Financial Plan must provide sound evidence that this requirement can be met.

### XII. FTA Regional Offices

Region I: 55 Broadway, Kendall Square, Suite 920, Cambridge, MA 02142–1093, (617) 494–2055

Region II: 26 Federal Plaza, Suite 2940, New York, NY 10278–0194, (212) 264–8162

Region III: 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, (215) 656–7100

Region IV: 61 Forsyth Street, S.W., Suite 17T50, Atlanta, GA 30303–8917, (404) 562–3500

Region V: 200 West Adams Street, 24th Floor, Chicago, IL 60606, (312) 353–2789

Region VI: 819 Taylor Street, Room 8A36, Fort Worth, TX 76102, (817) 978–0550

Region VII: 6301 Rockhill Road, Suite 303, Kansas City, MO 64131–1117, (816) 523–0204

Region VIII: 216 Sixteenth Street, Suite 650, Denver, CO 80202–5120, (303) 844–3242

Region IX: 201 Mission Street, Suite 2210, San Francisco, CA 94105–1831, (415) 744–3133

Region X: 915 Second Avenue, Suite 3142, Seattle, WA 98174–1002, (206) 220–7954

Issued on December 7, 1998.

**Gordon J. Linton,**

*Administrator.*

[FR Doc. 98–32898 Filed 12–9–98; 8:45 am]

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Federal Register

Thursday
December 10, 1998

Part IV

# Environmental Protection Agency

**National Recommended Water Quality Criteria; Notice; Republication**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–OW–6186–6a]**

## National Recommended Water Quality Criteria; Republication

**Editorial Note:** FR Doc. 98-30272 was originally published as Part IV (63 FR 67548-67558) in the issue of Monday, December 7, 1998. At the request of the agency, due to incorrect footnote identifiers in the tables, the corrected document is being republished in its entirety.

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

**ACTION:** Compilation of recommended water quality criteria and notice of process for new and revised criteria.

**SUMMARY:** EPA is publishing a compilation of its national recommended water quality criteria for 157 pollutants, developed pursuant to section 304(a) of the Clean Water Act (CWA or the Act). These recommended criteria provide guidance for States and Tribes in adopting water quality standards under section 303(c) of the CWA. Such standards are used in implementing a number of environmental programs, including setting discharge limits in National Pollutant Discharge Elimination System (NPDES) permits. These water quality criteria are not regulations, and do not impose legally binding requirements on EPA, States, Tribes or the public.

This document also describes changes in EPA's process for deriving new and revised 304(a) criteria. Comments provided to the Agency about the content of this Notice will be considered in future publications of water quality criteria and in carrying out the process for deriving water quality criteria. With this improved process the public will have more opportunity to provide data and views for consideration by EPA. The public may send any comments or observations regarding the compilation format or the process for deriving new or revised water quality criteria to the Agency now, or anytime while the process is being implemented.

**ADDRESSES:** A copy of the document, ''National Recommended Water Quality Criteria'' is available from the U.S. EPA, National Center for Environmental Publications and Information, 11029 Kenwood Road, Cincinnati, Ohio 45242, phone (513) 489–8190. The publication is also available electronically at: http://www.epa.gov/ost. Send an original and 3 copies of written comments to W–98–24 Comment Clerk, Water Docket, MC 4104, US EPA, 401 M Street, S.W., Washington, D.C. 20460. Comments may also be submitted electronically to OW-Docket@epamail.epa.gov. Comments should be submitted as a WP5.1, 6.1 or an ASCII file with no form of encryption. The documents cited in the compilation of recommended criteria are available for inspection from 9 to 4 p.m., Monday through Friday, excluding legal holidays, at the Water Docket, EB57, East Tower Basement, USEPA, 401 M St., S.W., Washington, D.C. 20460. For access to these materials, please call (202) 260–3027 to schedule an appointment.

**FOR FURTHER INFORMATION CONTACT:** Cindy A. Roberts, Health and Ecological Criteria Division (4304), U.S. EPA, 401 M. Street, S.W., Washington, D.C. 20460; (202) 260–2787; roberts.cindy@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. What Are Water Quality Criteria?

Section 304(a)(1) of the Clean Water Act requires EPA to develop and publish, and from time to time revise, criteria for water quality accurately reflecting the latest scientific knowledge. Water quality criteria developed under section 304(a) are based solely on data and scientific judgments on the relationship between pollutant concentrations and environmental and human health effects. Section 304(a) criteria do not reflect consideration of economic impacts or the technological feasibility of meeting the chemical concentrations in ambient water. Section 304(a) criteria provide guidance to States and Tribes in adopting water quality standards that ultimately provide a basis for controlling discharges or releases of pollutants. The criteria also provide guidance to EPA when promulgating federal regulations under section 303(c) when such action is necessary.

### II. What is in the Compilation Published Today?

EPA is today publishing a compilation of its national recommended water quality criteria for 157 pollutants. This compilation is also available in hard copy at the address given above.

The compilation is presented as a summary table containing EPA's water quality criteria for 147 pollutants, and for an additional 10 pollutants, criteria solely for organoleptic effects. For each set of criteria, EPA lists a **Federal Register** citation, EPA document number or Integrated Risk Information System (IRIS) entry (www.epa.gov/ngispgm3/iris/irisdat). Specific information pertinent to the derivation of individual criteria may be found in cited references. If no criteria are listed for a pollutant, EPA does not have any national recommended water quality criteria.

These water quality criteria are the Agency's current recommended 304(a) criteria, reflecting the latest scientific knowledge. They are generally applicable to the waters of the United States. EPA recommends that States and Tribes use these water quality criteria as guidance in adopting water quality standards pursuant to section 303(c) of the Act and the implementing of federal regulations at 40 CFR part 131. Water quality criteria derived to address site-specific situations are not included; EPA recommends that States and Tribes follow EPA's technical guidance in the ''Water Quality Standards Handbook—2nd Edition,'' EPA, August 1994, in deriving such site-specific criteria. EPA recognizes that in limited circumstances there may be regulatory voids in the absence of State or Tribal water quality standards for specific pollutants. However, States and Tribes should utilize the existing State and Tribal narrative criteria to address such situations; States and Tribes may consult EPA criteria documents and cites in the summary table for additional information.

The national recommended water quality criteria include: previously published criteria that are unchanged; criteria that have been recalculated from earlier criteria; and newly calculated criteria, based on peer-reviewed assessments, methodologies and data, that have not been previously published.

The information used to calculate the water quality criteria is not included in the summary table. Most information has been previously published by the Agency in a variety of sources, and the summary table cites those sources.

When using these 304(a) criteria as guidance in adopting water quality standards, EPA recommends States and Tribes consult the citations referenced in the summary table for additional information regarding the derivation of individual criteria.

The Agency intends to revise the compilation of national recommended water quality criteria from time to time to keep States and Tribes informed as to the most current recommended water quality criteria.

### III. How Are National Recommended Water Quality Criteria Used?

Once new or revised 304(a) criteria are published by EPA, the Agency expects States and Tribes to adopt promptly new or revised numeric water quality criteria into their standards consistent with one of the three options

in 40 CFR 131.11. These options are: (1) Adopt the recommended section 304(a) criteria; (2) adopt section 304(a) criteria modified to reflect site-specific conditions; or, (3) adopt criteria derived using other scientifically defensible methods. In adopting criteria under option (2) or (3), States and Tribes must adopt water quality criteria sufficient to protect the designated uses of their waters. When establishing a numerical value based on 304(a) criteria, States and Tribes may reflect site specific conditions or use other scientifically defensible methods. However, States and Tribes should not selectively apply data or selectively use endpoints, species, risk levels, or exposure parameters in deriving criteria; this would not accurately characterize risk and would not result in criteria protective of designated uses.

EPA emphasizes that, in the course of carrying out its responsibilities under section 303(c), it reviews State and Tribal water quality standards to assess the need for new or revised water quality criteria. EPA generally believes that five years from the date of EPA's publication of new or revised water quality criteria is a reasonable time by which States and Tribes should take action to adopt new or revised water quality criteria necessary to protect the designated uses of their waters. This period is intended to accommodate those States and Tribes that have begun a triennial review and wish to complete the actions they have underway, deferring initiating adoption of new or revised section 304(a) criteria until the next triennial review.

## IV. What is the Status of Existing Criteria While They Are Under Revision?

The question of the status of the existing section 304(a) criteria often arises when EPA announces that it is beginning a reassessment of existing criteria. The general answer is that water quality criteria published by EPA remain the Agency's recommended water quality criteria until EPA revises or withdraws the criteria. For example, while undertaking recent reassessments of dioxin, PCBs, and other chemicals, EPA has consistently upheld the use of the current section 304(a) criteria for these chemicals and considers them to be scientifically sound until new, peer reviewed, scientific assessments indicate changes are needed. Therefore, the criteria in today's notice are and will continue to be the Agency's national recommended water quality criteria for States and Tribes to use in adopting or revising their water quality standards until superseded by the publication of revised criteria, or withdrawn by notice in the **Federal Register**.

## V. What is the Process for Developing New or Revised Criteria?

Section 304(a)(1) of the CWA requires the Agency to develop and publish, and from time to time revise, criteria for water quality accurately reflecting the latest scientific knowledge. The Agency has developed an improved process that it intends to use when deriving new criteria or conducting a major reassessment of existing criteria. The purpose of the improved process is to provide expanded opportunities for public input, and to make the process more efficient.

When deriving new criteria, or when initiating a major reassessment of existing criteria, EPA will take the following steps.

1. EPA will first undertake a comprehensive review of available data and information.

2. EPA will publish a notice in the **Federal Register** and on the Internet announcing its assessment or reassessment of the pollutant. The notice will describe the data available to the Agency, and will solicit any additional pertinent data or views that may be useful in deriving new or revised criteria. EPA is especially interested in hearing from the public regarding new data or information that was unavailable to the Agency, and scientific views as to the application of the relevant Agency methodology for deriving water quality criteria.

3. After public input is received and evaluated, EPA will then utilize information obtained from both the Agency's literature review and the public to develop draft recommended water quality criteria.

4. EPA will initiate a peer review of the draft criteria. Agency peer review consists of a documented critical review by qualified independent experts. Information about EPA peer review practices may be found in the Science Policy Council's Peer Review Handbook (EPA 100–B–98–001, www.epa.gov).

5. Concurrent with the peer review in step four, EPA will publish a notice in the **Federal Register** and on the Internet, of the availability of the draft water quality criteria and solicit views from the public on issues of science pertaining to the information used in deriving the draft criteria. The Agency believes it is important to provide the public with the opportunity to provide scientific views on the draft criteria even though we are not required to invite and respond to written comments.

6. EPA will evaluate the results of the peer review, and prepare a response document for the record in accordance with EPA's Peer Review Handbook. EPA at the same time will consider views provided by the public on issues of science. Major scientific issues will be addressed in the record whether from the peer review or the public.

7. EPA will then revise the draft criteria as necessary, and announce the availability of the final water quality criteria in the **Federal Register** and on the Internet.

## VI. What is the Process for Minor Revisions to Criteria?

In addition to developing new criteria, and conducting major reassessments of existing criteria, EPA also from time to time recalculates criteria based on new information pertaining to individual components of the criteria. For example, in today's notice, EPA has recalculated a number of criteria based on new, peer-reviewed data contained in EPA's IRIS. Because such recalculations normally result in only minor changes to the criteria, do not ordinarily involve a change in the underlying scientific methodologies, and reflect peer-reviewed data, EPA will typically publish such recalculated criteria directly as the Agency's recommended water quality criteria. If it appears that a recalculation results in a significant change EPA will follow the process of peer review and public input outlined above. Further, when EPA recalculates national water quality criteria in the course of proposing or promulgating state-specific federal water quality standards pursuant to section 303(c), EPA will offer an opportunity for national public input on the recalculated criteria.

## VII. How Does the Process Outlined Above Improve Public Input and Efficiency?

In the past, EPA developed draft criteria documents and announced their availability for public comment in the **Federal Register**. This led to new data and views coming to EPA's attention after draft criteria had already been developed. Responding to new data would sometimes lead to extensive revisions.

The steps outlined above improve the criteria development process in the following ways.

1. The new process is Internet-based which is in line with EPA policy for public access and dissemination of information gathered by EPA. Use of the Internet will allow the public to be more engaged in the criteria development process than previously and to more

knowledgeably follow criteria development. For new criteria or major revisions, EPA will announce its intentions to derive the new or revised criteria on the Internet and include a list of the available literature. This will give the public an opportunity to provide additional data that might not otherwise be identified by the Agency.

2. The public now has two opportunities to contribute data and views, before development and during development, instead of a single opportunity after development.

3. EPA has instituted broader and more formal peer review procedures. This independent scientific review is a more rigorous disciplinary practice to ensure technical improvements in Agency decision making. Previously, EPA used the public comment process outlined above to obtain peer review. The new process allows for both public input and a formal peer review, resulting in a more thorough and complete evaluation of the criteria.

4. Announcing the availability of the draft water quality criteria on the Internet will give the public an opportunity to provide input on issues of science in a more timely manner.

## VIII. Where Can I Find More Information About Water Quality Criteria and Water Quality Standards?

For more information about water quality criteria and Water Quality Standards refer to the following: Water Quality Standards Handbook (EPA 823–B94–005a); Advanced Notice of Proposed Rule Making (ANPRM), (63 FR 36742); Water Quality Criteria and Standards Plan—Priorities for the Future (EPA 822–R–98–003); Guidelines and Methodologies Used in the Preparation of Health Effects Assessment Chapters of the Consent Decree Water Criteria Documents (45 FR 79347); Draft Water Quality Criteria Methodology Revisions: Human Health (63 FR 43755, EPA 822–Z–98–001); and Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses (EPA 822/R–85–100); National Strategy for the Development of Regional Nutrient Criteria (EPA 822–R–98–002).

These publications may also be accessed through EPA's National Center for Environmental Publications and Information (NCEPI) or on the Office of Science and Technology's Home-page (www.epa.gov/OST).

## IX. What Are the National Recommended Water Quality Criteria?

The following compilation and its associated footnotes and notes presents the national recommended water quality criteria.

## NATIONAL RECOMMENDED WATER QUALITY CRITERIA FOR PRIORITY TOXIC POLLUTANTS

| Priority pollutant | CAS No. | Freshwater | | Saltwater | | Human health for consumption of: | | FR cite/source |
|---|---|---|---|---|---|---|---|---|
| | | CMC (µg/L) | CCC (µg/L) | CMC (µg/L) | CCC (µg/L) | Water + organism (µg/L) | Organism only (µg/L) | |
| 1 Antimony | 7440360 | | | | | 14 [B, Z] | 4300 [B] | 57 FR 60848 |
| 2 Arsenic | 7440382 | 340 [A,D,K] | 150 [A,D,K] | 69 [A,D,bb] | 36 [A,D,bb] | | | 62 FR 42160 |
| | | | | | | 0.018 [C,M,S] | 0.14 [C,M,S] | 57 FR 60848 |
| 3 Beryllium | 7440417 | | | | | [J, Z] | [J] | 62 FR 42160 |
| 4 Cadmium | 7440439 | 4.3 [D, E, K] | 2.2 [D, E, K] | 42 [D, bb] | 9.3 [D, bb] | [J, Z] | [J] | 62 FR 42160 |
| 5a Chromium III | 16065831 | 570 [D, E, K] | 74 [D,E,K] | | | | | EPA 820/B–96–001 |
| | | | | | | [J, Z Total] | [J] | 62 FR 42160 |
| 5b Chromium VI | 18540299 | 16 [D, K] | 11 [D, K] | 1,100 [D, bb] | 50 [D, bb] | [J, Z Total] | [J] | 62 FR 42160 |
| 6 Copper | 7440508 | 13 [D, E, K, cc] | 9.0 [D, E, K, cc] | 4.8 [D, cc, ff] | 3.1 [D, cc, ff] | 1,300 [U] | | 62 FR 42160 |
| 7 Lead | 7439921 | 65 [D, E, bb, gg] | 2.5 [D, E, bb, gg] | 210 [D, bb] | 8.1 [D, bb] | [J] | [J] | 62 FR 42160 |
| 8 Mercury | 7439976 | 1.4 [D, K, hh] | 0.77 [D, K, hh] | 1.8 [D, ee, hh] | 0.94 [D, ee, hh] | 0.050 [B] | 0.051 [B] | 62 FR 42160 |
| 9 Nickel | 7440020 | 470 [D, E, K] | 52 [D, E, K] | 74 [D, bb] | 8.2 [D, bb] | 610 [B] | 4,600 [B] | 62 FR 42160 |
| 10 Selenium | 7782492 | [L, R, T] | 5.0 [T] | 290 [D, bb, dd] | 71 [D, bb, dd] | | | 62 FR 42160 |
| | | | | | | 170 [Z] | 11,000 | IRIS 09/01/91 |
| 11 Silver | 7440224 | 3.4 [D, E, G] | | 1.9 [D, G] | | | | 62 FR 42160 |
| 12 Thallium | 7440280 | | | | | 1.7 [B] | 6.3 [B] | 57 FR 60848 |
| 13 Zinc | 7440666 | 120 [D, E, K] | 120 [D, E, K] | 90 [D, bb] | 81 [D, bb] | | | 62 FR 42160 |
| | | | | | | 9,100 [U] | 69,000 [U] | IRIS 10/01/92 |
| 14 Cyanide | 57125 | 22 [K, Q] | 5.2 [K, Q] | | | | | EPA 820/B–96–001 |
| | | | | 1 [Q, bb] | 1 [Q, bb] | 700 [B, Z] | 220,000 [B, H] | 57 FR 60848 |
| 15 Asbestos | 1332214 | | | | | 7 million fibers/L [I] | | 57 FR 60848 |
| 16 2, 3, 7, 8-TCDD Dioxin | 1746016 | | | | | 1.3E–8 [C] | 1.4E–8 [C] | 62 FR 42160 |
| 17 Acrolein | 107028 | | | | | 320 | 780 | 57 FR 60848 |
| 18 Acrylonitrile | 107131 | | | | | 0.059 [B,C] | 0.66 [B,C] | 57 FR 60848 |
| 19 Benzene | 71432 | | | | | 1.2 [B,C] | 71 [B,C] | 62 FR 42160 |
| 20 Bromoform | 75252 | | | | | 4.3 [B,C] | 360 [B,C] | 62 FR 42160 |
| 21 Carbon Tetrachloride | 56235 | | | | | 0.25 [B,C] | 4.4 [B,C] | 57 FR 60848 |
| 22 Chlorobenzene | 108907 | | | | | 680 [B,Z] | 21,000 [B,H] | 57 FR 60848 |
| 23 Chlorodibromomethane | 124481 | | | | | 0.41 [B,C] | 34 [B,C] | 62 FR 42160 |
| 24 Chloroethane | 75003 | | | | | | | |
| 25 2-Chloroethylvinyl Ether | 110758 | | | | | | | |
| 26 Chloroform | 67663 | | | | | 5.7 [B,C] | 470 [B,C] | 62 FR 42160 |
| 27 Dichlorobromomethane | 75274 | | | | | 0.56 [B,C] | 46 [B,C] | 62 FR 42160 |
| 28 1,1-Dichloroethane | 75343 | | | | | | | |
| 29 1,2-Dichloroethane | 107062 | | | | | 0.38 [B,C] | 99 [B,C] | 57 FR 60848 |
| 30 1,1-Dichloroethylene | 75354 | | | | | 0.057 [B,C] | 3.2 [B,C] | 57 FR 60848 |
| 31 1,2-Dichloropropane | 78875 | | | | | 0.52 [B,C] | 39 [B,C] | 62 FR 42160 |
| 32 1,3-Dichloropropene | 542756 | | | | | 10 [B] | 1,700 [B] | 57 FR 60848 |
| 33 Ethylbenzene | 100414 | | | | | 3,100 [B,Z] | 29,000 [B] | 62 FR 42160 |
| 34 Methyl Bromide | 74839 | | | | | 48 [B] | 4000 [B] | 62 FR 42160 |
| 35 Methyl Chloride | 74873 | | | | | [J] | [J] | 62 FR 42160 |
| 36 Methylene Chloride | 75092 | | | | | 4.7 [B,C] | 1600 [B,C] | 62 FR 42160 |
| 37 1,1,2,2-Tetrachloroethane | 79345 | | | | | 0.17 [B,C] | 11 [B,C] | 57 FR 60848 |
| 38 Tetrachloroethylene | 127184 | | | | | 0.8 [C] | 8.85 [C] | 57 FR 60848 |
| 39 Toluene | 108883 | | | | | 6,800 [B,Z] | 200,000 [B] | 62 FR 42160 |
| 40 1,2-Trans-Dichloroethylene | 156605 | | | | | 700 [B,Z] | 140,000 [B] | 62 FR 42160 |
| 41 1,1,1-Trichloroethane | 71556 | | | | | [J,Z] | [J] | 62 FR 42160 |
| 42 1,1,2-Trichloroethane | 79005 | | | | | 0.60 [B,C] | 42 [B,C] | 57 FR 60848 |
| 43 Trichloroethylene | 79016 | | | | | 2.7 [C] | 81 [C] | 57 FR 60848 |
| 44 Vinyl Chloride | 75014 | | | | | 2.0 [C] | 525 [C] | 57 FR 60848 |
| 45 2-Chlorophenol | 95578 | | | | | 120 [B,U] | 400 [B,U] | 62 FR 42160 |
| 46 2,4-Dichlorophenol | 120832 | | | | | 93 [B,U] | 790 [B,U] | 57 FR 60848 |
| 47 2,4-Dimethylphenol | 105679 | | | | | 540 [B,U] | 2,300 [B,U] | 62 FR 42160 |
| 48 2-Methyl-4,6-Dinitrophenol | 534521 | | | | | 13.4 | 765 | 57 FR 60848 |
| 49 2,4-Dinitrophenol | 51285 | | | | | 70 [B] | 14,000 [B] | 57 FR 60848 |
| 50 2-Nitrophenol | 88755 | | | | | | | |
| 51 4-Nitrophenol | 100027 | | | | | | | |
| 52 3-Methyl-4-Chlorophenol | 59507 | | | | | [U] | [U] | |

