8–5–99
Vol. 64 No. 150
Pages 42579–42822

# Federal Register

Thursday
August 5, 1999

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## FEDERAL ELECTION COMMISSION

### 11 CFR Parts 110, 9004, and 9034

**[Notice 1999–13]**

### Party Committee Coordinated Expenditures; Costs of Media Travel With Publicly Financed Presidential Candidates

**AGENCY:** Federal Election Commission.

**ACTION:** Final Rule and Transmittal of Regulations to Congress.

**SUMMARY:** The Commission is revising two portions of its regulations governing publicly financed Presidential primary and general election candidates. These rules address the costs of transportation and ground services that federally funded Presidential primary and general election campaigns may pass on to the news media covering their campaigns, as well as party committee coordinated expenditures that are made before the date their candidates receive the nomination. Further information is provided in the supplementary information which follows.

**DATES:** Further action, including the publication of a document in the **Federal Register** announcing an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d) and 26 U.S.C. 9009(c) and 9039(c).

**FOR FURTHER INFORMATION CONTACT:** Ms. Rosemary C. Smith , Acting Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or toll free (800) 424–9530.

**SUPPLEMENTARY INFORMATION:** The Commission is publishing today the final text of revisions to its regulations governing certain aspects of the public financing of Presidential campaigns. Specifically, the amended rules at 11 CFR 9004.6 and 9034.6 govern transportation and services provided by federally funded Presidential candidates to the news media covering their campaigns. Also included are amendments to 11 CFR 110.7, regarding coordinated expenditures by political party committees on behalf of their Presidential and Congressional candidates that are made before the date these candidates are nominated by their political parties. These regulations implement section 441a(d) of the Federal election Campaign Act (''FECA''), section 9004 of the Presidential Election Campaign Fund Act (''Fund Act'') and section 9034 of the Presidential Primary Matching Payment Account Act (''Matching Payment Act''). *See* 2 U.S.C. 441a(d), and 26 U.S.C. 9004 and 9034. The Fund Act and the Matching Payment Act establish eligibility requirements for Presidential candidates seeking public financing, and indicate how funds received under the public financing system may be spent.

On May 5, 1997, the Commission issued a Notice of Proposed Rulemaking (''1997 NPRM'') in which it sought comments on proposed revisions to the coordinated expenditure provisions of 11 CFR 110.7. *See* 62 F.R. 24367 (May 5, 1997). Written comments were received from the Internal Revenue Service (IRS), the Chamber of Commerce, the National Right to Life Committee (NRLC), the Republican National Committee (RNC), the National Republican Senatorial Committee (NRSC), the National Republican Congressional Committee (NRCC), the Democratic National Committee (DNC), a joint comment from the Democratic Senatorial Campaign Committee (DSCC) and the Democratic Congressional Campaign Committee (DCCC), and Common Cause. A public hearing was held on June 18, 1997, at which witnesses testified on behalf of the DNC, the RNC, the NRLC, the NRSC, the DSCC and the DCCC, and Common Cause. The IRS indicated that it found no conflict with the Internal Revenue Code or regulations thereunder. Subsequently, the consideration of final rules was postponed pending the outcome of litigation that could materially affect the policies at issue.

On December 16, 1998, the Commission published a new Notice of Proposed Rulemaking (''1998 NPRM'') putting forth proposed amendments to its rules governing publicly financed Presidential primary and general election candidates. *See* 63 F.R. 69524 (Dec. 16, 1998). Issues concerning coordination between party committees and their Presidential candidates, which had been raised in the earlier rulemaking, were also included in the public funding rulemaking. In response to the 1998 NPRM, written comments on coordinated expenditures were received from Perot for President '96; James Madison Center for Free Speech; Common Cause and Democracy 21 (joint comment); Brennan Center for Justice; Lyn Utrecht, Eric Kleinfeld, and Patricia Fiori (joint comment); the DNC; and the RNC. Subsequently, the Commission reopened the comment period and held a public hearing on March 24, 1999, at which the following four witnesses presented testimony on the coordination issues: Lyn Utrecht (Ryan, Phillips, Utrecht & MacKinnon), Joseph E. Sandler (DNC), Thomas J. Josefiak (RNC), and James Bopp, Jr. (James Madison Center for Free Speech).

The 1998 NPRM also sought comments on proposed revisions to the regulations at 11 CFR 9004.6 and 9034.6 regarding media travel. Written comments on the media travel issues were received from Lyn Utrecht, Eric Kleinfeld, and Patricia Fiori (joint comment); the DNC; the RNC; and Carl P. Leubsdorf and twenty eight other executives of news organizations (joint comment). At the public hearing on March 24, 1999, the following witnesses presented testimony on the media travel rules: Kim Hume (Fox News), George Condon (Copley News Service), and Thomas J. Josefiak (RNC). The Internal Revenue Service stated that it has reviewed the NPRM and finds no conflict with the Internal Revenue Code or regulations thereunder. The comments and testimony on both topics are discussed in more detail below.

Please note, the Commission published previously final rules modifying the candidate agreement provisions so that federally-financed Presidential committees must electronically file their reports, as well as final rules governing the matchability of contributions made by credit and debit cards, including those transmitted over the Internet. *See* Explanation and Justification, 63 FR 45679 (August 27, 1998) (electronic filing) and Explanation and Justification, 64 FR 32394 (June 17, 1999) (matchability). The effective

date for the electronic filing regulations is November 13, 1998. *See* Announcement of Effective Date, 63 FR 63388 (November 13, 1998). An effective date for the matching fund rules will be announced once those regulations have been before Congress for thirty legislative days.

Section 438(d) of Title 2 and sections 9009(c) and 9039(c) of Title 26, United States Code, require that any rules or regulations prescribed by the Commission to carry out the provisions of title 2 or 26 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. The final rules that follow were transmitted to Congress on July 30, 1999.

**Explanation and Justification**

*Section 110.7 Party Committee Coordinated Expenditures and Spending Limits (2 U.S.C. 441a(d))*

Section 441a(d) permits national, state, and local committees of political parties to make limited general election campaign expenditures on behalf of their candidates, which are in addition to the amount they may contribute directly to those candidates. 2 U.S.C. 441a(d). These section 441a(d) expenditures are commonly referred to as ''coordinated party expenditures'' because such expenditures can be made after extensive consultation with the candidates and their campaign staffs.[1] However, party committees have never had to demonstrate actual ''coordination'' with their candidates to avail themselves of this additional spending limit.

Section 110.7 of the Commission's regulations implements the statutory exception to the contribution limits set forth at 2 U.S.C. 441a. Former paragraph (b)(4) of this section had presumed that party committees were incapable of making independent expenditures. This regulation was implicated by the Supreme Court's plurality opinion in *Colorado Republican Federal Campaign Committee* v. *Federal Election Commission,* 518 U.S. 604 (1996) (*Colorado*). In that decision, the Court concluded that political parties are capable of making independent expenditures on behalf of their candidates for federal office, and that it would violate the First Amendment to subject such independent expenditures to the expenditure limits found in section 441a(d) of the FECA. *Id.* at 613–14.

Following the *Colorado* Supreme Court decision, the Commission promulgated a Final Rule on August 7, 1996 that repealed paragraph (b)(4) of § 110.7 to the extent that this paragraph prohibited national committees of political parties from making independent expenditures for congressional candidates. 61 FR 40961 (Aug. 7, 1996). On the same date, the Commission also published a Notice of Availability seeking comment on other significant issues arising from the *Colorado* decision. 61 FR 41036 (Aug. 7, 1996). These included possible amendments to 11 CFR Part 109 and 11 CFR 110.7 to provide standards for determining when expenditures qualify as ''independent'' or are considered ''coordinated'' with Congressional and Presidential candidates. Another issue raised was whether to modify or repeal the rule barring national party committees from making independent expenditures on behalf of Presidential candidates in the general election. *See* 11 CFR 110.7(a)(5). Given that the *Colorado* decision concerned a Senatorial election, the Supreme Court specifically noted in the opinion that it was not addressing issues that might grow out of the public funding of Presidential campaigns. *Colorado,* 518 U.S. at 612.

As explained above, the Commission also issued two Notices of Proposed Rulemaking and held two public hearings on proposed revisions to the coordinated expenditure regulations. *See* 62 F.R. 24367 (May 5, 1997) and 63 F.R. 69524 (Dec. 16, 1998). For example, the 1998 NPRM put forward narrative proposals regarding a content-based standard for coordinated communications made to the general public. It also sought comment on coordination between the national committees of political parties and their Presidential candidates with respect to poll results, media production, consultants, and employees whose services are intended to benefit the parties' eventual Presidential nominees.

At this point, the Commission is continuing to evaluate possible amendments to 11 CFR 110.7 and 109.1 regarding the definitions of ''coordinated'' and ''independent'' expenditures, the standards applicable to party committee advertisements directed to the general public, and the possible repeal or modification of 11 CFR 110.7(a)(5), which currently bars national party committees from making independent expenditures in connection with Presidential general election campaigns. Consequently, revised proposals on these topics may be put out for additional public comment in the future.

However, with respect to pre-nomination coordinated expenditures, the Commission is promulgating new paragraph (d) of section 110.7, which is consistent with its previous policy permitting coordinated expenditures to be made before the date of the primary election. *See, e.g.,* Advisory Opinion 1984–15 (''[N]othing in the Act, its legislative history, Commission regulations, or court decisions indicates that coordinated party expenditures must be restricted to the time period between nomination and the general election.''); *see also* AO 1985–14. Please note, however, that other aspects of these advisory opinions may be modified or superseded by subsequent Commission decisions regarding the remaining coordination issues.

With regard to prenomination coordinated expenditures, one of the commenters on the 1998 NPRM indicated that the current state of the law is clear, based on AOs 1984–15 and 1985–14, and there is no need to revise the rules. This party committee also noted that its own rules preclude it from supporting a Presidential candidate until that candidate has sufficient delegates to be nominated. In contrast, other commenters urged the Commission to state explicitly in the regulations that political party committees may make 441a(d) expenditures before the general election campaign period. However, one of these commenters opposed a requirement that all pre-nomination expenditures count against the party's 441a(d) limit. The commenter did not think it would be fair to count party expenditures against the coordinated spending limits if they were for positive communications supporting an anticipated nominee who was later forced to withdraw, for example, due to illness.

The Commission has concluded that it is advisable to include language in 11 CFR 110.7 that specifically sets forth the Commission's past policy of permitting pre-nomination coordinated expenditures for the general election. Accordingly, new language at paragraph (d) of section 110.7 covers all Presidential candidates, whether or not they receive federal funding, as well as Congressional candidates. To issue new rules that only apply to Presidential candidates would create the implication that coordinated expenditures for House and Senate candidates are subject to different standards, thereby generating needless confusion. The Commission

[1] The coordinated spending limits were invalidated on Constitutional grounds by one district court in *Colorado Republican Federal Campaign Committee* v. *Federal Election Commission,* 41 F. Supp.2d 1197 (D. Co.o. 1999) on remand from 518 U.S. 604 (1996). This case is being appealed.

does not agree with the commenters who opposed counting ''positive'' pre-nomination expenditures against the 441a(d) limits if another candidate receives the party's nomination. For one thing, this approach would create a distinction between positive ads supporting the party's candidate and negative ads opposing other candidates. There is no apparent basis in the FECA or its legislative history for this type of distinction. In addition, there may be some situations where a party committee ad contains both positive messages about the party and its candidate as well as negative messages about the opposition.

*Section 9004.6 Expenditures for Transportation and Services Made Available to Media Personnel; Reimbursements*

Section 9004.6 of the Commission's regulations contains provisions governing expenditures by federally financed committees for transportation and other services provided to representatives of the news media covering the Presidential general election campaigns. These rules indicate that expenditures for these purposes will, in most cases, be treated as qualified campaign expenses subject to the overall spending limitations of section 9003.2. Parallel provisions regarding Presidential primary campaigns are located at 11 CFR 9034.6.

However, section 9004.6 also allows committees to accept limited reimbursement for these expenses from the media, and to deduct any reimbursements received from the amount of expenditures subject to the overall expenditure limitation. These rules set limits on the amount of reimbursement that a committee can accept, and require committees to pay a portion of any reimbursement that exceeds those limits to the U.S. Treasury. Section 9004.6(b) limits the reimbursements to 110% of a media representative's *pro rata* share of the actual cost of the transportation and services made available. Please note that the additional 10% generally corresponds to the amount the White House Travel Office bills the press for expenses associated with government employees directly supporting the press. The regulations specify that the *pro rata* share is calculated by dividing the total actual cost of the transportation and services provided by the total number of individuals to whom such transportation and services are made available. Under the revisions to this provision, the total number of individuals has not been changed, and thus continues to include committee staff, media personnel, Secret Service and others.

During the last Presidential election cycle, a number of disputes arose between the media and certain campaigns regarding charges billed to the press. The disputes concerned the types of expenses that relate to media coverage of campaign events as distinguished from the costs of staging those campaign events. Another issue centered on the ability of the campaigns to charge all press representatives for the use of ground facilities, not just those who travel with the candidate. The third issue concerned the perceived lateness and lack of specificity in the bills received for media costs.

1. Types of Costs That May Be Charged to the Media

The 1998 NPRM sought comments on whether the rules should be revised to include lists of allowable and nonallowable expenses that may be charged to the media for ground costs. Disputed items have included security services for the press, sound and lighting equipment, press risers and camera platforms, carpeting, bunting, skirts, railings, flags, and electrical service for the press platforms.

Two witnesses who have represented Presidential campaign committees or a party committee argued that presidential campaigns should be permitted to bill the media for legitimate costs incurred for the benefit of, or at the request of, the media, since these costs would not have been incurred otherwise. These comments stated that all the items listed in the NPRM are reasonable, legitimate costs that should be paid by the media. One of these witnesses specifically opposed an attempt to allocate costs between the press and the campaigns. In contrast, the representatives of 29 major news organizations stated that the informal system they had worked out with presidential campaign committees had broken down in the past two Presidential election campaigns and should be replaced with explicit guidelines. While the news organizations remain willing to pay legitimate travel expenses, they were opposed to being forced to pay what they considered to be the costs the campaign committees incurred in staging campaign events, which includes the sound and lighting systems, bunting and flags. They referred the Commission to the guidelines negotiated by the White House Correspondents' Association and the White House Travel Office for examples of the types of legitimate costs of covering campaign events that the news media believed it could fairly be asked to pay as well as items that should not be billed to the press unless a particular item is ordered by a news organization and that specific organization is billed. They urged the Commission to incorporate into its regulations similar restrictions on reimbursements from the media.

In light of the increasing numbers of disputes in this area, the Commission has concluded that more regulatory guidance is needed. Accordingly, 11 CFR 9004.6 is being amended by adding new paragraph (a)(3) to specify that publicly funded Presidential campaigns may seek reimbursement from the media only for the items listed in the White House Press Corps Travel Policies and Procedures issued by the White House Travel Office. The Commission has concluded that these guidelines, which were established by an arms length negotiation process, are suitable for incumbent Presidents seeking re-election, incumbent Vice Presidents running for President, as well as non-incumbent challengers in Presidential primary and general elections. Incorporating the White House Travel Office's guidelines into the regulations will also ensure that any future changes that are negotiated by the White House Correspondents' Association and the White House Travel Office will automatically be reflected in the Commission's rules without the need for additional rulemaking.

The Commission notes that the White House Travel Office guidelines currently include, in addition to a list of billable items, a provision providing for billing for any item specifically requested by a media representative. The Commission assumes that this or a similar provision will be retained in any revisions to the White House guidelines. Therefore, the limitation on press billings to items specified in the White House guidelines would not preclude media personnel from requesting items or services not specifically enumerated in those guidelines, and campaigns could bill the requesting media personnel for the requested items.

2. Ground Services Made Available to Traveling and Non-Traveling Media Representatives

The 1998 NPRM sought input as to whether further clarifications are needed to convey that Presidential campaign committees may only charge a media representative for his or her own *pro rata* share for meals, chairs on the press platform, seats on buses and vans, and telephone lines in filing centers, and that media representatives must not be expected to pay for services

made available to other members of the press or to campaign staff, volunteers, local elected officials or others. The Notice recognized that at times campaign committees have not sought payment from members of the press who do not travel on the press plane. One witness who has represented federally financed campaigns confirmed that the committees never obtain billing information on many media people. This may be due, sometimes, to the fact that local reporters and other media representatives not traveling with the campaign do not need to provide campaign staff with a credit card number for billing flights. Representatives of the news organizations who filed comments and testified at the hearing suggested that at the time campaigns provide press credentials to media representatives, whether on the plane or on the ground, it would not be a hardship for the campaign staff to obtain billing information. However, these witnesses found it objectionable that the press was sometimes charged for the entire cost of ground services made available to everyone attending the campaign event, or were charged for services that they were not allowed to use.

The current regulations at 11 CFR 9004.6(a)(2) permit, but do not require, campaign committees to obtain reimbursement from media representatives who use ground facilities, such as filing centers, but who do not travel on the press plane. The Commission notes that in practice one straightforward way for campaigns to obtain reimbursement from local media and other members of the press who do not travel with the candidate may be to collect billing information as part of the process of issuing press credentials. However, the Commission has decided that its regulations need not require the collection of billing information because campaign committees may elect to treat media costs as qualified campaign expenses and are not obligated to seek reimbursement.

Under the current regulations at 11 CFR 9004.6(b)(2), campaigns should already be well aware that each media representative may only be charged his or her own *pro rata* share of costs. These rules explain that everyone, which includes campaign staff and media personnel from other news organizations, must be included in this calculation. Thus, Presidential campaign committees may not force the traveling press to absorb the costs of ground services used or consumed by local media, campaign staff, or others. Consequently no additional changes to the regulations are necessary in this regard.

3. Billing and Payment Guidelines

Representatives of the major news organizations presented evidence in their written comments and testimony to the effect that it sometimes took months or even years after a campaign trip for them to receive bills from Presidential campaign committees for travel costs. They also explained that in some cases, they were presented with a bill for a single lump sum, which made it very difficult, if not impossible, to determine what charges were included and whether these amounts were correct. These commenters and witnesses also urged the Commission to place restrictions on what items could be charged to a media representative's credit card. Specifically, they urged the Commission to limit the use of credit cards to advance charter payments and hotel room reservations.

After evaluating the written comments and oral testimony, the Commission has decided that it is necessary to establish guidelines covering the billing and payment of media travel and ground costs. Consequently, new paragraph (b)(3) of section 9004.6 specifies that Presidential campaign committees have sixty (60) days to provide each media representative traveling or attending a campaign event with an itemized bill for each segment of the trip. The bill should specify the amounts charged for each of the following categories: air transportation, ground transportation, housing, meals, telephone services, and other billable items specified in the White House Travel Office's Travel Policies and Procedures. Sixty days is a reasonable, commercial length of time. The White House Travel Office's Travel Policies and Procedures contemplate billing within twenty (20) business days of the return of a trip. Prompt, detailed billing is needed so that the committees may obtain payment or settle disputes expeditiously. The Commission believes that it is reasonable and consistent with commercial business practices to require media representatives to pay for these costs within sixty (60) days from the date of the bill in the absence of a dispute over the charges. It should be noted that while the individual reporters' credit cards may be billed, their news organizations provide reimbursement. Under the new rules, prompt billing and payment may ensure that these payments are made and these billing disputes are resolved by the parties before the Commission begins to audit the committee.

*Section 9034.6 Expenditures for Transportation and Services Made Available to Media Personnel; Reimbursements*

The amendments contained in this section follow those made to section 9004.6, as discussed above.

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

The attached final rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that very few small entities will be affected by these proposed rules, and the cost is not expected to be significant. Further, any small entities affected have voluntarily chosen to receive public funding and to comply with the requirements of the Presidential Election Campaign Fund Act or the Presidential Primary Matching Payment Account Act in these areas.

**List of Subjects**

*11 CFR Part 110*

Campaign funds, Political committees and parties.

*11 CFR Part 9004*

Campaign funds.

*11 CFR Part 9034*

Campaign funds, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Subchapters A, E and F of Chapter I of Title 11 of the *Code of Federal Regulations* are amended as follows:

## PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

1. The authority citation for Part 110 continues to read as follows:

**Authority:** 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 441a, 441b, 441d, 441e, 441f, 441g and 441h.

2. Section 110.7 is amended by adding paragraph (d) to read as follows:

**§ 110.7 Party committee expenditure limitations (2 U.S.C. 441a(d)).**

* * * * *

(d) Timing. Party committees may make coordinated expenditures in connection with the general election campaign before their candidates have been nominated. All pre-nomination coordinated expenditures shall be subject to the coordinated expenditure limitations of this section, whether or not the candidate with whom they are

coordinated receives the party's nomination.

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

3. The authority citation for Part 9004 continues to read as follows:

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

4. Section 9004.6 is amended by revising paragraphs (a) and (b) to read as follows:

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

(a) *General.* (1) Expenditures by an authorized committee for transportation, ground services or facilities (including air travel, ground transportation, housing, meals, telephone service, typewriters, and computers) provided to media personnel, Secret Service personnel or national security staff will be considered qualified campaign expenses, and, except for costs relating to Secret Service personnel or national security staff, will be subject to the overall expenditure limitations of 11 CFR 9003.2(a)(1) and (b)(1).

(2) Subject to the limitations in paragraphs (b) and (c) of this section, committees may seek reimbursement from the media for the expenses described in paragraph (a)(3) of this section, and may deduct reimbursements received from media representatives from the amount of expenditures subject to the overall expenditure limitation of 11 CFR 9003.2(a)(1) and (b)(1). Expenses for which the committee receives no reimbursement will be considered qualified campaign expenses, and, with the exception of those expenses relating to Secret Service personnel and national security staff, will be subject to the overall expenditure limitation.

(3) Committees may seek reimbursement from the media only for the billable items specified in the White House Press Corps Travel Policies and Procedures issued by the White House Travel Office.

(b) *Reimbursement limits;* billing. (1) The amount of reimbursement sought from a media representative under paragraph (a)(2) of this section shall not exceed 110% of the media representative's pro rata share (or a reasonable estimate of the media representative's pro rata share) of the actual cost of the transportation and services made available. Any reimbursement received in excess of this amount shall be disposed of in accordance with paragraph (d)(1) of this section.

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

(3) No later than sixty (60) days of the campaign trip or event, the committee shall provide each media representative attending the event with an itemized bill that specifies the amounts charged for air and ground transportation for each segment of the trip, housing, meals, telephone service, and other billable items specified in the White House Press Corps Travel Policies and Procedures issued by the White House Travel Office. Payments shall be due sixty (60) days from the date of the bill, unless the media representative disputes the charges.

* * * * *

## PART 9034—ENTITLEMENTS

5. The authority citation for Part 9034 continues to read as follows:

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

6. Section 9034.6 is amended by revising paragraphs (a) and (b) to read as follows:

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

(a) *General.* (1) Expenditures by an authorized committee for transportation, ground services or facilities (including air travel, ground transportation, housing, meals, telephone service, typewriters, and computers) provided to media personnel, Secret Service personnel or national security staff will be considered qualified campaign expenses, and, except for costs relating to Secret Service personnel or national security staff, will be subject to the overall expenditure limitations of 11 CFR 9035.1(a).

(2) Subject to the limitations in paragraphs (b) and (c) of this section, committees may seek reimbursement from the media for the expenses described in paragraph (a)(3) of this section, and may deduct reimbursements received from media representatives from the amount of expenditures subject to the overall expenditure limitation of 11 CFR 9035.1(a). Expenses for which the committee receives no reimbursement will be considered qualified campaign expenses, and, with the exception of those expenses relating to Secret Service personnel and national security staff, will be subject to the overall expenditure limitation.

(3) Committees may seek reimbursement from the media only for the billable items specified in the White House Press Corps Travel Policies and Procedures issued by the White House Travel Office.

(b) *Reimbursement limits;* billing.

(1) The amount of reimbursement sought from a media representative under paragraph (a)(2) of this section shall not exceed 110% of the media representative's pro rata share (or a reasonable estimate of the media representative's pro rata share) of the actual cost of the transportation and services made available. Any reimbursement received in excess of this amount shall be disposed of in accordance with paragraph (d)(1) of this section.

(2) For the purposes of this section, a media representative's pro rata share shall be calculated by dividing the total actual cost of the transportation and services provided by the total number of individuals to whom such transportation and services are made available. For purposes of this calculation, the total number of individuals shall include committee staff, media personnel, Secret Service personnel, national security staff and any other individuals to whom such transportation and services are made available, except that, when seeking reimbursement for transportation costs paid by the committee under 11 CFR 9034.7(b)(5)(i)(C), the total number of individuals shall not include national security staff.

(3) No later than sixty (60) days of the campaign trip or event, the committee shall provide each media representative attending the event with an itemized bill that specifies the amounts charged for air and ground transportation for each segment of the trip, housing, meals, telephone service, and other billable items specified in the White House Press Corps Travel Policies and Procedures issued by the White House Travel Office. Payments shall be due sixty (60) days from the date of the bill, unless the media representative disputes the charges.

* * * * *

Dated: July 30, 1999.

**Scott E. Thomas,**

*Chairman, Federal Election Commission.*

[FR Doc. 99–20102 Filed 8–4–99; 8:45 am]

**BILLING CODE 6715–01–P**

## FEDERAL ELECTION COMMISSION

### 11 CFR Part 9036

**[NOTICE 1999–15]**

### Matching Credit Card and Debit Card Contributions in Presidential Campaigns

**AGENCY:** Federal Election Commission.

**ACTION:** Final rules and transmittal of regulations to Congress.

**SUMMARY:** On June 10, 1999, the Commission approved new regulations that allow contributions made by credit or debit card, including contributions made over the Internet, to be matched under the Presidential Primary Matching Payment Account Act. ''Matchable contributions'' are those which, when received by candidates who qualify for payments under the Matching Payment Act, are matched by the Federal Government. The rules published today provide general guidance on the documentation that must be provided before credit and debit card contributions will be matched, and state that more detailed guidance will be found in the Commission's Guideline for Presentation in Good Order.

**DATES:** Further action, including the publication of a document in the **Federal Register** announcing an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 26 U.S.C. 9039(c).

**FOR FURTHER INFORMATION CONTACT:** Rosemary C. Smith, Acting Assistant General Counsel, or Rita A. Reimer, Attorney, 999 E Street, NW, Washington, DC 20463, (202) 694–1650 or (800) 424–9530 (toll free).

**SUPPLEMENTARY INFORMATION:** On June 17, 1999, the Commission published revisions to its regulations at 11 CFR 9034.2 and 9034.3 to permit the matching of credit card and debit card contributions, including contributions received over the Internet, under the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031 *et seq.* (''Matching Payment Act''). 64 FR 32394. In that document the Commission announced that further documentation requirements for these contributions would be addressed in the Commission's upcoming rules concerning the public financing of presidential primary and general election campaigns. *Id.* The Commission is publishing this separate document for this purpose in order to give the regulated community the earliest possible guidance in this area.

Under the Matching Payment Act, if a candidate for the presidential nomination of his or her party agrees to certain conditions and raises in excess of $5,000 in contributions of $250 or less from residents of each of at least 20 States, the first $250 of each eligible contribution is matched by the Federal Government. 26 U.S.C. 9033, 9034. In the past, the Commission declined to match credit card contributions, although it has permitted campaign committees to accept them. The Commission has always held contributions submitted for matching to a higher documentation standard because the matching fund program involves the disbursement of millions of dollars in taxpayer funds. However, the Commission decided earlier this year such contributions should be matched, if appropriate safeguards and procedures were in place to guard against the receipt of excessive and prohibited contributions.

On December 16, 1998, the Commission published a Notice of Proposed Rulemaking (''NPRM'') in which it sought comments on a wide range of issues involved in the public financing of presidential primary and general election campaigns. 63 F.R. 69524 (Dec. 16, 1998). Several of those who commented on the NPRM and several witnesses who testified at the Commission's March 24, 1999 public hearing on the NPRM urged the Commission to match qualified contributions made by credit or debit card over the Internet. After considering the comments, testimony and other relevant material, the Commission decided to authorize the matching of such contributions as long as safeguards were present to limit the possibility of fraudulent, illegal or excessive contributions. *See Explanation and Justification to the Federal Election Commission's Rules Addressing Matching Credit Card and Debit Card Contributions in Presidential Campaigns,* 64 F.R. 32394 (June 17, 1999). The new rules are codified at 11 CFR 9034.2(b) and (c), and 11 CFR 9034.3(c). The Commission also approved an Advisory Opinion, AO 1999–9, that authorized the matching of Internet contributions, but made its approval contingent on the expiration of the Congressional review period discussed below.

Section 9039(c) of Title 26, United States Code, requires that any rules or regulations prescribed by the Commission to carry out the provisions of the Matching Payment Act be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated.

The regulations at 11 CFR 9034.2 and 9034.3 on matching credit card and debit card contributions were sent to Congress on June 11, 1999. The legislative review period for those rules has not yet expired. However, if those rules are disapproved, then the new rules at 11 CFR 9036.1 and 9036.2 would not take effect, because they are a corollary to the earlier rules. The revisions to 9036.1 and 9036.2 are also subject to their own legislative review period, which began when they were transmitted to Congress on Aug. 2, 1999.

The Commission announced in the June 17, 1999 document that, unless Congress and the President enact legislation disapproving the amendments to 11 CFR 9034.2 and 9034.3, these changes will apply retroactively to contributions made on January 1, 1999 and thereafter. The same is true of these further regulations.

#### Explanation and Justification

*Section 9036.1 Threshold Submission*

This section sets forth the requirements a candidate must meet in making the threshold submission to the Commission, that is, the submission in which the candidate demonstrates that the requirements of 26 U.S.C. 9033 and 9034 have been met. The Commission is adding a new paragraph (b)(7) to this section, dealing with credit and debit card contributions, and renumbering paragraphs (b)(7) and (b)(8) as paragraphs (b)(8) and (b)(9), respectively.

The Commission has issued several Advisory Opinions dealing with the Internet, *see, e.g.,* AO's 1995–9, 1995–35, 1997–16, 1999–7, 1998–22, and 1999–9. It has also initiated a project to determine the potential impact of the Internet on various aspects of political committees' operations. It has become clear to the Commission that even cutting-edge advancements in computer technology may quickly become obsolete. Consequently, the Commission has decided to include the technical requirements for making these submissions in its Guideline for Presentation in Good Order, commonly known as ''PIGO.'' Therefore, paragraph (b)(7) states without further elaboration that, in the case of a contribution made by a credit or debit card, including one

made over the Internet, the candidate shall provide sufficient documentation to the Commission to insure that each such contribution was made by a lawful contributor who manifested an intention to make the contribution to the campaign committee that submits it for matching fund payments. It further states that additional information on the documentation required to accompany such contributions will be found in PIGO. This approach will enable the Commission to update the technical requirements much more rapidly than would be possible if these requirements were to be included in the text of the rules.

The Commission notes, however, that PIGO has been incorporated by reference into the rules, and therefore is binding on candidates and their campaigns. 11 CFR 9036.1(b)(7), 9036.2(b). A candidate seeking matching funds for his or her presidential campaign must first sign a candidate agreement that provides, *inter alia,* that the candidate and the candidate's authorized committee(s) will prepare matching fund submissions in accordance with PIGO requirements. 11 CFR 9033.1(a)(9). Contributions submitted for matching will therefore not be matched unless these procedures are followed.

*Section 9036.2 Additional Submissions for Matching Fund Payments*

This section contains information on how subsequent submissions for matching fund payments, i.e., those made after the threshold submission, should be made. For the most part these requirements are identical to those for threshold submissions, except that additional submissions need not break down contributions by State, as is required of threshold submissions.

New paragraph (b)(1)(vii) of this section is identical to new paragraph 11 CFR 9036.1(b)(7), discussed *supra.* The new paragraph reinforces the requirement found in the introductory language of paragraph (b) of this section, which states that all additional submissions for matching fund payments shall be made in accordance with PIGO.

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

The attached final rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that these regulations do not affect a substantial number of entities, and most of the covered entities are not ''small entities'' for purposes of the Regulatory Flexibility Act. Therefore the rules would not have a significant economic effect on a substantial number of small entities.

**List of Subjects**

*11 CFR Part 9036*

Administrative practice and procedure, Campaign funds, Recordkeeping and reporting requirements.

For the reasons set forth in the preamble, Subchapter F, Chapter I of Title 11 of the Code of Federal Regulations is amended to read as follows:

## PART 9036—REVIEW OF SUBMISSION AND CERTIFICATION OF PAYMENTS BY COMMISSION

1. The authority citation for Part 9036 continues to read as follows:

**Authority:** 26 U.S.C. 9036 and 9039(b).

2. Section 9036.1 is amended by redesignating paragraphs (b)(7) and (b)(8) as paragraphs (b)(8) and (b)(9), respectively, and by adding new paragraph (b)(7) to read as follows:

**§ 9036.1 Threshold submission.**

* * * * *

(b) * * *

(7) In the case of a contribution made by a credit or debit card, including one made over the Internet, the candidate shall provide sufficient documentation to the Commission to insure that each such contribution was made by a lawful contributor who manifested an intention to make the contribution to the candidate or authorized committee that submits it for matching fund payments. Additional information on the documentation required to accompany such contributions is found in the Commission's Guideline for Presentation in Good Order. *See* 11 CFR 9033.1(b)(9).

* * * * *

3. Section 9036.2 is amended by adding new paragraph (b)(1)(vii), to read as follows:

**§ 9036.2 Additional submissions for matching fund payments.**

* * * * *

(b) * * *

(1) * * *

(vii) In the case of a contribution made by a credit or debit card, including one made over the Internet, the candidate shall provide sufficient documentation to the Commission to insure that each such contribution was made by a lawful contributor who manifested an intention to make the contribution to the candidate or authorized committee that submits it for matching fund payments. Additional information on the documentation required to accompany such contributions is found in the Commission's Guideline for Presentation in Good Order. *See* 11 CFR 9033.1(b)(9).

* * * * *

Dated: August 2, 1999.

**Scott E. Thomas,**

*Chairman, Federal Election Commission.*

[FR Doc. 99–20181 Filed 8–4–99; 8:45 am]

BILLING CODE 6715–01–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 95–AWA–4]**

**RIN 2120–AA66**

## Modification of the Orlando Class B Airspace Area, Orlando, FL; and Modification of the Orlando Sanford Airport Class D Airspace Area, Sanford, FL

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

**ACTION:** Final rule.

**SUMMARY:** This action modifies the Orlando Class B airspace area, Orlando, FL; and the Orlando Sanford Airport Class D airspace area, Sanford, FL. Specifically, this action modifies several subareas within the lateral boundaries of the existing Orlando Class B airspace area; and lowers the vertical limits of the Orlando Sanford Airport Class D airspace area. The FAA is taking this action to enhance safety, reduce the potential for midair collision, and improve the management of air traffic operations into, out of, and through the Orlando terminal area while accommodating the concerns of airspace users. Additionally, this action corrects the coordinates for the Orlando Sanford Airport.

**EFFECTIVE DATE:** 0901 UTC, September 9, 1999.

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

**SUPPLEMENTARY INFORMATION:**

**Availability of Final Rule**

An electronic copy of this document may be downloaded from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the Federal Register's electronic bulletin board service (telephone: 202–512–1661) using a modem and suitable communications software.

Internet users may reach the FAA's web page at http://www.faa.gov or the Federal Register's webpage at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the docket number of this final rule. Persons interested in being placed on a mailing list for future Notices of Proposed Rulemaking or final rules should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

**Related Rulemaking Actions**

On May 21, 1970, the FAA published, in the **Federal Register,** the Designation of Federal Airways, Controlled Airspace, and Reporting Points Final Rule (35 FR 7782). This rule provided for the establishment of Terminal Control Airspace (TCA) area (now known as Class B airspace areas).

On June 21, 1988, the FAA published, in the **Federal Register,** the Transponder with Automatic Altitude Reporting Capability Requirement Final Rule (53 FR 23356). This rule, in part, requires all aircraft to have an altitude encoding transponder when operating within 30 nautical miles (NM) of any designated TCA (now known as Class B airspace area) primary airport from the surface up to 10,000 feet mean sea level (MSL). This rule also provides an exclusion for those aircraft not originally certificated with an engine-driven electrical system (or those that have not subsequently been certified with such a system) balloons, or gliders operating outside of the Class B airspace area, but within 30 NM of the primary airport.

On October 14, 1988, the FAA published, in the **Federal Register,** the Terminal Control Area Classification and Terminal Control Area Pilot and Navigation Equipment Requirements Final Rule (53 FR 40318). This rule, in part, requires the pilot-in-command of a civil aircraft operating within a TCA (now known as Class B airspace area) to hold at least a private pilot certificate. Excepted from this requirement are student pilots who have received certain documented training.

On December 17, 1991, the FAA published, in the **Federal Register,** the Airspace Reclassification Final Rule (56 FR 65638). This rule, in part, discontinued the use of the term ''Terminal Control Area'' (TCA) and replaced it with the designation ''Class B airspace area.'' This change in terminology is reflected in the remainder of this final rule.

**Background**

The Class B airspace area program was developed to reduce the potential for midair collision in the congested airspace surrounding airports with high density air traffic operations by providing an area wherein all aircraft are subject to certain operating rules and equipment requirements.

The density of traffic and the type of operations being conducted in the airspace surrounding these major terminal areas increase the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier or military aircraft, or another GA aircraft. The basic causal factor common to these conflicts was the mix of aircraft operating in accordance with visual flight rules (VFR) and aircraft operating under instrument flight rules (IFR). Class B airspace areas provide a method to manage the increasing number of IFR and VFR operations. The regulatory requirements of Class B airspace areas afford the greatest protection for the greatest number of people, by giving air traffic control the increased capability to provide aircraft separation service.

The standard configuration of a Class B airspace area contains three concentric circles centered on the primary airport extending to 10, 20, and 30 NM, respectively. The standard vertical limit of these airspace areas normally should not exceed 10,000 feet MSL with the floor established at the surface in the inner area and at levels appropriate to the containment of operations in the outer areas. Variations of these criteria may be utilized contingent on the terrain, adjacent regulatory airspace, and factors unique to the terminal area.

**Public Input**

On May 17, 1999, the FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (64 FR 26705) proposing to modify several subareas within the lateral boundaries of the existing Class B airspace area; and modify the vertical limits of the Orlando Sanford Airport Class D airspace area. The comment period for this proposed rulemaking action closed on June 30, 1999.

In response to the proposal, the FAA received four comments. All comments received were considered before making a determination on this final rule. An analysis of the comments and the Agency's response follows.

**Discussion of Comments**

The FAA received three comments in favor of the planned modifications to the Orlando Class B airspace area and the Orlando Sanford Airport Class D airspace area which are as follows: the Orlando Sanford Airport; the City of Sanford; and the Sanford Airport Authority.

The Air Line Pilots Association also commented in favor of the planned modifications, but expressed concern that Area F to the west and east does not appear to give protection to departures on a standard rate of climb.

The FAA believes that Area F to the west and east is adequately designed to contain departures within the Class B airspace. Traffic normally departs via runway 18L/R on a 200° heading and, based on the aircraft's performance, turned westbound on course. Aircraft departing westbound must be out of 3,000 feet to turn in order to ensure separation from aircraft operating at Kissimmee Airport. Traffic departing eastbound can be transitioned to the north to remain in the Class B airspace area.

**The Rule**

The FAA amends 14 CFR part 71 by modifying the Orlando Class B airspace area, Orlando, FL, and the Orlando Sanford Airport Class D airspace area, Sanford, FL. Specifically, this action modifies several subareas within the lateral boundaries of the existing Class B airspace area, and modifies the vertical limits of the Orlando Sanford Airport Class D airspace area. The FAA is taking this action to enhance safety, reduce the potential for midair collision, and to improve the management of air traffic operations into, out of, and through the Orlando terminal area. Additionally, this action corrects the coordinates for the Orlando Sanford Airport. Specifically, this action

modifies the Orlando Class B airspace area as follows:

*Orlando Class B Airspace Area*

*Area A.* The size of Area A (that area beginning at the surface up to 10,000 feet MSL) is reduced to a 5-mile radius of the primary airport, Orlando International Airport. This airspace modification will contain large turbojet aircraft within the limits of the Class B airspace area while operating to and from the primary airport. In addition, a portion of Area A beyond 5 NM is removed form the surface area and reconfigured as Area B.

*Area B.* Area B is reconfigured from a section of the surface area, between the 5-mile radius of the primary airport, extending west to the John Young Parkway, north to Lake Underhill Road, east to the Stanton Power Plant, and south to the Orlando VORTAC 14 Distance Measuring Equipment (DME), extending upward from 900 feet MSL. This modification will support approach and departure procedures for aircraft transitioning to and from the Orlando International Airport.

Also, this airspace modification will allow Law Enforcement and Lifeguard helicopter operations below the floor of the Class B airspace area.

*Area C.* The Floor of Area C will remain at 1,600 feet MSL north of the Orlando Executive Airport; however, the lateral limits of Area C are modified to extend north of Lake Underhill Road, south of S.R. 436, east of S.R. 423 and S.R. 434, and extend 8 miles east of the Orlando Executive Airport. This airspace modification will support approach procedures for aircraft transitioning to the final approach course for the Orlando International Airport.

The floor of Area C is lowered from 3,000 to 1,600 feet MSL, extending 3 miles to the north and south of the Orlando Sanford Airport, east of the Wekiva River, and west of Lake Harney's eastern shore. This airspace modification will support approach procedures for large turbojet aircraft operations transitioning to and from the Orlando Sanford Airport.

In addition, the floor of Area C is raised from 1,500 to 1,600 feet MSL, extending south of the Orlando VORTAC 14 DME arc, north of the Orlando VORTAC 20 DME arc, and between 2 and 13 miles east of the Kissimmee Airport. This airspace modification will support approach procedures for aircraft transitioning to the final approach course for the Orlando International Airport. This modification will also allow nonparticipating aircraft sufficient airspace to conduct VFR operations below the vertical limits of the Class B airspace area while transitioning to/from secondary satellite airports.

*Area D.* Area D is modified by raising the floor of the area 10 miles north of the Orlando International airport from 1,600 to 2,000 feet MSL, and the area southwest of the Orlando international Airport from 1,500 to 2,000 feet MSL. This area extends between S.R. 423 and Kirkman Road, 6 to 9 miles west of the primary airport, between 2 miles north and 5 miles south of the Kissimmee Airport, and between 7 miles and 11 miles north of the Orlando VORTAC. This airspace modification will provide sufficient airspace modification will provide sufficient airspace for sequencing and vectoring arriving and departing aircraft in close proximity to the primary airport. It will also increase and navigable airspace below the Class B airspace area in the vicinity of Kissimmee Municiport Airport.

*Area E.* The floor of Area E will remain at 3,000 feet MSL; however, the lateral limits of Area E are expanded to the north and south . Area E is extended 3 miles west of the Wekiva river, and between 3 to 6 miles north of the Orlando Sanford Airport. This airspace modification will provide sufficient airspace for sequencing and vectoring aircraft, and ensure that operations are contained within the Class B airspace area.

Area E is also extended between the 20-mile and 30-mile arcs south of the primary airport, and between 7 miles and 15 miles east of the primary airport. This airspace modification will provide sufficient airspace for sequencing and vectoring aircraft, and will provide a controlled environment for aircraft arriving and departing the Class B airspace area.

*Area F.* The subareas of the Class B airspace areas are reconfigured as Area F, from 6,000 up to and including 10,000 feet MSL, extending from 8 miles west of the primary airport to Highway 27. This airspace modification will provide sufficient airspace to contain aircraft in a controlled environment when transitioning between the en route and terminal phase of flight.

Area F is also modified from the power line located approximately 15 miles east of the primary airport, eastward, to the power line located approximately 22 miles east of the primary airport. This airspace modification will provide sufficient airspace to contain aircraft in a controlled environment when transitioning between the en route and terminal phase of flight.

**Orlando Sanford Airport Class D Airspace Area**

The Orlando Sanford Airport Class D airspace area is lowered from 3,000 to 1,600 feet MSL. The Orlando Sanford Airport Class D airspace area will include a radius of 4.4 NM from the Orlando Sanford Airport up to but not including 1,600 feet MDL. This airspace modification coincides with lowering the floor of the Class B airspace area in the vicinity of the Orlando Sanford Airport.

The coordinates for this airspace docket are based on North American Datum 83. Class B and Class D airspace areas are published, respectively, in paragraphs 3000 and 5000 of FAA Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR section 71.1. The Class B and Class D airspace areas listed in this document will be subsequently published in this Order.

**Regulatory Evaluation Summary**

Changes to Federal Regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act (RFA) requires agencies to analyze the economic effect of regulatory changes on small businesses and other small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule: (1) Will generate benefits that justify its minimal costs and is not a ''significant regulatory action'' as defined in the Executive Order; (2) is not significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities, (4) will not constitute a barrier to international trade and (5) will not contain any federal intergovernmental or private sector mandate. These analyses are summarized here in the preamble, and the full Regulatory Evaluation is in the docket.

The FAA will modify the Orlando Class B and the Orlando Sanford Airport Class D airspace areas. The Orlando Class B airspace area modification will maintain the 10,000 feet MSL airspace ceiling and redefine the lateral limits of several of the existing subareas to

improve the management of air traffic operations in the Orlando terminal area. The Orlando Sanford Airport Class D airspace area modification will lower the airspace area from 3,000 to 1,600 feet MSL and will include a radius of 4.4 NM from the Orlando Sanford Airport up to but not including 1,600 feet MSL.

The FAA has determined that the modification of the Orlando Class B and the Orlando Sanford Airport Class D airspace areas will improve the operational efficiency while maintaining aviation safety in the terminal areas. Also, clearer boundary definition and changes to lateral and vertical limits of the subareas will leave additional noncontrolled airspace for VFR aircraft transitioning to and from satellite airports. This rule will impose negligible or no additional cost on airspace users and will potentially reduce circumnavigation costs to some operators.

The final rule will result in no additional administrative or operational cost for personnel and equipment to the agency. Printing of aeronautical charts which reflect the changes to the Class B and Class D airspace areas will be accomplished during a scheduled chart printing, and will result in no additional costs for plate modification and updating of charts. Furthermore, no staffing changes will be required to maintain the modified Class B and Class D airspace area. Potential increase in FAA operations workload can be absorbed by current personnel and equipment.

In view of the negligible cost of compliance, enhanced aviation safety, and improved operational efficiency, the FAA has determined that the final rule will be cost-beneficial.

**Final Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principal, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA has determined that the final rule will have a de minimus impact on small entities. All commercial and general aviation operators who presently use the Orlando International Airport are equipped to operate within the modified Class B airspace area. As for aircraft that regularly fly through the Orlando Sanford Airport Class D airspace area, since the airport is situated within the established Orlando Mode C Veil, all aircraft should already have the necessary equipment to transition the modified Class B airspace area. Therefore, there will be no additional equipment cost to these entities.

Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this rule will not have a significant economic impact on a substantial number of small entities.

**International Trade Impact Assessment**

The final rule will not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries or the import of foreign goods and services into the United States.

**Unfunded Mandates Assessment**

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (when adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Sector 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments in the aggregate of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan, which, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity for these small governments to provide input in the development of regulatory proposals.

This final rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) there are no requirements for information collection associated with this rule.

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

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

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

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

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

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

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the 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 3000—Subpart B-Class B Airspace*

* * * * *

**ASO FL B Orlando, FL [Revised]**

Orlando International Airport (Primary Airport)
(lat. 28°25′44″ N., long. 81°18′58″W.)
Orlando VORTAC
(lat. 28°32′34″ N., long. 81°20′06″W.)

Boundaries

Area A—That airspace extending upward from the surface to and including 10,000 feet MSL within a radius of 5 NM from the Orlando International Airport.

Area B—That airspace extending upward from 900 feet MSL to and including 10,000 feet MSL beginning at a point of the intersection of Sate Road (S.R.) 423 (John Young Parkway) and Interstate 4, thence northeast along Interstate 4 to the intersection of Interstate 4 and S.R. 441 (Orange Blossom Trail), thence direct to the intersection of Lake Underhill Road and Palmer Street, thence east along Lake Underhill Road to the intersection of Lake Underhill Road and the Central Florida Greenway, thence direct to lat. 28°30′00″ N., long. 81°11′00″ W., (one mile northwest of the Stanton Power Plant), thence south to the intersection of the ORL VORTAC 14-mile radius arc, thence clockwise along the 14-mile radius arc of the ORL VORTAC to the intersection of S.R. 423, thence north along S.R. 423 to the point of beginning.