NATIONAL RECOMMENDED WATER QUALITY CRITERIA FOR PRIORITY TOXIC POLLUTANTS—Continued

| Priority pollutant | CAS No. | Freshwater | | Saltwater | | Human health for consumption of: | | FR cite/source |
|---|---|---|---|---|---|---|---|---|
| | | CMC (µg/L) | CCC (µg/L) | CMC (µg/L) | CCC (µg/L) | Water + organism (µg/L) | Organism only (µg/L) | |
| 53 Pentachlorophenol | 87865 | 19 F,K | 15 F,K | 13 bb | 7.9 bb | 0.28 B,C | 8.2 B,C,H | 62 FR 42160 |
| 54 Phenol | 108952 | | | | | 21,000 B,U | | 62 FR 42160 |
| | | | | | | | 4,600,000 B,H,U | 57 FR 60848 |
| 55 2,4,6-Trichlorophenol | 88062 | | | | | 2.1 B,C,U | 6.5 B,C | 62 FR 42160 |
| 56 Acenaphthene | 83329 | | | | | 1,200 B,U | 2,700 B,U | 62 FR 42160 |
| 57 Acenaphthylene | 208968 | | | | | | | |
| 58 Anthracene | 120127 | | | | | 9,600 B | 110,000 B | 62 FR 42160 |
| 59 Benzidine | 92875 | | | | | 0.00012 B,C | 0.00054 B,C | 57 FR 60848 |
| 60 BenzoaAnthracene | 56553 | | | | | 0.0044 B,C | 0.049 B,C | 62 FR 42160 |
| 61 BenzoaPyrene | 50328 | | | | | 0.0044 B,C | 0.049 B,C | 62 FR 42160 |
| 62 BenzobFluoranthene | 205992 | | | | | 0.0044 B,C | 0.049 B,C | 62 FR 42160 |
| 63 BenzoghiPerylene | 191242 | | | | | | | |
| 64 BenzokFluoranthene | 207089 | | | | | 0.0044 B,C | 0.049 B,C | 62 FR 42160 |
| 65 Bis2-ChloroethoxyMethane | 111911 | | | | | | | |
| 66 Bis2-ChloroethylEther | 111444 | | | | | 0.031 B,C | 1.4 B,C | 57 FR 60848 |
| 67 Bis2-ChloroisopropylEther | 39638329 | | | | | 1,400 B | | 62 FR 42160 |
| | | | | | | | 170,000 B | 57 FR 60848 |
| 68 Bis2-EthylhexylPhthalate X | 117817 | | | | | 1.8 B,C | 5.9 B,C | 57 FR 60848 |
| 69 4-Bromophenyl Phenyl Ether | 101553 | | | | | | | |
| 70 Butylbenzyl Phthalate W | 85687 | | | | | 3,000 B | 5,200 B | 62 FR 42160 |
| 71 2-Chloronaphthalene | 91587 | | | | | 1,700 B | 4,300 B | 62 FR 42160 |
| 72 4-Chlorophenyl Phenyl Ether | 7005723 | | | | | | | |
| 73 Chrysene | 218019 | | | | | 0.0044 B,C | 0.049 B,C | 62 FR 42160 |
| 74 Dibenzoa,hAnthracene | 53703 | | | | | 0.0044 B,C | 0.049 B,C | 62 FR 42160 |
| 75 1,2-Dichlorobenzene | 95501 | | | | | 2,700 B,Z | 17,000 B | 62 FR 42160 |
| 76 1,3-Dichlorobenzene | 541731 | | | | | 400 | 2,600 | 62 FR 42160 |
| 77 1,4-Dichlorobenzene | 106467 | | | | | 400 Z | 2,600 | 62 FR 42160 |
| 78 3,3′-Dichlorobenzidine | 91941 | | | | | 0.04 B,C | 0.077 B,C | 57 FR 60848 |
| 79 Diethyl Phthalate W | 84662 | | | | | 23,000 B | 120,000 B | 57 FR 60848 |
| 80 Dimethyl Phthalate W | 131113 | | | | | 313,000 | 2,900,000 | 57 FR 60848 |
| 81 Di-n-Butyl Phthalate W | 84742 | | | | | 2,700 B | 12,000 B | 57 FR 60848 |
| 82 2,4-Dinitrotoluene | 121142 | | | | | 0.11 C | 9.1 C | 57 FR 60848 |
| 83 2,6-Dinitrotoluene | 606202 | | | | | | | |
| 84 Di-n-Octyl Phthalate | 117840 | | | | | | | |
| 85 1,2-Diphenylhydrazine | 122667 | | | | | 0.040 B,C | 0.54 B,C | 57 FR 60848 |
| 86 Fluoranthene | 206440 | | | | | 300 B | 370 B | 62 FR 42160 |
| 87 Fluorene | 86737 | | | | | 1,300 B | 14,000 B | 62 FR 42160 |
| 88 Hexachlorobenzene | 118741 | | | | | 0.00075 B,C | 0.00077 B,C | 62 FR 42160 |
| 89 Hexachlorobutadiene | 87683 | | | | | 0.44 B,C | 50 B,C | 57 FR 60848 |
| 90 Hexachlorocyclopentadiene | 77474 | | | | | 240 B,U,Z | 17,000 B,H,U | 57 FR 60848 |
| 91 Hexachloroethane | 67721 | | | | | 1.9 B,C | 8.9 B,C | 57 FR 60848 |
| 92 Ideno 1,2,3-cdPyrene | 193395 | | | | | 0.0044 B,C | 0.049 B,C | 62 FR 42160 |
| 93 Isophorone | 78591 | | | | | 36 B,C | 2,600 B,C | IRIS 11/01/97 |
| 94 Naphthalene | 91203 | | | | | | | |
| 95 Nitrobenzene | 98953 | | | | | 17 B | 1,900 B,H,U | 57 FR 60848 |
| 96 N-Nitrosodimethylamine | 62759 | | | | | 0.00069 B,C | 8.1 B,C | 57 FR 60848 |
| 97 N-Nitrosodi-n-Propylamine | 621647 | | | | | 0.005 B,C | 1.4 B,C | 62 FR 42160 |
| 98 N-Nitrosodiphenylamine | 86306 | | | | | 5.0 B,C | 16 B,C | 57 FR 60848 |
| 99 Phenanthrene | 85018 | | | | | | | |
| 100 Pyrene | 129000 | | | | | 960 B | 11,000 B | 62 FR 42160 |
| 101 1,2,4-Trichlorobenzene | 120821 | | | | | 260 Z | 940 | IRIS 11/01/96 |
| 102 Aldrin | 309002 | 3.0 G | | 1.3 G | | 0.00013 B,C | 0.00014 B,C | 62 FR 42160 |
| 103 alpha-BHC | 319846 | | | | | 0.0039 B,C | 0.013 B,C | 62 FR 42160 |
| 104 beta-BHC | 319857 | | | | | 0.014 B,C | 0.046 B,C | 62 FR 42160 |
| 105 gamma-BHC (Lindane) | 58899 | 0.95 K | | 0.16 G | | 0.019 C | 0.063 C | 62 FR 42160 |
| 106 delta-BHC | 319868 | | | | | | | |
| 107 Chlordane | 57749 | 2.4 G | 0.0043 G,aa | 0.09 G | 0.004 G,aa | | | 62 FR 42160 |
| | | | | | | 0.0021 B,C | 0.0022 B,C | IRIS 02/07/98 |

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| 108 | 4,4′-DDT | 50293 | 1.1[G] | 0.001[G,aa] | 0.13[G] | 0.001[G,aa] | 0.00059[B,C] | 0.00059[B,C] | 62 FR 42160 |
| 109 | 4,4′-DDE | 72559 | | | | | 0.00059[B,C] | 0.00059[B,C] | 62 FR 42160 |
| 110 | 4,4′-DDD | 72548 | | | | | 0.00083[B,C] | 0.00084[B,C] | 62 FR 42160 |
| 111 | Dieldrin | 60571 | 0.24[K] | 0.056[K,O] | 0.71[G] | 0.0019[G,aa] | 0.00014[B,C] | 0.00014[B,C] | 62 FR 42160 |
| 112 | alpha-Endosulfan | 959988 | 0.22[G,Y] | 0.056[G,Y] | 0.034[G,Y] | 0.0087[G,Y] | 110[B] | 240[B] | 62 FR 42160 |
| 113 | beta-Endosulfan | 33213659 | 0.22[G,Y] | 0.056[G,Y] | 0.034[G,Y] | 0.0087[G,Y] | 110[B] | 240[B] | 62 FR 42160 |
| 114 | Endosulfan Sulfate | 1031078 | | | | | 110[B] | 240[B] | 62 FR 42160 |
| 115 | Endrin | 72208 | 0.086[K] | 0.036[K,O] | 0.037[G] | 0.0023[G,aa] | 0.76[B] | 0.81[B,H] | 62 FR 42160 |
| 116 | Endrin Aldehyde | 7421934 | | | | | 0.76[B] | 0.81[B,H] | 62 FR 42160 |
| 117 | Heptachlor | 76448 | 0.52[G] | 0.0038[G,aa] | 0.053[G] | 0.0036[G,aa] | 0.00021[B,C] | 0.00021[B,C] | 62 FR 42160 |
| 118 | Heptachlor Epoxide | 1024573 | 0.52[G,V] | 0.0038[G,V,aa] | 0.053[G,V] | 0.0036[G,V,aa] | 0.00010[B,C] | 0.00011[B,C] | 62 FR 42160 |
| 119 | Polychlorinated Biphenyls PCBs | | | 0.014[N,aa] | | 0.03[N,aa] | | | 62 FR 42160 |
| | | | | | | | 0.00017[B,C,P] | 0.00017[B,C,P] | 63 FR 16182 |
| 120 | Toxaphene | 8001352 | 0.73 | 0.0002[aa] | 0.21 | 0.0002[aa] | 0.00073[B,C] | 0.00075[B,C] | 62 FR 42160 |

**Footnotes:**

[A] This recommended water quality criterion was derived from data for arsenic (III), but is applied here to total arsenic, which might imply that arsenic (III) and arsenic (V) are equally toxic to aquatic life and that their toxicities are additive. In the arsenic criteria document (EPA 440/5–84–033, January 1985), Species Mean Acute Values are given for both arsenic (III) and arsenic (V) for five species and the ratios of the SMAVs for each species range from 0.6 to 1.7. Chronic values are available for both arsenic (III) and arsenic (V) for one species; for the fathead minnow, the chronic value for arsenic (V) is 0.29 times the chronic value for arsenic (III). No data are known to be available concerning whether the toxicities of the forms of arsenic to aquatic organisms are additive.

[B] This criterion has been revised to reflect The Environmental Protection Agency's q1* or RfD, as contained in the Integrated Risk Information System (IRIS) as of April 8, 1998. The fish tissue bioconcentration factor (BCF) from the 1980 Ambient Water Quality Criteria document was retained in each case.

[C] This criterion is based on carcinogenicity of $10^{-6}$ risk. Alternate risk levels may be obtained by moving the decimal point (e.g., for a risk level of $10^{-5}$, move the decimal point in the recommended criterion one place to the right).

[D] Freshwater and saltwater criteria for metals are expressed in terms of the dissolved metal in the water column. The recommended water quality criteria value was calculated by using the previous 304(a) aquatic life criteria expressed in terms of total recoverable metal, and multiplying it by a conversion factor (CF). The term ''Conversion Factor'' (CF) represents the recommended conversion factor for converting a metal criterion expressed as the total recoverable fraction in the water column to a criterion expressed as the dissolved fraction in the water column. (Conversion Factors for saltwater CCCs are not currently available. Conversion factors derived for saltwater CMCs have been used for both saltwater CMCs and CCCs.) See ''Office of Water Policy and Technical Guidance on Interpretation and Implementation of Aquatic Life Metals Criteria,'' October 1, 1993, by Martha G. Prothro, Acting Assistant Administrator for Water, available from the Water Resource center, USEPA, 401 M St., SW, mall code RC4100, Washington, DC 20460; and 40 CFR§131.36(b)(1). Conversion Factors applied in the table can be found in Appendix A to the Preamble—Conversion Factors for Dissolved Metals.

[E] The freshwater criterion for this metal is expressed as a function of hardness (mg/L) in the water column. The value given here corresponds to a hardness of 100 mg/L. Criteria values for other hardness may be calculated from the following: CMC (dissolved) = exp $\{m_A$ [ln(hardness)]+$b_A\}$ (CF), or CCC (dissolved) = exp $\{m_C$ [ln (hardness)]+$b_C\}$ (CF) and the parameters specified in Appendix B to the Preamble—Parameters for Calculating Freshwater Dissolved Metals Criteria That Are Hardness-Dependent.

[F] Freshwater aquatic life values for pentachlorophenol are expressed as a function of pH, and are calculated as follows: CMD=exp(1.005(pH) − 4.869); CCC=exp(1.005 (pH) − 5.134). Values displayed in table correspond to a pH of 7.8.

[G] This Criterion is based on 304(a) aquatic life criterion issued in 1980, and was issued in one of the following documents: Aldrin/Dieldrin (EPA 440/5–80–019), Chlordane (EPA 440/5–80–027), DDT (EPA 440/5–80–038), Endosulfan (EPA 440/5–80–046), Endrin (EPA 440/5–80–047), Heptachlor (440/5–80–052), Hexachlorocyclohexane (EPA 440/5–80–054), Silver (EPA 440/5–80–071). The Minimum Data Requirements and derivation procedures were different in the 1980 Guidelines than in the 1985 Guidelines. For example, a ''CMC'' derived using the 1980 Guidelines was derived to be used as an instantaneous maximum. If assessment is to be done using an averaging period, the values given should be divided by 2 to obtain a value that is more comparable to a CMC derived using the 1985 Guidelines.

[H] No criterion for protection of human health from consumption of aquatic organisms excluding water was presented in the 1980 criteria document or in the 1986 Quality Criteria for Water. Nevertheless, sufficient information was presented in the 1980 document to allow the calculation of a criterion, even though the results of such a calculation were not shown in the document.

[I] This criterion for asbestos is the Maximum Contaminant Level (MCL) developed under the Safe Drinking Water Act (SDWA).

[J] EPA has not calculated human health criterion for this contaminant. However, permit authorities should address this contaminant in NPDES permit actions using the State's existing narrative criteria for toxics.

[K] This recommended criterion is based on a 304(a) aquatic life criterion that was issued in the 1995 Updates: Water Quality Criteria Documents for the Protection of Aquatic Life in Ambient Water, (EPA–820–B–96–011, September 1996). This value was derived using the GLI Guidelines (60 FR 15393–15399, March 23, 1995; 40 CFR 132 Appendix A); the difference between the 1985 Guidelines and the GLI Guidelines are explained on page iv of the 1995 Updates. None of the decisions concerning the derivation of this criterion were affected by any considerations that are specific to the Great Lakes.

[L] The CMC=1/[(f1/CMC1)=(f2/CMC2)] where f1 and f2 are the fractions of total selenium that are treated as selenite and selenate, respectively, and CMC1 and CMC2 are 185.9 μg/l and 12.83 μg/l, respectively.

[M] EPA is currently reassessing the criteria for arsenic. Upon completion of the reassessment the Agency will publish revised criteria as appropriate.

[N] PCBs are a class of chemicals which include aroclors, 1242, 1254, 1221, 1232, 1248, 1260, and 1016, CAS numbers 53469219, 11097691, 11104282, 11141165, 12672296, 11096825 and 12674112 respectively. The aquatic life criteria apply to this set of PCBs.

[O] The derivation of the CCC for this pollutant did not consider exposure through the diet, which is probably important for aquatic life occupying upper trophic levels.

[P] This criterion applies to total pcbs, i.e., the sum of all congener or all isomer analyses.

[Q] This recommended water quality criterion is expressed as μg free cyanide (as CN)/L.

[R] This value was announced (61 FR 58444–58449, November 14, 1996) as a proposed GLI 303(c) aquatic life criterion. EPA is currently working on this criterion and so this value might change substantially in the near future.

[S] This recommended water quality criterion refers to the inorganic form only.

[T] This recommended water quality criterion is expressed in terms of total recoverable metal in the water column. It is scientifically acceptable to use the conversion factor of 0.922 that was used in the GLI to convert this to a value that is expressed in terms of dissolved metal.

[U] The organoleptic effect criterion is more stringent than the value for priority toxic pollutants.

[V] This value was derived from data for heptachlor and the criteria document provides insufficient data to estimate the relative toxicities of heptachlor and heptachlor epoxide.

[W] Although EPA has not published a final criteria document for this compound it is EPA's understanding that sufficient data exist to allow calculation of aquatic criteria. It is anticipated that industry intends to publish in the peer reviewed literature draft aquatic life criteria generated in accordance with EPA Guidelines. EPA will review such criteria for possible issuance as national WQC.

[X] There is a full set of aquatic life toxicity data that show that DEHP is not toxic to aquatic organisms at or below its solubility limit.

[Y] This value was derived from data for endosulfan and is most appropriately applied to the sum of alpha-endosulfan and beta-endosulfan.

[Z] A more stringent MCL has been issued by EPA. Refer to drinking water regulations (40 CFR 141) or Safe Drinking Water Hotline (1–800–426–4791) for values.

[aa] This CCC is based on the Final Residue Value procedure in the 1985 Guidelines. Since the publication of the Great Lakes Aquatic Life Criteria Guidelines in 1995 (60FR 15393–15399, March 23, 1995), the Agency no longer uses the Final Residue Value procedure for deriving CCCs for new or revised 304(a) aquatic life criteria.

[bb] This water quality criterion is based on 304(a) aquatic life criterion that was derived using the 1985 Guidelines (Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses, PB85–227049, January 1985) and was issued in one of the following criteria documents: Arsenic (EPA 440/5–84–033), Cadmium (EPA 440/5–84–032), Chromium (EPA 440/5–84–029), Copper (EPA 440/5–84–031), Cyanide (EPA 400/5–84–028), Lead (EPA 440/5–84–027), Nickel (EPA 440/5–86–004), Pentachlorophenol (EPA 440/5–86–009), Toxaphene (EPA 440/5–86–006), Zinc (EPA 440/5–87–003).

[cc] When the concentration of dissolved organic carbon is elevated, copper is substantially less toxic and use of Water-Effect Ratios might be appropriate.

[dd] The selenium criteria document (EPA 440/5–87–006), September 1987) provides that if selenium is as toxic to saltwater fishes in the field as it is to freshwater fishes in the field, the status of the fish community should be monitored whenever the concentration of selenium exceeds 5.0 µg/L in salt water because the saltwater CCC does not take into account uptake via the food chain.

[ee] This recommended water quality criterion was derived on page 43 of the mercury criteria document (EPA 440/5–84–026, January 1985). The saltwater CCC of 0.025 µg/L given on page 23 of the criteria document is based on the Final Residue Value procedure in the 1985 Guidelines. Since the publication of the Great Lakes Aquatic Life Criteria Guidelines in 1995 (60FR15393–15399, March 23, 1995), the Agency no longer uses the Final Residue Value procedure for deriving CCCs for new or revised 304(a) aquatic life criteria.

[ff] This recommended water quality criterion was derived in Ambient Water Quality Criteria Saltwater Copper Addendum (Draft, April 14, 1995) and was promulgated in the Interim Final National Toxics Rule (60FR22228–222237, May 4, 1995).

[gg] EPA is actively working on this criterion and so this recommended water quality criterion may change substantially in the near future.

[hh] This recommended water quality criterion was derived from data for inorganic mercury (II), but is applied here to total mercury. If a substantial portion of the mercury in the water column is methylmercury, this criterion will probably be under protective. In addition, even though inorganic mercury is converted to methylmercury and methylmercury bioaccumulates to a great extent, this criterion does not account for uptake via the food chain because sufficient data were not available when the criteria was derived.

## NATIONAL RECOMMENDED WATER QUALITY CRITERIA FOR NON PRIORITY POLLUTANTS

| | Non priority pollutant | CAS No. | Freshwater | | Saltwater | | Human health for consumption of: | | FR cite/source |
|---|---|---|---|---|---|---|---|---|---|
| | | | CMC (µg/L) | CCC (µg/L) | CMC (µg/L) | CCC (µg/L) | Water + organism (µg/L) | Organism only (µg/L) | |
| 1 | Alkalinity | ..... | ..... | 20000 [F] | ..... | ..... | ..... | ..... | Gold Book |
| 2 | Aluminum pH 6.5–9.0 | 7429905 | 750 [G,I] | 87 [G,I,L] | ..... | ..... | ..... | ..... | 53 FR 33178 |
| 3 | Ammonia | 7664417 | FRESHWATER CRITERIA ARE pH DEPENDENT—SEE DOCUMENT | | | | | | EPA822–R–98–008 |
| | | | SALTWATER CRITERIA ARE pH AND TEMPERATURE DEPENDENT [D] | | | | | | EPA440/5–88–004 |
| 4 | Aesthetic Qualities | ..... | NARRATIVE STATEMENT—SEE DOCUMENT | | | | | | Gold Book |
| 5 | Bacteria | ..... | FOR PRIMARY RECREATION AND SHELLFISH USES—SEE DOCUMENT | | | | | | Gold Book |
| 6 | Barium | 7440393 | ..... | ..... | ..... | ..... | 1,000 [A] | ..... | Gold Book |
| 7 | Boron | ..... | NARRATIVE STATEMENT—SEE DOCUMENT | | | | | | Gold Book |
| 8 | Chloride | 16887006 | 860000 [G] | 230000 [G] | ..... | ..... | ..... | ..... | 53 FR 19028 |
| 9 | Chlorine | 7782505 | 19 | 11 | 13 | 7.5 | [C] | ..... | Gold Book |
| 10 | Chlorophenoxy Herbicide 2,4,5,-TP | 93721 | ..... | ..... | ..... | ..... | 10 [A] | ..... | Gold Book |
| 11 | Chlorophenoxy Herbicide 2,4-D | 94757 | ..... | ..... | ..... | ..... | 100 [A,C] | ..... | Gold Book |
| 12 | Chloropyrifos | 2921882 | 0.083 [G] | 0.041 [G] | 0.011 [G] | 0.0056 [G] | ..... | ..... | Gold Book |
| 13 | Color | ..... | NARRATIVE STATEMENT—SEE DOCUMENT [F] | | | | | | Gold Book |
| 14 | Demeton | 8065483 | ..... | 0.1 [F,H] | ..... | 0.1 [F,H] | ..... | ..... | Gold Book |
| 15 | Ether, Bis Chloromethyl | 542881 | ..... | ..... | ..... | ..... | 0.00013 [E] | 0.00078 [E] | IRIS 01/01/91 |
| 16 | Gases, Total Dissolved | ..... | NARRATIVE STATEMENT—SEE DOCUMENT [F] | | | | | | Gold Book |
| 17 | Guthion | 86500 | ..... | 0.01 [F,H] | ..... | 0.01 [F,H] | ..... | ..... | Gold Book |
| 18 | Hardness | ..... | NARRATIVE STATEMENT—SEE DOCUMENT | | | | | | Gold Book |
| 19 | Hexachlorocyclo-hexane-Technical | 319868 | ..... | ..... | ..... | ..... | 0.0123 | 0.0414 | Gold Book |
| 20 | Iron | 7439896 | ..... | 1000 [F] | ..... | ..... | 300 [A] | ..... | Gold Book |
| 21 | Malathion | 121755 | ..... | 0.1 [F,H] | ..... | ..... | ..... | ..... | Gold Book |
| 22 | Manganese | 7439965 | ..... | ..... | ..... | ..... | 50 [A] | 100 [A] | Gold Book |
| 23 | Methoxychlor | 72435 | ..... | 0.03 [F,H] | ..... | 0.03 [F,H] | 100 [A,C] | ..... | Gold Book |
| 24 | Mirex | 2385855 | ..... | 0.001 [F,H] | ..... | 0.001 [F,H] | ..... | ..... | Gold Book |
| 25 | Nitrates | 14797558 | ..... | ..... | ..... | ..... | 10,000 [A] | ..... | Gold Book |
| 26 | Nitrosamines | ..... | ..... | ..... | ..... | ..... | 0.0008 | 1.24 | |

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| 27 | Dinitrophenols | 25550587 | | | | | 70 | 14,000 | Gold Book |
| 28 | Nitrosodibutylamine,N | 924163 | | | | | 0.0064 [A] | 0.587 [A] | Gold Book |
| 29 | Nitrosodiethylamine,N | 55185 | | | | | 0.0008 [A] | 1.24 [A] | Gold Book |
| 30 | Nitrosopyrrolidine,N | 930552 | | | | | 0.016 | 91.9 | Gold Book |
| 31 | Oil and Grease | | NARRATIVE STATEMENT—SEE DOCUMENT [F] | | | | | | Gold Book |
| 32 | Oxygen, Dissolved | 7782447 | WARMWATER AND COLDWATER MATRIX—SEE DOCUMENT [O] | | | | | | Gold Book |
| 33 | Parathion | 56382 | 0.065 [J] | 0.013 [J] | | | | | Gold Book |
| 34 | Pentachlorobenzene | 608935 | | | | | 3.5 [E] | 4.1 [E] | IRIS 03/01/88 |
| 35 | pH | | | 6.5–9 [F] | | 6.5–8.5 [F,K] | 5–9 | | Gold Book |
| 36 | Phosphorus Elemental | 7723140 | | | | 0.1 [F,K] | | | Gold Book |
| 37 | Phosphate Phosphorus | | NARRATIVE STATEMENT—SEE DOCUMENT | | | | | | Gold Book |
| 38 | Solids Dissolved and Salinity | | | | | | 250,000 [A] | | Gold Book |
| 39 | Solids Suspended and Turbidity | | NARRATIVE STATEMENT—SEE DOCUMENT [F] | | | | | | Gold Book |
| 40 | Sulfide-Hydrogen Sulfide | 7783064 | | 2.0 [F,H] | | 2.0 [F,H] | | | Gold Book |
| 41 | Tainting Substances | | NARRATIVE STATEMENT—SEE DOCUMENT | | | | | | Gold Book |
| 42 | Temperature | | SPECIES DEPENDENT CRITERIA—SEE DOCUMENT [M] | | | | | | Gold Book |
| 43 | Tetrachlorobenzene,1,2,4,5- | 95943 | | | | | 2.3 [E] | 2.9 [E] | IRIS03/01/91 |
| 44 | Tributyltin TBT | | 0.46 [N] | 0.063 [N] | 0.37 [N] | 0.010 [N] | | | 62 FR 42554 |
| 45 | Trichlorophenol,2,4,5- | 95954 | | | | | 2,600 [B,E] | 9,800 [B,E] | IRIS 03/01/88 |

**Footnotes:**

[A] This human health criterion is the same as originally published in the Red Book which predates the 1980 methodology and did not utilize the fish ingestion BCF approach. This same criterion value is now published in the Gold Book

[B] The organoleptic effect criterion is more stringent than the value presented in the non priority pollutants table.