Area C—That airspace extending upward from 1,600 feet MSL to and including 10,000 feet MSL beginning at a point of the intersection of the Wekiva River at 28°44′00″ N., long. 81°25′30″ W., thence north along the Wekiva River to the intersection of lat. 28°50′00″ N. Thence east to lat. 28°50′00″ N., long. 81°02′30″ W., thence south to the intersection of lat. 28°44′00″ N., long. 81°02′30″ W., thence west to the point of beginning.

Also that airspace north of the Orlando Executive Airport extending upward from 1,600 feet MSL to and including 10,000 feet MSL beginning at a point of the intersection of Interstate 4 and S.R. 423. Thence north along S.R. 423 to the intersection of S.R. 423 and S.R. 441 (Orange Blossom Trail). Thence direct to the intersection of S.R. 434 (Forest City Road) and S.R. 424 (Edgewater Drive), thence north along S.R. 434 to the intersection of S.R. 436 (Altamonte Drive.), thence east along S.R. 436 to the intersection of Hwy 17–92, thence east along lat. 28°39′20″ N., to long. 81°11′00″ W. Thence south to the intersection of lat. 28°30′00″ N., thence northwest direct to the intersection of Lake Underhill Road and S.R. 417 (Central Florida Greenway), thence west along Lake Underhill Road to the intersection of Palmer Street. Thence southwest direct to the intersection of Interstate 4 and the S.R. 441, thence southwest along Interstate 4 to the point of beginning.

Also that airspace south of the primary airport extending upward from 1,600 feet MSL to and including 10,000 feet MSL beginning at a point of the intersection of long. 81°24′06″ W., and the ORL VORTAC 14-mile radius arc, thence counterclockwise along the 14-mile radius arc of the ORL VORTAC to the intersection of long. 81°11′00″ W., thence south to the intersection of the ORL VORTAC 20-mile radius arc, thence clockwise along the ORL VORTAC 20-mile radius arc to long. 81°24′06″ W., thence north to the point of beginning.

Area D—That airspace extending upward from 2,000 feet MSL to and including 10,000 feet MSL beginning at a point of the intersection of Interstate 4 and long. 81°27′30″ W., thence north to lat. 28°44′00″ N., thence east to long. 81°11′00″ W., thence south to lat. 28°39′20″ N., thence west to the intersection of S.R. 436 and Hwy 17–92, thence west along S.R. 436 to the intersection of S.R. 436 and S.R. 434, thence south along S.R. 434 to the intersection of S.R. 434 and S.R. 424, thence direct to the intersection of S.R. 423 and S.R. 441, thence south along S.R. 423 to the intersection of the ORL VORTAC 14-mile radius arc, thence counterclockwise along the 14-mile radius arc of the ORL VORTAC to long. 81°24′06″ W., thence south to the intersection of the ORL VORTAC 20-mile radius arc, thence clockwise to the intersection of long. 81°27′03″ W., thence north to the point of beginning.

Area E—That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL beginning at a point of the intersection of lat. 28°44′00″N., long. 81°27′30″W., thence north to the intersection of lat. 28°53′00″N., thence east to the intersection of the MCO Mode C Veil 30–NM radius arc, thence southeast along this arc to the intersection of the power lines at lat. 28°50′20″N., thence southeast along these power lines to lat.28°44′00″N., thence west to long. 81°02′30″W., thence north to lat. 28°50′00″N., thence west to the intersection of the Wekiva River, thence south along the Wekiva River to lat. 28°44′00″N., thence west to the point of beginning.

Also that airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL beginning south of the primary airport at a point of the intersection of long. 81°27′30″W. and the ORL 20-mile radius arc, thence counterclockwise along the 20-mile radius arc of the ORL VORTAC to the intersection of long. 81°11′00″W., thence north to the intersection of lat. 28°44′00″N., thence east to the intersection of the Florida Power transmission lines at lat. 28°44′00″N., long 81°05′20″W., (one half mile west of Southerland Airport), thence south along this power line to the intersection of Highway 50 at lat. 28°32′10″N., long. 81°03′45″W., thence south to the Bee Line Expressway, at lat. 28°27′05″N., long. 81°03′45″W., thence west along the Bee Line Expressway to the intersection of lat. 28°27′00″N., long. 81°04′40″W., thence south to the intersection of the ORL VORTAC 30-mile radius arc, thence clockwise along the 30-mile radius arc of the ORL VORTAC to long. 81°27′30″W., thence north to the point of beginning.

Area F—That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL beginning south of the primary airport at the intersection of the ORL VORTAC 30-mile radius arc and long. 81°27′30″W., thence clockwise to the intersection of Highway 27, thence north along Highway 27 to the intersection of Highway 27 and long. 81°45′00″W., thence north along long. 81°45′00″W., to the intersection of the ORL VORTAC 24-mile radius arc, thence clockwise along the 24-mile radius arc to the intersection of lat. 28°53′00″N., thence east to lat. 28°53′00″N., long. 81°27′30″W., thence south to the point of beginning.

Also that airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL beginning at the Florida Power transmission lines at lat. 28°44′00″N., long. 81°05′20″W., thence east along lat. 28°44′00″N. to the Florida Power transmission lines at lat. 28°44′00″N., long. 80°55′40″W., thence southeast and south along these power lines to the intersection of Highway 50, thence south to the power lines at lat. 28°22°14″N., long. 80°52′30″W., thence southwest along these power lines to the intersection of long. 81°04′40″W., thence north along long. 81°04′40″W., to the intersection of the Bee Line Expressway at lat. 28°27′05″N., long. 81°04′40″W., thence east along the Bee Line Expressway at lat. 28°27′05″N., long. 81°03′45″W., thence north to the intersection of Highway 50 and the Florida Power transmission lines at lat. 28°32′10″N., long. 81°03′45″W., thence north along these power lines to the point of beginning.

* * * * *

*Paragraph 5000—Subpart D–Class D Airspace*

* * * * *

**ASO FL D Sanford, FL**

**[Revised]**

Orlando Sanford Airport, FL [formerly known as the Central Florida Regional Airport
(Lat. 28°46′40″N, long. 81°14′15″W.)

That airspace extending upward from the surface to but not including 1,600 feet MSL within a 4.4-mile radius of the Orlando Sanford Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory/.

* * * * *

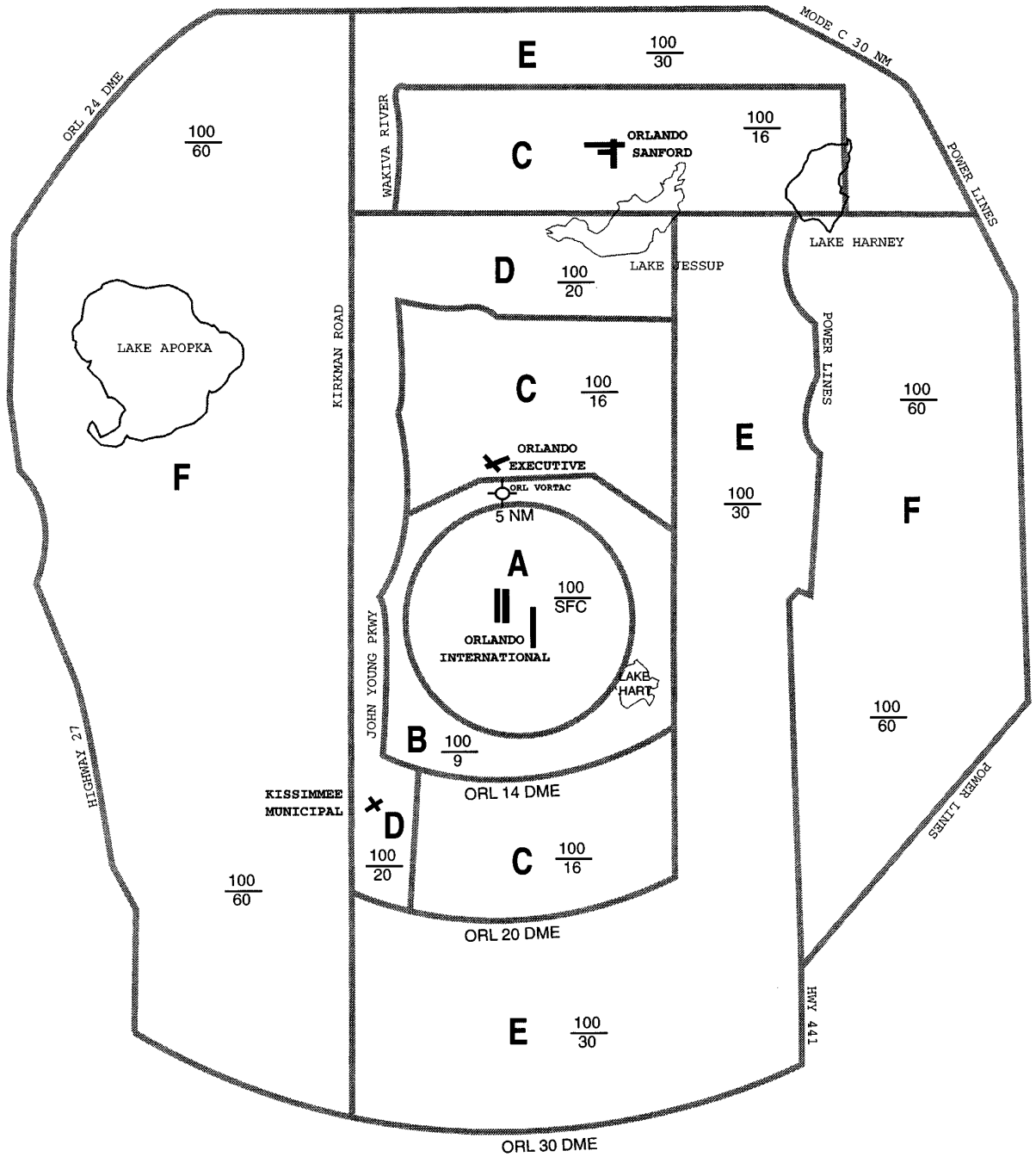
Issued in Washington, DC, on July 27, 1999.

**Reginald C. Matthews,**

*Manager, Airspace and Rules Division.*

BILLING CODE 4910–13–M

# ORLANDO
# PROPOSED
# CLASS B AIRSPACE
NOT TO BE USED FOR NAVIGATION




PREPARED BY THE
FEDERAL AVITION ADMINISTRATION
AIR TRAFFIC GRAPHICS (ATX-10)

034398.ILL

[FR Doc. 99–20022 Filed 8–5–99; 8:45 am]

BILLING CODE 4910–13–C

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. 99–ASW–09]**

## Revision of Class E Airspace; Galveston, TX.

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

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** This notice confirms the effective date of a direct final rule which revises Class E airspace at Galveston, TX.

**EFFECTIVE DATE:** The direct final rule published at 64 FR 24036 is effective 0901 UTC, September 9, 1999.

**FOR FURTHER INFORMATION CONTACT:** Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5793.

**SUPPLEMENTARY INFORMATION:** The FAA published this direct final rule with a request for comments in the **Federal Register** on May 5, 1999, (64 FR 24036). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 9, 1999. No adverse comments were received, and, thus, this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on July 28, 1999.

**Robert N. Stevens,**

*Acting Manager, Air Traffic Division, Southwest Region.*

[FR Doc. 99–20087 Filed 8–4–99; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 99–ASW–10]**

## Revision of Class E Airspace; Shreveport, LA.

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

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** This notice confirms the effective date of a direct final rule which revises Class E airspace at Shreveport, LA.

**EFFECTIVE DATE:** The direct final rule published at 64 FR 24035 is effective 0901 UTC, September 9, 1999.

**FOR FURTHER INFORMATION CONTACT:** Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5793.

**SUPPLEMENTARY INFORMATION:** The FAA published this direct final rule with a request for comments in the **Federal Register** on May 5, 1999, (64 FR 24035). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 9, 1999. No adverse comments were received, and, thus, this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on July 28, 1999.

**Robert N. Stevens,**

*Acting Manager, Air Traffic Division, Southwest Region.*

[FR Doc. 99–20086 Filed 8–4–99; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 99–ASW–17]**

## Revision of Class E Airspace; Antlers, OK

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

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

**SUMMARY:** This amendment revises the Class E airspace at Antlers, OK. The development of a Nondirectional Radio Beacon (NDB) Standard Instrument Approach Procedure (SIAP), at Antlers Municipal Airport, Antlers, OK, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Antlers Municipal Airport, Antlers, OK.

**DATES:** Effective 0901 UTC, November 4, 1999. Comments must be received on or before September 20, 1999.

**ADDRESSES:** Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 99–ASW–17, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

**FOR FURTHER INFORMATION CONTACT:** Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

**SUPPLEMENTARY INFORMATION:** This amendment to 14 CFR part 71 revises the Class E airspace at Antlers, OK. The development of a NDB SIAP, at Antlers Municipal Airport, Antlers, OK, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Antlers Municipal Airport, Antlers, OK.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR § 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

### The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on

the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

**Comments Invited**

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, 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 should 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 or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is 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 action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–ASW–17.'' The postcard will be date stamped and returned to the commenter.

**Agency Findings**

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 level 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.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an establishment body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

**List of Subjects in 14 CFR part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adotpion of the Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the 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 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

*ASW OK Antlers, OK [Revised]*

Antlers Municipal Airport, OK
(Lat. 34°11′33″N., long. 95°38′59″W.)
Antlers NDB
(Lat. 34°11′30″N., long. 95°39′7″W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Antlers Municipal Airport and within 2.5 miles each side of the 172° bearing from the Antlers NDB extending from the 6.5-mile radius to 7.3 miles south of the airport.

* * * * *

Issued in Fort Worth, TX, on July 12, 1999.

**Robert N. Stevens,**

*Acting Manager, Air Traffic Division, Southwest Region.*

[FR Doc. 99–20083 Filed 8–4–99; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 99–ASW–16]**

## Revision of Class E Airspace; Altus, OK

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

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

**SUMMARY:** This amendment revises the Class E airspace at Altus, OK. The development of a Nondirectional Radio Beacon (NDB) Standard Instrument Approach Procedures (SIAP), at Frederick Municipal Airport, Frederick, OK has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Frederick Municipal Airport, Frederick, OK.

**DATES:** Effective 0901 UTC, November 4, 1999. Comments must be received on or before September 20, 1999.

**ADDRESSES:** Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 99–ASW–16, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

**FOR FURTHER INFORMATION CONTACT:** Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort

Worth, TX 76193–0520, telephone 817–222–5593.

**SUPPLEMENTARY INFORMATION:** This amendment to 14 CFR part 71 revises the Class E Airspace at Altus, OK. The development of a NDB SIAP, at Frederick Municipal Airport, Frederick, OK has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Frederick Municipal Airport, Frederick, OK.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR § 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

**The Direct Final Rule Procedure**

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register,** and a notice of proposed rulemaking may be published with a new comment period.

**Comments Invited**

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, 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 should 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 or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is 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 action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–ASW–16.'' The postcard will be date stamped and returned to the commenter.

**Agency Findings**

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.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

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

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the 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 6005 Class E airspace areas extending upweard from 700 feet or more above the surface of the earth.*

* * * * *

**ASW OK E5 Altus, OK [Revised]**

Altus AFB, OK
(lat. 34°39′30″N., long. 99°16′00″W)
Altus VORTAC
(lat. 34°39′46″N., long. 99°16′16″W)
Altus Municipal Airport, OK
(lat. 34°41′56″N, long 99°20′17″W)
Tipton Municipal Airport, OK
(lat. 34°27′31″N., long. 99°10′17″W)
Frederick Municipal Airport, OK
(lat. 34°21′08″N., long. 98°59′05″W.)
Altus AFB ILS Localizer
(lat. 34°38′32″N., long. 99°16′26″W.)
Frederick NDB
(lat. 34°21′14″N., long. 98°59′11″W.)

That airspace extending upward from 700 feet above the surface within a 9.1-mile radius of Altus AFB and within 1.6 miles each side of the 185° radial of the Altus VORTAC extending from the 9.1-mile radius to 11.9 miles south of the airport and within 3 miles west and 2 miles each of the Altus AFB Localizer north course extending from the 9.1-mile radius to 15 miles north of the airport and within a 6.5-mile radius of altus Municipal Airport and within a 5.4-mile radius of Tipton Municipal Airport and within a 7.2-mile radius of Frederick Municipal Airport and within 2.5 miles each side of the 180° bearing from the Frederick NDB extending from the 7.2-mile radius to 7.7 miles south of the airport.

* * * * *

Issued in Fort Worth, TX, on July 12, 1999.

**Robert N. Stevens,**

*Acting Manager, Air Traffic Division, Southwest Region.*

[FR Doc. 99–20082 Filed 8–4–99; 8:45 am]

**BILLING CODE 4910–13–M**

## FEDERAL TRADE COMMISSION

### 16 CFR Part 5

### Employee Conduct Standards and Financial Conflicts of Interest; Cross-Reference to Executive Branch-wide Regulations

**AGENCY:** Federal Trade Commission.

**ACTION:** Final rule.

**SUMMARY:** In its rule concerning Employee Conduct Standards and Financial Conflicts of Interest, the Commission is amending its cross-reference to the executive branch-wide regulations, to correct a typographical error.

**EFFECTIVE DATE:** These amendments are effective August 5, 1999.

**FOR FURTHER INFORMATION CONTACT:** Ira S. Kaye, 202–326–2426, or Shira Pavis Minton, 202–326–2479, Attorneys, Office of the General Counsel, FTC, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

**SUPPLEMENTARY INFORMATION:** The Commission is revising Commission Rule 5.1, 16 CFR 5.1, to correct a typographical error.

This rule amendment relates solely to agency practice, and, thus, is not subject to the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553(a)(2), or to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601(2).

### List of Subjects in 16 CFR Part 5, Subpart A

Employee Conduct Standards and Financial Conflict of Interest.

For the reasons set forth in the preamble, the Federal Trade Commission amends Title 16, chapter I, subchapter A, of the Code of Federal Regulations as follows:

## PART 5—STANDARDS OF CONDUCT

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

**Authority:** 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 15 U.S.C. 46(g); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1900 Comp., p. 306; 5 CFR part 2635, unless otherwise noted.

2. Section 5.1 is amended by revising the citation ''5 CFR 5701.101'' to read ''5 CFR Part 5701'' and by revising the word ''supplements'' to ''supplement''.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 99–20145 Filed 8–4–99; 8:45 am]

**BILLING CODE 6750–01–M**

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 200, 240 and 249

**[Release No. 34–41672; File No. S7–16–99]**

**RIN 3235–AH73**

### Broker-Dealer Registration and Reporting

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Securities and Exchange Commission is taking several steps as contingency planning in the event that the implementation of Web CRD is postponed and Legacy CRD must be reinstated. These steps include redesignating Form BD currently in effect until July 30, 1999 as Interim Form BD, redesignating Form BDW currently in effect until August 1, 1999 as Interim Form BDW, and extending the effectiveness of these forms indefinitely; amending Rules 15b3–1(c), 15b6–1, 15Ba2–2(e), 15Bc3–1, 15Ca2–1(c), and 15Cc1–1 under the Securities Exchange Act of 1934 to allow the Commission, by order, to conditionally exempt broker-dealers from the filing instructions contained in those rules and Forms BD and BDW, respectively; and amending the Commission's Rules of Practice to delegate the authority to issue orders under all these rules to the Director of the Division of Market Regulation. These actions will permit the Commission to require use of Interim Form BD and Interim Form BDW after July 30, 1999 and August 1, 1999, respectively, in the event the full implementation of Web CRD is delayed and it becomes necessary to return to the Legacy CRD system.

**EFFECTIVE DATE:** July 30, 1999.

**FOR FURTHER INFORMATION CONTACT:** Catherine McGuire, Chief Counsel, Barbara A. Stettner, Special Counsel, or Brian R. Baysinger, Special Counsel at (202) 942–0073, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–1001.

**SUPPLEMENTARY INFORMATION:**

### I. Description of Amendments

On April 30, 1999, the Securities and Exchange Commission (''Commission'') adopted amendments to Form BDW (''Revised Form BDW'') and Rules 15b3–1, 15b6–1, 15Ba2–2, 15Bc3–1, 15Ca1–1 and 15Cc1–1 under the Securities Exchange Act of 1934 (''Exchange Act'').[1] On July 2, 1999, the Commission adopted amendments to Form BD (''Revised Form BD'') and Rules 15b3–1, 15Ba2–2, and 15Ca2–1 under the Exchange Act.[2] These amendments were mainly technical and formatting changes needed to accommodate electronic filing in ''Web CRD,'' the new, Internet-based Central Registration Depository (''CRD'') system. Revised Form BDW was intended to supercede Form BDW, currently in effect until August 1, 1999, beginning August 1, 1999, and Revised Form BD was intended to supercede Form BD, currently in effect until July 30, 1999,[3] beginning July 30, 1999.

Since the time the Commission adopted these amendments, the National Association of Securities Dealers Inc., which operates the CRD system, has engaged in more extensive testing of Web CRD. While it appears at this time that the implementation of Web CRD will continue to go forward as planned, we believe it is prudent to implement a contingency plan in the event the full implementation of Web CRD is delayed for any reason.

This contingency plan consists of three elements. First, the Commission is redesignating the old Form BD and Form BDW, respectively, as Interim Form BD and Interim Form BDW and extending their effective dates indefinitely. This is intended to preserve the effectiveness of these forms in the event it becomes necessary to return to the Legacy CRD system.[4] However, registrants must continue to file on Revised Forms BD and BDW until notified otherwise by the Commission.

Second, the Commission is amending Rules 15b3–1, 15b6–1, 15Ba2–2, 15Bc3–1, 15Ca2–1, and 15Cc1–1 to provide the Commission with the authority to, by order, conditionally exempt broker-

[1] Securities Exchange Act Release No. 41356 (April 30, 1999), 64 FR 25143 (May, 10, 1999) (''BDW Adopting Release'').

[2] Securities Exchange Act Release No. 41594 (July 2, 1999); 64 FR 37586 (July 12, 1999) (''BD Adopting Release'').

[3] The current Form BD is referred to in the Adopting Release as ''Interim Form BD.''

[4] The CRD system that is currently in effect is referred to as ''Legacy CRD.'' As explained in the BD Adopting Release and the BDW Adopting Release, the interim forms are compatible with Legacy CRD, not with Web CRD. *See* BD Adopting Release and BDW Adopting Release for details.

dealers from the filing instructions for Form BD and Form BDW. This authority is needed to provide the Commission with sufficient flexibility to continuously maintain the registration system for broker-dealers in the event the full implementation of Web CRD is delayed.

Third, the Commission is amending Rule 30–3 of its Rules of Practice to add a new paragraph (a)(67). This paragraph will delegate the authority to issue orders under Rules 15b3–1(c)(4), 15b6–1(e), 15Ba2–2(e)(4), 15Bc3–1(e), 15Ca2–1(c)(4), and 15Cc1–1(d) to the Director of the Division of Market Regulation.[5] The Commission believes that this is necessary to effectively respond to any event that may delay the full implementation of Web CRD.

The Commission is adopting these amendments immediately, without notice and comment, which would otherwise be required by the Administrative Procedure Act. The Commission for good cause finds that, based on the reasons cited above, notice and solicitation of comment regarding the Commission's contingency planning for CRD is impracticable, unnecessary, and contrary to the public interest.[6] Furthermore, the Commission for good cause finds that, based on the reasons cited above, the rules and amendments shall be effective July 30, 1999. The Commission believes that the benefits of having a contingency plan to handle any problems with implementing Web CRD justify any minimal cost or inconvenience to broker-dealers. If the Commission does not adopt a contingency plan, and Web CRD fails to timely and adequately replace Legacy CRD, the marketplace could be disrupted: new broker-dealers could be delayed when trying to enter the market and important information about broker-dealers and their employees may be temporarily unavailable or difficult to access. This contingency plan needs to be adopted prior to the expiration of the old Form BD on July 30, 1999.

There will be little or no additional costs if Interim Forms BD and BDW are retained concurrently with new Forms BD and BDW because the forms are virtually identical. Furthermore, the Commission will inform broker-dealers which forms to file and does not intend to discipline firms that inadvertently file on the wrong form.

[5] 17 CFR 200.30–3

[6] 5 U.S.C. 553(b)(3)(B) (an agency may dispense with prior notice and comment when it finds, for good cause, that notice and comment are ''impracticable, unnecessary, or contrary to the public interest.''). 5 U.S.C. 553(d) (an agency may dispense with publication of a rule less than thirty days before its effective date only for good cause).

The Commission would like to stress that we still expect Web CRD to be implemented as planned. However, the Commission believes that, given the size and complexity of the Web CRD system, and the importance of the CRD system in the broker-dealer regulatory scheme, it is prudent to have a contingency plan in place.

## II. Cost Benefit Analysis

The Commission believes that the benefits of the rule amendments clearly justify any costs that may be incurred. The amendments will benefit broker-dealers by providing a contingency plan in the event the full implementation of Web CRD is delayed. Also, the Commission would like to stress that there would be little or no additional costs to industry participants if Interim Forms BD and BDW are retained concurrently with Revised Forms BD and BDW.

## III. Competitive Effects/NSMIA

Pursuant to Section 23(a) of the Exchange Act, the Commission does not believe the rule amendments will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

## IV. Regulatory Flexibility Analysis

Pursuant to Section 605(b) of the Regulatory Flexibility Act, the Chairman has certified that the rule amendments will not have a significant impact on a substantial number of small entities.[7] A copy of the Certification is attached as Exhibit A.

## List of Subjects

*17 CFR Part 200*

Administrative practice and procedure, Authority delegations (Government agencies).

*17 CFR Parts 240 and 249*

Broker-dealers, Reporting and recordkeeping requirements, Securities.

## Statutory Basis and Text of Final Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

## PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for part 200 continues to read in part as follows:

[7] 15 U.S.C. 78w(a).

**Authority:** 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*ll*(d), 78mm, 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

2. Section 200.30–3 is amended by adding paragraph (a)(67) to read as follows:

### § 200.30–3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a) * * *

(67) To issue orders under Rules 15b3–1(c)(4), 15b6–1(e), 15Ba2–2(e)(4), 15Bc3–1(e), 15Ca2–1(c)(4), and 15Cc1–1(d) (17 CFR 240.15b3–1(c)(4), 240.15b6–1(e), 240.15Ba2–2(e)(4), 240.15Bc3–1(e), 240.15Ca2–1(c)(4), and 240.15Cc1–1(d)).

* * * * *

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for part 240 continues to read in part as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

4. By amending § 240.15b3–1 by adding paragraph (c)(4) to read as follows:

### § 240.15b3–1 Amendments to application.

* * * * *

(c) *Temporary re-filing instructions.*

* * *

(4) The Commission, by order, may exempt any broker or dealer from the filing requirements provided in Form BD (17 CFR 249.501) and paragraphs (c)(1), (c)(2), and (c)(3) of this section under conditions that differ from the filing instructions contained in Form BD and paragraphs (c)(1), (c)(2), and (c)(3) of this section.

5. By amending § 240.15b6–1 by adding paragraph (e) to read as follows.

### § 240.15b6–1 Withdrawal from registration.

* * * * *

(e) The Commission, by order, may exempt any broker or dealer from the filing requirements provided in Form BDW (17 CFR 249.501a) under conditions that differ from the filing instructions contained in Form BDW.

6. By amending § 240.15Ba2–2 by adding paragraph (e)(4) to read as follows:

### § 240.15Ba2–2 Application for registration of non-bank municipal securities dealers whose business is exclusively intrastate.

* * * * *

(e) *Temporary re-filing instructions.*
* * *

(4) The Commission, by order, may exempt any broker or dealer from the filing requirements provided in Form BD (17 CFR 249.501) and paragraphs (e)(1), (e)(2), and (e)(3) of this section under conditions that differ from the filing instructions contained in Form BD and paragraphs (e)(1), (e)(2), and (e)(3) of this section.

7. By amending § 240.15Bc3–1 by adding paragraph (e) to read as follows:

**§ 240.15Bc3–1 Withdrawal from registration of municipal securities dealers.**

* * * * *

(e) The Commission, by order, may exempt any broker or dealer from the filing requirements provided in Form BDW (17 CFR 249.501a) under conditions that differ from the filing instructions contained in Form BDW.

8. By amending § 240.15Ca2–1 by adding paragraph (c)(4) to read as follows:

**§ 240.15Ca2–1 Application for registration as a government securities broker or government securities dealer.**

* * * * *

(c) *Temporary re-filing instructions.*
* * *

(4) The Commission, by order, may exempt any broker or dealer from the filing requirements provided in Form BD (17 CFR 249.501) and paragraphs (c)(1), (c)(2), and (c)(3) of this section under conditions that differ from the filing instructions contained in Form BD and paragraphs (c)(1), (c)(2), and (c)(3) of this section.

9. By amending § 240.15Cc1–1 by adding paragraph (d) to read as follows:

**§ 240.15Cc1–1 Withdrawal from registration of municipal securities dealers.**

* * * * *

(d) The Commission, by order, may exempt any broker or dealer from the filing requirements provided in Form BDW (17 CFR 249.501a) under conditions that differ from the filing instructions contained in Form BDW.

## PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

10. The authority citation for part 249 continues to read in part as follows:

**Authority:** 15 U.S.C. 78a, et. seq., unless otherwise noted;

* * * * *

11. By amending § 249.501 by designating the current text as paragraph (a) and by adding paragraph (b) to read as follows:

**§ 249.501 Form BD, for application for registration as a broker and dealer or to amend or supplement such an application.**

(a) * * *

(b) Interim Form BD shall be used for application for registration as broker-dealer under the Securities Exchange Act of 1934, or to amend such application, only by order of the Commission. In the event broker-dealers are required to comply with their filing obligations on Interim Form BD, the form will be made available at the Commission's Publication Office at (202) 942–4040.

12. By amending § 249.501a by designating the current text as paragraph (a) and by adding paragraph (b) to read as follows:

**§ 249.501a Form BDW, notice of withdrawal from registration as broker-dealer pursuant to § 240.15b6–1, § 240.15Bc3–1, or § 240.15Cc1–1 of this chapter.**

(a) * * *

(b) Interim Form BDW shall be used for application for registration as broker-dealer under the Securities Exchange Act of 1934, or to amend such application, only by order of the Commission. In the event broker-dealers are required to comply with their filing obligations on Interim Form BD, the form will be made available at the Commission's Publication Office at (202) 942–4040.

By the Commission.

Dated: July 30, 1999.

**Margaret H. McFarland,**

*Deputy Secretary.*

**Note:** This Appendix A to the preamble will not appear in the Code of Federal Regulations.

### Appendix A to the Preamble—Securities and Exchange Commission Regulatory Flexibility Act Certification

I, Arthur Levitt, Jr., Chairman of the U.S. Securities and Exchange Commission (''Commission''), hereby certify, pursuant to 5 U.S.C. § 605(b), that (1) the redesignation of Form BD and Form BDW, as currently in effect until July 30, 1999 and August 1, 1999, respectively, as Interim Form BD and Interim Form BDW and (2) the amendments to Rules 15b3–1(c), 15b6–1, 15Ba2–2(e), 15Bc3–1, 15Ca2–1(c), and 15Cc1–1(''Rules'') and 17 CFR § § 249.501 and 501a under the Securities Exchange Act of 1934 (''Exchange Act'') would not, if adopted, have a significant economic impact on a substantial number of small entities. The redesignation of Form BD and Form BDW is intended to preserve the effectiveness of these forms in the event it is necessary to return to the legacy CRD system. The rule amendments would allow the Commission, by order, to conditionally exempt broker-dealers from the filing instructions contained in those rules and Forms BD and BDW, respectively. This authority is needed to provide the Commission with sufficient flexibility to continuously maintain the registration system for broker-dealers in the event the full implementation of Web CRD is delayed. The amendments would impose little or no new recordkeeping requirements or compliance burdens on small entities. Accordingly, the amendments would not have a significant economic impact on a substantial number of small entities.

Dated: July 30, 1999.

Arthur Levitt, Jr.,

*Chairman.*

[FR Doc. 99–20099 Filed 7–30–99; 4:34 pm]

BILLING CODE 8010–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 510, 520, 522, and 558

### New Animal Drugs; Change of Sponsor

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

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for six new animal drug applications (NADA's) from Roussel-UCLAF SA, Animal Health Division to Hoechst Roussel Vet.

**EFFECTIVE DATE:** August 5, 1999.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

**SUPPLEMENTARY INFORMATION:** Roussel-UCLAF SA, Animal Health Division, 102 Route de Noisy, 93235 Romainville Cedex, France, has informed FDA that it has transferred ownership of, and all rights and interests in, the approved NADA's (130–951, 131–310, 138–612, 140–824, 140–897, and 140–992) to Hoechst Roussel Vet, 30 Independence Blvd., P.O. Box 4915, Warren, NJ 07059.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808. Accordingly, the agency is amending the regulations in 21 CFR parts 510, 520, 522, and 558 to reflect the change of sponsor. The agency is also amending 21 CFR 510.600(c)(1) and (c)(2) to remove the sponsor name for Roussel UCLAF SA because the firm no longer is the holder of any approved NADA's.

**List of Subjects**

*21 CFR Part 510*

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

*21 CFR Parts 520 and 522*

Animal drugs.

*21 Part 558*

Animal Drugs, Animal Feeds.

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 510, 520, 522, and 558 are amended as follows:

## PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

### § 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry for ''Roussel-UCLAF SA'' and in the table in paragraph (c)(2) by removing the entry for ''012579''.

## PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 520 continues to read as follows:

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

### § 520.48 [Amended]

4. Section 520.48 *Altrenogest solution* is amended in paragraph (b) by removing ''012579'' and adding in its place ''012799''.

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

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

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

### § 522.2476 [Amended]

6. Section 522.2476 *Trenbolone acetate* is amended in paragraph (b) by removing ''012579'' and adding in its place ''012799''.

### § 522.2477 [Amended]

7. Section 522.2477 *Trenbolone acetate and estradiol* is amended in paragraph (a) by removing ''012579'' and adding in its place ''012799''.

## PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

8. The authority citation for 21 CFR part 558 continues to read as follows:

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

### § 558.265 [Amended]

9. Section 558.265 *Halofuginone hydrobromide* is amended in paragraph (a) by removing ''012579'' and adding in its place ''012799''.

Dated: June 29, 1999.

**Claire M. Lathers**

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

[FR Doc. 99–20141 Filed 8–4–99; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF THE INTERIOR

## Minerals Management Service

## 30 CFR Part 250

## Pipelines and Pipeline Rights-of-Way; Correction

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Technical amendment.

**SUMMARY:** This document makes technical amendments to regulations that were published in the **Federal Register** (July 24, 1997, 63 FR 39775; redesignated May 29, 1998, 63 FR 29479, 29486) and were codified in the July 1, 1998, edition of Title 30—Mineral Resources, Parts 200–699, Code of Federal Regulations (CFR). The regulations being corrected relate to the filing fee for applying for a pipeline right-of-way grant in the Outer Continental Shelf. This correction will reduce the filing fees required for converting existing lease term pipelines into right-of-way pipelines.

**EFFECTIVE DATE:** August 5, 1999.

**FOR FURTHER INFORMATION CONTACT:** Kumkum Ray (703) 787–1600.

**SUPPLEMENTARY INFORMATION:**

### Background

The final rules that we are correcting affect persons submitting applications to MMS for a pipeline right-of-way grant to convert existing lease term pipelines into right-of-way pipelines under 30 CFR 250.1010(a). In September 1997, MMS changed its regulations to raise the filing fee submitted with applications for pipeline right-of-way grants from $1,400 to $2,350. The filing fees MMS charges are based on our administrative costs in processing applications and documents that provide special benefits to non-Federal recipients above those that accrue to the public at large.

Our regulations in § 250.1010(a) state that ''* * * MMS periodically will amend the filing fee based on its experience with the costs for administering pipeline right-of-way applications. * * * MMS will amend the application fee * * * without notice and opportunity for comment.'' Since publishing this final regulation, we have determined that we incur only minimal expenses in administering applications to convert existing lease term pipelines into right-of-way pipelines and issue a pipeline right-of-way grant.

Therefore, we are correcting the regulations at § 250.1010(a) to reduce the pipeline right-of-way grant application filing fee for this type of application to $300, instead of the $2,350 application filing fee required for a pipeline right-of-way grant to install a new pipeline. The reduced amount reflects the average processing costs of these applications.

### Need for Correction

As published, the final regulations contain the requirement for an application filing fee for a type of pipeline right-of-way grant that is higher than the administrative processing costs involved and needs to be corrected.

### List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Geological and geophysical data, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Accordingly, 30 CFR part 250 is amended by making the following correcting technical amendment:

## PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

**Authority:** 43 U.S.C. 1331 *et seq.*

### § 250.1010 [Corrected]

2. In § 250.1010, the first five sentences in paragraph (a) are revised to read as follows:

**§ 250.1010 Applications for a pipeline right-of-way grant.**

(a) You must submit an original and three copies of an application for a new or modified pipeline right-of-way grant to the Regional Supervisor. The application must address those items required by § 250.1007 (a) or (b) of this subpart, as applicable. It must also state the primary purpose for which you will use the right-of-way grant. If the right-of-way has been used before the application is made, the application must state the date such use began, by whom, and the date the applicant obtained control of the improvement. When you file your application, you must pay the rental required under § 250.1009(c)(2) of this subpart and a non-refundable filing fee of $2,350 for a pipeline right-of-way grant to install a new pipeline or a non-refundable filing fee of $300 for a pipeline right-of-way grant to convert an existing lease term pipeline into a right-of-way pipeline. * * *

* * * * *

Dated: July 9, 1999.

**E.P. Danenberger,**

*Chief, Engineering and Operations Division.*

[FR Doc. 99–20157 Filed 8–4–99; 8:45 am]

**BILLING CODE 4310–MR–P**

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 100

**[CGD08–99–048]**

**RIN 2115–AE46**

## Special Local Regulations; Aurora APR Powerboat Races Ohio River Miles 496.5–498.5, Aurora, IN

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** Special local regulations are being adopted for the Aurora APR Powerboat Races taking place on the Ohio River at approximately mile 496.5 to 498.5. This event will be held on August 28–29, 1999 from 9 a.m. until 7 p.m. at Aurora, Indiana. These regulations are needed to provide for the safety of life on navigable waters during the event.

**DATES:** These regulations are effective from 9 a.m. until 7 p.m. on August 28–29, 1999.

**ADDRESSES:** Unless otherwise indicated, all documents referred to in this regulation are available for review at Marine Safety Office, Louisville, 600 Martin Luther King Jr. Place, Room 360, Louisville, KY 40202–2230.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Jeff Johnson, Chief, Port Management Department, USCG Marine Safety Office, Louisville, KY, telephone (502) 582–5194, ext. 39.

**SUPPLEMENTARY INFORMATION:** *Drafting information.* The drafters of this regulation are Lieutenant Jeff Johnson, Project Officer, Chief, Port Management Department, USCG Marine Safety Office, Louisville, KY, and LTJG Michele Woodruff, Project Attorney, Eighth Coast Guard district Legal Office.

### Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rule making for these regulations has not been published, and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rule making procedures would be impracticable. The details of the event were not finalized in sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

### Background and Purpose

The marine event requiring this regulation is a Powerboat Regatta. The event is sponsored by Aurora Riverfront Beautification. The Powerboat Regatta will take place on the Ohio River at approximately mile 496.5 to 498.5. Non-participating vessels will be able to transit the area after the river is reopened.

### Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because of the event's short duration.

### Small Entities

The Coast Guard finds that the impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq.*, that this temporary rule will not have a significant economic impact on a substantial number of small entities because of the event's short duration.

### Collection of Information

This rule contains no information collection requirements under the paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*).

### Federalism Assessment

The Coast Guard has analyzed this action in accordance with the principles and criteria of Executive Order 12612 and has determined that this rule does not raise sufficient federalism implications to warrant to preparation of a Federalism Assessment.

### Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2–1, paragraph (34)(h) of Commandant Instruction M16475.1C, this rule is excluded from further environmental documentation.

### List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons set forth in the preamble, the Coast Guard temporarily amends Part 100 of Title 33, Code of Federal Regulations, as follows:

## PART 100—REGATTAS AND MARINE PARADES

1. The authority citation for Part 100 continues to read:

**Authority:** 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. Effective from 9 a.m. to 7 p.m., August 28–29, 1999, a temporary § 100.35T–08–048 is added to read as follows:

**§ 100.35T–08–048 Ohio River at Aurora, Indiana.**

(a) *Regulated area.* Ohio River Mile 496.5 to 498.5.

(b) *Special local regulation.* All persons and/or vessels not registered with the sponsors as participants or official patrol vessels are considered spectators. ''Participants'' are those persons and/or vessels identified by the sponsor as taking part in the event. The ''official patrol'' consists of any Coast Guard, public, state or local law enforcement and/or sponsor provided vessel assigned to patrol the event. The Coast Guard ''Patrol Commander'' is a Coast Guard commissioned, warrant, or petty officer who has been designated by Commanding Officer, Coast Guard Marine Safety Office Louisville.

(1) No vessel shall anchor, block, loiter in, or impede the through transit of participants or official patrol vessels in the regulated area during effective

dates and times, unless cleared for such entry by or through an official patrol vessel.

(2) When hailed and/or signaled by an official patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions given; failure to do so may result in a citation.

(3) The Patrol Commander is empowered to forbid and control the movement of all vessels in the regulated area. The Patrol Commander may terminate the event at any time it is deemed necessary for the protection of life and/or property and can be reached on VHF–FM Channel 16 by using the call sign ''PATCOM''.

(c) *Effective date.* This section is effective from 9 a.m. until 7 p.m., August 28–29, 1999.

Dated: July 26, 1999.

**Paul J. Pluta,**

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

[FR Doc. 99–20207 Filed 8–4–99; 8:45 am]

BILLING CODE 4910–15–M

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 117

**[CGD08–99–047]**

**RIN 2115–AE47**

## Drawbridge Operation Regulation; Tennessee River, TN

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Commander, Eighth Coast Guard District is temporarily changing the regulation governing the Chief John Ross Drawbridge, Mile 464.1, Tennessee River. The drawbridge need no open for vessel traffic and may remain in the closed-to-navigation position from July 26, 1999 to October 1, 1999. This temporary rule is issued for bridge repairs and painting necessary to maintain the lift span in safe, working order.

**DATES:** This temporary rule is effective from 12:01 a.m., July 26, 1999 to noon, October 1, 1999.

**ADDRESSES:** The public docket and all documents referred to in this rule will be available for inspection and copying at room 2.107f in the Robert A. Young Federal Building at Commander (obr), Eighth Coast Guard District, 1222 Spruce Street, St., Louis, Missouri 63103–2832, between 7 a.m and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Roger K. Wiebusch, Bridge Administrator; Eighth Coast Guard District, Bridge Branch, telephone 314–539–3900 extension 378.

**SUPPLEMENTARY INFORMATION:**

### Background

On June 29, 1999, the Tennessee Department of Transportation (TNDOT) requested a temporary change to the operation of the Chief John Ross Drawbridge across the Tennessee River, Mile 464.1 at Chattanooga, Tennessee. The TNDOT requested that the drawbridge be permitted to remain closed to navigation beginning in July to the end of September to facilitate necessary repair work and painting required to keep the lift span in safe, working order. Repairs to the deck will require the placement of heavy concrete lane barriers on the lift span which will preclude openings.

This rule is being published as a temporary rule and is being made effective on the date of publication. This rule is being promulgated without a notice of proposed rulemaking and should be made effective in less than 30 days due to the short time frame provided between the submission of the request by the TNDOT and the date of the scheduled start to work. For this reason, the Coast Guard determined good cause exists, according to 5 U.S.C. 553, to eliminate public comment period before the effective date of this rule and to make the rule effective in less than 30 days after publication.

### Discussion of Temporary Rule

The Chief John Ross Drawbridge navigation span provides vertical clearance of 58.7 feet above normal pool in the closed-to-navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. Presently, the draw is required to open on signal when the vertical clearance beneath the draw is 50 feet or less. When the vertical clearance is more than 50 feet at least eight hours notice is required. Due to the clearance provided by the bridge in the closed-to-navigation position commercial vessel operators do not usually require the bridge to open for passage of marine traffic. There was only a single reported bridge opening in the past 15 years. This temporary drawbridge operation amendment has been coordinated with the commercial waterway operators. No objections to the temporary rule were raised.

### Regulatory Evaluation

This temporary rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040); February 26, 1979).

The Coast Guard expects the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. Since the bridge has not had to open for river traffic in the past several years, it is not expected that navigation will change in the next four months to require openings.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this temporary rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000.

Because it expects the impact of this action to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b), that this action will not have a significant economic impact on a substantial number of small entities.

### Collection of Information

This temporary rule does not provide for a collection-of-information requirement under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

### Federalism

The Coast Guard has analyzed this temporary rule under the principles and criteria contained in Executive Order 12612, and has determined that this temporary rule does not raise sufficient implications of federalism to warrant the preparation of a Federalism Assessment. The authority to regulate the permits of bridges over the navigable waters of the U.S. belong to the Coast Guard by Federal statutes.

### Environmental

The Coast Guard considered the environmental impact of this temporary rule and concluded that under Figure 2–1, paragraph 32(e) of Commandant Instruction M16475.1C, this temporary rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection

or copying where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 117**

Bridges.

For the reasons set out in the preamble, the Coast Guard temporarily amends Part 117 of Tile 33, Code of Federal Regulations, as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Effective from 12:01 a.m., July 26, 1999, to 12 noon, October 1, 1999, § 117.949 is suspended and a new § 117.T950 is added to read as follows:

**§ 117.T950 Tennessee River.**

(a) *Southern Railway Bridge.* The draw of the Southern Railway Bridge over the Tennessee River, mile 470.7, at Hixon, Tennessee, shall open on signal when the vertical clearance beneath the draw is 50 feet or less. When the vertical clearance beneath the draw is more than 50 feet, at least eight hours notice is required. When the operator of a vessel returning through the draw within four hours informs the drawtender of the probable time to return, the drawtender shall return one half hour before the time specified and promptly open the draw on signal for the vessel without further notice. If the vessel giving notice fails to arrive within one hour after the arrival time specified, whether upbound or downbound, a second eight hours notice is required. Clearance gages of a type acceptable to the Coast Guard shall be installed on both sides of the bridge.

(b) *Chief John Ross Drawbridge.* The drawspan of the Chief John Ross Drawbridge, mile 464.1, at Chattanooga, Tennessee, need not open for vessel traffic and may be maintained in the closed-to-navigation position.

Dated: July 26, 1999.

**Paul J. Pluta,**

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

[FR Doc. 99–20208 Filed 8–4–99; 8:45 am]

**BILLING CODE 4910–15–M**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[DC25–2018a; FRL–6412–5]**

## Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; 15 Percent Plan for the Metropolitan Washington, D.C. Ozone Nonattainment Area

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

**ACTION:** Direct final rule.

**SUMMARY:** We are converting our conditional approval of the District of Columbia's State Implementation Plan (SIP) revision to achieve a 15 percent reduction in volatile organic compound (VOC) emissions (15% plan) in the Metropolitan Washington, D.C. ozone nonattainment area to a full approval. In a rule published on July 7, 1998, we conditionally approved the District's 15% plan as a revision to the District's SIP. The sole condition we imposed for full approval was that the District begin mandatory testing of motor vehicles under its enhanced inspection and maintenance program (I/M program) on or before April 30, 1999. The District began the required testing on April 26, 1999, and thus fulfilled the condition for full approval. The District's 15% plan SIP revision meets all the requirements of the Clean Air Act relating to the plan to achieve a 15% reduction in VOC emissions.

**DATES:** This rule is effective on October 4, 1999 without further notice, unless EPA receives adverse written comment by September 7, 1999. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments should be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, US Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the District of Columbia Department of Public Health, Air Quality Division, 2100 Martin Luther King Avenue, S.E., Washington, DC 20020.

**FOR FURTHER INFORMATION CONTACT:** Christopher Cripps, (215) 814–2179, at the EPA Region III address above, or by e-mail at cripps.christopher@epa.gov.

**SUPPLEMENTARY INFORMATION:** In this action, we are converting our conditional approval of the District's 15% plan as a revision to the District's SIP to a full approval.

In a rule published on July 7, 1998 (63 FR 36578), we granted a conditional approval to the District's 15% plan because the District's enhanced inspection maintenance (I/M) program, which is one of the many control measures adopted by the District to achieve the 15% reduction in VOC emissions, had only been conditionally approved at that time. The sole condition we imposed for full approval of the District's enhanced I/M program and thus the 15% plan was that the District begin mandatory testing of motor vehicles under its enhanced I/M program on or before April 30, 1999. The District began the required testing on April 26, 1999, and thus fulfilled the condition for full approval.