[C] A more stringent Maximum Contaminant Level (MCL) has been issued by EPA under the Safe Drinking Water Act. Refer to drinking water regulations 40 CFR 141 or Safe Drinking Water Hotline (1–800–426–4791) for values.

[D] According to the procedures described in the Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses, except possibly where a very sensitive species is important at a site, freshwater aquatic life should be protected if both conditions specified in Appendix C to the Preamble—Calculation of Freshwater Ammonia Criterion are satisfied.

[E] This criterion has been revised to reflect The Environmental Protection Agency's q1* or RfD, as contained in the Integrated Risk Information System (IRIS) as of April 8, 1998. The fish tissue bioconcentration factor (BCF) used to derive the original criterion was retained in each case.

[F] The derivation of this value is presented in the Red Book (EPA 440/9–76–023, July, 1976).

[G] This value is based on a 304(a) aquatic life criterion that was derived using the 1985 Guidelines (Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses, PB85–227049, January 1985) and was issued in one of the following criteria documents: Aluminum (EPA 440/5–86–008); Chloride (EPA 440/5–88–001); Chloropyrifos (EPA 440/5–86–005).

[H] This CCC is based on the Final Residue Value procedure in the 1985 Guidelines. Since the publication of the Great Lakes Aquatic Life Criteria Guidelines in 1995 (60 FR 15393–15399, March 23, 1995), the Agency no longer uses the Final Residue Value procedure for deriving CCCs for new or revised 304(a) aquatic life criteria.

[I] This value is expressed in terms of total recoverable metal in the water column.

[J] This value is based on a 304(a) aquatic life criterion that was issued in the 1995 Updates: Water Quality Criteria Documents for the Protection of Aquatic Life in Ambient Water (EPA–820–B–96–001). This value was derived using the GLI Guidelines (60 FR 15393–15399, March 23, 1995; 40 CFR 132 Appendix A); the differences between the 1985 Guidelines and the GLI Guidelines are explained on page iv of the 1995 Updates. No decision concerning this criterion was affected by any considerations that are specific to the Great Lakes.

[K] According to page 181 of the Red Book: For open ocean waters where the depth is substantially greater than the euphotic zone, the pH should not be changed more than 0.2 units from the naturally occurring variation or any case outside the range of 6.5 to 8.5. For shallow, highly productive coastal and estuarine areas where naturally occurring pH variations approach the lethal limits of some species, changes in pH should be avoided but in any case should not exceed the limits established for fresh water, i.e., 6.5–9.0.

[L] There are three major reasons why the use of Water-Effect Ratios might be appropriate. (1) The value of 87 μg/l is based on a toxicity test with the striped bass in water with pH=6.5–6.6 and hardness <10 mg/L. Data in "Aluminum Water-Effect Ratio for the 3M Plant Effluent Discharge, Middleway, West Virginia" (May 1994) indicate that aluminum is substantially less toxic at higher pH and hardness, but the effects of pH and hardness are not well quantified at this time. (2) In tests with the brook trout at low pH and hardness, effects increased with increasing concentrations of total aluminum even though the concentration of dissolved aluminum was constant, indicating that total recoverable is a more appropriate measurement than dissolved, at least when particulate aluminum is primarily aluminum hydroxide particles. In surface waters, however, the total recoverable procedure might measure aluminum associated with clay particles, which might be less toxic than aluminum associated with aluminum hydroxide. (3) EPA is aware of field data indicating that many high quality waters in the U.S. contain more than 87 μg aluminum/L, when either total recoverable or dissolved is measured.

[M] U.S. EPA. 1973. Water Quality Criteria 1972. EPA–R3–73–033. National Technical Information Service, Springfield, VA.; U.S. EPA. 1977. Temperature Criteria for Freshwater Fish: Protocol and Procedures. EPA–600/3–77–061. National Technical Information Service, Springfield, VA.

[N] This value was announced (62 FR 42554, August 7, 1997) as a proposed 304(a) aquatic life criterion. Although EPA has not responded to public comment, EPA is publishing this as a 304(a) criterion in today's notice as guidance for States and Tribes to consider when adopting water quality criteria.

[O] U.S. EPA. 1986. Ambient Water Quality Criteria for Dissolved Oxygen. EPA 440/5–86–003. National Technical Information Service, Springfield, VA.

NATIONAL RECOMMENDED WATER QUALITY CRITERIA FOR ORGANOLEPTIC EFFECTS

| | Pollutant | CAS No. | Organoleptic effect criteria (µg/L) | FR cite/source |
|---|---|---|---|---|
| 1 | Acenaphthene | 208968 | 20 | Gold Book |
| 2 | Monochlorobenzene | 108907 | 20 | Gold Book |
| 3 | 3-Chlorophenol | ..... | 0.1 | Gold Book |
| 4 | 4-Chlorophenol | 106489 | 0.1 | Gold Book |
| 5 | 2,3-Dichlorophenol | ..... | 0.04 | Gold Book |
| 6 | 2,5-Dichlorophenol | ..... | 0.5 | Gold Book |
| 7 | 2,6-Dichlorophenol | ..... | 0.2 | Gold Book |
| 8 | 3,4-Dichlorophenol | ..... | 0.3 | Gold Book |
| 9 | 2,4,5-Trichlorophenol | 95954 | 1 | Gold Book |
| 10 | 2,4,6-Trichlorophenol | 88062 | 2 | Gold Book |
| 11 | 2,3,4,6-Tetrachlorophenol | ..... | 1 | Gold Book |
| 12 | 2-Methyl-4-Chlorophenol | ..... | 1800 | Gold Book |
| 13 | 3-Methyl-4-Chlorophenol | 59507 | 3000 | Gold Book |
| 14 | 3-Methyl-6-Chlorophenol | ..... | 20 | Gold Book |
| 15 | 2-Chlorophenol | 95578 | 0.1 | Gold Book |
| 16 | Copper | 744058 | 1000 | Gold Book |
| 17 | 2,4-Dichlorophenol | 120832 | 0.3 | Gold Book |
| 18 | 2,4-Dimethylphenol | 105679 | 400 | Gold Book |
| 19 | Hexachlorocyclopentadiene | 77474 | 1 | Gold Book |
| 20 | Nitrobenzene | 98953 | 30 | Gold Book |
| 21 | Pentachlorophenol | 87865 | 30 | Gold Book |
| 22 | Phenol | 108952 | 300 | Gold Book |
| 23 | Zinc | 7440666 | 5000 | 45 FR 79341 |

**General Notes:**

1. These criteria are based on organoleptic (taste and odor) effects. Because of variations in chemical nomenclature systems, this listing of pollutants does not duplicate the listing in Appendix A of 40 CFR Part 423. Also listed are the Chemical Abstracts Service (CAS) registry numbers, which provide a unique identification for each chemical.

## National Recommended Water Quality Criteria

### Additional Notes

#### 1. Criteria Maximum Concentration and Criterion Continuous Concentration

The Criteria Maximum Concentration (CMC) is an estimate of the highest concentration of a material in surface water to which an aquatic community can be exposed briefly without resulting in an unacceptable effect. The Criterion Continuous Concentration (CCC) is an estimate of the highest concentration of a material in surface water to which an aquatic community can be exposed indefinitely without resulting in an unacceptable effect. The CMC and CCC are just two of the six parts of a aquatic life criterion; the other four parts are the acute averaging period, chronic averaging period, acute frequency of allowed exceedence, and chronic frequency of allowed exceedence. Because 304(a) aquatic life criteria are national guidance, they are intended to be protective of the vast majority of the aquatic communities in the United States.

#### 2. Criteria Recommendations for Priority Pollutants, Non Priority Pollutants and Organoleptic Effects

This compilation lists all priority toxic pollutants and some non priority toxic pollutants, and both human health effect and organoleptic effect criteria issued pursuant to CWA § 304(a). Blank spaces indicate that EPA has no CWA § 304(a) criteria recommendations. For a number of non-priority toxic pollutants not listed, CWA § 304(a) ''water + organism'' human health criteria are not available, but, EPA has published MCLs under the SDWA that may be used in establishing water quality standards to protect water supply designated uses. Because of variations in chemical nomenclature systems, this listing of toxic pollutants does not duplicate the listing in Appendix A of 40 CFR Part 423. Also listed are the Chemical Abstracts Service CAS registry numbers, which provide a unique identification for each chemical.

#### 3. Human Health Risk

The human health criteria for the priority and non priority pollutants are based on carcinogenicity of $10^{-6}$ risk. Alternate risk levels may be obtained by moving the decimal point (e.g., for a risk level of 10–5, move the decimal point in the recommended criterion one place to the right).

#### 4. Water Quality Criteria Published Pursuant to Section 304(a) or Section 303(c) of the CWA

Many of the values in the compilation were published in the proposed California Toxics Rule (CTR, 62 FR 42160). Although such values were published pursuant to Section 303(c) of the CWA, they represent the Agency's most recent calculation of water quality criteria and thus are published today as the Agency's 304(a) criteria. Water quality criteria published in the proposed CTR may be revised when EPA takes final action on the CTR.

#### 5. Calculation of Dissolved Metals Criteria

The 304(a) criteria for metals, shown as dissolved metals, are calculated in one of two ways. For freshwater metals criteria that are hardness-dependent, the dissolved metal criteria were calculated using a hardness of 100 mg/l as $CaCO_3$ for illustrative purposes only. Saltwater and freshwater metals' criteria that are not hardness-dependent are calculated by multiplying the total recoverable criteria before rounding by the appropriate conversion factors. The final dissolved metals' criteria in the table are rounded to two significant figures. Information regarding the calculation of hardness dependent conversion factors are included in the footnotes.

#### 6. Correction of Chemical Abstract Services Number

The Chemical Abstract Services number (CAS) for Bis(2-Chloroisopropyl) Ether, has been corrected in the table. The correct CAS number for this chemical is 39638–32–9. Previous publications listed 108–60–1 as the CAS number for this chemical.

### 7. Maximum Contaminant Levels

The compilation includes footnotes for pollutants with Maximum Contaminant Levels (MCLs) more stringent than the recommended water quality criteria in the compilation. MCLs for these pollutants are not included in the compilation, but can be found in the appropriate drinking water regulations (40 CFR 141.11–16 and 141.60–63), or can be accessed through the Safe Drinking Water Hotline (800–426–4791) or the Internet (http://www.epa.gov/ost/tools/dwstds-s.html).

### 8. Organoleptic Effects

The compilation contains 304(a) criteria for pollutants with toxicity-based criteria as well as non-toxicity based criteria. The basis for the non-toxicity based criteria are organoleptic effects (e.g., taste and odor) which would make water and edible aquatic life unpalatable but not toxic to humans. The table includes criteria for organoleptic effects for 23 pollutants. Pollutants with organoleptic effect criteria more stringent than the criteria based on toxicity (e.g., included in both the priority and non-priority pollutant tables) are footnoted as such.

### 9. Category Criteria

In the 1980 criteria documents, certain recommended water quality criteria were published for categories of pollutants rather than for individual pollutants within that category. Subsequently, in a series of separate actions, the Agency derived criteria for specific pollutants within a category. Therefore, in this compilation EPA is replacing criteria representing categories with individual pollutant criteria (e.g., 1,3-dichlorobenzene, 1,4-dichlorobenzene and 1,2-dichlorobenzene).

### 10. Specific Chemical Calculations

*A. Selenium*

(1) Human Health

In the 1980 Selenium document, a criterion for the protection of human health from consumption of water and organisms was calculated based on a BCF of 6.0 L/kg and a maximum water-related contribution of 35 μg Se/day. Subsequently, the EPA Office of Health and Environmental Assessment issued an errata notice (February 23, 1982), revising the BCF for selenium to 4.8 L/kg. In 1988, EPA issued an addendum (ECAO–CIN–668) revising the human health criteria for selenium. Later in the final National Toxic Rule (NTR, 57 FR 60848), EPA withdrew previously published selenium human health criteria, pending Agency review of new epidemiological data.

This compilation includes human health criteria for selenium, calculated using a BCF of 4.8 L/kg along with the current IRIS RfD of 0.005 mg/kg/day. EPA included these recommended water quality criteria in the compilation because the data necessary for calculating a criteria in accordance with EPA's 1980 human health methodology are available.

(2) Aquatic Life

This compilation contains aquatic life criteria for selenium that are the same as those published in the proposed CTR. In the CTR, EPA proposed an acute criterion for selenium based on the criterion proposed for selenium in the Water Quality Guidance for the Great Lakes System (61 FR 58444). The GLI and CTR proposals take into account data showing that selenium's two most prevalent oxidation states, selenite and selenate, present differing potentials for aquatic toxicity, as well as new data indicating that various forms of selenium are additive. The new approach produces a different selenium acute criterion concentration, or CMC, depending upon the relative proportions of selenite, selenate, and other forms of selenium that are present.

EPA notes it is currently undertaking a reassessment of selenium, and expects the 304(a) criteria for selenium will be revised based on the final reassessment (63 FR 26186). However, until such time as revised water quality criteria for selenium are published by the Agency, the recommended water quality criteria in this compilation are EPA's current 304(a) criteria.

*B. 1,2,4-Trichlorobenzene and Zinc*

Human health criteria for 1,2,4-trichlorobenzene and zinc have not been previously published. Sufficient information is now available for calculating water quality criteria for the protection of human health from the consumption of aquatic organisms and the consumption of aquatic organisms and water for both these compounds. Therefore, EPA is publishing criteria for these pollutants in this compilation.

*C. Chromium (III)*

The recommended aquatic life water quality criteria for chromium (III) included in the compilation are based on the values presented in the document titled: 1995 Updates: Water Quality Criteria Documents for the Protection of Aquatic Life in Ambient Water, however, this document contains criteria based on the total recoverable fraction. The chromium (III) criteria in this compilation were calculated by applying the conversion factors used in the Final Water Quality Guidance for the Great Lakes System (60 FR 15366) to the 1995 Update document values.

*D. Ether, Bis (Chloromethyl), Pentachlorobenzene, Tetrachlorobenzene 1,2,4,5- Trichlorophenol*

Human health criteria for these pollutants were last published in EPA's Quality Criteria for Water 1986 or ''Gold Book''. Some of these criteria were calculated using Acceptable Daily Intake (ADIs) rather than RfDs. Updated q1*s and RfDs are now available in IRIS for ether, bis (chloromethyl), pentachlorobenzene, tetrachlorobenzene 1,2,4,5-, and trichlorophenol, and were used to revise the water quality criteria for these compounds. The recommended water quality criteria for ether, bis (chloromethyl) were revised using an updated q1*, while criteria for pentachlorobenzene, and tetrachlorobenzene 1,2,4,5-, and trichlorophenol were derived using an updated RfD value.

*E. PCBs*

In this compilation EPA is publishing aquatic life and human health criteria based on total PCBs rather than individual arochlors. These criteria replace the previous criteria for the seven individual arochlors. Thus, there are criteria for a total of 102 of the 126 priority pollutants.

Dated: October 26, 1998.

**J. Charles Fox,**

*Assistant Administrator, Office of Water.*

### Appendix A—Conversion Factors for Dissolved Metals

| Metal | Conversion factor freshwater CMC | Conversion factor freshwater CCC | Conversion factor saltwater CMC | Conversion factor saltwater CCC |
|---|---|---|---|---|
| Arsenic | 1.000 | 1.000 | 1.000 | 1.000 |
| Cadmium | 1.138672-[(ln hardness)(0.041838)] | 1.101672-[(ln hardness)(0.041838)] | 0.994 | 0.994 |
| Chromium III | 0.316 | 0.860 | | |
| Chromium VI | 0.982 | 0.962 | 0.993 | 0.993 |
| Copper | 0.960 | 0.960 | 0.83 | 0.83 |
| Lead | 1.46203-[(ln hardness)(0.145712)] | 1.46203-[(ln hardness)(0.145712)] | 0.951 | 0.951 |
| Mercury | 0.85 | 0.85 | 0.85 | 0.85 |
| Nickel | 0.998 | 0.997 | 0.990 | 0.990 |
| Selenium | | | 0.998 | 0.998 |
| Silver | 0.85 | | 0.85 | |
| Zinc | 0.978 | 0.986 | 0.946 | 0.946 |

### Appendix B—Parameters for Calculating Freshwater Dissolved Metals Criteria That Are Hardness-Dependent

| Chemical | $m_A$ | $b_A$ | $m_C$ | $b_C$ | Freshwater conversion factors (CF) | |
|---|---|---|---|---|---|---|
| | | | | | Acute | Chronic |
| Cadmium | 1.128 | −3.6867 | 0.7852 | −2.715 | 1.136672-[ln (hardness)(0.041838)] | 1.101672-[ln (hardness)(0.041838)] |
| Chromium III | 0.8190 | 3.7256 | 0.8190 | 0.6848 | 0.316 | 0.860 |
| Copper | 0.9422 | −1.700 | 0.8545 | −1.702 | 0.960 | 0.960 |
| Lead | 1.273 | −1.460 | 1.273 | −4.705 | 1.46203-[ln (hardness)(0.145712)] | 1.46203-[ln (hardness)(0.145712)] |
| Nickel | 0.8460 | 2.255 | 0.8460 | 0.0584 | 0.998 | 0.997 |
| Silver | 1.72 | −6.52 | | | 0.85 | |
| Zinc | 0.8473 | 0.884 | 0.8473 | 0.884 | 0.978 | 0.986 |

### Appendix C—Calculation of Freshwater Ammonia Criterion

1. The one-hour average concentration of total ammonia nitrogen (in mg N/L) does not exceed, more than once every three years on the average, the CMC calculated using the following equation:

$$CMC = \frac{0.275}{1+10^{7.204-pH}} + \frac{39.0}{1+10^{pH-7.204}}$$

In situations where salmonids do not occur, the CMC may be calculated using the following equation:

$$CMC = \frac{0.411}{1+10^{7.204-pH}} + \frac{58.4}{1+10^{pH-7.204}}$$

2. The thirty-day average concentration of total ammonia nitrogen (in mg N/L) does not exceed, more than once every three years on the average, the CCC calculated using the following equation:

$$CCC = \frac{0.0858}{1+10^{7.688-pH}} + \frac{3.70}{1+10^{pH-7.688}}$$

**Editorial Note:** FR Doc. 98-30272 was originally published as Part IV (63 FR 67548-67558) in the issue of Monday, December 7, 1998. At the request of the agency, due to incorrect footnote identifiers in the tables, the corrected document is being republished in its entirety.

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December 10, 1998

# Part V

# Department of Transportation

## Federal Transit Administration

**49 CFR Part 639**
**Capital Leases; Final Rule**

**DEPARTMENT OF TRANSPORTATION**

**Federal Transit Administration**

**49 CFR Part 639**

**[Docket No. FTA–98–4407]**

**RIN 2132–AA65**

## Capital Leases

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

**ACTION:** Final rule

**SUMMARY:** This final rule implements the Transportation Equity Act for the 21st Century, Public Law 105–178 (TEA–21), which allows all Federal Transit Administration (FTA) capital grant funds to be used for leasing facilities and equipment if a lease is more cost effective than purchase or construction. Before the enactment of TEA–21, recipients were permitted to lease assets only with funds received under 49 U.S.C. 5307. This rule amends FTA's leasing regulation to extend this option to all FTA funds, to the extent a recipient meets all other regulatory requirements.

**EFFECTIVE DATE:** This rule is effective January 11, 1999.

**SUPPLEMENTARY INFORMATION:**

### A. Background

Under 49 U.S.C. 5307, Federal funds are provided to urbanized areas on the basis of a statutory formula. These funds are available for the acquisition or construction of mass transportation facilities and equipment (''capital assistance grants''), as well as, beginning in fiscal year 1999, for the payment of a portion of the net operating cost of mass transportation facilities and equipment (''operating assistance grants'') in areas of less than 200,000 in population.

Historically, few Federal Transit Administration (FTA) grantees leased capital assets, because under Office of Management and Budget cost principles (OMB Circular A–87, ''Cost Principles for Grants to State and Local Governments'') a significant portion of lease costs (as much as forty percent) representing imputed interest was ineligible for reimbursement.

In 1987, section 308 of the Surface Transportation and Uniform Relocation Assistance Act, Public Law 100–17 (STURAA), expressly authorized the use of section 5307 capital assistance funds to acquire facilities and equipment by lease where leasing is more cost effective than purchase or construction. As explained in the accompanying Senate Report, section 308

> Permits grantees to use [section 5307] grant funds to lease major capital cost items such as computers, maintenance of way and other heavy equipment, maintenance of effort rail equipment, radio equipment, bus garages, property or structures for park and ride, and other buildings or facilities used for mass transit purposes. The Committee recognizes that it is often more cost effective for grantees to lease rather than purchase major capital items. Leasing arrangements can also provide transit authorities with flexibility that is needed, for example, to maintain their communications and computing equipment or to adapt buildings and other facilities to changing needs. By including this section, the Committee intends to help grantees better manage their operations and conduct long-term and short-term planning. S. Rep. No. 3, 100th Cong., 1st Sess. 6 (1987).

On October 15, 1991, FTA issued 49 CFR Part 639 (56 F.R. 51786), which implements section 308. The rule sets out the factors for determining whether leasing is more cost effective than purchase or construction of such items. In accordance with section 308, sections 639.1, 639.3, 639.5, and 639.13(a) of the regulation limit eligibility for the award of capital leasing funds to requests for assistance under section 5307.

*B. Section 3003 of TEA–21*

Section 3003 of the Transportation Equity Act for the 21st Century, Public Law 105–178 (TEA–21), amends 49 U.S.C. 5302(a)(1) by adding, *inter alia,* the following subsection to the definition of ''capital project'':

> (F) Leasing equipment or a facility for use in mass transportation, subject to regulations that the Secretary prescribes limiting the leasing arrangements to those that are more cost effective than purchase or construction.

Section 3003 therefore makes all leasing arrangements for mass transit projects that meet FTA's cost-effectiveness criteria eligible for capital funding. Moreover, section 3003 does not limit eligibility for capital lease funding to requests for assistance under section 5307, but allows all categories of FTA funds to be used for leasing purposes, to the extent that they meet the regulatory requirements. FTA is thus amending 49 CFR Part 639 to reflect this expansion of its capital leasing authority.

*C. FTA's Final Action*

In keeping with section 3003 of TEA–21, FTA is amending 49 CFR 639.1, 639.3, 639.5 and 639.13(a) to recognize that all categories of FTA funds, and not merely section 5307 block grant formula funds, may be used to acquire equipment and facilities under leases that meet FTA's cost-effectiveness criteria.

### Regulatory Impacts

*A. Regulatory Analyses and Notices*

FTA has determined that this action is not significant under Executive Order 12866 or the Department of Transportation regulatory policies and procedures. Because this rule merely expands the categories of FTA grant funds eligible for capital leasing and does not make substantive changes in evaluation criteria, it is anticipated that the impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required. There are not sufficient Federalism implications to warrant the preparation of a Federalism Assessment under Executive Order 12612.

*B. Regulatory Flexibility Act*

In accordance with 5 U.S.C. 603(a), as added by the Regulatory Flexibility Act, Pub. L. 96–354, FTA certifies that this rule will not have a significant impact on a substantial number of small entities within the meaning of the Act, because it gives section 5311 recipients an option not currently extended to them, which is to lease mass transit equipment or facilities when it is more cost effective than purchasing them.

*C. Paperwork Reduction Act*

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995.

### List of Subjects in 49 CFR Part 639

Government contracts, Grant programs—transportation, Mass transportation. Accordingly, for the reasons described in the Preamble of this document, FTA is proposing to amend Title 49, Code of Federal Regulations, Part 639 as follows:

## PART 639—[AMENDED]

1. The authority citation of Part 639 is revised to read as follows:

**Authority:** 49 U.S.C. 5302; 49 CFR 1.51.

2. Section 639.1 is revised to read as follows:

#### § 639.1 General overview of this part.

This part contains the requirements to qualify for capital assistance when leasing facilities or equipment under the Federal transit laws. This part is set out in four subparts, with subpart A containing general information on scope and definitions. Subpart B contains the principal requirements of this part, including eligibility requirements, the self-certification system used, and identification of the various forms of leases and grants that are eligible under

the program. Subpart B also contains a section on other Federal requirements that may apply. Subpart C includes the actual calculations that each recipient should undertake before certifying that a lease is cost-effective. Finally, subpart D contains requirements on early lease termination and project management in general.

3. Section 639.3 is revised to read as follows:

**§ 639.3 Purpose of this part.**

This rule implements section 3003 of the Transportation Equity Act for the 21st Century (Pub. L. 105–178). Section 3003 amended section 5302 of Chapter 53 of Title 49 of the United States Code to allow a recipient to use capital funds to finance the leasing of facilities and equipment on the condition that the leasing arrangements are more cost effective than purchase or construction.

4. Section 639.5 is revised to read as follows:

**§ 639.5 Scope of this part.**

This part applies to all requests for capital assistance under Chapter 53 of Title 49 of the United States Code where the proposed method of obtaining a capital asset is by lease rather than purchase or construction.

5. Section 639.13(a) is revised to read as follows:

**§ 639.13 Eligible types of leases.**

(a) General. Any leasing arrangement, the terms of which provide for the recipient's use of a capital asset, potentially is eligible as a capital project under Chapter 53 of Title 49 of the United States Code, regardless of the classification of the leasing arrangement for tax purposes.

* * * * *

Issued on: December 7, 1998.

**Gordon J. Linton,**

*Administrator.*

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# Part VI

# Department of Labor

**Pension and Welfare Benefits Administration**

**29 CFR Part 2520**

**Proposed Revisions to Certain Regulations Regarding Annual Reporting and Disclosure Requirements; Proposed Rule**

**DEPARTMENT OF LABOR**

**Pension and Welfare Benefits Administration**

**29 CFR Part 2520**

**RIN 1210–AA52**

## Proposed Revisions to Certain Regulations Regarding Annual Reporting and Disclosure Requirements

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Notice of proposed rulemaking

**SUMMARY:** This document contains proposed amendments to Department of Labor (Department) regulations relating to the annual reporting and disclosure requirements under part 1 of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act). In part, the amendments contained in this document are necessary to conform the regulations to the previously published revisions to the annual return/report forms (Form 5500 Series) filed by administrators of employee pension and welfare benefit plans under part 1 of Title I of ERISA. The regulatory amendments, in conjunction with the revisions to the Form 5500 Series, are intended to reduce the annual reporting burdens on employee benefit plans while ensuring that the Department has access to the information it needs to carry out its administrative and enforcement responsibilities under ERISA and that participants and beneficiaries have access to the information they need to protect their rights and benefits under ERISA. Other proposed amendments contained in this document would modify the reporting requirements for certain group insurance arrangements. The remaining amendments are technical in nature and are designed to either simplify or clarify the existing reporting regulations. If adopted, the amendments will affect the financial and other information required to be reported and disclosed by employee benefit plans filing Form 5500 Series reports under part 1 of Title I of ERISA.

**DATES:** Written comments on the proposed regulations must be received by the Department on or before February 8, 1999.

**ADDRESSES:** Interested persons are invited to submit written comments (preferably three copies) concerning the proposals herein to: Office of Regulations and Interpretations, Room N–5669, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210, ATTENTION: Proposed Amendments to Annual Reporting Regulations. All written comments should clearly reference the relevant proposed amendment(s). All submissions will be open to public inspection in the Public Disclosure Room, Pension and Welfare Benefits Administration, Room N–5638, 200 Constitution Avenue, N.W., Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:** Eric A. Raps, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, (202) 219–8515 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### A. Background

Under Titles I and IV of ERISA, and the Internal Revenue Code, as amended, pension and other employee benefit plans are generally required to file annual return/reports concerning, among other things, the financial condition and operations of the plan. These annual reporting requirements can be satisfied by filing the Form 5500 Series in accordance with its instructions and related regulations. The Form 5500 Series is the primary source of information concerning the operation, funding, assets and investments of pension and other employee benefit plans. In addition to being an important disclosure document for plan participants and beneficiaries, the Form 5500 Series is a compliance and research tool for the Department, and a source of information and data for use by other federal agencies, Congress, and the private sector in assessing employee benefit, tax, and economic trends and policies.

During the last two years, the Department's Pension and Welfare Benefits Administration (PWBA), the Internal Revenue Service and the Pension Benefit Guaranty Corporation (the Agencies) have conducted an extensive review of the Form 5500 Series in an effort to streamline the information required to be reported and the methods by which the information is filed and processed. A Notice of Proposed Forms Revisions soliciting public comments on proposed revision of the Form 5500 Series was published in the **Federal Register** on September 3, 1997 (62 FR 46556). The Agencies' proposal replaced the Form 5500, Form 5500–C and Form 5500–R with one Form 5500 intended to streamline the report and the methods by which it is filed. Concurrent with the development of the new forms, the Agencies are also developing a new computerized system to process the Form 5500 (the ERISA Filing Acceptance System or ''EFAST''). The new computerized processing system is designed to simplify and expedite the receipt and processing of the new Form 5500 by relying on computer scannable forms and electronic filing technologies. The overall proposal is intended to streamline and improve the Form 5500 Series and lower the administrative burdens and costs incurred by the more than 800,000 employee benefit plans that file the Form 5500 Series each year. A public hearing on the proposed forms revisions was held on November 17, 1997, and written comments on the proposal were received until the public record was closed on December 3, 1997. The Agencies received over 60 public comments and received oral testimony from employer groups, employee representatives, financial institutions, service organizations and others on the form streamlining proposal. On February 4, 1998, the Department announced that, in response to public comments, the implementation of the new Form 5500 would be delayed until the 1999 plan year.

Public reaction to the September 3, 1997 Notice of Proposed Forms Revisions was generally supportive of the new streamlined structure of the Form 5500 Series. The Agencies, accordingly, decided to adopt the new reporting structure largely as proposed. In response to public comments, the Agencies made various adjustments to the proposed forms and instructions where consistent with the purposes of the Form 5500 and the objectives of the streamlining project. A revised Form 5500 was submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act and a Notice was published in the **Federal Register** on June 24, 1998 (63 FR 34493) which provided a 30-day opportunity to submit comments to OMB on the new Form 5500 submission. The new Form 5500 was also made available on PWBA's internet site (http://www.dol.gov/dol/pwba) as part of the Agencies' commitment to make information about the new forms available to plans and their service providers at the earliest opportunity. Following its Paperwork Reduction Act review, OMB gave conditional Paperwork Reduction Act approval to the new Form 5500 on August 26, 1998. The approval is conditioned on the Agencies soliciting public comments on the computer scannable version of the new form after its development and making minor technical adjustments to

the form.[1] After the computer scannable versions of the new forms and electronic filing options are developed as part of the EFAST project, the Agencies intend to publish a **Federal Register** notice soliciting public comments. The final computer scannable version of the forms which will be required to be used for 1999 plan year filings will be published in the **Federal Register** following the Agencies' evaluation of public comments.

The proposed amendments published herein to the Department's annual reporting regulations (Part 2520 of Chapter XXV of Title 29 of the Code of Federal Regulations) are intended, in major part, to make the technical and conforming changes to the regulations necessary to implement the new Form 5500 Series. As stated in the September 3, 1997 Notice of Proposed Forms Revisions, the new Form 5500 Series will not become effective as an alternative method of compliance and limited exemption from the reporting and disclosure requirements of part 1 of Title I of ERISA until these regulations are issued in final form.

**B. Request for Comments**

Interested persons are invited to submit written comments (preferably three copies) concerning the proposals herein to: Office of Regulations and Interpretations, Room N–5669, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210, Attention: Proposed Amendments To Annual Reporting Regulations. All written comments should clearly reference the relevant proposed amendment(s). All submissions will be open to public inspection in the Public Disclosure Room, Pension and Welfare Benefits Administration, Room N–5638, 200 Constitution Avenue, N.W., Washington, D.C.

The regulatory amendments proposed herein do not involve revisions to the Form 5500 Series itself and generally do not announce changes to the annual reporting requirements for employee benefit plans in addition to those described in the previously published forms revisions. The Agencies in developing the revisions to the Form 5500 Series previously considered the comments submitted in response to the September 3, 1997 Notice of Proposed Forms Revisions and the June 24, 1998 Notice. Those comments will be treated as part of the public record for this Notice of Proposed Rulemaking, and, to the extent those comments include information relevant to the regulatory amendments proposed herein, the Department will treat those comments as comments on this Notice of Proposed Rulemaking to avoid the need to submit duplicate public comments.

**C. Discussion of the Proposal**

*1. Section 2520.103–1*

Section 2520.103–1 generally describes the content of the Form 5500 Series as a limited exemption and alternative method of compliance. One of the central changes announced in the Notice of Proposed Forms Revisions for improving the Form 5500 Series and reducing the reporting burden on filers was the development of one Form 5500 for use by both ''large plan'' filers (plans that previously filed the Form 5500) and ''small plan'' filers (plans that previously were eligible to file the Form 5500-C/R) that was structured along the lines of tax returns familiar to individual and corporate taxpayers '' a simple one-page main form with basic information necessary to identify the plan for which the report is filed that guides each filer to those schedules applicable to the filer's specific type of plan. The Form 5500-C/R is being eliminated, but limited financial reporting options for small plans are being maintained.[2] To accommodate these form changes, the proposed regulatory amendments would update the references in § 2520.103–1 to the annual report to reflect the new structure of the Form 5500.[3]

*2. Section 2520.103–2*

Welfare plans participating in a group insurance arrangement (GIA) are exempt from filing individual annual reports under § 2520.104–43 provided that the trust, trade association, or other entity which holds the insurance contracts and acts as a conduit for the payment of insurance premiums files an annual report for the entire arrangement. Section 2520.103–2 prescribes the contents of the annual report for GIAs in order for the participating plans to be eligible for the exemption described in § 2520.104–43. The annual report required to be filed under § 2520.103–2 must contain a completed Form 5500, including any required schedules, a report by an independent qualified public accountant (IQPA), and separate financial statements if prepared by the IQPA in order to form the opinion required by § 2520.103–2(b)(5). The Department is proposing amendments to § 2520.103–2 that are consistent with the changes proposed for § 2520.103–1, as applicable, and §§ 2520.104–21 and 2520.104–43 (described in section C.7 of this preamble). Of particular note for GIAs is the addition of a new Schedule D (DFE/Participating Plan Information) to the Form 5500. The Schedule D is intended to serve as a multipurpose schedule for reporting certain information on relationships between plans and entities that are classified as ''Direct Filing Entities'' or DFEs, including investment entities covered under § 2520.103–12, master trust investment accounts, common or collective trusts (CCTs), pooled separate accounts (PSAs), and GIAs. In the case of GIAs, the new Schedule D would be a standardized form that GIAs would be required to use to satisfy the current requirement to file a list of participating plans. (See discussions below of CCTs, PSAs, master trusts and 103–12 investment entities for more information on applicable requirements for plans and entities required to file the new Schedule D).

*3. Sections 2520.103–3, 2520.103–4, 2520.103–9, 2520.103–12 and 2520.103–1(e)*

(a) Common/Collective Trusts and Pooled Separate Accounts

Section 2520.103–3 provides an exemption from certain annual reporting requirements for plan assets held in a CCT maintained by a bank, trust company or similar institution. Section 2520.103–4 provides a similar exemption for plan assets held in a PSA maintained by an insurance carrier. Pursuant to §§ 2520.103–3 and 2520.103–4, a plan investing in these entities generally need not include information regarding the individual transactions of the entity in the plan's annual report. Rather, the plan must

[1] The conditions regarding form changes involved (i) consolidating the separate reporting of long-term and short-term corporate debt instruments into one line item for all corporate debt instruments on the Schedule H (Income and Expense Statement), (ii) adding a clarifying instructional statement to the text on line 5 of Schedule R, (iii) bolding instructional text on line 3 of Schedule T, (iv) adding a statement to the Schedule C instructions that trades and businesses (whether or not incorporated) are ''persons'' required to be reported as service providers, and (v) clarifying the instructions for line 3b(2) of Schedule H regarding the inapplicability of the ''short plan year'' provisions of 29 CFR 2520.104–50 to Direct Filing Entity Form 5500s filed for group insurance arrangements and investment entities described in 29 CFR 2520.103–12 (103–12 IEs) .

[2] For example, plans eligible to file as small plans that take advantage of the simplified reporting rules would continue to be exempt from the annual audit requirements contained in ERISA § 103 and would continue to be relieved of the obligation to file certain schedules required for large plan filers (e.g., Schedule C —Service Provider Information).

[3] The proposal also would delete the cross-reference to obsolete § 2520.103–7. This provision was removed from the Code of Federal Regulations on July 1, 1996 (61 FR 33847).

include in its annual report certain information regarding: (i) the current value of the plan's units of participation in the CCT or PSA, (ii) transactions involving the acquisition and disposition of units of participation in the CCT or PSA, and (iii) a statement of the assets and liabilities of the CCT or PSA. Further, the Department, pursuant to § 2520.103–9, exempts plans from including a statement of the assets and liabilities of the CCT and/or PSA with their annual report if the bank, trust company or insurance carrier sponsoring the CCT or PSA, respectively, files its statement of assets and liabilities directly with the Department and certain other conditions are met. The statement of assets and liabilities of a CCT and PSA is not required to be reported in a standardized format. The absence of standardized reporting for CCTs and PSAs has made it virtually impossible for the Department to correlate and effectively use the data regarding the approximately 226.2 billion dollars in plan assets held by CCTs and PSAs. The Department has concluded that a change in the current reporting rules is needed to enable it to continue to satisfy its research and enforcement responsibilities.

Under the proposed forms revisions, as under the current Form 5500 Series, CCTs and PSAs may elect to file information on behalf of their participating plans. As noted above, the revisions to the Form 5500 Series include a new Schedule D (DFE/ Participating Plan Information). The Schedule D is a standardized schedule for filing certain information on relationships between plans and CCTs and PSAs (as well as other entities that are classified as ''Direct Filing Entities'' or DFEs, including investment entities covered under § 2520.103–12, master trust investment accounts, and GIAs). In the case of a CCT or PSA that elects to file as a DFE, the CCT or PSA would be required to complete: (1) applicable items on the revised Form 5500; (2) one or more Schedules D (to list all participating plans at any time during the year and all CCTs, PSAs, or investment entities described in § 2520.103–12 (103–12 IEs) that the CCT or PSA invested in during the year; and (3) a Schedule H (Financial Information) (formerly referred to as the Schedule FIN in the September 3, 1997 **Federal Register** Notice of Proposed Forms Revisions).

A large plan investing in one or more CCTs or PSAs which file as a DFE would report the value of its respective interests in each of these entities as a single entry on the appropriate lines in the plan's asset and liability statement as of the beginning and end of the plan year. A large plan investing in a CCT or PSA which files as a DFE also would report on the plan's Schedule H income and expense statement the net investment gain/loss for the DFE as part of a single entry for each class of DFE. As indicated previously, the new Schedule D (DFE/Participating Plan Information) would be added to the Form 5500. The Schedule D would be required to be attached to the plan's Form 5500 to report information about the plan's participation in CCTs and PSAs.

In the case of small plans with CCT or PSA investments, regardless of whether the CCT or PSA files directly with the Department, the small plan would file a Schedule D, but would report total assets and total income, respectively, on single line items of the small plan Schedule I financial statements without separate Schedule I financial statement reporting on CCT or PSA investments.

Thus, the reporting for large plans investing in CCTs and PSAs that elect to file as DFEs and for small plan filers would not change significantly from the current reporting requirements. Similarly, except for the addition of Schedule H (Part II), generally the information that would be filed by a CCT or PSA that elects to file as a DFE would be substantially the same as the current reporting requirements with the major change being that the information would be required to be filed on the Form 5500 as the standard reporting format for all filers.

If a CCT or PSA does not file a Form 5500 as a DFE, large employee benefit plans would be required to break out their percentage interest in the underlying assets of the CCT or PSA and report that interest as a dollar value in the appropriate categories on the asset and liability statement contained in Schedule H (Financial Information). The failure by a large plan to break out its allocated interest in a CCT or PSA on the asset and liability statement contained in Schedule H when the CCT or PSA does not file as a DFE would be considered a failure by the plan administrator to file a complete Form 5500. The Department does not envision this as imposing a substantial additional burden on large plan filers because there is only a small number of other general investment categories on the Schedule H, such as: interest bearing cash; U.S. government securities; corporate debt instruments; corporate stock; partnership/joint venture interests; real estate; loans; registered investment companies, other assets; and employer securities. Further, the currently required asset and liability statement of the CCT or PSA should provide for many filers most of the detail needed to break the assets and liabilities into these categories. Furthermore, large plan filers investing in CCTs and PSAs that do not file as DFEs would still report the net investment gain/loss with respect to their participation in a CCT or PSA as part of single entries on Part II of the Schedule H (income and expense statement) and would continue to report their interest in a CCT or PSA on the Form 5500 financial schedules (other than Part I of Schedule H) in the same general manner as under current rules (e.g., current value of the units of participation in CCTs and PSAs would be reported on the schedule of assets held for investment and the Schedule D).

The Department believes that changing the reporting requirements for plans investing in CCTs and PSAs is the only viable alternative for capturing the information needed to carry out its oversight responsibilities about plan assets and ensuring that there is adequate disclosure of plan investment information to plan participants and beneficiaries. The Department, therefore, is exercising its regulatory authority under sections 103(b)(4), 104(a)(3), 110 and 505 to modify the reporting requirements with respect to plans that participate in CCTs and PSAs. The Department views the proposed changes as important and necessary in light of the dramatic growth in the value of plan assets held by CCTs and PSAs. For example, the value of plan assets invested in CCTs and PSAs increased between 1990 and 1995, the latest year for which information is available, from $113.9 billion to $226.2 billion. In order to minimize the costs and paperwork burdens on CCTs and PSAs associated with this proposal, it is anticipated that processing improvements would be implemented in the near future so this information could be filed with the Department either via magnetic media (magnetic tapes, floppy diskettes) or other electronic means.

(b) 103–12 Investment Entities and Master Trusts

Section 2520.103–1(e) provides for special reporting rules for plans that participate in a master trust. In general, a master trust is a trust maintained by a bank or similar institution to hold the assets of several plans that are all sponsored by a single employer or by several employers which are under common control. Such plans must report the value of their interest in the

master trust as a single asset category in the plan's statement of assets and liabilities. The plan's share of earnings, realized and unrealized gains and losses of the master trust is reported in the plan's statement of income, expenses and changes in net assets for the plan year. A separate annual report for the master trust is required under current rules. The proposed amendments to § 2520.103–1(e) do not change the information required to be reported regarding the master trust, but rather establish the Form 5500 Series as the standard reporting format for master trusts.