In a rule published June 11, 1999 (64 FR 31498) , we converted our conditional approval of the District's enhanced I/M program as a revision to the District's SIP to a full approval. Therefore, we are now converting our conditional approval of the District's 15% plan as a revision to the District's SIP to full approval.

### EPA Action

EPA is converting its conditional approval of the District's 15% plan to a full approval. An extensive discussion of the District's 15% plan and our rationale for our approval action was provided in the previous final rule that conditionally approved the 15% plan (see 63 FR 36578 and 63 FR 36652) and in our Technical Support Document, dated June 22, 1998. This action to convert our conditional approval to a full approval is being published without prior proposal because we view this as a noncontroversial amendment and because we anticipate no adverse comments. In a separate document in the ''Proposed Rules'' section of this **Federal Register** publication, we are proposing to convert our conditional approval of the District's 15% plan SIP revision to a full approval if adverse comments are filed. This action will be effective without further notice unless we receive relevant adverse comment by September 7, 1999. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. Any parties interested in commenting must do so at this time. If no such comments are received by September 7, 1999, you

are advised that this action will be effective on October 4, 1999.

**Administrative Requirements**

*A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled ''Regulatory Planning and Review.''

*B. Executive Order 12875*

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

*C. Executive Order 13045*

E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) Is ''economically significant,'' as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

*D. Executive Order 13084*

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

*E. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

*F. Unfunded Mandates*

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

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

*G. Submission to Congress and the Comptroller General*

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

*H. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to convert our conditional approval of the District of Columbia's

15% plan to a full approval must be filed in the United States Court of Appeals for the appropriate circuit by October 4, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

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

Dated: July 23, 1999.

**W. Michael McCabe,**

*Regional Administrator, Region III.*

Chapter I, title 40, of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

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

**Authority:** 42 U.S.C. 7401–7671q.

### Subpart J—District of Columbia

2. Section 52.476 is added to read as follows:

**§ 52.476 Control strategy: ozone.**

EPA approves as a revision to the District of Columbia State Implementation Plan the 15 Percent Rate of Progress Plan for the District of Columbia's portion of the Metropolitan Washington, D.C. ozone nonattainment area, submitted by the Director of the District of Columbia Department of Health on April 16, 1998.

**§ 52.473 [Removed]**

3. Section 52.473 is removed and reserved.

[FR Doc. 99–19903 Filed 8–4–99; 8:45 am]
BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 271

**[FRL–6410–1]**

## Wisconsin: Final Authorization of State Hazardous Waste Management Program Revision

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

**ACTION:** Immediate final rule.

**SUMMARY:** Wisconsin has applied for final authorization of the revision to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The scope of this revision package includes partial completion of SPA's 8, 9, 13, 14 and 15, with the following clusters: RCRA Cluster I, including HSWA and non-HSWA Rules; RCRA Cluster II, including HSWA and non-HSWA provisions; RCRA Cluster III, including HSWA and non-HSWA provisions; RCRA Cluster IV, including HSWA and non-HSWA provisions; HSWA Cluster I; HSWA Cluster II; non-HSWA Cluster III; non-HSWA Cluster V; and non-HSWA Cluster VI. The major rules in the application include Land Disposal Restrictions, Recycled Used Oil Management, Wood Preserving Listings, and Organic Air Emission Standards for Process Vents and Equipment Leaks. The EPA has reviewed Wisconsin's application and determined that its hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Unless adverse written comments are received during the review and comment period, EPA's decision to authorize Wisconsin's hazardous waste program revision will take effect as provided below.

**DATES:** This rule will become effective on October 4, 1999, without further notice, unless EPA receives relevant adverse comments by September 7, 1999. Should EPA receive such comments EPA will publish a timely document withdrawing this rule.

**ADDRESSES:** Send written comments referring to Docket Number ARA 6, to Mr. Daniel F. Chachakis, U.S. EPA Region 5, Waste Pesticides and Toxics Division, Program Management Branch (DM–7J), 77 W. Jackson Blvd., Chicago, IL 60604, Phone (312) 886–2022. Copies of the Wisconsin program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying from 9 a.m. to 4 p.m. at the following addresses: Mr. Tom Eggert, Wisconsin Department of Natural Resources, 101 South Webster Street, Madison, WI 53707–7921 and EPA Region 5, Office of RCRA, 77 West Jackson Blvd., Seventh Floor, Chicago, IL 60604.

**FOR FURTHER INFORMATION CONTACT:** Mr. Daniel F. Chachakis, Environmental Protection Specialist, Wisconsin Regulatory Specialist, U.S. EPA Region 5 Waste, Pesticides and Toxics Division, Program Management Branch (DM–7J), 77 West Jackson Blvd., Chicago, IL 60604; (312) 886–2022.

**SUPPLEMENTARY INFORMATION:**

### A. Background

States with final authorization under section 3006(b) of the RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. As the Federal hazardous waste program changes, the States must revise their programs and apply for authorization of the revisions. Revisions to State hazardous waste programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must revise their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

### B. Wisconsin

Wisconsin initially received Final Authorization on January 30, 1986, effective January 31, 1986 (51 FR 3783) to implement its base hazardous waste management program. Wisconsin received authorization for revisions to its program on May 23, 1989, effective June 6, 1989 (54 FR 22278), on November 22, 1989, effective January 22, 1990 (54 FR 48243), on April 24, 1992 effective April 24, 1992 (57 FR 15029), on June 2, 1993 effective August 2, 1993 (58 FR 31344) and on August 5, 1994, effective October 4, 1994 (59 FR 39971).

The authorized Wisconsin RCRA program was incorporated by reference into the CFR effective April 24, 1989 (54 FR 7422), May 29, 1990 (55 FR 11910), and November 22, 1993 (58 FR 49199).

On May 7, 1999, Wisconsin submitted a final complete program revision application, seeking authorization of its program revision in accordance with 40 CFR 271.21. The EPA reviewed Wisconsin's application, and now makes an immediate final decision, subject to receipt of adverse written comment, that Wisconsin's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final Authorization. Consequently, EPA intends to grant Wisconsin Final Authorization for the program modifications contained in the revision.

The public may submit written comments on EPA's immediate final decision until September 7, 1999. Copies of Wisconsin's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this document.

If EPA does not receive adverse written comment pertaining to

Wisconsin's program revision by the end of the comment period, the authorization of Wisconsin's revision will become effective October 4, 1999. If the Agency does receive adverse written comment, it will publish a document withdrawing this immediate final rule before its effective date. EPA will then address the comments in a later final rule based on the companion document appearing in the Proposed Rules section of today's **Federal Register**. EPA may not provide additional opportunity for comment. Any parties interested in commenting should do so at this time.

On October 4, 1999, (unless EPA publishes a prior FR action withdrawing this immediate final rule), Wisconsin will be authorized to carry out, in lieu of the Federal program, those provisions of the State's program which are analogous to the following provisions of the Federal program:

| Description of Federal requirement [include checklist #, if relevant] | **Federal Register** date and page [and/or RCRA statutory authority] | Analogous State authority [1] |
|---|---|---|
| **CONSOLIDATED CHECKLIST FOR THE LAND DISPOSAL RESTRICTIONS AS OF JUNE 30, 1994** | | |
| Revision Checklist 34 .... | 51 *FR* 40572, November 7, 1986 as amended.<br>52 *FR* 21010, June 4, 1987. | Statute: 227.12(1)<br>Code: 600.01–600.03; 600.06 (1)–(4); 605.02; 605.05(2), (5), (7)(a); 605.04–605.06; 605.08(1)(b); 605.09(1)(c); 610.05(4); 610.07(1), (2); 610.09; 615.06(6); 620.14; 625.04(4); 630.02; 630.12(1); 630.13(1)(f), (h); 630.31(1)(d); 630.31(1)(k)–(o); 675.01–675.02; 675.03(3), (6); 675.04–675.05; 675.06(1); 675.07(1)(a)–(e), (g), (2), (3); 675.11(1), (3); 675.12(1), (2); 675.20(1); 675.21(1), Table CCWE, (2); 675.22(1); 675.22(2)(a); 675.23(1); 675.24(1)(a), (2); 675.30(1)–(5); 675 Appendix I; 680.22(5), (6), (15), (32); 680.42 (intro), (1), (19). |
| Revision Checklist 39 .... | 52 *FR* 25760, July 8, 1987 as amended.<br>52 *FR* 41259, October 27, 1987. | Code: 600.03(96), (126), (177); 600.10(2); 610.04(2), (3); 615.04(2); 630.13(1)(h)3; 675.03(2), (6) 675.04(1)(b), (2); 675.05(1), (2); 675.06(1); 675.07(1)(a)–(d), (2), (3); 675.13(1)–(5); 675.20(1), (2); 675.22(1)(a), (b), (2)(a); 675.30(1), (6); 675 Appendix II; 680.07(4); 680.22(6); 680.23. |
| Revision Checklist 50 .... | 53 *FR* 31138, August 17, 1988 as amended.<br>54 *FR* 8264, February 27, 1989. | Code: 600.04(1); 625.05(1); 630.13(1)(h)3; 630.31(1)(k)–(o); 675.04(1)(b); 675.05(1), (2); 675.07(1)(a)–(g), (i), (j), (2), (3); 675.11; 675.12; 675.13(1)(e), (2), (3); 675.14(1), (2), (3), (4)(a)–(c), (5); 675.20(1), (3); 675.21(1), Table CCWE; 675.22(1)(b); 675.23(1), Table CCW, (2); 675.24(1)(a), (c)1, (2); 675.30(4); 680.22(6), (15). |
| Revision Checklist 62 .... | 54 *FR* 18836, May 2, 1989. | Code: 675.23(1) Table CCW. |
| Revision Checklist 63 .... | 54 *FR* 26594, June 23, 1989. | Code: 600.04(1); 675.15; 675.21(1), Table CCWE; 675.22(1)(c); 675.23(1), Table CCW, (2). |
| Revision Checklist 66 .... | 54 *FR* 36967, September 6, 1989 as amended.<br>55 *FR* 23935, June 13, 1990. | Code: 600.04(1); 625.05(1); 675.05; 675.07(1)(f), (j); 675.14(1), (5); 675.24(1)(a); 675.30(4). |
| Revision Checklist 78 .... | 55 *FR* 22520, June 1, 1990. | Code: 600.04(1), (2); 600.03(2), (100), (126), (177); 605.08(1)(b), (2)(b), (3)(b), (4)(b), (5)(b); 605.09(2)(a), (3)(a)3, 605 Appendix III; 610.05(3); 615.05(4)(a)6; 615.06(3); 625.05(1); 630.02(intro); 655.09; 660.18(3), (9)(c)3, 6; 675.03(intro), (1), (2), (3), (6), (7), (8); 675.06(1), (2); 675.07(1)(d)1b, 2, (e)1b, (f), (j), (k), (L), (2)(d)1b, (e)3, 4, (3); 675.09; 675.16(1)–(4), (5)(a), (6), (7); 675.20(1), (3); 675.21(1), Table CCWE; 675.22(1)(intro), (b), Table 1, Table 2, Table 3, (c), (2)(a), (4), (5), 675.23(1), Table CCW, (3); 675 Appendix III, IV, V, VI, VII; 680.22(5), (25), (32); 680 Appendix I, I.6. |
| Revision Checklist 83 .... | 56 *FR* 3864, January 31, 1991. | Code: 605.04(1)(b)7, Note; 605.08(1)(b); 605.09(2)(a); 610.05(3); 610.08(1)(k)1, (o)9, (q); 615.06(3); 675.03(1), (7), (8)(a), (b); 675.07(1)(b), (c)1b, (d)1b, (e)1b, (g), (h), (i), (k), (L), (2)(d)1d; 675.09(1); 675.14(2); 675.16(1), (3), (4), (5)(a); 675.20(1); 675.21(1), Table CCWE; 675.22(1)(b), Table 1, Table 2, Table 3, (c); 675.23(1), Table CCW, (3); 675 Appendix III, IV, VI, VII; 680 Appendix I, I.6. |
| Revision Checklist 95 .... | 56 *FR* 41164, August 19, 1991. | Code: 605.04(1)(b)6a, b, 8; 675.21(1), Table CCWE, (2); 675.22(1)(b). |
| Revision Checklist 102 .. | 57 *FR* 8086, March 6, 1992. | Code: 630.12(1); 675.06(2); 675.21(1); 675.22(1)(b), Table 2; 680.22(5). |
| Revision Checklist 103 .. | 57 *FR* 20766, May 15, 1992. | Code: 675.16(5)(a). |
| Revision Checklist 106 .. | 57 *FR* 28628, June 26, 1992. | Code: 675.16(3), (8). |
| Revision Checklist 109 .. | 57 *FR* 37194, August 18, 1992. | Code: 600.03(45), (150), (172); 605.04(1)(b)6, 7, (4); 615.05(4); 655.02(intro); 655.05(2); 655.06(1); 655.07(1), (2), (4)(b), (6), (7); 655.11(2)(a), (b); 660.02; 660.16(1); 660.18(11), (28); 675.03(1), (4); 675.05(1); 675.07(1)(c)1c–e, (d), (f), (j), (2)(d)1, (e), (3)(a), (5); 675.09(4), (5); 675.20(2); 675.21(1), Table CCWE, (3); 675.22(1)(b), Table 2, (2)(a), (5); 675.23(1), Table CCW; 675.25; 675.26; 675.30(1); 675 Appendix I; 680.04(1); 680.06(3)(b), (m); 680.07(4); 680.21(1)(a); 680.22(25); 680.23, 680 Appendix I, I.6., M.; 685.02; 685.05(1)(b), (c), (e), (2)(h), (4)(a); 685.06(1)(a)–(c); 685.07(3)(a). |
| Revision Checklist 116 .. | 57 *FR* 47772, October 20, 1992. | Code: 675.16(3), (4), (5). |
| Revision Checklist 123 .. | 58 *FR* 28506, May 14, 1993. | Code: 675.03(1), (5); 675.16(5). |

| Description of Federal requirement [include checklist #, if relevant] | **Federal Register** date and page [and/or RCRA statutory authority] | Analogous State authority [1] |
|---|---|---|
| **BURNING OF WASTE FUEL AND USED OIL FUEL IN BOILERS AND INDUSTRIAL FURNACES** | | |
| Revision Checklist 19 (HSWA Cluster I). | 50 *FR* 49164–49211, November 29, 1985 as amended.<br>51 *FR* 41900–41904, November 19, 1986.<br>52 *FR* 11819–11822 April 13, 1987. | Code: 605.05(1)(q), (t); 610.07(1), (4); 625.07(1), (2)(a), (3)–(7); 655.02. |
| **USED OIL FILTER EXCLUSION** | | |
| Revision Checklist 104 (RCRA Cluster II, HSWA Provisions). | 57 *FR* 21524–21534, May 20, 1992. | Code: 605.05(1)(v)1–4. |
| **USED OIL FILTER EXCLUSION; TECHNICAL CORRECTIONS** | | |
| Revision Checklist 107 (RCRA Cluster III, HSWA Provisions). | 57 *FR* 29220, July 1, 1992. | Code: 605.05(1)(v). |
| **CONSOLIDATED CHECKLIST FOR THE RECYCLED USED OIL MANAGEMENT STANDARDS AS OF JUNE 30, 1994** | | |
| Revision Checklist 112 .. | 57 *FR* 41566, September 10, 1992. | Code: 590.02(1), (4)(a), (b), (5)–(7); 590.03(1), (2), (8), (8) Note, (9), (16), (26), (35), (40), (44), (47), (49), (50), (51), (53)–(55); 590.04(1)(a)–(e), (f), (2); 590.05(1), (2), (4), (7); 590.06(1)(c), (2); 590.07(1)–(4); 590.08; 590.09(1), (2), Table 1; 590.10(1)–(4); 590.11(1)–(5); 590.12(1), (2); 590.13(1), (2), (4), (5); 590.14(1), (2); 590.15; 590.20(1); 590.21(2); 590.30 (intro), (1)–(4); 590.31; 590.32; 590.33; 590.34(1), (2); 590.35(1)–(3); 590.36(1)–(7); 590.37(1)–(4); 590.38; 590.50; 590.51; 590.52(1), (2); 590.53(1), (2), (4)–(8); 590.54; 590.55(1)–(3); 590.56(1), (2); 590.57; 590.58; 590.70; 590.71; 590.72; 590.73; 590.74(1); 590.75(1), (2); 590.76; 590.80; 590.81; 590.82; 590.83; 590.84(1), (2); 590.85(1)–3); 590.86(1), (2); 605.04(1)(b)9; 605.05(1) (q), (t), (x), (2)(a); 610.07(4); 625.12; 708.05. |
| Revision Checklist 122 .. | 58 *FR* 26420, May 3, 1993 as amended.<br>58 *FR* 33341, June 17, 1993. | Code: 590.02(4)(a), (5); 590.04(1)(b)1, (2)(c)–(e); 590.05(2); 590.07(1)–(3); 590.09(2), Table 1, note; 590.10(1), (3), (5); 590.14(1); 590.33(4); 590.35(2); 590.36(4)(a)1, 2; 590.52(2)(f)10; 590.53, 590.71(1); 590.80; 590.85(1); 605.05(1)(v), (w); 610.07(4); 630.04(6). |
| Revision Checklist 130 .. | 59 *FR* 10550, March 4, 1994. | Code: 590.02(6); 590.03(47); 590.04(1)(c); 590.10(3)(c); 590.11(1); 590.12(2)b; 590.37(1)(d), (2)(e); 590.50(3)(a); 590.53(3). |
| **CONSOLIDATED CHECKLIST FOR THE WOOD PRESERVING LISTINGS AS OF DECEMBER 31, 1992** | | |
| Revision Checklist 82 .... | 55 *FR* 50450, December 6, 1990. | Code: 605.05(1)(e), (6); 605.09(2)(a), Table II; 605 Appendix II, III, IV; 615.05(4) (a) 4, 5; 645.02(5); 656.02; 656.03(1)–(4); 656.06; 656.07(1)(b), (2)(a)–(d), (3), (4)(a)–(o), (5)(a), (b); 656.08(1)(a)–(c); 680.22(33). |
| Revision Checklist 91 .... | 56 *FR* 27332, June 13, 1991. | Code: 605.09(2)(a), Table II. |
| Revision Checklist 92 .... | 56 *FR* 30192, July 1, 1991. | Code: 605.05(1)(e), (s), (6)(a), (b), (c), (d); 615.05(4)(a); 656.02; 656.06(3); 656.07(1)(b), (2)(a)–(d), (3), (4)(a)–(o), (5)(a), (b); 656.08(1)(a)–(c); 680.22(33). |
| Revision Checklist 120 .. | 57 *FR* 61492, December 24, 1992. | Code: 605.09(2)(a), Table II; 656.02; 656.04(3); 656.07(1)(b), (2)(a), (b), (3), (4)(a), (b), (i); 680.22(33). |
| **CORRECTIVE ACTION MANAGEMENT UNITS AND TEMPORARY UNITS** | | |
| Revision Checklist 121 (RCRA Cluster III, HSWA Provisions) (SPA 14). | 58 *FR* 8658–8685, February 16, 1993. | Code: 600.03(49), (62), (78), (126), (129), (150); 630.04(8); 635.17(2); 636.40; 636.41; 675.03(6). |
| **STATICAL METHODS FOR EVALUATING GROUND WATER MONITORING DATA FROM HAZARDOUS WASTE FACILITIES** | | |
| Revision Checklist 55 (Non-HSWA Cluster V). | 53 *FR* 39720–39731, October 11, 1988. | Code: 635.07; 635.12(1)(a), (5), (13), (15)(c), (16); 635.13(3), (7)–(10); 635.14(3)(c), (4), (7)–(10). |
| **AMENDMENTS TO INTERIM STANDARDS FOR DOWN-GRADIENT GROUND-WATER MONITORING WELL LOCATIONS** | | |
| Revision Checklist 99 (RCRA Cluster II, Non-HSWA). | 56 *FR* 66365–66369, December 23, 1991. | Code: 635.12(1)(c). |

| Description of Federal requirement [include checklist #, if relevant] | **Federal Register** date and page [and/or RCRA statutory authority] | Analogous State authority [1] |
|---|---|---|
| **ORGANIC AIR EMISSION STANDARDS FOR PROCESS VENTS AND EQUIPMENT LEAKS** | | |
| Revision Checklist 79 (HSWA Cluster II). | 55 *FR* 25454–25519, June 21, 1990. | Code: 600.03(30), (47), (63), (66), (84), (86), (90), (112), (113), (179), (209), (214), (222), (230); 600.10(2)(a)45–51, (b)3; 625.04(4), (7); 630.13(1)(f); 630.15(2)(d); 630.31(1)(d), (h); 630.40(3)(c); 631.02; 631.03; 631.06(1), (2)(a)1, 2, 3, (b)–(L); 631.07; 631.08, (1)–(3)(d)1, 3–9, (e)–(h), (4)–(6); 631.09; 632.02; 632.03; 632.06; 632.07; 632.08; 632.09; 632.10; 632.11(2), (3); 680.06(3)(e), (f)4, 5; 680.22(6), (15), (16), (34), (35). |
| **ORGANIC AIR EMISSION STANDARDS FOR PROCESS VENTS AND EQUIPMENT LEAKS; TECHNICAL AMENDMENT** | | |
| Revision Checklist 87 (RCRA Cluster I, HSWA Rule). | 56 *FR* 19290, April 26, 1991. | Code: 630.13(1)(f); 630.31(1)(d); 631.02(1), (2); 631.06(2)(f)3; 631.07(3)(a)6; 631.08(2)(d)2, (3)(e); 632.06(1)(b)1, (e)3; 632.09(3); 632.11(2)(d)2, (3)(e)2; 680.22(6), (15), (34), (35). |
| **HSWA CODIFICATION RULE DOUBLE LINERS, CORRECTION** | | |
| Revision Checklist 77 (HSWA Cluster II). | 55 *FR* 19262–19264, May 9, 1990. | Code: 660.18(11)(b), (d). |
| **LINERS AND LEAK DETECTION SYSTEMS FOR HAZARDOUS WASTE LAND DISPOSAL UNITS** | | |
| Revision Checklist 100 (RCRA Cluster II, Both HSWA and Non-HSWA Provisions). | 57 *FR* 3462–3497, January 29, 1992. | Statute: Ch 289 (old 144.44); Code: 600.03(192), (220); 630.15(2)(d); 630.31(1)(h); 655.05(2); 655.06(1); 655.07; 655.08(3); 660.13; 660.16; 660.18(11), (12), (16), (18), (28), (30), (31)(b), (c), (38), (39); 660.22(2)(b)–(g), (25); 680.04; 680.06(5)(a); 680.22(25); 680.42(2). |
| **LIQUIDS IN LANDFILLS II** | | |
| Revision Checklist 118 (RCRA Cluster III, HSWA Provisions). | 57 *FR* 54452–54461, November 18, 1992. | Code: 630.13(1)(g)3; 660.18(8), (9)(b)1, (c)2, 3, (d); 680.22(6), (25). |
| **IDENTIFICATION AND LISTING OF HAZARDOUS WASTE; AND DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION** | | |
| Revision Checklist 53 (AMENDED) (Non-HSWA Cluster V). | 53 *FR* 35412–35421, September 13, 1988. | Code: 605.05(1)(k); 605.09(2)(b); 605 Appendix III. |
| **IDENTIFICATION AND LISTING OF HAZARDOUS WASTE; REMOVAL OF IRON DEXTRAN FROM THE LIST OF HAZARDOUS WASTES** | | |
| Revision Checklist 56 (Non-HSWA Cluster V). | 53 *FR* 43878–43881, October 31, 1988. | Code: 605.09 (3)(c); 605 Appendix IV. |
| **IDENTIFICATION AND LISTING OF HAZARDOUS WASTE; REMOVAL OF STRONTIUM SULFIDE FROM THE LIST OF HAZARDOUS WASTES** | | |
| Revision Checklist 57 (Non HSWA Cluster V). | 53 *FR* 43881–43884, October 31, 1988. | Code: 605.09 (3)(b); 605 Appendix IV. |
| **MINING WASTE EXCLUSION I** | | |
| Revision Checklist 65 (Non HSWA Cluster VI). | 54 *FR* 36592–36642, September 1, 1989. | Code: 605.04(1)(b)3, 7; 605.05(1)(k). |
| **TESTING AND MONITORING ACTIVITIES** | | |
| Revision Checklist 67 (Non-HSWA Cluster VI). | 54 *FR* 40260–40269, September 29, 1989. | Code: 600.10(2)(c); 605 Appendix II. |
| **REPORTABLE QUANTITY ADJUSTMENT METHYL BROMIDE PRODUCTION WASTES** | | |
| Revision Checklist 68 (HSWA Cluster II). | 54 *FR* 41402–41408, October 6, 1989. | Code: 605.09(2)(b); 605 Appendix II, III. |