Similarly, section 2520.103–12 provides an exemption and alternative method of reporting for plans investing in certain investment entities the assets of which are deemed to include plan assets under section 2510.3–101. Under the alternative method, the plan administrator need not include in the plan's annual report any information regarding the underlying assets and individual transactions of the 103–12 investment entity. Instead, the administrator is required to report only the value of the plan's investment or units of participation in the investment entity. As a condition to using this alternative, however, certain information must be filed by the 103–12 investment entity directly with the Department. The proposed amendments to § 2520.103–12(b) do not change the information required to be reported by the 103–12 investment entity, but rather establish the Form 5500 Series as the standard reporting format.

*4. Section 2520.103–5*

Section 2520.103–5 implements section 103(a)(2) of the Act. Section 103(a)(2) of the Act requires insurance carriers or other organizations which provides some or all of the benefits under a plan or holds plan assets, banks or similar institutions which holds plan assets, and plan sponsors to transmit and certify to the accuracy and completeness of such information as is needed by the plan administrator to comply with the requirements of Title I of the Act. Because the filing requirements for a plan participating in a CCT or PSA generally will be affected by whether such CCT or PSA directly files with the Department, section 2520.103–5 is proposed to be modified to conform to the new direct filing entity (DFE) reporting regime and ensure that administrators have adequate advance knowledge about their reporting responsibilities.

In the case of a CCT or PSA, the proposed amendments would require that such CCT or PSA notify its participating plans of whether or not it intends to file a Form 5500 as a DFE, and to furnish the plan administrator with the information about the assets held by such CCT or PSA, respectively, needed by the plan administrator to satisfy its obligations under Title I of ERISA. These notifications must be made within the same period of time for transmitting information already required by existing § 2520.103–5 (i.e., 120 days after the close of each participating plan's plan year). The proposal does not contain any detailed rules relating to the manner of the exchange of information between the plan and the CCT or PSA. The Department has decided to let the plan administrator develop with the sponsor of the CCT or PSA a suitable procedure whereby the plan administrator can establish to his or her satisfaction that the administrator and the Department will receive all of the required information in a timely fashion. This does not, of course, relieve the plan administrator of the responsibility to monitor the conduct of the CCT or PSA sponsor and to obtain whatever financial information concerning the CCT or PSA that is necessary for the administrator to satisfy his or her obligations under ERISA.

The proposed forms revisions did not affect the information required from plan sponsors and the Department is not proposing any amendment to the plan sponsors' obligations described in § 2520.103–5.

*5. Section 2520.103–6 and Section 2520.103–11*

Section 2520.103–6 sets forth the definition of reportable (5%) transactions for the Form 5500. Section 2520.103–11 provides rules for preparing the schedule of assets held for investment purposes and the schedule of assets held for investment purposes that were both acquired and disposed of within the same plan year (hereinafter collectively referred to as the schedules of assets held for investment). The new Form 5500 as proposed would have eliminated for large plan filers the requirement to file with their annual report a schedule of reportable (5%) transactions (line 27d of the current Form 5500) and schedules of assets held for investment (line 27a of the current Form 5500). Although the Department proposed in September 1997 to remove the requirement to submit the line 27a and line 27d schedules as part of the annual report, the proposal attempted to preserve affected participants' access to the information by providing them with the right to request and receive reportable transaction information and a detailed list of investments. In developing the proposed forms revisions, the Department estimated that fewer than 60,000 plans out of the over 800,000 pension and welfare benefit plans that file an annual report would be affected by this aspect of the proposal. Because the 60,000 affected plans are larger plans, the filing of schedules detailing plan investments often involves substantial amounts of paper. As proposed, the new Form 5500 would still have required a financial statement reflecting assets on an aggregate rather than individual basis, and the affected plans would have still have been subject to an annual audit by an IQPA. Finally, there did not seem to be a substantial need for the schedules to be on file at the Department's public disclosure room because the Department receives only a small number of requests per year for copies, and the Department could make a request for copies from the plan administrator on behalf of any plan participants or beneficiaries.

The Department, however, received public comments on the proposal that raised serious concerns about adverse consequences of eliminating these schedules from the annual report. In light of those comments and testimony received at the November 17, 1997 hearing on the proposed forms revisions, the Department has decided not to adopt this change. The Department nonetheless believes that it is possible to make a number of modifications to these schedules to eliminate certain burdens associated with the production of information that is already available to participants and beneficiaries. Accordingly, the proposal amends the reportable transactions rules to no longer require that transactions effected at the affirmative direction of participants or beneficiaries under an individual account plan be taken into account when completing the schedule of reportable transactions. Because of the administrative burdens and recordkeeping complexity associated with compiling aggregate cost of assets for which investment decisions are directed by participants and beneficiaries, the proposal also eliminates for such participant directed assets the requirement to prepare the ''historical cost'' entry on the schedules of assets held for investment. The proposal would not relieve the administrator from including in the schedules of assets held for investment descriptions and current values for assets held at a participant's or beneficiary's direction. Finally, the IQPA's opinion must cover the schedule

of reportable transactions and schedules of assets held for investment.

The proposed regulation would also provide that, solely for purposes of this reporting relief, a transaction will be considered ''directed'' by a participant or beneficiary to the extent that the individual, in fact, affirmatively authorized the investment of the asset allocated to his or her account. This reporting relief is broader than the fiduciary liability relief prescribed by § 2550.404c–1 that applies to a narrower class of transactions in which participants and beneficiaries exercise control over the assets involved in the transaction.

Because the proposal retains the schedule of reportable transactions and schedules of assets held for investment as part of the annual report primarily to meet participant disclosure concerns, not to satisfy research and enforcement needs, the Department is not requiring use of a standardized computer scannable form for the schedule of reportable transactions or schedules of assets held for investment (unlike the Schedule G which will be mandatory for the other financial transaction schedules). Rather, administrators would be allowed to use any format for preparing the schedule of reportable transactions and schedules of assets held for investment as long as the content requirements of §§ 2520.103–6 and 2520.103–11 are met and the same size paper as the Form 5500 is used (electronic filing requirements for these schedules will be developed as part of the, previously described, EFAST project).

The Department is also proposing to amend section 2520.103–6 to include a special rule for the reportable transaction schedule for initial plan years. Section 2520.103–6(b)(1)(i) currently requires that the 5% thresholds for reportable transactions be calculated using current value of assets as of the beginning of the initial plan year. Concerns have been expressed by filers that in most cases the current rule results in virtually all investment transactions during the initial plan year being reportable transactions under section 2520.103–6. The Department does not believe that this result was intended under ERISA inasmuch as the purpose of the reportable transaction rules was to identify transactions relating to a significant portion of the plan's assets because these transactions may pose the greatest financial risk to a plan. Accordingly, the Department is proposing that the current value of plan assets for purposes of preparing the schedule of reportable transactions for the initial plan year would be the current value of plan assets at the end of the initial plan year.

*6. Section 2520.103–10*

Section 2520.103–10 identifies the financial schedules that are required to be included with the filing of the Form 5500. The Department is proposing to amend § 2520.103–10 to conform it to the new Form 5500 and other regulatory amendments described elsewhere in this preamble. Accordingly, as proposed, § 2520.103–10 would be amended to update references to the annual report financial schedules to conform the references to the schedules associated with the new Form 5500.

Further, under the proposal, the use of the revised Schedule G will be mandatory for the schedule of party in interest transactions, schedule of obligations in default, and schedule of leases in default. These schedules are now required by lines 27b, 27c, 27e and 27f of the current Form 5500 and may be filed using a similar format and using the same size paper as the current Schedule G. Because the Department will be developing and implementing a new system to simplify and expedite the receipt and processing of the Form 5500 Series by using optical scanning technology and optical character recognition, it would not be possible for the Department to process Schedule G information and include such information in our data base unless the use of Schedule G is mandatory. The proposed Schedule G would have to be attached to the Form 5500 of a large plan, master trust investment account or 103–12 IE to report loans or fixed income obligations in default or determined to be uncollectible as of the close of the reporting year (Part I of Schedule G), leases in default or classified as uncollectible during the plan year (Part II of the Schedule G) and nonexempt transactions (Part III of the Schedule G).

The proposed changes to the schedule of reportable transactions and the schedules of assets held for investment (which are not included on the new Schedule G) are discussed in paragraph C.5 of this preamble.

*7. Section 2520.104–21 and Section 2520.104–43*

Section 2520.104–21 provides an exemption from certain Title I reporting and disclosure requirements for welfare plans that are part of a group insurance arrangement (GIA) as defined in paragraph (b) of that regulation.[4] The exemption is available for welfare plans which have fewer than 100 participants and which are part of a GIA, if the arrangement, among other things, uses a trust (or other entity such as a trade association) as the holder of the insurance contracts and the conduit for payment of premiums to an insurance company. See § 2520.104–21(b)(3). Section 2520.104–43 provides plans (regardless of whether such plans have 100 or more participants) with relief from filing the annual report in cases where the GIA described in § 2520.104–21 files a Form 5500 report on behalf of all the participating plans. The Department is proposing to amend §§ 2520.104–21 and 2520.104–43 to provide that the exemptions would only be available in those cases in which the GIA utilizes a trust as the conduit for the payment of the premiums. The proposal also would modify the examples in paragraph (d) of § 2520.104–21 to reflect these changes. The Department believes that interpreting the reporting exemption as providing GIAs with an exemption from the substantive requirement to hold plan assets in trust is not in the interest of participants and beneficiaries, and needs correction. Indeed, adoption of the proposed amendment would conform the reporting regulations for GIAs with ERISA § 403 and § 2550.403a–1, which do not provide a trust exception for GIAs. The Department does not envision that the proposed amendment will create administrative burdens for GIAs or result in increased costs for participating plans because the plan assets collected and held by the intermediary entity must be separately accounted for under current law.[5] The Department is also proposing that this

[4] For example, section 2520.104–21 provides relief to certain welfare plans from the requirement to file a copy of the summary plan description and descriptions of material modifications in the terms of a plan or changes in the information required to be included in the summary plan description. Section 1503 of The Taxpayer Relief Act of 1997 (TRA 97), Pub. L. 105–34 (enacted August 5, 1997), amended ERISA by repealing the requirement to file the aforementioned documents with the Department. A separate notice of proposed rulemaking will be published by the Department to conform these regulations to TRA 97.

[5] The proposed amendment, if adopted, also would be consistent with the enforcement policy in ERISA Technical Release 92–01 (TR 92–01) (57 FR 23272 and 58 FR 45359). TR 92–01 announced interim relief from the trust and certain reporting requirements of ERISA for certain contributory welfare plans. TR 92–01, however, does not apply to § 2520.104–21 GIAs or to participant contributions after they have been segregated from an employer's general assets and transmitted to an intermediary account. Thus, if the proposed amendment is adopted as a final rule, participating cafeteria plans may continue to rely on the enforcement policy contained in TR 92–01 until participant contributions are transmitted to the GIA, but the GIA would be required to hold plan assets in trust.

change, if adopted, would be effective for plan years beginning after Dec. 31, 1998, to coincide with the 1999 plan year implementation of the new Form 5500.

*8. Sections 2520.104–41 and 2520.104–46*

Section 2520.104–41 provides a simplified method of annual reporting for plans with fewer than 100 participants and § 2520.104–46 waives the IQPA requirement for such small plans. In general, small plans eligible to file simplified reports are required to file the Form 5500–C every third plan year and the Form 5500–R (an abbreviated version of the Form 5500–C) for the two intervening plan years. As indicated previously, the Agencies have proposed to replace the Form 5500 and the Form 5500–C/R with an improved single Form 5500 for use by both large and small plan filers, with simplified reporting options for small plans incorporated into the new restructured forms. This proposal would amend §§ 2520.104–41 and 2520.104–46 to conform the terms in the regulations to the new Form 5500 Series.

*9. Section 2520.104–44*

Section 2520.104–44 contains a limited exemption and alternative method of compliance for annual reporting by certain unfunded and insured plans. The Department has received inquiries from the public about the reporting requirements for pension plans exclusively using a tax deferred annuity arrangement under Internal Revenue Code section 403(b)(1) and/or a custodial account for regulated investment company stock under Internal Revenue Code section 403(b)(7). The current Form 5500 Series instructions provide for limited reporting for these types of pension plans. The Department has previously expressed its view that such plans are not subject to the IQPA audit requirements as part of their annual reporting obligations under Title I of ERISA. See the Department's Information Letter issued to Gary H. Friedman (dated November 15, 1996). The Department, therefore, is proposing to make conforming technical amendments to § 2520.104–44 to clarify the annual reporting obligations of such plans.

*10. Section 2520.104b–10*

Section 2520.104b–10 sets forth the requirements for the summary annual report (SAR) and prescribes the formats for such reports. The proposed amendments to section 2520.104b–10 would make the SAR requirements conform to the new Form 5500 Series (e.g., by referring to the modified list of the attached statements and schedules to the Form 5500). The proposed amendments also would address the elimination of the Form 5500–R. Under current SAR rules, administrators of small plans are not required to prepare and furnish a SAR for those plan years in which a Form 5500–R is filed if one of the two following methods of compliance is met. Under the first method of compliance, plans must furnish participants (and beneficiaries receiving benefits under a pension plan) with a copy of the filed Form 5500–R as a substitute for furnishing the SAR. Under the second method, plans are required to notify participants and such beneficiaries in writing of their right upon written request to receive free-of-charge a copy of the Form 5500–R filed by the plan. Under the second method of compliance, § 2520.104b–10(b)(2)(ii) permits active participants to be notified by posting the notice at worksite locations in a manner reasonably calculated to ensure disclosure of the information. The Form 5500–R furnished under either method of compliance must be accompanied by a prescribed notice. Because the Form 5500–R is proposed to be eliminated, small plans will be required to furnish a SAR every year rather than every third year. Although the reporting statistics indicate that approximately 50 percent of small filers file the Form 5500–C every year and, therefore, would not be eligible for the alternative method of compliance, the Department seeks comments as to the burdens associated of complying with proposed § 2520.104b–10, if any, for small plan filers who would no longer be able to file a Form 5500–R. The proposed amendments to §§ 2520.104b–10(d)(3) and 2520.104b–10(d)(4) also restate the information available to participants and beneficiaries under the heading ''Your Rights to Additional Information'' so that it is consistent with the new Form 5500 Series. These proposed changes are expected to improve the process by which information is disclosed to participants and beneficiaries of small plans which currently file the Form 5500–R.

The existing regulations contain a cross-reference guide as an appendix. The purpose of this guide is to correspond the line items of the SAR to the line items on the Form 5500 and Form 5500–C. The Department intends to publish as part of the final regulation a revised appendix to conform it to the final version of the new Form 5500 and associated schedules.

**D. Findings Regarding the New Form 5500 as a Limited Exemption and Alternative Method of Compliance**

Section 104(a)(2)(A) of the Act authorizes the Secretary to prescribe by regulation simplified reporting for pension plans that cover fewer than 100 participants. Section 104(a)(3) authorizes the Secretary to exempt any welfare plan from all or part of the reporting and disclosure requirements of Title I of ERISA or to provide simplified reporting and disclosure, if the Secretary finds that such requirements are inappropriate as applied to such plans. Section 110 permits the Secretary to prescribe for pension plans alternative methods of complying with any of the reporting and disclosure requirements if the Secretary finds that: (1) the use of the alternative method is consistent with the purposes of ERISA and it provides adequate disclosure to plan participants and beneficiaries and to the Secretary; (2) application of the statutory reporting and disclosure requirements would increase costs to the plan or impose unreasonable administrative burdens with respect to the operation of the plan; and (3) the application of the statutory reporting and disclosure requirements would be adverse to the interests of plan participants in the aggregate.

For purposes of Title I of ERISA, the filing of a completed Form 5500 (including any required statements, schedules, and IQPA report) generally constitutes compliance with the limited exemption and alternative method of compliance in 29 CFR 2520.103–1(b). As indicated in the preamble to the notice of proposed forms revisions, the Department stated that the findings required under ERISA sections 104(a)(3) and 110 relating to the use of the Form 5500, as revised, as an alternative method of compliance and limited exemption from the reporting and disclosure requirements of part 1 of Title I of ERISA would be separately addressed as part of the rulemaking that would amend the reporting regulations necessary to implement the new Form 5500 Series.

*1. General Findings*

As reflected in the revisions to the Form 5500 Series and the amendments proposed herein, a number of changes are being proposed which affect the information required to be reported and disclosed on the Form 5500 Series. The Department, in the proposed amendments, has attempted to balance the needs of participants, beneficiaries and the Department to obtain

information necessary to protect ERISA rights and interests with the needs of administrators to minimize costs attendant with the reporting of information to the federal government. In view of these changes, the Department proposes to make the following findings under sections 104(a)(3) and 110 of the Act with regard to the utilization of the revised Form 5500 (and revised statements and schedules required to be attached to the Form 5500) as an alternative method of compliance and limited exemption pursuant to 29 CFR 2520.103–1(b).

The use of the revised Form 5500 as an alternative method of compliance is consistent with the purposes of Title I of ERISA and provides adequate disclosure to participants and beneficiaries and adequate reporting to the Secretary. While the information required to be reported on or in connection with the revised Form 5500 deviates, in some respects, from that delineated in section 103 of the Act, the information essential to ensuring adequate disclosure and reporting under Title I of ERISA is required to be included on or as part of the Form 5500, as revised.

The use of Form 5500 as an alternative method of compliance relieves plans subject to the annual reporting requirements from increased costs and unreasonable administrative burdens by providing a standardized format which facilitates reporting, eliminates duplicative reporting requirements, and simplifies the content of the annual report in general. The Form 5500, as revised, is intended to further reduce the administrative burdens and costs attributable to compliance with the annual reporting requirements.

Taking into account the above, the Department has determined that application of the statutory annual reporting and disclosure requirements without the availability of the Form 5500 would be adverse to the interests of participants in the aggregate. The revised Form 5500 provides for the reporting and disclosure of basic financial and other plan information described in section 103 in a uniform, efficient, and understandable manner, thereby facilitating the disclosure of such information to plan participants.

Finally, the Department has determined under section 104(a)(3) that a strict application of the statutory reporting requirements, without taking into account the proposed revisions to the Form 5500, would be inappropriate in the context of welfare plans for the reasons discussed in this preamble and the preamble to the notice announcing the proposed forms revisions.

*2. Special Findings*

(a) Schedule A (Insurance Information)

Schedule A must be attached to the annual report if any pension or welfare benefits under any ERISA covered plan are provided by, or if the plan holds any investment contracts with, an insurance company or other similar organization. Although most of the Schedule A data has been retained substantially unchanged, certain changes were made to the Schedule A to more closely conform the Schedule A to recent accounting industry changes on ''current value'' financial reporting of investment-type contracts with insurance companies,[6] and to collect: (i) better identifying information on the type of insurance contracts and type of insured benefits being reported and (ii) the insurer's employer identification number and National Association of Insurance Commissioners' (NAIC) code. In general, under the current Form 5500 Series, the financial reporting required for insurance products is not identical to the reporting for other financial products.[7] In the interest of the efficient administration of ERISA, the Department has attempted to align the reporting and disclosure requirements, where possible and to the extent consistent with the best interests of plan participants, with generally accepted accounting principles (GAAP). The Schedule A changes proposed by the Department are intended to be consistent with the Financial Accounting Standards Board (FASB) Statement of Financial Accounting Standards No. 110 (FAS 110) and No. 126 (FAS 126) and American Institute of Certified Public Accountants Statement of Position 94–4 (SOP 94–4), which generally require the disclosure of the fair value of investment contracts with insurance companies (except for certain investment contracts held by defined benefit pension plans and ''fully benefit responsive'' contracts held by defined contribution pension and welfare plans with assets of $100 million or less). Because it is the Department's view that the Schedule A reporting requirements are equally important for small as well as large plans, the proposal would not provide different Schedule A reporting standards depending on the size of the plan. The Department also believes that the additional information being required to identify the type of insurance product purchased and NAIC code and EIN of the insurance company (or similar organization) from which the product was sold are helpful to the Department being able to accomplish its oversight responsibilities, and will not be burdensome to plans inasmuch as this information should be readily available.

(b) Schedule C (Service Provider Information)

Schedule C must be attached to the Form 5500 filed by large plan filers if any person who rendered services to the plan received directly or indirectly $5,000 or more in compensation from the plan during the plan year. The major changes to the Schedule C involve eliminating the requirement to annually identify plan trustees, limiting the current requirement to explain service provider terminations to terminations of accountants and enrolled actuaries, and limiting the number of plan service providers required to be reported to the forty top paid service providers at or above the $5,000 threshold. The Department notes that trustee and plan administrator information already must be disclosed in the summary plan description (SPD), and changes in trustees and plan administrators must be disclosed in a summary of material modification (SMM). SPDs and SMMs must be furnished automatically, whereas the Form 5500 is required to be disclosed only on request. Further, to the extent a service provider receives $5,000 or more in compensation from the plan, comparing the list of service providers on Schedule Cs from year to year will allow a participant or beneficiary to determine whether a particular service provider (such as an investment manager, trustee, or custodian) was terminated. Similarly, comparing annual Schedule A filings will provide information on changes in insurers. With respect to limiting of Schedule C list of service providers to the forty top paid providers receiving $5,000 or more in compensation, only approximately 100 employee benefit plans filing the 1994 Form 5500 listed more than 40 service providers on their Schedule Cs. Those 100 filings constituted less than one percent of the Form 5500 filings received. These Schedule C changes will not, in the Department's view, result in inadequate disclosure to participants and beneficiaries in large plans. Because Schedule C is not required to be filed by small plans, the Schedule C changes

[6] ERISA § 3(26) defines ''current value'' as fair market value where available and otherwise fair value as determined in good faith by a trustee or named fiduciary pursuant to the terms of the plan and in accordance with the regulations of the Secretary, assuming an orderly liquidation at the time of such determination.

[7] See, for example, the instructions for line 31c(16) of the 1997 Form 5500.

described herein would not affect the annual reports of those plans.

(c) Schedule D (Direct Filing Entity/ Participating Plan Schedule)

As indicated previously, the new DFE reporting rules were developed in an effort to improve the reporting requirements for plans participating in CCTs, PSAs, master trusts, 103–12 IEs and GIAs. With the exception for small plans of the Schedule D requirement to report year-end dollar value of interests in CCTs, PSAs, master trusts and 103–12 IEs, substantially all of the information that would be required to be reported by employee benefit plans under the new DFE reporting regime is currently required to be reported. Compare the new Form 5500 Series with the 1997 Form 5500 and Form 5500–C/R instructions for line 6e and page 4 instructions for additional information that must be reported for plans participating in CCTs, PSAs, master trusts, 103–12 IEs, and group insurance arrangements. Similarly, substantially all of the information that would be required to be reported by DFEs is currently required to be filed by CCTs, PSAs, MTIAs, 103–12IEs and GIAs. Compare the new Form 5500 Series with the 1997 Form 5500 and Form 5500–C/R page 6 instructions on filing requirements for CCTs, PSAs, master trusts and 103–12 IEs, and the Form 5500 line 1 instructions for GIAs.[8] Thus, the Department believes that the major change in reporting with respect to DFEs is that information must be reported in a standardized format using the Form 5500 and associated schedules. The Department does not believe the proposed new DFE rules should result in material cost increases or administrative burdens for plans. Further, direct reporting by CCTs, PSAs, 103–12 IEs and GIAs continues to be optional. To the extent there are cost or burden increases being passed through to the plan by the entity, plans can evaluate those annual reporting implications when deciding whether to participate in a CCT, PSA, 103–12 IE or GIA. The information that is available to be disclosed to participants and beneficiaries under the current annual reporting regime would not be reduced under the proposed forms revision. Finally, as indicated previously, continuation of the current rules would result in inadequate reporting to the Department, would mean that the Department would continue to be unable to correlate and effectively use the data regarding the more than $1 trillion in plan assets invested by plans in DFEs, and, therefore, would be adverse to the interests of participants and beneficiaries in the aggregate.

(d) Schedule of Reportable Transactions and Schedules of Assets Held For Investment

With regard to exclusion of certain participant directed transactions under an individual account plan from the schedule of reportable transactions, and the deletion of the requirement to include historical cost information in the schedules of assets held for investment on those transactions, the Department believes, on the basis of its enforcement experience, that the revised schedules will still result in adequate reporting to the Department and will not hamper its ability to identify fiduciary violations. The underlying purpose for the schedule of reportable transactions is to identify significant transactions that may reveal fiduciary misconduct. In general, individualized information on participant directed transactions is not especially relevant to that purpose. Similarly, historical cost on the schedules of assets held for investment is intended to provide individualized information on the investment gain/loss performance of the specific assets or classes of assets. The plan's aggregate gain or loss on a class of assets does not provide meaningful information on the gain or loss to a particular participant's account resulting from individually directed transactions. For those reasons, the Department does not believe having this information on the annual report is useful in targeting its enforcement cases, but including this participant directed transaction information in these schedules will result in additional costs and administrative burdens to plans. In light of the purposes underlying the reportable transaction schedule and the historical cost requirement, the Department believes that these schedules will still provide adequate disclosure to plan participants and beneficiaries.

**Other Supplementary Information**

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and which are likely to have a significant economic impact on a substantial number of small entities. If an agency determines that a proposed rule is likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the notice of proposed rulemaking describing the impact of the rule on small entities, and seeking public comment on such impact. Small entities include small businesses, organizations, and governmental jurisdictions.

For purposes of analysis under the RFA, PWBA proposes to continue to consider a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(2) of the Employee Retirement Income Security Act of 1974 (ERISA), which permits the Secretary of Labor to prescribe simplified annual reports for pension plans which cover less than 100 participants. Under section 104(a)(3), the Secretary may also provide for simplified annual reporting and disclosure if the statutory requirements of part 1 of Title I of ERISA would otherwise be inappropriate for welfare benefit plans. Pursuant to the authority of ERISA section 104(a)(3), the Department has previously issued at §§ 2520.104–20, 2520.104–21, 2520.104–41, 2520.104–46 and 2520.104b–10 certain simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans, including unfunded or insured welfare plans covering fewer than 100 participants and which satisfy certain other requirements.

Further, while some large employers may have small plans, in general, most small plans are maintained by small employers. Thus, PWBA believes that assessing the impact of this proposed rule on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business which is based on size standards promulgated by the Small Business Administration (SBA) (13 CFR 121.201) pursuant to the Small Business Act (15 U.S.C. 631 *et seq.*). PWBA, therefore, requests comments on the appropriateness of the size standard used in evaluating the

[8] In the case of GIAs, the current rules require use of a Form 5500. For master trusts and 103–12 IEs, the Form 5500 instructions already require the filer either use the Form 5500 and schedules or report information in the same format using the same categories as those specified in the Form 5500. In the case of CCTs and PSAs, the Department does not believe imposing similar formatting requirements should involve any significant additional burden. The Department also believes that there will be minimal additional burden in requiring CCTs and PSAs that elect to file as a DFE to report income and expenses on Schedule H (Part II).

impact of this proposed rule on small entities. PWBA has consulted with the SBA Office of Advocacy concerning use of this participant count standard for RFA purposes. See 13 CFR § 121.902(b)(4).

On this basis, however, PWBA has preliminarily determined that this rule will not have a significant economic impact on a substantial number of small entities. In support of this determination, and in an effort to provide a sound basis for this conclusion, although not required, PWBA considers the elements of an initial regulatory flexibility analysis to be as follows:

(1) The Department is promulgating this proposed rule to amend the regulations relating to the annual reporting and disclosure requirements of section 103 of ERISA to conform existing regulations to revisions to the annual return/report forms (Form 5500 Series).

(2) Section 103 of ERISA requires every employee benefit plan covered under part 1 of Title I of ERISA to publish and file an annual report concerning, among other things, the financial conditions and operations of the plan. Section 109 of ERISA authorizes the Secretary to prescribe forms for the reporting of information that is required to be submitted as part of the annual report.

The Secretary may also prescribe alternative methods of complying with reporting and disclosure requirements if the Secretary finds that: the use of the alternative method is consistent with the purposes of ERISA and provides adequate disclosure to participants and beneficiaries and the Secretary, application of the statutory reporting and disclosure requirements would increase costs to the plan or impose unreasonable administrative burdens with respect to the operation of the plan, and the application of the statutory reporting and disclosure requirements would be adverse to the interests of plan participants in the aggregate.

The Department proposes to find that use of the Form 5500 as revised constitutes an alternative method of compliance which is consistent with these conditions. Generally, the Department believes that use of the revised Form 5500 would relieve plans of all sizes from increased costs and unreasonable burdens by providing a standard format which facilitates reporting required by the statute, eliminates duplicative reporting requirements, and streamlines the content of the annual report.

(3) The Department, in conjunction with the IRS and PBGC, proposed a number of changes to the existing Form 5500 Series in an effort to reduce paperwork burdens and costs and enhance the utility of the annual report forms generally. The regulatory amendments proposed herein are designed to ease the burden of plans, both large and small, in complying with the reporting and disclosure requirements of ERISA. The regulatory amendments proposed do not directly affect the number of small plans required to comply with the annual reporting requirements or change existing small plan limited exemptions from reporting requirements. Thus, for example, under the proposal small plans would continue to be exempt from reporting service provider information and supplying the report of an independent qualified public accountant. In addition, the conforming rules as proposed generally preserve the more limited reporting for small plans which is presently in effect.

(4) Based on information available from 1993 Form 5500 filings, the Department estimates that there are approximately 6.7 million small pension and welfare benefit plans that are covered under Title I of ERISA. About 6 million of these plans with fewer than 100 participants are insured or unfunded welfare benefit plans, which are currently exempt from Form 5500 filing requirements and will continue to be exempt under the proposed revisions to the Form 5500 Series. The proposed rules therefore, will have no impact on these small plans. Thus, approximately 700,000 small plans, or about 9% of all small plans, are required to file the existing Form 5500 Series, and will be impacted by the proposed rules conforming existing regulations to the revised Form 5500 Series.

(5) The revisions to the Form 5500 Series are estimated to impose no additional filing burden on small plans than that of the current forms over the existing three-year filing cycle. In fact, a comparison of the burden associated with the existing reporting requirements with the revisions to the Form 5500 Series indicates an overall reduction in the burden for small plans based on the number of data elements required to be reported for each.

Under current filing requirements, small plans must file a Form 5500–C at least once every three years and file the less detailed Form 5500–R in the two intervening years. While the ratio of Form 5500–R to Form 5500–C filings varies from year-to-year, on average about 55% of all annual small plan filings are on the Form 5500–R and 45% are on the Form 5500–C because many small plans annually file the Form 5500–C.

The burden associated with completion of the Form 5500 Series can be divided into two steps: reading the instructions and completing the individual line items. The revised Form 5500 Series requires small plans to provide more line item information than the Form 5500–R, but less information than the Form 5500–C. The burden associated with completion of all required items on the revised form is estimated to be 5% greater than the Form 5500–R and 32% less than the Form 5500–C. Based on a ratio of the Form 5500–R to Form 5500–C filings of 55% to 45%, the proposed revisions to the Form 5500 Series are estimated to result in an average reduction of 15% in the burden associated with completion of the revised form items.

The more efficient format of the revisions to the Form 5500 Series, with most of the information broken out into separate schedules, should also reduce the time required to read the instructions because filers will be able to skip over the instructions for schedules that do not apply to them. It is, however, expected that all filers will require additional time in the initial year of filing to thoroughly read the instructions and to familiarize themselves with the revised Form 5500 Series. It is, therefore, assumed in the initial year of filing the revised Form 5500 Series that additional time required for instruction reading will result in an overall burden (including the reduction for line items) that on average will be 26% greater than the annual burden for completion of the Form 5500–C/R. It is assumed that most filers will not require this additional time in subsequent years, and that the average reduction will be the 15% based on the reduction in the number of line items.

When the higher burden associated with instruction reading is pro-rated over a three-year period (corresponding with the existing three-year cycle of Form 5500–C and Form 5500–R filings) the annual burden imposed by the proposed revisions to the Form 5500 Series for the typical filer is estimated to be 2% less than that of the Form 5500–C/R. When the initial year burden is pro-rated over a 10-year period, the proposed revision to the Form 5500 Series is estimated to result in an 11% reduction in the annual burden for small plans.

Entry of the information required by the Form 5500–C/R is made from financial and other records maintained

by plans. Sound accounting and general business practices would generally dictate that all or most of these records be maintained even in the absence of a reporting requirement. To the extent that specific records are kept only for reporting purposes it is assumed that small plans currently maintain on an annual basis all records necessary to complete the Form 5500–C because of the existing requirement that a Form 5500–C (which requires both beginning and ending year financial data) must be filed at least once every three years. The reduced reporting requirements of the proposed revisions to the Form 5500 Series compared to the current Form 5500–C, therefore, should not increase and may potentially reduce the overall recordkeeping burden for small plans.

Completion of the Form 5500–C/R requires a mixture of professional and clerical skills. It is assumed that this mixture will not change as a result of the revisions to the Form 5500 Series. The cost savings, therefore, should correspond to the savings in burden hours. For sponsors using third-party administrators (TPAs) to complete all or part of the Form 5500 Series, additional costs attributable to instruction reading and understanding the revisions of the Form 5500 Series are expected to be negligible. However, any savings in this area for plan sponsors are expected to be offset by additional costs charged by TPAs to modify automated system software to accommodate the proposed revisions to the Form 5500 Series. The elimination of the Form 5500–R may increase burdens for these small filers because under the proposal they will be required to furnish SARs on an annual basis and without the accommodations found in the existing regulations at § 2520.104b–10(b). The Department solicits comments from interested parties on this aspect of the proposal.

(6) No Federal rules have been identified that duplicate, overlap or conflict with the proposed rule.

(7) No significant alternatives to the proposed rule which would minimize the impact on small entities have been identified, although the review and proposed revision of the Form 5500 Series were undertaken to reduce paperwork burden for all filers while maintaining the more limited reporting for small plans. The Department believes it has minimized the economic impact of the forms revision and conforming rules on small plans to the extent possible while recognizing plan participants' and the Department's need for information to protect participant rights under Title I of ERISA, and needs of other interested parties for timely statistical information on employee benefit plans.

The Department invites interested persons to submit comments regarding its preliminary determination that the proposal will not have a significant economic impact on a substantial number of small entities. The Department also requests comments from small entities regarding what, if any, special problems they might encounter if the proposal were to be adopted, and what changes, if any, could be made to minimize those problems. To avoid duplication of comments, comments submitted in response to the September 3, 1997 Notice of Proposed Revision of Annual Information Return/Report (62 FR 46556) and the June 24, 1998 request for comments will be treated as comments on this Notice of Proposed Rulemaking.

*Executive Order 12866 Statement*

Under Executive Order 12866, the Department must determine whether the regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, it has been determined that this regulatory action creates a novel method of statutory compliance consistent with the President's priorities that will reduce paperwork and regulatory compliance burdens on businesses, including small businesses and organizations, and make better use of scarce federal resources, in accord with the mandates of the Paperwork Reduction Act and the President's priorities. Therefore, this notice is ''significant'' and subject to OMB review under Executive Order 12866(3)(f)(4).

Under Part 1 of Title I ERISA, administrators of pension and welfare benefit plans (collectively referred to as employee benefit plans) are required to file annual returns/reports concerning their financial condition and operations. ERISA section 104(a)(2)(A) authorizes the Secretary of Labor to prescribe by regulation simplified reporting for pension plans that cover fewer than 100 participants. Section 104(a)(3) authorizes that Secretary to exempt any welfare plan from all or part of the reporting and disclosure requirements of Title I or to provide simplified reporting and disclosure if the Secretary finds that such requirements are inappropriate as applied to such plans. Section 110 permits the Secretary to prescribe for pension plans alternative methods of complying with any of the reporting and disclosure requirements if the Secretary finds that: (1) the use of the alternative method is consistent with the purposes of ERISA and provides adequate disclosure to plan participants and beneficiaries and to the Secretary; (2) application of the statutory reporting and disclosure requirements would increase costs to the plan or impose unreasonable administrative burdens with respect to the operation of the plan; and (3) the application of the statutory reporting and disclosure requirements would be adverse to the interests of plan participants in the aggregate.

For purposes of Title I of ERISA, the filing of a completed Form 5500 (including any required statements, schedules, and report of an independent qualified public accountant) generally constitutes compliance with the limited exemption and alternative method of compliance set forth by regulation in § 2520.103–1(b). As stated in this preamble, the Department is proposing to make the determination that application of the statutory annual reporting and disclosure requirements without the availability of the Form 5500 as revised would be adverse to the interests of participants in the aggregate. The use of the new Form 5500 as an alternative method of compliance would relieve plans subject to the annual reporting requirements from increased costs and unreasonable administrative burdens by providing a standardized format which facilitates reporting, eliminates duplicative reporting requirements, and simplifies the content of the annual report in general.

The Form 5500 Series serves as the primary source of information concerning the operation, funding, assets and investments of pension and other employee benefit plans. The Form 5500 is not only an important disclosure

document for participants and beneficiaries, but also a compliance and research tool for the Department and a source of information and data for use by other federal agencies, Congress, and the private sector in assessing employee benefit, tax, and economic trends and policies.

The Pension and Welfare Benefits Administration, the Internal Revenue Service, and the Pension Benefit Guaranty Corporation have conducted an extensive review of the Form 5500 Series in an effort to streamline the information required to be reported and the methods by which the information is filed and processed. A proposed revision of the Form 5500 Series was published in the **Federal Register** on September 3, 1997 (62 FR 46556). The proposal was designed to lower the administrative burdens and costs incurred by the more than 900,000 employee benefit plans that annually file the Form 5500 Series. A public hearing on the proposed revision was held on November 17, 1997, and written comments on the proposal were received until the public record was closed on December 3, 1997. On February 4, 1998, the Department announced that, in response to public comments, the implementation of the new Form 5500 would be delayed until the 1999 plan year. A revised Form 5500 was submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act and a Notice was published in the **Federal Register** on June 24, 1998 (63 FR 34493) which provided a 30-day opportunity to submit comments to OMB on the new Form 5500 submission. The new Form 5500 was also made available on PWBA's internet site (http://www.dol.gov/dol/pwba) as part of the Agencies' commitment to make information about the new forms available to plans and their service providers at the earliest opportunity. Following its Paperwork Reduction Act review, OMB gave conditional Paperwork Reduction Act approval to the new Form 5500 on August 26, 1998. As discussed in paragraph A (Background) of this preamble, the approval is conditioned, in part, on the Agencies soliciting public comments on the computer scannable version of the new form after its development and making minor adjustments to the form. The final computer scannable version of the forms, which must be used for 1999 plan years, will be published in the **Federal Register** following the Agencies' evaluation of public comments. The amendments proposed in this Notice of Proposed Rulemaking are intended to make technical changes to the Department's reporting regulations, and conform them to requirements of the Form 5500 Series, as revised.

Because information reported to the Department is also subject to ERISA's disclosure provisions, the Department in this proposal has attempted to balance the needs of participants, beneficiaries and the Department to obtain information necessary to protect ERISA rights and interests with the needs of administrators to minimize costs attendant with the reporting of information to the federal government.

*Costs*

The cost and burden associated with the annual reporting requirement for any given plan will vary according to a limited number of factors, including whether and to what extent underlying records are maintained electronically or manually, whether and to what extent the Form 5500 is reproduced electronically or completed manually, and whether and to what extent these activities are performed in-house by the plan sponsor or purchased from service providers. However, little information is available with respect to the actual distribution of plans within these ranges. Consideration of the potential cost impact of the proposed revisions to the Form 5500 Series results, therefore, in estimates which are based on a number of assumptions concerning the costs of automated systems and system modifications, the numbers and types of users of automated systems, and the numbers and types of users of the services of third-party administrators.

The Department believes that the revisions to the Form 5500 will generally impose the greatest additional cost on plan administrators whose systems for storing and producing Form 5500 data are most completely automated, and the least additional cost on those least automated. For this reason, a distinction is made here between ''full-service automated systems'' and ''basic automated systems.'' A full-service automated system is considered to be a sophisticated system which stores and manipulates the data needed for completion of the form, and which also summarizes and prints the data in the Form 5500 format. A basic automated system generally stores financial data, flags the types of transactions required to be reported on the Form 5500, and facilitates completion of the form, but does not configure output in Form 5500 format.

Both types of systems are expected to require certain modifications in their data storage features, due to the proposed changes in the groupings of financial data on the form. However, while the output of basic systems may be expected to require some revision to facilitate efficient completion of the form, reconfiguration of the existing output of full-service systems to conform with the revised Form 5500 format is considered likely to require substantial system modifications.

For purposes of this discussion of potential costs, it has been assumed that the Form 5500 reproduction capability represents one-half of the cost of the complete system, and that basic automated systems sell for approximately one-half of the cost of full-service automated systems. Modification (in contrast to initial purchase) of the output capability of a full-service system is assumed to equal one-third of the cost of the original system. On this basis, the full-service system cost can be adjusted by a factor of .165 to arrive at the cost increase attributable to modifying output capability. Several other assumptions underlying the costs estimated here are specifically identified where applicable.

The Department believes that the primary purchasers of full-service automated systems are third-party administrators (TPAs) serving substantial numbers of clients, and banks and trust companies managing master trust investment accounts (MTIAs). Such full-service systems have been developed by only a small number of vendors. The known cost of one such system consists of an initial fee of $11,000 and an additional annual fee of $2,000. Given the stated assumptions concerning the costs for the output capability and the modification of output capability as percentages of original cost, the cost of system redesign passed along from vendors to TPA purchasers is estimated to amount to an initial fee of $1,815 plus an increased annual fee of $333. Assuming a ten-year redesign cycle, and ten-year depreciation of the initial fee increase, the annual increase would amount to $182 plus the $333 annual fee, or $515.

This annual increase may be multiplied by the number of TPA purchasers which are assumed to be of sufficient size to warrant the purchase and modification of these systems to arrive at a total annual cost. Fifty-five TPAs with at least 50 client plans were identified for this purpose by tabulating the number of unique employer identification numbers for plan administrators among 1993 annual reports in which the plan administrator

was different from the plan sponsor. The resulting estimate of the annual cost of system modifications for TPAs using full-service systems is $28,325.

Banks and trust companies providing master trust services to plans are also assumed to purchase or develop in-house automated systems to both complete Direct Filing Entity (DFE) reports filed with the Department and to provide plan financial data to plan sponsors filing Form 5500 reports. Data from 1993 Form 5500 filings indicate a total of 160 such banks and trust companies managing MTIAs for approximately 24,000 plans filing Form 5500 reports completed by the plan sponsor. Assuming the same $515 annual cost increase for managers of MTIAs, their modification cost is estimated at $82,400.

Users of basic automated systems are believed to include smaller TPAs and large plan sponsors that complete Form 5500 in-house. It is assumed that the TPAs and plan sponsors using these systems would either purchase redesigned software from vendors or incur direct costs to modify software developed in-house. Modification costs would likely vary, but are expected to be roughly equivalent to the cost to the Department of modifying the internal system which configures balance sheet and income statement data in Form 5500 format. This cost is estimated to be equal to 2.7% of the initial cost of the system.

Based on the known cost of a full-service automated system, and the assumption that basic systems are available for one-half the cost of full-service systems, the basic system might be purchased for $5,500 plus a $1,000 annual fee. A 2.7% increase in the cost attributable to changes in the financial schedule would result in a fee increase of $148.50 plus $27 per year. Depreciation of the initial fee over a ten-year period would result in an annual cost of about $42.

Because the number of plan sponsors which rely, either directly or indirectly, on a basic automated system is unknown, certain assumptions are made for the purpose of estimating a cost of modifying basic automated systems. It is assumed that two principal types of filers will either purchase such systems from vendors or pay an equivalent cost for modifying systems developed in-house: small TPAs completing Form 5500 in their clients' behalf, and sponsors of self-insured or partially insured, partially self-insured plans with at least 100 participants which complete the forms in-house. Small plan filers which complete the forms in-house and large fully-insured filers are excluded from this estimate because it is believed that these filers will not rely on automated systems.

The number of plans which have Form 5500 completed by a TPA is derived from the review of 1993 Form 5500 data where the plan administrator differs from the plan sponsor. The total count of such plans in 1993 was 28,900. Subtracting the 18,300 plans previously considered as clients of large TPAs leaves 10,600 plans serviced by small TPAs. Assuming an average client base of 20 plans for these smaller TPAs results in an estimate of approximately 530 TPAs. Given the assumption of $42 for the annual increase in costs, these TPAs would incur an estimated cost increase of $22,180 for system modifications.

The number of 1993 plan filings which did not show a different plan sponsor and plan administrator, which have at least 100 participants, and which are not fully-insured was 45,500. Of these, 37,000 plans were sponsored by sponsors of single plans; 8,500 sponsored multiple plans, totaling 30,000 plans. It is assumed that sponsors of multiple plans require systems which handle multiple records, and that systems which do not require multiple records will be less costly to modify. The 8,500 sponsors are expected to incur a $42 annual cost for modifying multiple-plan systems, for a total of $357,000. The 37,000 plans which do not require multiple-record capability are expected to incur one-half of the annual cost of multiple-record system modification, or $21 per plan, for a total of $777,000.

As summarized below, the annual cost estimated on the basis of the stated assumptions to be incurred as a result of modification of automated systems to produce or complete Form 5500 is $1.3 million.