| Description of Federal requirement [include checklist #, if relevant] | **Federal Register** date and page [and/or RCRA statutory authority] | Analogous State authority [1] |
|---|---|---|
| **REPORTABLE QUANTITY ADJUSTMENT** | | |
| Revision Checklist 69 (HSWA Cluster II). | 54 *FR* 50968–50979, December 11, 1989. | Code: 605.09(2)(a); 605 Appendix III, IV. |
| **MINING WASTE EXCLUSION II** | | |
| Revision Checklist 71 (Non-HSWA Cluster VI). | 55 *FR* 2322–2354, January 23, 1990. | Code: 600.03(56); 605.05(1)(k); 610.08(d); 615.08(15). |
| **MODIFICATION OF F019 LISTING** | | |
| Revision Checklist 72 (Non-HSWA Cluster VI). | 55 *FR* 5340–5342, February 14, 1990. | Code: 605.09(2)(b). |
| **TESTING AND MONITORING ACTIVITIES; TECHNICAL CORRECTIONS** | | |
| Revision Checklist 73 (Non-HSWA Cluster VI). | 55 *FR* 8948–8950, March 9, 1990. | Code: 600.10(2)(c); 605 Appendix II. |
| **LISTING OF 1,1–DIMETHYLHYDRAZINE PRODUCTION WASTES** | | |
| Revision Checklist 75 (HSWA Cluster II). | 55 *FR* 18496–18506, May 2, 1990. | Code: 605.09(2)(b); 605 Appendix II, III. |
| **CRITERIA FOR LISTING TOXIC WASTES; TECHNICAL AMENDMENT** | | |
| Revision Checklist 76 (Non-HSWA Cluster VI). | 55 *FR* 18726, May 4, 1990. | Code: 605.07(2)(a)3. |
| **TOXICITY CHARACTERISTIC; HYDROCARBON RECOVERY OPERATIONS** | | |
| Revision Checklist 80 (RCRA Cluster I, HSWA Rule). | 55 *FR* 40834–40837, October 5, 1990 as amended.<br>56 *FR* 3978, February 1, 1991.<br>56 *FR* 13406–13411, April 2, 1991. | Code: 600.04(1). |
| **PETROLEUM REFINERY PRIMARY AND SECONDARY OIL/WATER/SOLIDS SEPARATION SLUDGE LISTINGS (F037 AND F038)** | | |
| Revision Checklist 81 (RCRA Cluster I, HSWA). | 55 *FR* 46354–46397, November 2, 1990 as amended.<br>55 *FR* 51707, December 17, 1990. | Code: 605.09(2)(a); 605.14, 605 Appendix III. |
| **TOXICITY CHARACTERISTIC; CHLOROFLUOROCARBON REFRIGERANTS** | | |
| Revision Checklist 84 (RCRA Cluster I, HSWA Rule). | 56 *FR* 5910–5915, February 13, 1991. | Code: 605.05(1)(r). |
| **REMOVAL OF STRONTIUM SULFIDE FROM THE LIST OF HAZARDOUS WASTES; TECHNICAL AMENDMENT** | | |
| Revision Checklist 86 (RCRA Cluster I, Non-HSWA Rule). | 56 *FR* 7567–7568, February 25, 1991. | Code: 605.09(3)(a)1 removed; 605 Appendix IV. |
| **ADMINISTRATIVE STAY FOR K069 LISTING** | | |
| Revision Checklist 88 (RCRA Cluster I, Non-HSWA). | 56 *FR* 19951, May 1, 1991. | Code: 605.09(2)(b). |

| Description of Federal requirement [include checklist #, if relevant] | **Federal Register** date and page [and/or RCRA statutory authority] | Analogous State authority [1] |
|---|---|---|
| **REVISION TO THE PETROLEUM REFINING PRIMARY AND SECONDARY OIL/WATER/SOLIDS SEPARATION SLUDGE LISTINGS (F037 AND F038)** | | |
| Revision Checklist 89 (RCRA Cluster I, HSWA Rule). | 56 *FR* 21955–21960, May 13, 1991. | Code: 605.09(2)(a). |
| **MINING WASTE EXCLUSION III** | | |
| Revision Checklist 90 (RCRA Cluster I). | 56 *FR* 27300–27330, June 13, 1991. | Code: 605.05(1)(k). |
| **RECYCLED COKE BY-PRODUCT EXCLUSION** | | |
| Revision Checklist 105 (RCRA Cluster II, HSWA Provisions). | 57 *FR* 27880–27888, June 22, 1992. | Code: 605.05(1)(t). |
| **TOXICITY CHARACTERISTICS REVISIONS: TECHNICAL CORRECTIONS** | | |
| Revision Checklist 108 (RCRA Cluster III, HSWA Provisions). | 57 *FR* 30657–30658, July 10, 1992. | Code: 605.05(1)(e), (i). |
| **COKE BY-PRODUCTS LISTINGS** | | |
| Revision Checklist 110 (RCRA Cluster III, HSWA Provisions). | 57 *FR* 37284–37306, August 18, 1992. | Code: 605.05(1)(t); 605.09(2)(b); 605 Appendix III. |
| **CHLORINATED TOLUENE PRODUCTION WASTE LISTING** | | |
| Revision Checklist 115 (RCRA Cluster III, HSWA Provisions). | 57 *FR* 47376–47386, October 15, 1992. | Code: 605.09(2)(b); 605 Appendix III. |
| **TOXICITY CHARACTERISTIC AMENDMENT** | | |
| Revision Checklist 117B (RCRA Cluster III, HSWA Provision). | 57 *FR* 23062–23063, June 1, 1992. | Code: 605.04(1)(b)3. |
| **TOXICITY CHARACTERISTIC REVISION; TCLP CORRECTION** | | |
| Revision Checklist 119 (RCRA Cluster III, HSWA Provision). | 57 *FR* 55114–55117, November 24, 1992 as amended.<br>58 *FR* 6854, February 2, 1993 | Code: 605.08(5); 675.07(1)(a); 675.20(1). |
| **TESTING AND MONITORING ACTIVITIES** | | |
| Revision Checklist 126 (RCRA Cluster IV, HSWA/Non-HSWA Provisions). | 58 *FR* 46040–46051, August 31, 1993 as amended.<br>59 *FR* 47980–47982, September 19, 1994 | Code: 600.10(2)(b)1; 605.08(3)(a)1, 2, (5); 605.10(1)(a), (d); 605 Appendix II; 645.09(1); 660.18(7); 665.06(1)(d)1d, 2, (e)1c, d; 675.07(1)(a), (b), (g); 675.20(1); 675.21(1); 680.18(7); 680.22(22), (25). |
| **STANDARDS FOR GENERATORS OF HAZARDOUS WASTE** | | |
| Revision Checklist 58 (Non-HSWA Cluster V). | 53 *FR* 45089–45093, November 8, 1988. | Code: 615.08. |
| **LIABILITY COVERAGE—CORPORATE GUARANTEE** | | |
| Revision Checklist 27 (Non-HSWA Cluster III). | 51 *FR* 25350–25356, July 11, 1986. | Code: 685.08(1). |

| Description of Federal requirement [include checklist #, if relevant] | **Federal Register** date and page [and/or RCRA statutory authority] | Analogous State authority [1] |
|---|---|---|
| **CONSOLIDATED LIABILITY REQUIREMENTS** | | |
| Revision Checklist 113 (RCRA Cluster III, Non-HSWA Provisions). | 53 *FR* 33938–33960, September 1, 1988 as amended.<br>56 *FR* 30200, July 1, 1991<br>57 *FR* 42832–42844, September 16, 1992 | Statutes: 289.41 (old 144.443);<br>Code: 600.03 (218); 685.07(1), (5)(f), (i); 685.08(1)-(3), (7)–(12). |
| **PERMIT MODIFICATIONS FOR HAZARDOUS WASTE MANAGEMENT FACILITIES** | | |
| Revision Checklist 54 (Non-HSWA Cluster V). | 53 *FR* 37912–37942, September 28, 1988 as amended.<br>53 *FR* 41649, October 24, 1988 | Statutes: 227.52; 227.53; 289.23 (old 144.44(2)); 289.30 (old 144.44(3)); 291.25(2) (old 144.64(2)(am)1).<br>Code: 600.04(2); 630.22(1)(c)5; 665.07(1)(a), (2)(f); 680.07; 680.40(2); 680.42(5); 680.44; 680 Appendix I; 685.05(3), (4)(a); 685.06(6). |
| **HAZARDOUS WASTE MISCELLANEOUS UNITS; STANDARDS APPLICABLE TO OWNERS AND OPERATORS** | | |
| Revision Checklist 59 (Non-HSWA Cluster V). | 54 *FR* 615–617, January 9, 1989. | Code: 680.06(3)(e); 680.21(1)(b), (c); 685.05(2); 685.06(5). |
| **AMENDMENT TO REQUIREMENTS FOR HAZARDOUS WASTE INCINERATOR PERMITS** | | |
| Revision Checklist 60 (Non-HSWA Cluster V). | 54 *FR* 4286–4288, January 30, 1989. | Code: 655.06(4). |
| **CHANGES TO INTERIM STATUS FACILITIES FOR HAZARDOUS WASTE MANAGEMENT PERMITS; PROCEDURES FOR POST—CLOSURE PERMITTING** | | |
| Revision Checklist 61 (Non-HSWA Cluster V). | 54 *FR* 9596–9609, March 7, 1989. | Statutes: 227.52; 227.53; Ch 289 (old 144.44); 291.23, 291.25, 291.27, 291.29, 291.31 (old 144.64);<br>Code: 665.07; 680.07(4); 680.32; 680.43; 680.44(1); 680 Appendix I. |
| **DELAY OF CLOSURE PERIOD FOR HAZARDOUS WASTE MANAGEMENT FACILITIES** | | |
| Revision Checklist 64 (Non-HSWA Cluster VI). | 54 FR 33376–33398, August 14, 1989. | Code: 630.12(1), (3)(a); 630.13(1)(a); 680 Appendix I; 685.05(3)(a), (4)(a), (6), (7); 685.07(3)(a)3, 4; 685.22(5), (17), (19). |

[1] The Wisconsin provisions are from the Wisconsin Statutes and Annotations 1995–96, and the Wisconsin Administrative Code, Register, May, 1995, No. 473.

EPA shall administer any RCRA hazardous waste permits, or portions of permits, that contain conditions based upon the federal program provisions for which the State is applying for authorization, and which were issued by EPA prior to the effective date of this authorization. EPA has previously suspended issuance of permits for the other provisions on January 31, 1986, June 6, 1986, January 22, 1990, April 24, 1992, August 2, 1993, and October 4, 1994, the effective dates of Wisconsin's final authorization for the RCRA program revisions.

Wisconsin is not authorized to operate the Federal program in Indian country. This authority remains with EPA unless provided otherwise in a future statute or regulation.

### C. Decision

I conclude that Wisconsin's application for program revision authorization meets all of the statutory and regulatory requirements established by RCRA. Accordingly, EPA grants Wisconsin Final Authorization to operate its hazardous waste program as revised. Wisconsin now has responsibility for permitting treatment, storage, and disposal facilities within its borders (except in Indian country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Wisconsin also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

### D. Codification in Part 272

The EPA uses 40 CFR part 272 for codification of the decision to authorize Wisconsin's program and for incorporation by reference of those provisions of its statutes and regulations that EPA will enforce under sections 3008, 3013 and 7003 of RCRA. EPA reserves amendment of 40 CFR part 272, subpart YY until a later date.

### Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments and the private sector. Under sections 202 and 205 of the UMRA, EPA generally must prepare a written statement of economic and regulatory alternatives analyses for

proposed and final rules with Federal mandates, as defined by the UMRA, that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

EPA has determined that section 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the Wisconsin program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary federal program.

The requirements of section 203 of UMRA also do not apply to today's action. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, section 203 of the UMRA requires EPA to develop a small government agency plan. This rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate TSDFs, they are already subject to the regulatory requirements under the existing State laws that are being authorized by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

*Certification Under the Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. Such small entities which are hazardous waste generators, transporters, or which own and/or operate TSDFs are already subject to the regulatory requirements under the existing State laws that are now being authorized by EPA. The EPA's authorization does not impose any significant additional burdens on these small entities. This is because EPA's authorization would simply result in an administrative change, rather than a change in the substantive requirements imposed on these small entities.

Pursuant to the provision at 5 U.S.C. 605(b), the Agency hereby certifies that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization approves regulatory requirements under existing State law to which small entities are already subject. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

*Submission to Congress and the Comptroller General*

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

*Compliance With Executive Order 12866*

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

*Compliance With Executive Order 12875*

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

This rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

*Compliance With Executive Order 13045*

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks,'' applies to any rule that: (1) the Office of Management and Budget determines is ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

*Compliance With Executive Order 13084*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA provides to the Office of Management and Budget a description of the prior consultation and communications the agency has had

with representatives of tribal governments and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.

This rule is not subject to E.O. 13084 because it does not significantly or uniquely affect the communities of Indian tribal governments. Wisconsin is not authorized to implement the RCRA hazardous waste program in Indian country. This action has no effect on the hazardous waste program that EPA implements in the Indian country within the State.

*Paperwork Reduction Act*

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

*National Technology Transfer and Advancement Act*

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

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

**List of Subjects in 40 CFR Part 271**

Environmental Protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

**Authority:** This document is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

**David A. Ullrich,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 99–19734 Filed 8–4–99; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

### 42 CFR Part 413

**[HCFA–1883–F]**

**RIN 0938–AI80**

## Medicare Program; Revision of the Procedures for Requesting Exceptions to Cost Limits for Skilled Nursing Facilities and Elimination of Reclassifications

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule revises the procedures for granting exceptions to the cost limits for skilled nursing facilities (SNFs) and retains the current procedures for exceptions to the cost limits for home health agencies (HHAs). It also removes the provision allowing reclassification for all providers.

**EFFECTIVE DATE:** This final rule is effective September 7, 1999.

**FOR FURTHER INFORMATION CONTACT:** Steve Raitzyk, (410) 786–4599.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Section 223 of the Social Security Amendments of 1972 (Pub. L. 92–603) amended section 1861(v)(1)(A) of the Social Security Act (the Act) to authorize the Secretary to establish ''* * * limits on the direct and indirect overall incurred costs or incurred costs of specific items or services or groups of items or services * * *'' as a presumptive estimate of reasonable costs. Under section 1861(v)(1)(A), if a provider's cost exceeds its Medicare cost limit, it is deemed to be unreasonable for the efficient delivery of needed health care services. The Congress, however, in the House Committee report ''H.R. Rep. No. 92–231, 92nd Congress, 1st Session 5071 (1971),'' stated that providers could obtain relief from the effect of the cost limits based on evidence of the need for an exception.

We published a final rule on June 1, 1979 (44 FR 31802) to implement the legislation. The provisions are presently in 42 CFR 413.30 and concern principles of reasonable cost reimbursement.

Section 413.30 describes the general principles and procedures for establishing cost limits and the process by which providers may appeal the applicability of these cost limits. Under § 413.30(c), a provider may seek relief from the effects of applying cost limits, either by requesting an exemption from its limit as a new provider of inpatient services, by requesting a reclassification of its provider status, or by requesting an exception to the cost limit.

On August 11, 1998, we published a proposed rule concerning procedures for requesting exceptions to cost limits in the **Federal Register** (63 FR 42797). We proposed to revise the approval process for granting exceptions to the cost limits for skilled nursing facilities (SNFs) and to remove the provision for obtaining a reclassification for all providers. In that proposed rule, we traced the development of cost limits since 1972.

In the proposed rule, we stated that we may find it inappropriate to apply particular limits to a class of providers because of provider class characteristics, the data on which the limits are based, or the method by which the limits are determined (63 FR 42800). We further stated that we may explain our reasoning for exclusion in a notice setting forth the limits for the appropriate cost reporting periods. We explained that estimates of the costs necessary for efficient delivery of health services may be based on cost reports or other data providing indicators of current costs. Current and past period data would be adjusted to arrive at estimated costs for the prospective periods to which limits are being applied.

We described the process of establishing cost limits and the basis on which they were calculated. We also explained that the servicing intermediary would have to notify each SNF or HHA of its cost limit at least 30 days before the applicable cost reporting period. Each intermediary cost limit notification would have to contain the following:

- The provider's classification and calculation of the applicable limit.
- A statement that, if the provider believes it has been incorrectly classified, it is the provider's responsibility to furnish to the intermediary evidence that demonstrates the classification is incorrect.
- A statement that the provider may be entitled to an exemption from, or an

exception to, the cost limits under the provisions of § 413.30.

## II. Provisions of the Proposed Rule

### *A. Provider Reclassification*

In the proposed rule, we noted that under current § 413.30(d), a provider may obtain a reclassification of its provider status if it can show that its classification is at variance with the criteria specified in establishing the limits. We noted that when cost limits were first developed, we manually arrayed the data collected from the providers' cost reports and classified them by type (hospital-based or freestanding) and location (metropolitan area or nonmetropolitan area). We stated there were instances when providers were misclassified. Thus, we allowed providers to file reclassification requests if they could show that the data we used for the classification were incorrect.

We noted that HHAs and SNFs now file specific cost reports, and metropolitan and nonmetropolitan area designations have become linked, through automation, to the county and State where each provider is located. As a result, a SNF or HHA cannot be misclassified. Reclassifications for hospitals, now filed with the Medicare Geographic Review Board, are governed under the provisions of subpart L (The Medicare Geographic Classification Review Board) of part 412 (Prospective Payment System for Inpatient Hospital Services). Hospitals no longer apply for reclassifications under § 413.30. Therefore, we proposed to remove § 413.30(d) to discontinue the use of reclassifications.

### *B. Exceptions to Cost Limits*

In the preamble to the June 1979 final rule (44 FR 31806), we clarified the difference between an exemption and an exception. If a provider receives an exemption, it is not affected at all by the cost limits and it is paid under the standard rules for reasonable cost or customary charges. If a provider receives an exception, it is paid on the basis of the cost limit, plus an incremental sum for the reasonable costs warranted by the circumstances that justified the exception.

Our current regulation at § 413.30(f) (§ 413.30(c) in this final rule) allows a provider that is subject to cost limits to request an exception to the cost limits if its costs exceed, or are expected to exceed, the limits as a result of one of the following unusual situations: Atypical services; extraordinary circumstances; providers in areas with fluctuating populations; medical and paramedical education costs; and unusual labor costs. A SNF may request an exception for cost reporting periods occurring before July 1, 1998.

We stated that an adjustment is made only to the extent that the costs are reasonable, attributable to the circumstance specified, separately identified by the provider, and verified by the intermediary. The provider must file a request for an exception to the cost limits no later than 180 days from the date of the intermediary's notice of program pay. The intermediary reviews the request with all supporting documentation. The intermediary also makes and submits to us a recommendation on the provider's request. We make a final determination and respond to the intermediary within 180 days from the date of the intermediary's recommendation. If we do not respond within 180 days, it is considered good cause for the granting of an extension of the time limit to apply for a Provider Reimbursement Review Board review.

In July 1994, we published manual instructions (HCFA Pub. 15–1, Transmittal No. 378) that give SNFs detailed instructions for requesting exceptions to the SNF cost limits. Under this transmittal, in section 2531.1, intermediaries are required to submit their recommendations on a SNF's exception request within 90 days of receipt. We stated that we notify the intermediary of our final determination on the exception within 90 days of the date the request is received. We further stated that our current regulation at § 413.30(c) allows us 180 days to make our final determination.

We explained that after reviewing SNF exception requests submitted by intermediaries under the rules in Transmittal 378, we identified six intermediaries that were proficiently adjudicating SNF exceptions within the required time frame. The resulting increase in administrative efficiency has benefited SNFs, fiscal intermediaries, and the Medicare program.

We proposed in the August 1998 rule to revise § 413.30(c) to give all intermediaries the authority to make final determinations on SNF exception requests. We stated that this would result in an increase in administrative efficiency benefiting all SNFs who file SNF exception requests and fiscal intermediaries that process those exception requests.

We also stated our intent to work with the Blue Cross Association to perform additional training for all fiscal intermediaries and to designate a single contact person to handle all inquiries from fiscal intermediaries regarding exception requests.

Under our proposed § 413.30(c), if the intermediary determines that the SNF did not provide adequate documentation from which a proper determination can be made, the intermediary would notify the SNF that the request is denied. The intermediary would also notify the SNF that it has 45 days from the date on the intermediary's denial letter to submit a new exception request with the complete documentation, that we continue to allow the SNF to request a review by the Provider Reimbursement Review Board (PRRB), and that the time we need to review the request (through the intermediary) is considered good cause for extending the time limit for a PRRB review. Otherwise, the denial is our final determination.

We stated, in accordance with section 4432 of the Balanced Budget Act of 1997 (Pub. L. 105–33), that effective with cost reporting periods beginning on or after July 1, 1998, there will be a 3-year transition period to the prospective payment system. During the transition period, SNFs will be paid a blended payment that is based partially on a facility-specific rate and a prospective payment rate. The base period for the facility-specific rate is cost reporting periods beginning during the period October 1, 1994 through September 30, 1995. Exceptions for SNFs will no longer be available for cost reporting periods beginning on or after July 1, 1998.

The procedures for HHA exception requests would remain unchanged and are set forth in this final rule at § 413.30(c)(1). We note that we will not make exception payments to an HHA that is subject to the per-beneficiary limit described in a final rule with comment period that we published on March 31, 1998 (63 FR 15718).

### *C. Technical Changes*

We proposed to remove paragraph (h) of § 413.30, pertaining to hospital cost report adjustments, because it is obsolete, and we also proposed to make minor editorial changes to other portions of § 413.30.

## III. Analysis of and Responses to Comments

We received comments on the proposed rule from an organization representing nursing homes and from a consulting company. The comments and our responses to those comments are as follows:

*Comment:* The commenter expressed concerns that fiscal intermediaries have a mounting workload due to the implementation of the SNF prospective payment system, and that this

regulation will create additional workload responsibilities for fiscal intermediaries.

*Response:* Fiscal intermediaries have been processing SNF exception requests since July 1994, under Transmittal No. 378 of HCFA Pub. 15–1. An intermediary processes an exception within 90 days of receipt from the SNF and sends its recommendation to our staff who also makes a final determination within 90 days. This final regulation will allow an intermediary to implement its recommendation without having to submit it to us for a final determination. Not only is there no additional workload required of an intermediary, this regulation will actually reduce the intermediary's workload by not having to submit the exception to us and wait for our response. We have designated Joseph Menning as the contact person available to assist the intermediaries with any questions or problems and we will monitor the performance of the intermediaries. He may be reached by telephone at (410) 786–4594, or by e-mail at jmenning@hcfa.gov, or by mail at: HCFA, 7500 Security Boulevard, Room C5–06–05, Baltimore, MD 21244.

*Comment:* One commenter requested that we establish a separate arbitration board to hear SNF claims relating to disagreements about exception decisions made by a fiscal intermediary.

*Response:* If errors in either computations or the application of exception methodologies are detected by the SNF, the SNF should notify the fiscal intermediary and the intermediary will review the SNF's claim. If there is still a disagreement, the SNF can ask that its intermediary contact the HCFA-designated exceptions contact person in an effort to resolve the disagreement between the SNF and the intermediary. If the SNF still disagrees with the intermediary's determination, it can request a review by the PRRB.

*Comment:* A commenter claimed that there are inconsistencies in the methodology and calculation of SNF exceptions among intermediaries and that some intermediaries consistently miss responding to a SNF's exception request within the required 90-day timeframe.

*Response:* We have trained all intermediaries to follow the instructions in Transmittal No. 378 of HCFA Pub. 15–1. We are not aware of any inconsistent applications of exceptions policies among intermediaries. We monitor the performance of intermediaries on various pay issues, including exceptions, under the Contractor Performance Evaluation Program (CPEP). Also, if the intermediary misses the 90-day timeframe to respond to a SNF's exception request, this failure to respond is considered good cause for an extension of the time limit for the SNF to apply for a review by the PRRB.