ESTIMATED NUMBER OF FORM 5500 SERIES FILINGS COMPLETED WITH ASSISTANCE OF AUTOMATED SYSTEMS

| | Number of plans | Annual per plan costs | Total annual costs | Ten-year cost per plan | Total ten-year costs |
|---|---|---|---|---|---|
| Large TPAs (full service systems) | 18,300 | $1.55 | $28,325 | $15.50 | $283,250 |
| MTIAs (full service systems) | 24,000 | 3.43 | 82,400 | 34.30 | 823,200 |
| Small TPAs (basic systems) | 10,600 | 2.09 | 22,180 | 20.90 | 221,800 |
| Large Plans Administered In-House—One Plan | 37,000 | 21.00 | 777,000 | 210.00 | 7,770,000 |
| Large Plans Administered In-House—Multiple Plans | 30,000 | 11.90 | 357,000 | 119.00 | 3,570,000 |
| Total | 119,900 | 10.12 | 1,266,905 | 101.20 | 12,668,250 |

Further, it is estimated that other resources will be required in the initial year of implementation of the revised forms. As a result of the change in information required to be reported by plans with fewer than 100 participants, average time for small plans to complete the Department's data elements is assumed to increase from 51.4 minutes for existing Form 5500–C filers and 33.6 minutes for Form 5500–R filers (an annual average of 41.6 minutes over the existing three-year filing cycle for plans with fewer than 100 participants which are not otherwise exempt from filing requirements) to 52.4 minutes for the revised form. This increase in the initial year is based on the assumption that filers will require additional time for reviewing instructions to the revised form. The time required for small plan filers to complete the Form 5500 is estimated to be 35.2 minutes in subsequent years.

Additional time will also be required in the year of implementation of the revised form for DFEs such as common/collective trusts, pooled separate accounts, master trusts, 103–12 investment entities, and group insurance arrangements to complete the Form 5500 Series in the standardized format. Existing rules specify the types of information to be filed by DFEs or reported to plan sponsors, but do not require the use of a standard format for reporting purposes. It is estimated that DFEs will expend approximately 8,429 hours per year in preparing and filing plan and asset information in the standardized format and providing certifications to participating plans concerning whether or not they will file directly with the Department. Corresponding costs may be passed on

to plans which participate in a DFE in the form of increased fees.

*Benefits*

The revision of the Form 5500 Series was undertaken in an effort to simplify and streamline the annual return/report, and reduce the reporting burden on filers. The new form is intended to reduce the total amount of information to be reported by many plans by eliminating information that is not useful for enforcement, research, or other statutorily mandated missions. The revisions are also designed to eliminate redundant items and revise questions that have historically produced filing errors. The revisions also generally require welfare plans to complete fewer items than pension plans, and small plans to complete fewer items than large plans.

The revisions eliminate the Form 5500–C/R, but maintain limited financial reporting similar to the existing Form 5500–R for small plans. Plans currently exempt from filing a return/report (such as certain small unfunded/insured welfare plans and certain SEPs), or those eligible for limited reporting options (such as certain Code section 403(b) plans) will continue to be eligible for that annual reporting relief.

The revisions restructure the Form 5500 along the lines familiar to individual and corporate taxpayers—a simple one-page main form with basic information necessary to identify the plan for which the report is filed, along with a checklist of the schedules being filed which are applicable to the filer's plan type. The structure should aid filers by allowing them to assemble and file a return that is customized to their plan. Instructions to the form have been reorganized with the intention that they be easier to use due to grouping on the basis of the schedules to be attached. The revised instructions will allow filers to go directly to the instructions which apply to them, and avoid those which do not apply.

Based on the elimination of certain information and reformatting of the Form 5500 Series, the burden of preparing and distributing the form is estimated to be reduced by between 12% and 13% per year over the ten-year life of the form. Assuming an hourly cost ranging from $20 to $25 per hour for preparation of the form, the burden hour reduction is expected to result in a reduction in filer costs which ranges from $1.7 million to $2.1 million per year over the life of the form.

The revisions also establish the Form 5500 as the standardized reporting format for DFEs. The DFE reporting rules were intended to simplify the annual reporting requirements for participating plans and eliminate confusion regarding the reporting obligations of plans which participate in DFEs. Standardization of the information reported by DFEs is expected to allow the Department to correlate and effectively use the data for enforcement and research purposes with respect to the over $1 trillion in plan assets held by DFEs.

The revisions are also designed to support and facilitate the processing system currently in developmental stages to simplify and expedite the processing of the Form 5500 Series. This new system is planned to rely on electronic filing with automatic error detection, and optical scanning technology and optical character recognition to computerize the paper forms, resulting in reductions in government processing costs. Implementation of the single form with multiple schedules is also expected to reduce the government's costs to process the forms, due to an overall reduction in the number of pages on which the information will be submitted.

The Department believes that the current action conforming rules related to annual reporting obligations for employee benefit plan administrators to the new Form 5500 Series is consistent with the principles set forth in the Executive Order in that it will reduce costs and paperwork burden over the life of the forms while enhancing the ability to protect benefits with timely and accurate information.

*Paperwork Reduction Act Statement*

The Agencies, as part of their continuing efforts to reduce paperwork and respondent burden, invite the general public and Federal agencies to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data are provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents is properly assessed. The Agencies solicited comments on the information collection request (ICR) included in this proposed regulatory action as part of the proposed revision of the Form 5500 Series published in the **Federal Register** on September 3, 1997 (62 FR 46556). A public hearing on the proposed revision was held on November 17, 1997, and written comments on the proposal were received until the public record was closed on December 3, 1997. The Agencies received public comments stating that, although acknowledging that the forms revisions will reduce plan administration costs, estimates of the time required to collect the information and prepare the forms and related schedules were low resulting in underestimated burden calculations. The Agencies are currently exploring approaches to developing a revised burden estimation methodology in an effort to respond to those concerns. On February 4, 1998, the Department announced that, in response to public comments, the implementation of the new Form 5500 would be delayed until the 1999 plan year. A new and revised Form 5500 was submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act which was made available on PWBA's internet site. A Comment Request published in the **Federal Register** on June 24, 1998, 63 FR 34493, provided the public with a 30-day opportunity to submit comments to OMB on the new Form 5500 submission. Following OMB's review, OMB gave conditional Paperwork Reduction Act approval to the new Form 5500 on August 26, 1998. As discussed in paragraph A (Background) of this preamble, the approval is conditioned, in part, on the Agencies soliciting public comments on the computer scannable version of the new form after its development and making minor adjustments to the form. The final computer scannable version of the forms, which will be required to be used for 1999 plan years, will be published in the **Federal Register** following the Agencies' evaluation of public comments. In order to avoid unnecessary duplication of public comments, the supplementary PRA 95 information published in the September 3, 1997 Notice of Proposed Forms Revisions and the June 24, 1998 Comment Request is incorporated herein by this reference in its entirety, and comments submitted in response to these **Federal Register** publications will be treated as comments on this Notice of Proposed Rulemaking. A copy of the ICR may be obtained by contacting the office listed under the heading ''Addressee For PRA 95 Comments.''

The Department has submitted a copy of the proposed information collection to the Office of Management and Budget (OMB) in accordance with 44 U.S.C. § 3507(d) of the PRA 95 for its review of its information collections. The Department is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Comments should be sent to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, D.C. 20503; Attention: Desk Officer for the Pension and Welfare Benefits Administration. Although comments may be submitted through February 8, 1999, OMB requests that comments be received within 30 days of publication of the Notice of Proposed Rulemaking to ensure their consideration.

Addressee for PRA 95 Comments: Written comments regarding only PRA 95 and the ICR should be sent to Gerald B. Lindrew, U.S. Department of Labor, PWBA/OPR, Room N–5647, 200 Constitution Avenue, N.W., Washington, DC 20210, telephone 202–219–4784 (this is not a toll-free number). Written comments must be submitted on or before February 8, 1999, to be assured of consideration.

I. PRA 95 Background: The Department is proposing to amend its annual reporting regulations to conform them to the Agencies' revision of the Form 5500 Series in a effort to streamline and simplify this annual report.

II. PRA 95 Current Actions: The amendments contained in this document are necessary to conform the Department's annual reporting regulations to the new Form 5500 Series for which OMB gave conditional Paperwork Reduction Act approval on August 26, 1998. As described in paragraph A of this preamble, the approval is conditioned, in part, on the Agencies soliciting public comments on the computer scannable version of the new form after its development and making minor adjustments to the form. See the Notice of Proposed Forms Revisions published in the **Federal Register** on September 3, 1997 (62 FR 46556), the Comment Request published in the **Federal Register** on June 24, 1998 (63 FR 34493) and PWBA's internet site for the new Form 5500 that was submitted to OMB for approval under the Paperwork Reduction Act.

As indicated in paragraphs C.3 and C.4 of this preamble, the proposed amendments would modify the reporting rules for plans investing in CCTs and PSAs, and add a new information collection item with a small additional burden to existing requirements for CCTs and PSAs. Under existing rules, CCTs and PSAs must provide certain information to each participating plan's administrator including (i) a copy of the annual statement of assets and liabilities for its fiscal year that ends with or within the plan year of such plan and (ii) the value of the plan's units of participation. This information must be certified as accurate and complete and must be provided by the CCT and PSA within 120 days after the close of the plan year for each participating plan. A participating plan is required to include with their annual report a copy of the CCT's or PSA's statement of assets and liabilities unless such CCT or PSA files it directly with the Department and certain other conditions are met. In such a case, the CCT or PSA must certify to the plan administrator that a copy of its statement of assets and liabilities has been filed with the Department. A PSA's and CCT's statement of assets and liabilities is not required to be reported in a uniform format or manner. In addition, under the existing rules a participating plan must report the current value of its interest in a CCT or PSA at the beginning and end of its plan year regardless of whether the CCT or PSA files directly with the Department.

Under the proposal, CCTs and PSAs which elect to file directly with the Department, like other DFEs, must use a standardized form. In the case of a CCT or PSA that intends to file as a DFE, the proposed amendments would require that such CCT or PSA notify its participating plans of its intention to do so. In the case of a CCT or PSA that does not file as a DFE, the proposed amendments would require that such CCT or PSA notify its participating plans of this fact and furnish the information needed about its assets (i.e., break out their interest in the CCT or PSA into general asset categories such as stocks, debt, real estate, etc.) so the participating plan can satisfy its own annual reporting obligations. These notifications must be made within the same time period for transmitting information already required under the existing rules (i.e., 120 days after the close of the plan year for each participating plan).

The impact of these proposed changes with respect to CCTs and PSAs and plans which participate in these entities has been estimated and included in the total estimated burden for this ICR under PRA 95. The total additional burden imposed by standardization of reporting and modification of the certification requirement for CCTs and PSAs is estimated at 2,725 hours per year. This includes only a nominal adjustment for the change in the certification requirement. The Department believes that the certification will be based on a decision made once per year for each CCT or PSA. CCTs or PSAs that file as a DFE are under current rules required to certify essentially the same substantive information as would be required under the new DFE rules. The requirement to certify that the entity is filing as a DFE within 120 days after the end of the participating plans year-ends should be a brief statement that should not impose any measurable burden in addition to that resulting from the current requirements. In the case of CCTs and PSAs that do not file as a DFE, the entities under current rules already must certify various substantive information to their participating plans within 120 days after the plans' year-ends. Adding to the certification a brief statement that the entity is not filing as a DFE should not impose any measurable burden in addition to that resulting from the current requirements. In this regard, the Department anticipates that the requirement to certify information sufficient to enable the participating plans' to report beginning and end of year values for their interests in the underlying assets of such CCTs or PSAs should not be a burden inasmuch as plans participating in CCTs and PSAs already are required to report the current value of their units of participation in CCTs and PSAs as of the beginning and end of the plan year. The proposed rulemaking would also explicitly require an information collection item in §§ 2520.103–1(f), 2520.103–2(c), 2520.103–9(d) and 2520.103–12(f) for entities filing electronically by requiring that such entities maintain an original copy of the filing with all required signatures as part of the entity's records. The Department believes that no additional burden associated with such record maintenance will arise inasmuch as plans and direct filers routinely maintain copies of all such filings to satisfy other statutory obligations.

Finally, the proposed amendments to § 2520.104b-10 may add a burden that is associated with the elimination of the Form 5500–R filing. Specifically, such plans will be required to provide SARs on an annual basis and may not use the alternative method of compliance currently provided in § 2520.104b–10(b).

*Type of Review:* Revision of a currently approved collection.

*Agency:* Pension and Welfare Benefits Administration.

*OMB Number:* Currently approved under OMB No.1210–0016; A new number will be assigned to the revised Form 5500 and schedules which will be published on the form and schedules used by DOL, IRS and PBGC.

*Title:* Form 5500 Series.

*Affected Public:* Individuals or households; Business or other for-profit; Not-for-profit institutions.

*Form Number:* DOL/IRS/PBGC Form 5500 and Schedules.

*Total Respondents:* 801,934.

*Total Responses:* 801,934.

*Frequency of Response:* Annually.

*Estimated Time per Response, Estimated Burden Hours, Total Annual Burden:* PWBA and IRS burden estimates are based on different estimation methodologies resulting in total burden estimate ranges from 1.71 million burden hours (using the PWBA methodology) to 8.46 million burden hours (using the IRS methodology) for preparing the Form 5500 Series report and sending it to the government. See the Notice of Proposed Forms Revisions published in the **Federal Register** on September 3, 1997 (62 FR 46556) for detailed information on the burden estimates.

*Small Business Regulatory Enforcement Fairness Act*

This notice of proposed rulemaking, when finalized, will be subject to the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et. seq.*) and will be transmitted to Congress and the Comptroller General for review.

*Unfunded Mandates Reform Act*

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this notice of proposed rulemaking, if finalized, would not include any Federal mandate that may result in expenditures by State, local or tribal governments, and would not impose an annual burden exceeding $100 million on the private sector.

*Statutory Authority*

This regulation is proposed pursuant to the authority in sections 101, 103, 104, 109, 110, 111, 504 and 505 of ERISA and under Secretary of Labor's Order No. 1–87, 52 FR 13139, April 21, 1987.

**List of Subjects in 29 CFR Part 2520**

Accountants, Disclosure requirements, Employee benefit plans, Employee Retirement Income Security Act, Pension plans, Pension and welfare plans, Reporting and recordkeeping requirements, and Welfare benefit plans.

For the reasons set out in the preamble, Part 2520 of Chapter XXV of Title 29 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

1. The authority citation for Part 2520 continues to read as follows:

**Authority:** Secs. 101, 102, 103, 104, 105, 109, 110, 111(b)(2), 111(c), and 505, Pub. L. 93–406, 88 Stat. 840–52 and 894 (29 U.S.C. 1021–1025, 1029–31, and 1135); Secretary of Labor's Order No. 27–74, 13–76, 1–87, and Labor Management Services Administration Order 2–6.

Sections 2520.102–3, 2520.104b-1 and 2520.104b-3 also are issued under sec. 101(a), (c) and (g)(4) of Pub. L. 104–191, 110 Stat. 1936, 1939, 1951 and 1955 and, sec. 603 of Pub. L. 104–204, 110 Stat. 2935 (29 U.S.C. 1185 and 1191c).

2. Section 2520.103–1 is amended by revising paragraphs (b) introductory text, (b)(1), the first sentence of (b)(2)(i), paragraphs, (b)(4), (c), (d) and the first sentence of paragraph (e) as follows:

**§ 2520.103–1 Contents of the annual report.**

* * * * *

(b) *Contents of the annual report for plans with 100 or more participants electing the limited exemption or alternative method of compliance.* Except as provided in paragraph (d) of this section and in §§ 2520.103–2 and 2520.104–44, the annual report of an employee benefit plan covering 100 or more participants at the beginning of the plan year which elects the limited exemption or alternative method of compliance described in paragraph (a)(2) of this section shall include:

(1) A Form 5500 ''Annual Return/Report of Employee Benefit Plan'' and any statements or schedules required to be attached to the form, completed in accordance with the instructions for the form, including Schedule A (Insurance Information), Schedule B (Actuarial Information), Schedule C (Service Provider Information), Schedule D (Direct Filing Entity/Participating Plan Information), Schedule G (Financial Transactions Schedule), Schedule H (Financial Information), Schedule R (Retirement Plan Information), and the other financial schedules described in § 2520.103–10. See the instructions for this form.

(2) * * *

(i) A statement of assets and liabilities at current value presented in comparative form for the beginning and end of the year. * * *

* * * * *

(4) In the case of a plan, some or all of the assets of which are held in a pooled separate account maintained by an insurance company, or a common or collective trust maintained by a bank or similar institution, a copy of the annual statement of assets and liabilities of such account or trust for the fiscal year of the account or trust which ends with or within the plan year for which the annual report is made as required to be furnished to the administrator by such account or trust under § 2520.103–5(c). Although the statement of assets and liabilities referred to in § 2520.103–5(c) shall be considered part of the plan's annual report, such statement of assets and liabilities need not be filed with the plan's annual report. See §§ 2520.103–3 and 2520.103–4 for the reporting requirements for plans some or all of the assets of which are held in a pooled separate account maintained by an insurance company, or a common or collective trust maintained by a bank or similar institution.

* * * * *

(c) *Contents of the annual report for plans with fewer than 100 participants.* Except as provided in paragraph (d) of this section and in §§ 2520.104–43 and 2520.104a-6, the annual report of an employee benefit plan which covers fewer than 100 participants at the beginning of the plan year shall include a Form 5500 ''Annual Return/Report of Employee Benefit Plan'' and any statements or schedules required to be attached to the form, completed in accordance with the instructions for the form, including Schedule A (Insurance Information), Schedule B (Actuarial Information), Schedule D (Direct Filing Entity/Participating Plan Information), Schedule I (Financial Information—Small Plan), and Schedule R (Retirement Plan Information).

(d) *Special rule.* If a plan has between 80 and 120 participants (inclusive) as of the beginning of the plan year, the plan administrator may elect to file the same category of annual report (i.e., the annual report for plans with 100 or more participants under paragraph (b) of this section or the annual report for

plans with fewer than 100 participants under paragraph (c) of this section) that it filed for the previous plan year.

(e) *Plans which participate in a master trust.* The plan administrator of a plan which participates in a master trust shall file an annual report on Form 5500 in accordance with the instructions for the form relating to master trusts. * * *

3. Section 2520.103–1 is further amended by adding a new paragraph (f) as follows:

**§ 2520.103–1 [Amended]**

* * * * *

(f) *Electronic filing.* The Form 5500 ''Annual Return/Report of Employee Benefit Plan'' may be filed electronically or through other media in accordance with the instructions accompanying the form, provided the plan administrator maintains an original copy, with all required signatures, as part of the plan's records.

4. Section 2520.103–2 is amended by revising paragraph (b)(1), the first sentence of (b)(2)(i) and paragraph (b)(4) as follows:

**§ 2520.103–2 Contents of the annual report for a group insurance arrangement.**

* * * * *

(b) * * *

(1) A Form 5500 ''Annual Return/Report of Employee Benefit Plan'' and any statements or schedules required to be attached to the form, completed in accordance with the instructions for the form, including Schedule A (Insurance Information), Schedule C (Service Provider Information), Schedule D (Direct Filing Entity/Participating Plan Information), Schedule G (Financial Transactions Schedule), Schedule H (Financial Information), and the other financial schedules described in § 2520.103–10.

(2) * * *

(i) A statement of all trust assets and liabilities at current value presented in comparative form for the beginning and end of the year. * * *

* * * * *

(b)(4) In the case of a Form 5500 annual report filed under this section for a group insurance arrangement some or all of the assets of which are held in a pooled separate account maintained by an insurance carrier, or a common or collective trust maintained by a bank, trust company or similar institution, a copy of the annual statement of assets and liabilities of such account or trust for the fiscal year of the account or trust which ends with or within the plan year for which the annual report is made as required to be furnished by such account or trust under § 2520.103–5(c). Although the statement of assets and liabilities referred to in § 2520.103–5(c) shall be considered part of the group insurance arrangement's annual report, such statement of assets and liabilities need not be filed with its annual report. See §§ 2520.103–3 and 2520.103–4 for the reporting requirements for plans some or all of the assets of which are held in a pooled separate account maintained by an insurance company, or a common or collective trust maintained by a bank or similar institution, and see § 2520.104–43(b)(2) for when the terms ''group insurance arrangement'' and ''trust'' shall be, respectively, used in place of the terms ''plan'' and ''plan administrator.''

* * * * *

5. Section 2520.103–2 is further amended by adding a new paragraph (c) as follows:

**§ 2520.103–2 [Amended]**

* * * * *

(c) *Electronic filing.* The Form 5500 ''Annual Return/Report of Employee Benefit Plan'' may be filed electronically or through other media in accordance with the instructions accompanying the form, provided the trust maintains an original copy, with all required signatures, as part of the trust's records.

6. Section 2520.103–3 is amended by revising paragraphs (a) and (c) as follows:

**§ 2520.103–3 Exemption from certain annual reporting requirements for assets held in a common or collective trust.**

(a) *General.* Under the authority of sections 103(b)(3)(G), 103(b)(4), 104(a)(2)(B), 104(a)(3), and 110 of the Act, a plan whose assets are held in whole or in part in a common or collective trust maintained by a bank, trust company, or similar institution which meets the requirements of paragraph (b) of this section shall include as part of the annual report to be filed under §§ 2520.104a-5 or 2520.104a-6 the information described in paragraph (c) of this section. Such plan is not required to include in its annual report information concerning the individual transactions of the common or collective trust. This exemption has no application to assets not held in such trusts.

* * * * *

(c) *Contents.* (1) A plan which meets the requirements of paragraph (b) of this section, and which invests in a common or collective trust that files a Form 5500 report in accordance with § 2520.103–9, shall include in its annual report: information required by the instructions to Schedule H (Financial Information) about the current value of and net investment gain or loss relating to the units of participation in the common or collective trust held by the plan; identifying information about the common or collective trust including its name, employer identification number, and any other information required by the instructions to the Schedule D (Direct Filing Entity/Participating Plan Information); and such other information as is required in the separate statements and schedules of the annual report about the value of the plan's units of participation in the common or collective trust and transactions involving the acquisition and disposition by the plan of units of participation in the common or collective trust.

(2) A plan which meets the requirements of paragraph (b) of this section, and which invests in a common or collective trust that does not file a Form 5500 report in accordance with § 2520.103–9, shall include in its annual report: information required by the instructions to Schedule H (Financial Information) about the current value of the plan's allocable portion of the underlying assets and liabilities of the common or collective trust and the net investment gain or loss relating to the units of participation in the common or collective trust held by the plan; identifying information about the common or collective trust including its name, employer identification number, and any other information required by the instructions to the Schedule D (Direct Filing Entity/Participating Plan Information); and such other information as is required in the separate statements and schedules of the annual report about the value of the plan's units of participation in the common or collective trust and transactions involving the acquisition and disposition by the plan of units of participation in the common or collective trust.

7. Section 2520.103–4 is amended by revising paragraphs (a) and (c) as follows:

**§ 2520.103–4 Exemption from certain annual reporting requirements for assets held in an insurance company pooled separate account.**

(a) *General.* Under the authority of sections 103(b)(3)(G), 103(b)(4), 104(a)(2)(B), 104(a)(3), and 110 of the Act, a plan whose assets are held in whole or in part in a pooled separate account of an insurance carrier which meets the requirements of paragraph (b) of this section shall include as part of the annual report to be filed under § 2520.104a-5 or § 2520.104a-6 the information described in paragraph (c)

of this section. Such plan is not required to include in its annual report information concerning the individual transactions of the pooled separate account. This exemption has no application to assets not held in such a pooled separate account.

* * * * *

(c) *Contents.* (1) A plan which meets the requirements of paragraph (b) of this section, and which invests in a pooled separate account that files a Form 5500 report in accordance with § 2520.103–9, shall include in its annual report: information required by the instructions to Schedule H (Financial Information) about the current value of, and net investment gain or loss relating to, the units of participation in the pooled separate account held by the plan; identifying information about the pooled separate account including its name, employer identification number, and any other information required by the instructions to the Schedule D (Direct Filing Entity/Participating Plan Information); and such other information as is required in the separate statements and schedules of the annual report about the value of the plan's units of participation in the pooled separate accounts and transactions involving the acquisition and disposition by the plan of units of participation in the pooled separate account.

(2) A plan which meets the requirements of paragraph (b) of this section, and which invests in a pooled separate account that does not file a Form 5500 report in accordance with § 2520.103–9, shall include in its annual report: information required by the instructions to Schedule H (Financial Information) about the current value of the plan's allocable portion of the underlying assets and liabilities of the pooled separate account and the net investment gain or loss relating to the units of participation in the pooled separate account held by the plan; identifying information about the pooled separate account including its name, employer identification number, and any other information required by the instructions to the Schedule D (Direct Filing Entity/Participating Plan Information); and such other information as is required in the separate statements and schedules of the annual report about the value of the plan's units of participation in the pooled separate account and transactions involving the acquisition and disposition by the plan of units of participation in the pooled separate account.

8. Section 2520.103–5 is amended by redesignating paragraph (c)(1)(iii) as paragraph (c)(1)(iv), redesignating paragraph (c)(2)(iii) as (c)(2)(iv), redesignating paragraph (c)(2)(ii) as paragraph (c)(2)(iii), revising paragraphs (c)(1)(ii) and (c)(2)(i) and adding new paragraphs (c)(1)(iii), and (c)(2)(ii) as follows:

**§ 2520.103–5 Transmittal and certification of information to plan administrator for annual reporting purposes.**

* * * * *

(c) * * *

(1) * * *

(ii) Holds assets of a plan in a pooled separate account and files the Form 5500 report pursuant to § 2520.103–9 for a plan year—

(A) A copy of the annual statement of assets and liabilities of the separate account for the fiscal year of such account ending with or within the plan year for which the participating plan's annual report is made,

(B) A statement of the value of the plan's units of participation in the separate account,

(C) The EIN of the separate account, entity number required for purposes of completing the Form 5500, and any other identifying number assigned by the insurance carrier to the separate account,

(D) A statement that a filing pursuant to § 2520.103–9(c) will be made for the separate account (for its fiscal year ending with or within the participating plan's plan year) on or before the date upon which such plan's annual report is required to be filed in accordance with §§ 2520.104a-5 or 2520.104a-6, and

(E) Upon request of the plan administrator, any other information that can be obtained from the ordinary business records of the insurance carrier and that is needed by the plan administrator to comply with the requirements of section 104(a)(1)(A) of the Act and § 2520.104a-5 or § 2520.104a-6.

(iii) Holds assets of a plan in a pooled separate account and does not file the Form 5500 report pursuant to § 2520.103–9, for a plan year—

(A) A copy of the annual statement of assets and liabilities of the separate account for the fiscal year of such account that ends with or within the plan year for which the annual report is made,

(B) A statement of the value of the plan's units of participation in the separate account,

(C) The EIN of the separate account and any other identifying number assigned by the insurance carrier to the separate account,

(D) A statement that a filing pursuant to § 2520.103–9(c) will not be made for the separate account for its fiscal year ending with or within the participating plan's plan year, and

(E) Upon request of the plan administrator, any other information that can be obtained from the ordinary business records of the insurance carrier and that is needed by the plan administrator to comply with the requirements of section 104(a)(1)(A) of the Act and § 2520.104a-5 or § 2520.104a-6.

* * * * *

(2) * * *

(i) In a common or collective trust that files the Form 5500 report pursuant to § 2520.103–9, for a plan year—

(A) A copy of the annual statement of assets and liabilities of the common or collective trust for the fiscal year of such trust ending with or within the plan year for which the participating plan's annual report is made,

(B) A statement of the value of the plan's units of participation in the common or collective trust,

(C) The EIN of the common or collective trust, entity number assigned for purposes of completing the Form 5500, any other identifying number assigned by the bank, trust company, or other institution to the common or collective trust,

(D) A statement that a filing pursuant to § 2520.103–9(c) will be made for the common or collective trust (for its fiscal year ending with or within the participating plan's plan year) on or before the date upon which the annual report for such plan is required to be filed in accordance with §§ 2520.104a-5 or 2520.104a-6, and

(E) Upon request of the plan administrator, any other information that can be obtained from the ordinary business records of the bank, trust company or similar institution and that is needed by the plan administrator to comply with the requirements of section 104(a)(1)(A) of the Act and §§ 2520.104a-5 or 2520.104a-6.

(ii) In a common or collective trust that does not file the Form 5500 ''Annual Return/Report of Employee Benefit Plan'', pursuant to § 2520.103–9, for a plan year—

(A) A copy of the annual statement of assets and liabilities of the common or collective trust for the fiscal year of such account that ends with or within the plan year for which the annual report is made,

(B) A statement of the value of the plan's units of participation in the common or collective trust,

(C) The EIN of the common or collective trust, and any other

identifying number assigned by bank, trust company or similar institution to the common or collective trust,

(D) A statement that a filing pursuant to § 2520.103–9(c) will not be made for the common or collective trust for its fiscal year ending with or within the participating plan's plan year, and

(E) Upon request of the plan administrator, any other information that can be obtained from the ordinary business records of the bank, trust company or similar institution and that is needed by the plan administrator to comply with the requirements of section 104(a)(1)(A) of the Act and §§ 2520.104a–5 or 2520.104a–6.

* * * * *

9. Section 2520.103–6 is amended by revising paragraphs (a) and (b)(1)(ii), and adding paragraph (f) as follows:

**§ 2520.103–6 Definition of reportable transaction for Annual Return/Report.**

(a) *General.* For purposes of preparing the schedule of reportable transactions described in § 2520.103–10(b)(6), and subject to the exceptions provided in §§ 2520.103–3, 2520.103–4 and 2520.103–12, with respect to individual transactions by a common or collective trust, pooled separate account, or a 103–12 investment entity, a reportable transaction includes any transaction or series of transactions described in paragraph (c) of this section.

(b) * * *

(1) * * *

(ii) With respect to schedules of reportable transactions for the initial plan year of a plan, the term ''current value'' shall mean the current value, as defined in section 3(26) of the Act, of plan assets at the end of a plan's initial plan year.

* * * * *

(f) *Special rule for certain participant-directed transactions.* Participant or beneficiary directed transactions under an individual account plan shall not be taken into account under paragraph (c)(1) of this section for purposes of preparing the schedule of reportable transactions described in this section. For purposes of this section only, a transaction will be considered directed by a participant or beneficiary only to the extent that such individual, in fact, affirmatively authorized the investment of the asset allocated to his or her account.

10. Section 2520.103–9 is revised as follows:

**§ 2520.103–9 Direct filing for bank or insurance carrier trusts and accounts.**

(a) *General.* Under the authority of sections 103(b)(4), 104(a)(3), 110 and 505 of the Act, an employee benefit plan, some or all of the assets of which are held in a common or collective trust or a pooled separate account described in section 103(b)(3)(G) of the Act and §§ 2520.103–3 and 2520.103–4, is relieved from including in its annual report information about the current value of the plan's allocable portion of assets and liabilities of the common or collective trust or pooled separate account and information concerning the individual transactions of the common or collective trust or pooled separate account, provided that the plan meets the requirements of paragraph (b) of this section, and, provided further, that the bank or insurance carrier which holds the plan's assets meets the requirements of paragraph (c) of this section.

(b) *Application.* A plan whose assets are held in a common or collective trust or a pooled separate account described in section 103(b)(3)(G) of the Act and §§ 2520.103–3 and 2520.103–4, provided the plan administrator, on or before the end of the plan year, provides the bank or insurance carrier which maintains the common or collective trust or pooled separate account with the plan number, and name and EIN of the plan sponsor as it will be indicated on the plan's annual report.

(c) *Separate filing by common or collective trusts and pooled separate accounts.* The bank or insurance carrier which maintains the common or collective trust or pooled separate account in which assets of the plan are held shall file, in accordance with the instructions for the form, a completed Form 5500 ''Annual Return/Report of Employee Benefit Plan'' and any statements or schedules required to be attached to the form for the common or collective trust or pooled separate account, including Schedule D (Direct Filing Entity/Participating Plan Information) and Schedule H (Financial Information). See the instructions for this form. The information reported shall be for the fiscal year of such trust or account ending with or within the plan year for which the annual report of the plan is made.

(d) *Method of filing.* The Form 5500 ''Annual Return/Report of Employee Benefit Plan'' may be filed electronically or through other media in accordance with the instructions accompanying the form, provided the common or collective trust or pooled separate account maintains an original copy, with all required signatures, as part of its records.

11. Section 2520.103–10 is revised to read as follows:

**§ 2520.103–10 Annual report financial schedules.**

(a) *General.* The administrator of a plan filing an annual report pursuant to § 2520.103–1(a)(2) or the report for a group insurance arrangement pursuant to § 2520.103–2 shall, as provided in the instructions to the Form 5500 ''Annual Return/Report of Employee Benefit Plan,'' include as part of the annual report the separate financial schedules described in paragraph (b) of this section.

(b) *Schedules.* (1) *Assets held for investment.* (i) A schedule of all assets held for investment purposes at the end of the plan year (see § 2520.103–11) with assets aggregated and identified by:

(A) Identity of issue, borrower, issuer or similar party;

(B) Description of investment including maturity date, rate of interest, collateral, par or maturity value;

(C) Cost; and

(D) Current value, and, in the case of a loan, the payment schedule (e.g., fully amortized, partly amortized with a final lump sum payment).

(ii) In the case of assets or investment interests of two or more plans maintained in one trust, all entries on the schedule of assets held for investment purposes that relate to the trust shall be completed by including the plan's allocable portion of the trust.

(2) *Assets acquired and disposed within the plan year.* (i) A schedule of all assets acquired and disposed of within the plan year (see § 2520.103–11) with assets aggregated and identified by:

(A) Identity of issue, borrower, issuer or similar party;

(B) Descriptions of investment including maturity date, rate of interest, collateral, par or maturity value;

(C) Cost of acquisitions; and

(D) Proceeds of dispositions.

(ii) In the case of assets or investment interests of two or more plans are maintained in one trust, all entries on the schedule of assets held for investment purposes that relate to the trust shall be completed by including the plan's allocable portion of the trust.

(3) *Party in interest transactions.* A schedule of each transaction involving a person known to be a party in interest except do not include:

(i) A transaction to which a statutory exemption under part 4 of title I applies;

(ii) A transaction to which an administrative exemption under section 408(a) of the Act applies; or

(iii) A transaction to which the exemptions of section 4975(c) or 4975(d) of the Internal Revenue Code (Title 26 of the United States Code), applies.

(4) *Obligations in default.* A schedule of all loans or fixed income obligations

which were in default as of the end of the plan year or were classified during the year as uncollectible.

(5) *Leases in default.* A schedule of all leases which were in default or were classified during the year as uncollectible.

(6) *Reportable transactions.* A schedule of all reportable transactions as defined in § 2520.103–6.

(c) *Format requirements for certain schedules.* (1) There is no specific format requirement for the schedules described in paragraphs (b)(1), (b)(2) or (b)(6) of this section provided such schedules are filed with the required information using the same size paper as the Form 5500.

(2) Except as provided in paragraph (c)(1) of this section, such paragraph shall not apply to the Form 5500 and the statements and schedules required to be filed with such form.

12. Section 2520.103–11 is amended by revising paragraph (a) and adding paragraphs (d) as follows:

**§ 2520.103–11 Assets held for investment purposes.**

(a) *General.* For purposes of preparing the schedule of assets held for investment purposes described in § 2520.103–10(b)(1) and (2), assets held for investment purposes include those assets described in paragraph (b) of this section.

* * * * *

(d) *Special rule for certain participant-directed transactions.* Cost information may be omitted from the schedule of assets held for investment, for assets described in paragraphs (b)(1)(i) and (b)(1)(ii) of this section, only with respect to participant or beneficiary directed transactions under an individual account plan. For purposes of this section only, a transaction will be considered directed by a participant or beneficiary only to the extent that such individual, in fact, affirmatively authorized the investment of the asset allocated to his or her account.

13. Section 2520.103–12 is amended by revising the last sentence of paragraph (a), revising paragraph (b), and also adding a new paragraph (f) as follows:

**§ 2520.103–12 Limited exemption and alternative method of compliance for annual reporting of investments in certain entities.**

(a) * * * The information described in paragraph (b), however, shall be considered as part of the annual report for purposes of the requirements of section 104(a)(1) of the Act and §§ 2520.104a–5 and 2520.104a–6.

(b) The entity described in paragraph (c) of this section shall file, in accordance with the instructions for the form:

(1) A Form 5500 ''Annual Return/Report of Employee Benefit Plan'' and any statements or schedules required to be attached to the form for such entity, completed in accordance with the instructions for the form, including Schedule A (Insurance information), Schedule C (Service Provider Information), Schedule D (Direct Filing Entity/Participating Plan Information), Schedule G (Financial Transactions Schedule), Schedule H (Financial Information), and the financial schedules described in § 2520.103–10(b)(1) and (b)(2). See the instructions for this form. The information reported shall be for the fiscal year of such entity ending with or within the plan year for which the annual report of the plan is made.

(2) A report of an independent qualified public accountant, regarding the financial statements and schedules described in paragraph (b)(1) of this section which meets the requirements of § 2520.103–1(b).

(c) * * *

* * * * *

(f) *Method of filing.* The Form 5500 ''Annual Return/Report of Employee Benefit Plan'' may be filed electronically or through other media in accordance with the instructions accompanying the form provided the entity described in paragraph (c) of this section maintains an original copy, with all required signatures, as part of its records.

14. Section 2520.104–21 is amended by revising paragraphs (b)(3) and (d) as follows.

**§ 2520.104–21 Limited exemption for certain group insurance arrangements.**

* * * * *

(b) * * *

(2) * * *

(3) Uses a trust (or other entity such as a trade association) as the holder of the insurance contracts and uses a trust as the conduit for payment of premiums to the insurance company.

* * * * *

(d) *Examples.* (1) A welfare plan has 25 participants at the beginning of the plan year. It is part of a group insurance arrangement of a trade association and provides benefits to employees of two or more unaffiliated employers, but not in connection with a multiemployer plan as defined in the Act. Plan benefits are fully insured pursuant to insurance contracts purchased with premium payments derived half from employee contributions (which the employer forwards within three months of receipt) and half from the general assets of each participating employer. Refunds to the plan are paid to participating employees within three months of receipt as provided in the plan and as described to each participant upon entering the plan. A trust acts as a conduit for payments, receiving premium payments from participating employers and paying the insurance company. The plan appoints the trade association as its plan administrator. The association, as plan administrator, provides summary plan descriptions to participants and beneficiaries, enlisting the help of participating employers in carrying out this distribution, and also holds the insurance contracts. The plan administrator also makes copies of certain plan documents available to the plan's principal office and such other places as necessary to give participants reasonable access to them. The plan administrator files with the Secretary an annual report covering activities of the plan, as required by the Act and such regulations as the Secretary may issue. The exemption provided by this section applies because the conditions of paragraph (b) have been satisfied.

(2) Assume the same facts as paragraph (d)(1) of this section except that the premium payments for the insurance company are paid from the trust through an independent insurance brokerage firm. The trade association is the holder of the insurance contract. The plan appoints an officer of the participating employer as the plan administrator. The officer, as plan administrator, performs the same reporting and disclosure functions as the administrator in paragraph (d)(1) of this section, enlisting the help of the association in providing summary plan descriptions and necessary information. The exemption provided by this section applies.

(3) The facts are the same as paragraph (d)(1), except the welfare plan has 125 participants at the beginning of the plan year. The exemption provided by this section does not apply because the plan had 100 or more participants at the beginning of the plan year. See, however, § 2520.104–43.

(4) The facts are the same as paragraph (d)(2), except the welfare plan has 125 participants. The exemption provided by this section does not apply because the plan had 100 or more participants at the beginning of the plan year. See, however, § 2520.104–43.

15. Section 2520.104–41 is amended by revising paragraphs (b) and (c) as follows:

**§ 2520.104–41 Simplified annual reporting requirements for plans with fewer than 100 participants.**

* * * * *

(b) *Application*. The administrator of an employee pension or welfare benefit plan which covers fewer than 100 participants at the beginning of the plan year and the administrator of an employee pension or welfare benefit plan described in § 2520.103–1(d) may file the simplified annual report described in paragraph (c) of this section in lieu of the annual report required to be filed pursuant to section 104(a)(1)(A) of the Act and § 2520.104a–5.

(c) *Contents*. The administrator of an employee pension or welfare benefit plan described in paragraph (b) of this section shall file, in accordance with the instructions for the form, a completed Form 5500 ''Annual Return/Report of Employee Benefit Plan'' and any statements or schedules required to be attached to the form, including Schedule A (Insurance information), Schedule B (Actuarial Information), Schedule D (Direct Filing Entity/ Participating Plan Information), Schedule I (Financial Information—Small Plan), and Schedule R (Retirement Plan Information). See the instructions for this form.

16. Section 2520.104–43 is amended by revising paragraphs (b)(1)(ii) and (b)(2) as follows:

**§ 2520.104–43 Exemption from annual reporting requirement for certain group insurance arrangements.**

* * * * *

(b) * * *

(1) * * *

(ii) an annual report containing the items set forth in § 2520.103–2 has been filed with the Secretary of Labor in accordance with §§ 2520.104a–6 by the trust or other entity which is the holder of the group insurance contracts by which plan benefits are provided.

(2) For purposes of this section, the terms ''group insurance arrangement'' and ''trust'' shall be used in place of the terms ''plan'' or ''plan administrator,'' as applicable, in §§ 2520.103–3, 2520.103–4, 2520.103–6, 2520.103–8, 2520.103–9 and 2520.103–10.

* * * * *

17. Section 2520.104–44 is amended by revising the second sentence of paragraph (a)(2), removing the word ''and'' at the end of paragraph (b)(1)(iii), substituting a semi-colon for the period at the end of paragraph (b)(2), adding paragraph (b)(3), and revising paragraph (c)(1) as follows:

**§ 2520.104–44 Limited exemption and alternative method of compliance for annual reporting by unfunded plans and by certain insured plans.**

(a) * * *

(2) * * * An employee pension benefit plan which meets the requirements of paragraph (b)(2) or (b)(3) of this section is not required to comply with the annual reporting requirements described in paragraph (c) of this section.

(b) * * *

(3) A pension plan using a tax deferred annuity arrangement under section 403(b)(1) of the Internal Revenue Code (Title 26 of the United States Code) and/or a custodial account for regulated investment company stock established under Code section 403(b)(7) as the sole funding vehicle for providing pension benefits.

(c) * * *

(1) Completing certain items of the annual report as prescribed by the instructions to the Form 5500 ''Annual Return/Report of Employee Benefit Plan'' and accompanying schedules;

* * * * *

18. Section 2520.104–46 is amended by revising paragraph (d)(1) as follows:

**§ 2520.104–46 Waiver of examination and report of an independent qualified public accountant for employee benefit plans with fewer than 100 participants.**

* * * * *

(d) *Limitations.* (1) The waiver described in this section does not affect the obligation of the plan described in paragraph (b)(1) or (b)(2) of this section to file the Form 5500 ''Annual Return/ Report of Employee Benefit Plan'' and all applicable financial schedules and statements as prescribed by the instructions to the form. See § 2520.104–41.

* * * * *

19. Section 2520.104b–10 is amended as follows.

a. In the first sentence of paragraph (a), the phrase ''paragraphs (b) and (g)'' is revised to read ''paragraph (g)''.

b. Remove and reserve paragraph (b).

20. Paragraph (c) introductory text and the first sentence of paragraph (f) of section 2520.104b–10 are revised as follows:

**§ 2520.104b–10 Summary Annual Report.**

* * * * *

(c) *When to furnish.* Except as otherwise provided in this paragraph (c), the summary annual report required by paragraph (a) of this section shall be furnished within nine months after the close of the plan year.

* * * * *

(f) *Furnishing of additional documents to participants and beneficiaries.* A plan administrator shall promptly comply with any request by a participant or beneficiary for additional documents made in accordance with the procedures or rights described in paragraph (d) of this section.

* * * * *

21. Section 2520.104b–10 is further amended as follows.

a. The following sentence from paragraph (d)(3) under the heading ''Basic Financial Statement'' is removed: [For plans filing form 5500K, omit separate entries for employer contributions and employee contributions and insert instead ''contributions by the employer and employees of ($ )''].

b. In paragraph (d)(3), the list under the heading ''Your Rights to Additional Information'' (after the introductory text but before the language ''To obtain a copy of the full annual report * * *'') is revised to read as follows:

* * * * *

1. an accountant's report;

2. financial information and information on payments to service providers;

3. assets held for investment;

4. fiduciary information, including non-exempt transactions between the plan and parties-in-interest (that is, persons who have certain relationships with the plan);

5. loans or other obligations in default or classified as uncollectible;

6. leases in default;

7. transactions in excess of 5 percent of the plan assets;

8. insurance information including sales commissions paid by insurance carriers;

9. information regarding any common or collective trusts, pooled separate accounts, master trusts or 103–12 investment entities in which the plan participates, and

10. actuarial information regarding the funding of the plan.

* * * * *

c. In paragraph (d)(4), the list under the heading ''Your Rights to Additional Information'' (after the introductory text but before the language ''To obtain a copy of the full annual report * * *'') is revised as follows:

* * * * *

1. an accountant's report;

2. financial information and information on payments to service providers;

3. assets held for investment;

4. fiduciary information, including non-exempt transactions between the plan and parties-in-interest (that is, persons who have certain relationships with the plan);

5. loans or other obligations in default or classified as uncollectible;

6. leases in default;

7. transactions in excess of 5 percent of the plan assets;

8. insurance information including sales commissions paid by insurance carriers; and

9. information regarding any common or collective trusts, pooled separate accounts, master trusts or 103–12 investment entities in which the plan participates.

* * * * *

d. The last sentence of both paragraphs (d)(3) and (d)(4) under the heading ''Your Rights to Additional Information'' are revised as follows:

''Requests to the Department should be addressed to: Public Disclosure Room, Room N5638, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.''

e. The last sentence of the undesignated paragraph following paragraph (e)(2) is removed.

Signed at Washington, DC, this 4th day of December, 1998.

**Meredith Miller,**

*Deputy Assistant Secretary for Policy Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 98–32659 Filed 12–9–98; 8:45 am]

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A cumulative list of Public Laws for the second session of the 105th Congress was published in the **Federal Register** on November 30, 1998.