*Comment:* One commenter expressed the view that many intermediaries know very little about SNF operations or regulatory compliance issues and this makes it difficult for them to make a proper decision on exceptions issues such as the ''low occupancy'' adjustment.

*Response:* All intermediaries employ personnel who deal with operational and regulatory compliance issues. We know of no intermediaries that have had problems in this area. If a fiscal intermediary or SNF encounters a problem concerning any exceptions policy, including operational and regulatory compliance issues, it may contact the HCFA-designated contact person for assistance. Also, a SNF that encounters a problem may contact the HCFA-designated exceptions contact.

*Comment:* The same commenter indicated that in its estimation, many intermediaries ignore low occupancy arguments and calculations made by SNFs and either make arbitrary partial adjustments or 100 percent low occupancy adjustments.

*Response:* We have instructed fiscal intermediaries to submit all alternate proposals to the low occupancy adjustment to us for a determination. We have received many alternate proposals to the low occupancy adjustment submitted by fiscal intermediaries on behalf of SNFs and their representatives. We issued program instructions to the fiscal intermediaries based on these proposals.

## IV. Provisions of the Final Rule

Based on our review and analysis of comments, we are adopting the proposed rule as final. We are making, however, a technical clarification to the proposed § 413.30(d) to indicate that SNF exemptions apply only to cost reporting periods beginning before July 1, 1998. We are revising the approval process for granting exceptions to the cost limits for SNFs (§ 413.30(c)) and retaining the current procedures for exceptions to the cost limits for HHAs (§ 413.30(c)(1)). We are also removing the current provision allowing reclassification for all providers (§ 413.30(d)).

## V. Regulatory Impact Statement

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless we certify that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all SNFs and HHAs are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This rule to eliminate reclassifications for HHAs and SNFs has no effect on them since they currently do not need to be reclassified. Hospitals can obtain any needed reclassifications and exceptions under subpart L of part 412. The change in the method of processing requests for exceptions to cost limits has no economic impact on either the providers or the Medicare program.

For these reasons, we are not preparing an analysis for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

### List of Subjects in 42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 42 CFR, part 413, is amended as follows:

## PART 413—[AMENDED]

1. The authority citation for part 413 is revised to read as follows:

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 413.30 is revised to read as follows:

### § 413.30 Limitations on payable costs.

(a) *Introduction*—(1) *Scope.* This section implements section 1861(v)(1)(A) of the Act by setting forth the general rules under which HCFA may establish limits on SNF and HHA costs recognized as reasonable in determining Medicare program

payments. It also sets forth rules governing exemptions and exceptions to limits established under this section that HCFA may make as appropriate in considering special needs or situations.

(2) *General principle.* Payable SNF and HHA costs may not exceed the costs HCFA estimates to be necessary for the efficient delivery of needed health care services. HCFA may establish estimated cost limits for direct or indirect overall costs or for costs of specific services or groups of services. HCFA imposes these limits prospectively and may calculate them on a per admission, per discharge, per diem, per visit, or other basis.

(b) *Procedure for establishing limits.* (1) In establishing limits under this section, HCFA may classify SNFs and HHAs by factors that HCFA finds appropriate and practical, including the following:

(i) Type of services furnished.

(ii) Geographical area where services are furnished, allowing for grouping of noncontiguous areas having similar demographic and economic characteristics.

(iii) Size of institution.

(iv) Nature and mix of services furnished.

(v) Type and mix of patients treated.

(2) HCFA bases its estimates of the costs necessary for efficient delivery of health services on cost reports or other data providing indicators of current costs. HCFA adjusts current and past period data to arrive at estimated costs for the prospective periods to which limits are applied.

(3) Before the beginning of a cost period to which revised limits will be applied, HCFA publishes a notice in the **Federal Register**, establishing cost limits and explaining the basis on which they are calculated.

(4) In establishing limits under paragraph (b)(1) of this section, HCFA may find it inappropriate to apply particular limits to a class of SNFs or HHAs due to the characteristics of the SNF or HHA class, the data on which HCFA bases those limits, or the method by which HCFA determines the limits. In these cases, HCFA may exclude that class of SNFs or HHAs from the limits, explaining the basis of the exclusion in the notice setting forth the limits for the appropriate cost reporting periods.

(c) *Requests regarding applicability of cost limits.* For cost reporting periods beginning before July 1, 1998, a SNF may request an exception or exemption to the cost limits imposed under this section. An HHA may request only an exception to the cost limits. The SNF or HHA must make its request to its fiscal intermediary within 180 days of the date on the intermediary's notice of program pay.

(1) *Home health agencies.* The intermediary makes a recommendation on the HHA's request to HCFA, which makes the decision. HCFA responds to the request within 180 days from the date HCFA receives the request from the intermediary. The intermediary notifies the HHA of HCFA's decision. The time required by HCFA to review the request is considered good cause for the granting of an extension of the time limit for the HHA to apply for a PRRB review, as specified in § 405.1841 of this chapter. HCFA's decision is subject to review under subpart R of part 405 of this chapter.

(2) *Skilled nursing facilities.* The intermediary makes the final determination on the SNF's request and notifies the SNF of its determination within 90 days from the date that the intermediary receives the request from the SNF. If the intermediary determines that the SNF did not provide adequate documentation from which a proper determination can be made, the intermediary notifies the SNF that the request is denied. The intermediary also notifies the SNF that it has 45 days from the date on the intermediary's denial letter to submit a new exception request with the complete documentation and that otherwise, the denial is the final determination. The time required by the intermediary to review the request is considered good cause for the granting of an extension of the time limit for the SNF to apply for a PRRB review, as specified in § 405.1841 of this chapter. The intermediary's determination is subject to review under subpart R of part 405 of this chapter.

(d) *Exemptions.* Exemptions from the limits imposed under this section may be granted to a new SNF with cost reporting periods beginning before July 1, 1998 as stated in § 413.1(g)(1). A new SNF is a provider of inpatient services that has operated as the type of SNF (or the equivalent) for which it is certified for Medicare, under present and previous ownership, for less than 3 full years. An exemption granted under this paragraph expires at the end of the SNF's first cost reporting period beginning at least 2 years after the provider accepts its first inpatient.

(e) *Exceptions.* Limits established under this section may be adjusted upward for a SNF or HHA under the circumstances specified in paragraphs (e)(1) through (e)(5) of this section. An adjustment is made only to the extent that the costs are reasonable, attributable to the circumstances specified, separately identified by the SNF or HHA, and verified by the intermediary.

(1) *Atypical services.* The SNF or HHA can show that the—

(i) Actual cost of services furnished by a SNF or HHA exceeds the applicable limit because the services are atypical in nature and scope, compared to the services generally furnished by SNFs or HHAs similarly classified; and

(ii) Atypical services are furnished because of the special needs of the patients treated and are necessary in the efficient delivery of needed health care.

(2) *Extraordinary circumstances.* The SNF or HHA can show that it incurred higher costs due to extraordinary circumstances beyond its control. These circumstances include, but are not limited to, strikes, fire, earthquake, flood, or other unusual occurrences with substantial cost effects.

(3) *Areas with fluctuating populations.* The SNF or HHA meets the following conditions:

(i) Is located in an area (for example, a resort area) that has a population that varies significantly during the year.

(ii) Is furnishing services in an area for which the appropriate health planning agency has determined does not have a surplus of beds or services and has certified that the beds or services furnished by the SNF or HHA are necessary.

(iii) Meets occupancy or capacity standards established by the Secretary.

(4) *Medical and paramedical education.* The SNF or HHA can demonstrate that, if compared to other SNFs or HHAs in its group, it incurs increased costs for services covered by limits under this section because of its operation of an approved education program specified in § 413.85.

(5) *Unusual labor costs.* The SNF or HHA has a percentage of labor costs that varies more than 10 percent from that included in the promulgation of the limits.

(f) *Operational review.* Any SNF or HHA that applies for an exception to the limits established under paragraph (e) of this section must agree to an operational review at the discretion of HCFA. The findings from this review may be the basis for recommendations for improvements in the efficiency and economy of the SNF's or the HHA's operations. If recommendations are made, any future exceptions are contingent on the SNF's or HHA's implementation of these recommendations.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 19, 1999.

**Nancy-Ann Min DeParle,**

*Administrator, Health Care Financing Administration.*

Dated: April 22, 1999.

**Donna E. Shalala,**

*Secretary.*

[FR Doc. 99–20015 Filed 8–4–99; 8:45 am]

**BILLING CODE 4120–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 99–1441; MM Docket No. 99–124; RM–9519]**

### Radio Broadcasting Services; Castle Dale, UT

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 237C3 at Castle Dale, Utah, in response to a petition filed by Mountain West Broadcasting. *See* 64 FR 23254, April 30, 1999. The coordinates for Channel 237C3 at Castle Dale are 39–12–48 NL and 111–01–18 WL. With this action, this proceeding is terminated. A filing window for Channel 237C3 at Castle Dale will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

**DATES:** Effective September 7, 1999.

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

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 99–124, adopted July 14, 1999, and released July 23, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

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

Radio broadcasting.

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

**PART 73—[AMENDED]**

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

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

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Utah, is amended by adding Castle Dale, Channel 237C3.

Federal Communications Commission.

**John A. Karousos,**

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

[FR Doc. 99–20137 Filed 8–4–99; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 99–1441; MM Docket No. 99–128; RM–9520]**

### Radio Broadcasting Services; Mona, UT

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 225A at Mona, Utah, in response to a petition filed by Mountain West Broadcasting. *See* 64 FR 23254, April 30, 1999. The coordinates for Channel 225A at Mona are 39–46–39 NL and 111–51–41 WL. There is a site restriction 4.4 kilometeres (2.7 miles) south of the community. With this action, this proceeding is terminated. A filing window for Channel 225A at Mona will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

**DATES:** Effective September 7, 1999.

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

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 99–128, adopted July 14, 1999, and released July 23, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

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

Radio broadcasting.

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

**PART 73—[AMENDED]**

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

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

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Utah, is amended by adding Mona, Channel 225A.

Federal Communications Commission.

**John A. Karousos,**

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

[FR Doc. 99–20136 Filed 8–4–99; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 99–1441; MM Docket No. 99–126; RM–9518]**

### Radio Broadcasting Services; Hurricane, UT

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 275C3 at Hurricane, Utah, in response to a petition filed by Mountain West Broadcasting. *See* 64 FR 23253, April 30, 1999. The coordinates for Channel 275C3 at Hurricane are 37–10–30 NL and 113–17–24 WL. With this action, this proceeding is terminated. A filing window for Channel 275C3 at Hurricane will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

**DATES:** Effective September 7, 1999.

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

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 99–126, adopted July 14, 1999, and released July 23, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription

Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

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

Radio broadcasting.

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

## PART 73—[AMENDED]

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

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

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Utah, is amended by adding Hurricane, Channel 275C3.

Federal Communications Commission.

**John A. Karousos,**

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

[FR Doc. 99–20135 Filed 8–4–99; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 99–1441; MM Docket No. 99–125; RM–9542]**

### Radio Broadcasting Services; Huntington, UT

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 296C2 at Huntington, Utah, in response to a petition filed by Mountain West Broadcasting. *See* FR 64 FR 23252, April 30, 1999. The coordinates for Channel 296C2 at Huntington are 39–19–36 NL and 110–57–50 WL. With this action, this proceeding is terminated. A filing window for Channel 296C2 at Huntington will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

**DATES:** Effective September 7, 1999.

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

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 99–125, adopted July 14, 1999, and released July 23, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

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

Radio broadcasting.

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

## PART 73—[AMENDED]

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

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

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Utah, is amended by adding Huntington, Channel 296C2.

Federal Communications Commission.

**John A. Karousos,**

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

[FR Doc. 99–20134 Filed 8–4–99; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 99–1441; MM Docket No. 99–132; RM–9525]**

### Radio Broadcasting Services; Midland, MD

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 258A at Midland, Maryland, in response to a petition filed by West Wind Broadcasting. *See* 64 FR 24567, May 7, 1999. The coordinates for Channel 258A at Midland are 39–40–19 NL and 78–57–25 WL. There is a site restriction 9.1 kilometers (5.7 miles) north of the community. With this action, this proceeding is terminated. A filing window for Channel 258A at Midland will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

**DATES:** Effective September 7, 1999.

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

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 99–132, adopted July 14, 1999, and released July 23, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

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

Radio broadcasting.

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

## PART 73—[AMENDED]

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

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

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Maryland, is amended by adding Midland, Channel 258A.

Federal Communications Commission.

**John A. Karousos,**

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

[FR Doc. 99–20133 Filed 8–4–99; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 99–1441; MM Docket No. 99–129; RM–9541]**

### Radio Broadcasting Services; Monticello, UT

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 291C1 at Monticello, Utah, in response to a petition filed by Mountain West Broadcasting. *See* 64 FR 23255, April 30, 1999. The coordinates for Channel 291C1 at Monticello are 37–52–17 NL and 109–20–32 WL. With this action, this proceeding is terminated. A filing window for Channel 291C1 at Monticello will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

**DATES:** Effective September 7, 1999.

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

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 99–129, adopted July 14, 1999, and released July 23, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

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

Radio broadcasting.

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

## PART 73—[AMENDED]

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

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

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Utah, is amended by adding Monticello, Channel 291C1.

Federal Communications Commission.

**John A. Karousos,**

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

[FR Doc. 99–20132 Filed 8–4–99; 8:45 am]

**BILLING CODE 6712–01–P**

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 99–1441; MM Docket No. 99–130; RM–9517]**

### Radio Broadcasting Services; Wellington, UT

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 221C3 at Wellington, Utah, in response to a petition filed by Mountain West Broadcasting. *See* 64 FR 23255, April 30, 1999. The coordinates for Channel 221C3 at Wellington are 39–32–33 NL and 110–44–05 WL. With this action, this proceeding is terminated. A filing window for Channel 221C3 at Wellington will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

**DATES:** Effective September 7, 1999.

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

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 99–130, adopted July 14, 1999, and released July 23, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

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

Radio broadcasting.

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

## PART 73—[AMENDED]

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

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

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Utah, is amended by adding Wellington, Channel 221C3.

Federal Communications Commission.

**John A. Karousos,**

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

[FR Doc. 99–20131 Filed 8–4–99; 8:45 am]

**BILLING CODE 6712–01–P**

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 99–1441; MM Docket No. 99–135; RM–9522]**

### Radio Broadcasting Services; Groveton, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 251A at Groveton, Texas, in response to a petition filed by Trinity County Radio. *See* 64 FR 24997, May 10, 1999. The coordinates for Channel 251A at Groveton are 31–03–30 NL and 95–07–36 WL. With this action, this proceeding is terminated. A filing window for Channel 251A at Groveton will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

**DATES:** Effective September 7, 1999.

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

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 99–135, adopted July 14, 1999, and released July 23, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

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

Radio broadcasting.

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

## PART 73—[AMENDED]

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

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

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Groveton, Channel 251A.

Federal Communications Commission.

**John A. Karousos,**

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

[FR Doc. 99–20130 Filed 8–4–99; 8:45 am]

**BILLING CODE 6712–01–P**

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 99–1441; MM Docket No. 99–138; RM–9569]**

### Radio Broadcasting Services; Lovelady, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 282C3 at Lovelady, Texas, in response to a petition filed by Lovelady

Broadcasting Company. *See* 64 FR 24998, May 10, 1999. The coordinates for Channel 282C3 at Lovelady are 31–09–51 NL and 95–27–09 WL. There is a site restriction 4.1 kilometers (2.5 miles) north of the community. With this action, this proceeding is terminated. A filing window for Channel 282C3 at Lovelady will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

**DATES:** Effective September 7, 1999.

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

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 99–138, adopted July 14, 1999, and released July 23, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

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

Radio broadcasting.

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

## PART 73—[AMENDED]

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

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

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Lovelady, Channel 282C3.

Federal Communications Commission.

**John A. Karousos,**

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

[FR Doc. 99–20129 Filed 8–4–99; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 76

**[CS Docket No. 95–178; FCC 99–116]**

## Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** The Federal Communications Commission published in the **Federal Register** of June 24, 1999 (64 FR 33788), a report and order and final rule to ease the transition for broadcasters, cable operators, and viewers as the Commission moves from an ADI to a DMA-based market definition. The amended rule did not contain the complete names of two publications containing the DMA designations. This document provides these names for reference by regulated parties and clarifies which sections of the rule are amended.

**DATES:** Effective on August 5, 1999.

**FOR FURTHER INFORMATION CONTACT:** Ben Golant, Consumer Protection and Competition Division, Cable Services Bureau, at (202) 418–7111.

**SUPPLEMENTARY INFORMATION:** The FCC published a report and order and final rule in the **Federal Register** of June 24, 1999 (64 FR 33788). This notice clarifies the sources of the Nielsen data necessary to determine county and station assignments for broadcast signal carriage purposes by revising the amendment to § 76.55(e) to include the complete names of the two Nielsen publications that are necessary to determine the counties comprising a television market and the television stations assigned to each of the 211 markets in the United States. To find out to which market a station is assigned for the 1999 election, the proper publication is *Nielsen's Station Index: 1997–98 Directory.* To find out to which market a county is assigned for the 1999 election, the proper publication is *Nielsen's Station Index: September 1997 U.S. Television Household Estimates.*

In rule FR Doc. 99–15959 published on June 24, 1999, (64 FR 33788) make the following correction. On page 33796 in the first column, in § 76.55, the amendatory instruction number 2., and the amendment to paragraphs (e)(1) through (e)(6) are corrected to read as follows:

* * * * *

2. Section 76.55 is amended by revising paragraph (e) to read as follows:

**§ 76.55 Definitions applicable to the must-carry rules.**

(e) *Television market.* (1) Until January 1, 2000, a commercial broadcast television station's market, unless amended pursuant to § 76.59, shall be defined as its Area of Dominant Influence (ADI) as determined by Arbitron and published in the Arbitron 1991–1992 Television ADI Market Guide, as noted below, except that for areas outside the contiguous 48 states, the market of a station shall be defined using Nielsen's Designated Market Area (DMA), where applicable, as published in the Nielsen 1991–92 DMA Market and Demographic Rank Report, and that Puerto Rico, the U.S. Virgin Islands, and Guam will each be considered a single market.

(2) Effective January 1, 2000, a commercial broadcast television station's market, unless amended pursuant to § 76.59, shall be defined as its Designated Market Area (DMA) as determined by Nielsen Media Research and published in its Nielsen Station Index Directory and Nielsen Station Index US Television Household Estimates or any successor publications.

(i) For the 1999 election pursuant to § 76.64(f), which becomes effective on January 1, 2000, DMA assignments specified in the 1997–98 Nielsen Station Index Directory and September 1997 Nielsen Station Index US Television Household Estimates, available from Nielsen Media Research, 299 Park Avenue, New York, NY, shall be used.

(ii) The applicable DMA list for the 2002 election pursuant to § 76.64(f) will be the DMA assignments specified in the 2000–2001 list, and so forth for each triennial election pursuant to § 76.64(f).

(3) In addition, the county in which a station's community of license is located will be considered within its market.

(4) A cable system's television market(s) shall be the one or more ADI markets in which the communities it serves are located until January 1, 2000, and the one or more DMA markets in which the communities it serves are located thereafter.

(5) In the absence of any mandatory carriage complaint or market modification petition, cable operators in communities that shift from one market to another, due to the change in 1999–2000 from ADI to DMA, will be permitted to treat their systems as either in the new DMA market, or with respect to the specific stations carried prior to the market change from ADI to DMA, as

in both the old ADI market and the new DMA market.

(6) If the change from the ADI market definition to the DMA market definition in 1999–2000 results in the filing of a mandatory carriage complaint, any affected party may respond to that complaint by filing a market modification request pursuant to § 76.59, and these two actions may be jointly decided by the Commission.

* * * * *

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

[FR Doc. 99–19938 Filed 8–4–99; 8:45 am]

**BILLING CODE 6712–01–P**

# Proposed Rules

Federal Register
Vol. 64, No. 150
Thursday, August 5, 1999

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 932

**[Docket No. FV99–932–610 REVIEW]**

### California Olives; Section 610 Review

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

**ACTION:** Notice of review and request for comments.

**SUMMARY:** This action announces the Agricultural Marketing Service (AMS) review of Marketing Order 932 for olives grown in California, under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA).

**DATES:** Written comments on this notice must be received by October 4, 1999.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this notice of review. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Kurt Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (209) 487–5901; Fax: (209) 487–5906; E-mail: Kurt.Kimmel@usda.gov; or George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491; Fax: (202) 720–5698; E-mail: George.Kelhart@usda.gov.

**SUPPLEMENTARY INFORMATION:** Marketing Order No. 932, as amended (7 CFR Part 932), regulates the handling of olives grown in California. The marketing order is effective under the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674).

AMS published in the **Federal Register** (63 FR 8014; February 18, 1999), its plan to review certain regulations, including Marketing Order No. 932, under criteria contained in section 610 of the Regulatory Flexibility Act (RFA; 5 U.S.C. 601–612). Because many AMS regulations impact small entities, AMS decided, as a matter of policy, to review certain regulations which, although they may not meet the threshold requirement under section 610 of the RFA, warrant review. The February 18 notice stated that AMS would list the regulations to be reviewed in AMS' regulatory agenda which is published in the **Federal Register** as part of the Unified Agenda. However, after further consideration, AMS has decided to announce the reviews in the **Federal Register** separate from the Unified Agenda. Accordingly, this notice and request for comments is made for California olives.

The purpose of the review will be to determine whether the California marketing order for olives should be continued without change, amended, or rescinded (consistent with the objectives of the AMAA) to minimize the impacts on small entities. In conducting this review, AMS will consider the following factors: (1) The continued need for the marketing order; (2) the nature of complaints or comments received from the public concerning the marketing order; (3) the complexity of the marketing order; (4) the extent to which the marketing order overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the marketing order has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the marketing order.

Written comments, views, opinions, and other information regarding the olive marketing order's impact on small businesses are invited.

Dated: July 27, 1999.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 99–20169 Filed 8–4–99; 8:45 am]
**BILLING CODE 3410–02–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 99–NE–36–AD]**

**RIN 2120–AA64**

### Airworthiness Directives; AlliedSignal Inc. ALF502R and LF507 Series Turbofan Engines

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This proposal would require revisions to Chapter 5, Airworthiness Limitations section, of the AlliedSignal Inc. ALF502R and LF507 series Engine Manuals to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This proposal would also require an air carrier's approved continuous airworthiness maintenance program to incorporate these inspection procedures. Air carriers with an approved continuous airworthiness maintenance program would be allowed to either maintain the records showing the current status of the inspections using the record keeping system specified in the air carrier's maintenance manual, or establish an acceptable alternate method of record keeping. This proposal is prompted by a Federal Aviation Administration (FAA) study of in-service events involving uncontained failures of critical rotating engine parts that indicated the need for improved inspections. The improved inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures. The actions specified by this proposed AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

**DATES:** Comments must be received by November 3, 1999.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99-NE–36-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be sent via the Internet using the following address: ''9-ane-adcomment@faa.gov''. Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Raymond Vakili, Aerospace Engineer Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (562) 627–5262, fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NE–36–AD.'' The postcard will be date stamped and returned to the commenter.

## Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–36–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

## Discussion

A recent Federal Aviation Administration (FAA) study analyzing 15 years of accident data for transport category airplanes identified several failure mode root causes that can result in serious safety hazards to transport category airplanes. This study identified uncontained failure of critical life-limited rotating engine parts as the leading engine-related safety hazard to airplanes. Uncontained engine failures have resulted from undetected cracks in rotating parts that initiated and propagated to failure. Cracks can originate from causes such as unintended excessive stress from the original design, or they may initiate from stresses induced from material flaws, handling damage, or damage from machining operations. The failure of rotating parts can present a significant safety hazard to the airplanes by release of high energy fragments that could injure passengers or crew by penetration of the cabin, damage flight control surfaces, sever flammable fluid lines, or otherwise compromise the airworthiness of the airplane.

Accordingly, the FAA has developed an intervention strategy to significantly reduce uncontained engine failures. This intervention strategy was developed after consultation with industry and will be used as a model for future initiatives. This intervention strategy is to conduct enhanced, nondestructive inspections of fan disks which could most likely result in a safety hazard to the airplane in the event of a disk fracture. The FAA is also considering the need for additional rule making. Future ADs may be issued introducing additional intervention strategies to further reduce or eliminate uncontained engine failures.

Properly focused enhanced inspections require identification of the parts whose failure presents the highest safety hazard to the airplane, identifying the most critical features to inspect on these parts, and utilizing inspection procedures and techniques that improve crack detection. The FAA, with close cooperation of the engine manufacturers, has completed a detailed analysis that identifies the most safety significant parts and features, and the most appropriate inspection methods.

Critical life-limited high-energy rotating parts are currently subject to some form of recommended crack inspection when exposed during engine maintenance or disassembly. As a result of this AD, the inspections currently recommended by the manufacturer will become mandatory for those parts listed in the compliance section. Furthermore, the FAA intends that additional mandatory enhanced inspections resulting from this AD serve as an adjunct to the existing inspections. The FAA has determined that the enhanced inspections will significantly improve the probability of crack detection while the parts are disassembled during maintenance. All mandatory inspections must be conducted in accordance with detailed inspection procedures prescribed in the manufacturer's Engine Manuals.

Additionally, this AD allows for air carriers operating under the provisions of 14 CFR part 121 with an FAA-approved continuous airworthiness maintenance program, and entities with whom those air carriers make arrangements to perform this maintenance, to verify performance of the enhanced inspections by retaining the maintenance records that include the inspections resulting from this AD, provided that the records include the date and signature of the person performing the maintenance action. These records must be retained with the maintenance records of the part, engine module, or engine until the task is repeated. This will establish a method of record preservation and retrieval typical to those in existing continuous airworthiness maintenance programs. Instructions must be included in an air carrier's maintenance manual providing procedures on how this record preservation and retrieval system will be implemented and integrated into the air carrier's record keeping system.

This proposal would require, within the next 30 days after the effective date of this AD, revisions to Chapter 5, Airworthiness Limitations section, of the AlliedSignal Inc. ALF502R and LF507 series Engine Manuals and, for air carriers, the approved continuous airworthiness maintenance program. AlliedSignal Inc., the manufacturer of ALF502R and LF507 series turbofan engines, used on 14 CFR part 25 airplanes, has provided the FAA with a detailed proposal that identifies and prioritizes the critical life-limited rotating engine parts with the highest potential to hazard the airplane in the event of failure, along with instructions for enhanced, focused inspection methods. The enhanced inspections resulting from this AD will be conducted at piece-part opportunity, as defined below in the compliance section, rather than specific time inspection intervals.

The FAA estimates that 200 engines installed on airplanes of US registry would be affected by this proposed AD, that it would take approximately 56 work hours per engine to accomplish the proposed actions. The average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on US operators is estimated to be $672,000.

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

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

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**AlliedSignal Inc.:** Docket 99–NE–36–AD.

*Applicability:* AlliedSignal Inc. (formerly Textron Lycoming and Avco Lycoming) ALF502R and LF507 series turbofan engines, installed on but not limited to British Aerospace BAe 146–100A, BAe 146–200A, BAe 146–300A, AVRO 146–RJ70A, AVRO 146–RJ85A, and AVRO 146–100A series airplanes.

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

*Compliance:* Required as indicated, unless accomplished previously. To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

(a) Within the next 30 days after the effective date of this AD, revise Chapter 5, e Airworthiness Limitations section, of the AlliedSignal Inc. ALF502R and LF507 Engine Manuals, and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following:

*''Chapter 5, Airworthiness Limitations Section, Mandatory Inspections:*

(1) Perform inspections of the following parts at each piece-part opportunity in accordance with the instructions provided in the applicable manual provisions:

| Part nomenclature | Part number (P/N) | Inspect per engine manual chapter |
|---|---|---|
| For ALF502R series turbofan engines: | | |
| Fan Disc | All | 72–31–07 Inspection/Check. |
| First Turbine Disc | All | 72–51–12 Inspection/Check. |
| Second Turbine Disc | All | 72–51–21 Inspection/Check. |
| Impeller | All | 72–34–38 Inspection/Check. |
| Low Pressure Turbine Shaft: | | |
| (Third Turbine) | All | 72–52–03 Inspection/Check. |
| Fourth Turbine Disc | All | 72–52–06 Inspection/Check. |
| For LF507 series turbofan engines: | | |
| Fan Disc | All | 72–31–08 Inspection/Check. |
| First Turbine Disc | All | 72–51–11 Inspection/Check. |
| Second Turbine Disc | All | 72–51–20 Inspection/Check. |
| Impeller | All | 72–34–20 Inspection/Check. |
| Low Pressure Turbine Shaft: | | |
| (Third Turbine) | All | 72–52–24 Inspection/Check. |
| Fourth Turbine Disc | All | 72–52–03 Inspection/Check. |

(2) For the purposes of these mandatory inspections, piece-part opportunity means:

(i) The part is completely disassembled when done in accordance with the disassembly instructions in the engine manufacturer's Engine Manual; and

(ii) The part has accumulated more than 100 cycles in service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine.''

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in section 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections shall be performed only in accordance with Chapter 5, Airworthiness Limitations section, of the AlliedSignal Inc. ALF502R and LF507 Engine Manuals.

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

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles Aircraft Certification Office.

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

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369 (c) of the Federal Aviation Regulations [14 CFR 121.369 (c)] of this chapter must maintain records of the mandatory inspections that result from revising the Engine Manual's Chapter 5, Airworthiness Limitations section, and the air carrier's continuous airworthiness program. Alternately, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369 (c) of the Federal Aviation Regulations [14 CFR 121.369 (c)]; however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380 (a) (2) (vi) of the Federal Aviation Regulations [14 CFR 121.380 (a) (2) (vi)]. All other operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

**Note 3:** The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the Engine Manuals.

Issued in Burlington, Massachusetts, on July 30, 1999.

**Jorge A. Fernandez,**

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

[FR Doc. 99–20184 Filed 8–4–99; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 99–NE–15–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Allison Engine Company, Inc. AE 3007A and AE 3007C Turbofan Engines

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Allison Engine Company, Inc. AE 3007A and AE 3007C series turbofan engines. This proposal would require removing certain turbine wheels from service before exceeding new, reduced cyclic life limits. This proposal is prompted by a refined life analysis that was performed by the manufacturer. The actions specified by the proposed AD are intended to prevent an uncontained turbine wheel failure, which could result in damage to the airplane.

**DATES:** Comments must be received by October 4, 1999.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–15–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ane-adcomment@faa.gov.'' Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Rolls-Royce Allison, P.O. Box 420, Speed Code U–15, Indianapolis, IN 46206–0420, telephone (317) 230–6674. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

**FOR FURTHER INFORMATION CONTACT:** John Tallarovic, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone (847) 294–8180, fax (847) 294–7834.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NE–15–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–15–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

### Discussion

Allison Engine Company, Inc., also known as Rolls-Royce Allison, the manufacturer of AE 3007A and AE 3007C series turbofan engines, suspects that certain turbine wheels may have tungsten contamination. The suspect turbine wheels were manufactured between January 26, 1993, and August 27, 1993. The manufacturer has also re-evaluated the effect of a surface treatment on the service life of a wheel. A refined life analysis, which took into account both the possibility of tungsten inclusions and the surface treatment, revealed new maximum service lives that are significantly lower than those previously published. This condition, if not corrected, could result in an uncontained turbine wheel failure, which could result in damage to the airplane.

The FAA has reviewed and approved the technical contents of Rolls-Royce Alert Service Bulletin (ASB) AE 3007A–A–72–105 and AE 3007C–A–72–105, dated January 29,1999, that lists new, reduced engine cyclic life limits for affected turbine wheels. Rolls-Royce Allison produces and distributes the service documents that cover the Allison Engine Co. AE3007A and AE3007C turbofan engines. Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design, the proposed AD would require removing affected turbine wheels from service before exceeding new, reduced cyclic life limits. The actions would be required to be accomplished in accordance with the ASB described previously.

There are approximately 325 engines of the affected design in the worldwide fleet. The FAA estimates that 260

engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 63 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. The estimated cost of the lost cycles due to the reduction of the engine cycle life limit is $57,800 per engine. Required parts would cost approximately $54,020 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $15,028,000. The manufacturer of the affected turbine wheels has advised the FAA that it may defray the cost of the reduced life limits, thus reducing the overall cost to operators.

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

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

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Allison Engine Company, Inc.:** Docket No. 99–NE–15–AD.

*Applicability:* Allison Engine Company, Inc. AE 3007A and AE 3007C series turbofan engines, installed on, but not limited to Cessna Aircraft Company 750 series airplanes and Empresa Brasileira de Aeronautica S.A. (Embraer) EMB–145 series airplanes.

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

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

To prevent an uncontained turbine wheel failure, which could result in damage to the airplane, accomplish the following:

(a) Remove stage 1 turbine wheels, part numbers (P/N's) 23065891 and 23062373, and replace with new or serviceable parts as follows:

(1) For stage 1 turbine wheels with serial numbers (SN's) listed in table 5 of Rolls-Royce Alert Service Bulletin (ASB) AE 3007A–A–72–105 and AE 3007C–A–72–105, dated January 29, 1999, replace before accumulating 9,000 engine cycles since new (CSN).

(2) For all other stage 1 turbine wheels SN's, replace before accumulating 13,100 engine CSN.

(b) Remove stage 2 turbine wheels, P/N's 23065892 and 23063462, and replace with new or serviceable parts as follows:

(1) For stage 2 turbine wheels with SN's listed in table 6 of Rolls-Royce ASB AE 3007A–A–72–105 and AE 3007C–A–72–105, dated January 29,1999, replace before accumulating 7,800 engine CSN.

(2) For all other stage 2 turbine wheels SN's, replace before accumulating 8,400 engine CSN.

(c) This AD establishes new cyclic life limits for the turbine wheels identified in paragraphs (a) and (b) of this AD. Except in accordance with paragraph (d) of this AD, no alternative life limits may be approved for the turbine wheels identified in paragraphs (a) and (b) of this AD.

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

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

Issued in Burlington, Massachusetts, on July 30, 1999.

**Jorge A. Fernandez,**

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

[FR Doc. 99–20183 Filed 8–4–99; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF ENERGY

## Federal Energy Rregulatory Commission

## 18 CFR Part 357

**[Docket No. RM99–10–000]**

## Revision of FERC Form No. 6: Annual Report of Oil Pipeline Companies; Notice Of Technical Conference and Request For Comments

July 30, 1999.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of Technical Conference and Request for Comments on Revisions to FERC Form No. 6: Annual Report of Oil Pipeline Companies (FERC Form No. 6).

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) Staff will conduct a technical conference to solicit comments and discuss potential changes to the FERC Form No. 6 to better meet current and future regulatory requirements and industry needs. The technical conference is intended to be an informal working session so participants can freely discuss their views on issues related to FERC Form No. 6. The Commission is interested in discussing and obtaining specific comments on the need to: delete, add, revise, consolidate, and clarify FERC Form No. 6 schedules and instructions. The Commission is also seeking comments on the related regulations contained in 18 CFR Part 357; and procedures to implement electronic filing for FERC Form No. 6.

The Commission is inviting interested parties to submit written comments addressing issues outlined in Appendix A of the notice prior to the technical conference and is requesting parties to notify the Commission if they wish to attend.

**DATES:** The technical conference will be held on Wednesday, September 8, 1999.

Notification of persons who wish to attend the conference must be filed on or before Friday, August 20, 1999.

Written comments must be filed on or before Friday, August 20, 1999.

**ADDRESSES:** The technical conference will be held at the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

Submit written comments to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

Persons who wish to attend the conference must notify:

Michael Oliva, (202)219–2597, FAX: (202)219–0125, E–Mail: michael.oliva@ferc.fed.us
or
Donna Culbertson, (202)219–1102, FAX: (202)219–0125, E–Mail: donna.culbertson@ferc.fed.us

**FOR FURTHER INFORMATION CONTACT:**

Donna Culbertson (Technical Issues), Office of Finance, Accounting and Operations, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 219–1102

Andrew Lyon (Legal Issues), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–0637

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, N.E., Room 2A, Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission from November 14, 1994 to the present. CIPS can be accessed via Internet through FERC's Home Page (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. Documents will be available on CIPS in ASCII and WordPerfect 6.1 format. User assistance is available at 202–208–2474 or by E-mail to cipsmaster@ferc.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Home Page using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to RimsMaster@FERC.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc., is located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

**Notice of Technical Conference and Request for Comments**

The Federal Energy Regulatory Commission Staff (Staff) will convene a technical conference to solicit comments and discuss potential changes to the FERC Form No. 6: Annual Report of Oil Pipeline Companies (FERC Form No. 6) filing requirements and related regulations contained in 18 CFR Part 357 to better meet current and future regulatory requirements and industry needs. The technical conference will be held on Wednesday, September 8, 1999, at 9:00 A.M. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. The conference is intended to be an informal working session so participants can freely discuss their views on issues related to FERC Form No. 6. The conference is open to shippers, trade associations, oil pipeline companies, federal and state agencies, users of the information reported in the FERC Form No. 6, and other interested parties. Appendix A contains a list of suggested subjects for discussion at the technical conference. The discussion is not limited to these topics but can cover other FERC Form No. 6 topics as well.

The Commission's oil pipeline regulations require each oil pipeline company, subject to the provisions of the Interstate Commerce Act, and having jurisdictional operating revenues exceeding $350,000 in each of the three immediately preceding calendar years, to submit the FERC Form No. 6. Oil pipeline companies exempt from filing the FERC Form No. 6 prepare and file only pages 1 and 700 of the Form 6.

FERC Form No. 6 is filed by March 31st of each year for the previous calendar year. This report collects financial and operational information from oil pipeline companies subject to FERC's jurisdiction through various schedules including: general corporate information, financial statements, balance sheet supporting schedules, income account supporting schedules, and plant statistical data.

Staff is convening the conference to solicit comments from the industry and the public and discuss potential changes to the schedules listed above and the Commission's regulations. The Commission is interested in obtaining specific comments on the need to: delete, add, revise, consolidate, and clarify FERC Form No. 6 schedules and instructions. The Commission is also seeking comments on the related regulations contained in 18 CFR Part 357; and procedures to implement electronic filing for FERC Form No. 6.

Persons who wish to attend the conference should notify Michael Oliva or Donna Culbertson by August 20, 1999, either by telephone, facsimile, or by E-Mail.

Michael Oliva, (202) 219–2597, FAX: (202) 219–0125, *michael.oliva@ferc.fed.us*
or
Donna Culbertson, (202) 219–1102, FAX: (202) 219–0125 *donna.culbertson@ferc.fed.us*

Please provide your name, title, affiliation, mailing address, voice and fax telephone numbers, and your Internet E-Mail address if you have one. Companies or organizations with more than one representative may consolidate the notifications if they provide the Companies are encouraged to coordinate with their respective industry associations to consolidate discussions as much as possible.

The Commission Staff also invites interested persons to submit written comments addressing the issues outlined in Appendix A prior to the technical conference to help focus the discussion. Interested persons should come prepared to discuss these issues at the technical conference. Based on the comments received, Commission Staff will determine the best way to structure the conference to efficiently obtain the information needed.

The original and 14 copies of such comments must be received by the Commission before 5:00 P.M., Friday, August 20, 1999. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426 and should refer to Docket No. RM99–10–000.

In addition to filing paper copies, the Commission encourages the filing of comments either on computer diskette or via Internet E-Mail. Comments may be filed in the following formats: WordPerfect 8.0 or below, MS Word Office 97 or lower version, or ASCII format.

For diskette filing, include the following information on the diskette

label: Docket No. RM99–10–000; the name of the filing entity; the software and version used to create the file; and the name and telephone number of a contact person.

For Internet E-Mail submittal, comments should be submitted to ''*comment.rm@ferc.fed.us*'' in the following format. On the subject line, specify Docket No. RM99–10–000. In the body of the E-Mail message, include the name of the filing entity; the software and version used to create the file, and the name and telephone number of the contact person. Attach the comment to the E-Mail in one of the formats specified above. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt. Questions on electronic filing should be directed to Brooks Carter at 202–501–8145, E-Mail address brooks.carter@ferc.fed.us.

Commenters should take note that, until the Commission amends its rules and regulations, the paper copy of the filing remains the official copy of the document submitted. Therefore, any discrepancies between the paper filing and the electronic filing or the diskette will be resolved by reference to the paper filing.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426, during regular business hours. Additionally, comments may be viewed, printed, or downloaded remotely via the Internet through FERC's Homepage using the RIMS or CIPS links. RIMS contains all comments but only those comments submitted in electronic format are available on CIPS. User assistance is available at 202–208–2222, or by E-Mail to *rimsmaster@ferc.fed.us.*

**David P. Boergers,**

*Secretary.*

**Appendix A—Topics for Discussion at Form 6 Technical Conference September 8, 1999**

Form 6 General Information, Instructions, and Definitions (Pages i—iii)

- What information, instructions, and definitions should be included, eliminated, revised, and consolidated?

Form 6 Instructions

- Where are there interpretation problems with the Form 6 instructions? For example, categorizing expenses between operations and maintenance expense, defining system property, defining Statement of Cash Flows line item requirements, and calculating cost of service.

—Identify by schedule and instruction where more clarification is needed.
—Define type and detail of instruction needed.

Form 6 Schedules

- What GAAP updates should be made? For example, updating the ''Analysis of Federal Income and Other Taxes Deferred'' Schedule from APB 11 to FASB 109.
- Are there items that should be included, eliminated, revised, and consolidated in each Form 6 schedule?

—Identify by schedule, column, and line item where changes are needed.
—Define type and detail of change needed.

Conforming Form 6 Changes to the Oil Regulations

- What changes need to be made to conform the instruction and schedule changes outlined above to the oil regulations?

—Identify the part and section of the regulations that need to be changed.
—Define type and detail of change needed.

Form 6 Alternatives

- Are there other alternatives to filing the Form 6? For example, filing GAAP financial statements certified by the external accountants and supplemental schedules containing the information FERC needs to regulate its jurisdictional companies.

Form 6 Electronic Filing

- What format should be used to prepare the Form 6 (e.g., use the same format used to prepare the Form 1 or Form 2)?
- How should the electronic Form 6 be tested?

[FR Doc. 99–20110 Filed 8–4–99; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 314

**[Docket Nos. 99N–0193 and 99D–0529]**

### Changes to an Approved NDA or ANDA; Proposed Rule and Draft Companion Guidance; Public Meeting

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

**ACTION:** Announcement of public meeting.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing a public meeting to discuss proposed amendments to its regulations on postapproval changes to the chemistry, manufacturing, and controls of approved drugs, and a draft companion guidance. FDA is inviting interested parties, including industry, health professionals, patients, and patient advocacy groups to present their perspectives on the proposed amendments and the draft companion guidance.

**DATES:** The meeting will be held on Thursday, August 19, 1999, from 9 a.m. to 5 p.m. Registration and requests to make an oral presentation should be received by Monday, August 13, 1999.

**ADDRESSES:** The meeting will be held at the Hilton Hotel, 620 Perry Pkwy., Gaithersburg, MD. To register and request time for an oral presentation, send or fax written material to the listed contact person.

**FOR FURTHER INFORMATION CONTACT:** Susan C. Lange, Office of New Drug Chemistry (HFD–800), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5918, FAX 301–594–0746.

**SUPPLEMENTARY INFORMATION:** Section 116 of the Food and Drug Administration Modernization Act of 1997 provides for the revision of § 314.70 (21 CFR 314.70) of FDA regulations concerning postapproval changes to the chemistry, manufacturing, and controls of approved drugs. In the **Federal Register** of June 28, 1999 (64 FR 34608), the agency published a proposed rule entitled ''Supplements and Other Changes to an Approved Application,'' proposing amendments to § 314.70. The comment period for the proposed rule closes on September 13, 1999 (Docket No. 99N–0193). In the same issue of the **Federal Register** (64 FR 34660), the agency announced the availability of a draft guidance for industry entitled ''Changes to an Approved NDA or ANDA.'' The comment period for the draft guidance closes on August 27, 1999 (Docket No. 99D–0529). To ensure broad public input on the proposed rule and the draft guidance, the agency is holding a public meeting on the proposed amendments to § 314.70 and the draft guidance for industry.

To provide a framework for presentations, discussions of revisions to § 314.70 will be organized according to the following sections in the proposed regulation: (1) Section 314.70(a)—Changes to an approved application; (2) § 314.70(b)—Changes requiring a prior approval supplement; (3) § 314.70(c)—Changes being effected supplement; (4) § 314.70(d)—Changes for description in an annual report; and (5) § 314.70(e)—Protocols.

The presentation topics for the draft guidance will be organized as follows: (1) Assessing the effect of manufacturing changes; (2) components and composition; (3) sites; (4) manufacturing process; (5) specifications; (6) package; (7) labeling; (8) miscellaneous changes; and (9) multiple changes.

When submitting a request for an oral presentation at the August 19, 1999, meeting, please specify your

presentation topic. The time allowed for each presenter will depend on the number of presentation requests.

Registration information (including name, title, firm name, address, telephone, and fax number) and requests for presentation (including specific topic) should be submitted to the listed contact person by Friday, August 13, 1999. Space is limited, therefore, interested parties are encouraged to register early. Special accommodations due to disability should be submitted at least 7 days in advance.

Transcripts of the meeting 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.

Dated: July 28, 1999.

**Margaret M. Dotzel,**

*Acting Associate Commissioner for Policy.*

[FR Doc. 99–20088 Filed 8–4–99; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF THE TREASURY

## Fiscal Service

## 31 CFR Part 375

## Marketable Treasury Securities Redemption Operations

**AGENCY:** Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of the Treasury (''Treasury'', ''We'', or ''Us'') is publishing for comment proposed rules setting out the terms and conditions by which we may redeem outstanding, unmatured marketable Treasury securities. While we have not decided to conduct redemption operations, we are publishing this proposed rule to obtain comments on the mechanism by which we might conduct such operations. By establishing the mechanism in advance, we would be able to conduct redemption operations in a more timely and efficient way should such a decision be made.

We would establish a new part in the Code of Federal Regulations for this purpose. The proposed rules describe a process by which an entity may submit competitive offers to sell us securities. The proposed rules also describe how we would announce the redemption operation results and the requirements for delivering securities to us and receiving payment.

Redemption operations would help us better manage our financing needs, promote more efficient capital markets, and may lower financing costs for taxpayers.

**DATES:** Submit comments on or before October 4, 1999.

**ADDRESSES:** You may send us hardcopy comments at: Government Securities Regulations Staff, Bureau of the Public Debt, 999 E Street NW., Room 315, Washington, DC 20239–0001. You may also send us comments by e-mail at govsecreg@bpd.treas.gov. When sending comments by e-mail, please use an ASCII file format and provide your full name and mailing address. Comments received will be available for public inspection and downloading from the Internet and for public inspection and copying at the Treasury Department Library, FOIA Collection, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. To visit the library, call (202) 622–0990 for an appointment.

This proposed amendment is also available for downloading from Public Debt's web site at the following address: www.publicdebt.treas.gov.

**FOR FURTHER INFORMATION CONTACT:** Lori Santamorena (Acting Executive Director) or Chuck Andreatta (Senior Financial Advisor), Bureau of the Public Debt, Government Securities Regulations Staff, (202) 691–3632.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The government's improved fiscal position has caused Treasury's borrowing needs to decline significantly, and we have been adjusting the government's borrowing program accordingly. Our adjustments to date have distributed the required cuts in borrowing across various maturities and sectors of the federal debt. In this environment, we began examining the concept of purchasing outstanding Treasury securities in the market. No decisions have been made to use a debt buy-back program, but having the infrastructure available to be able to use this tool would provide Treasury additional flexibility.

Debt buy-backs could provide us with greater flexibility to manage the government's debt and to respond to our improved fiscal condition. First, buy-backs could enhance market liquidity by allowing us to maintain regular issuance of new benchmark securities across the maturity spectrum, in greater volume than otherwise. Over the long term, this enhanced liquidity could reduce the government's interest expense and promote more efficient capital markets.

Second, buy-backs could enhance our ability to exert control over the maturity structure of the debt. Without a debt buy-back program, further reductions in Treasury new issue sizes and frequencies could be necessary. A buy-back program, however, would provide us the option of managing the maturity structure of the debt by selectively targeting the maturities of debt to be repurchased.

Third, buy-backs could be used as a cash management tool, absorbing excess cash in periods such as late April when tax revenues greatly exceed immediate spending needs.

In addition, although not a primary reason for conducting buy-backs, we may occasionally be able to reduce the government's interest expense by purchasing ''off-the-run'' debt and replacing it with lower-yield ''on-the-run'' debt.;[1]

### II. Analysis

In a buy-back operation (a ''redemption operation'' in the proposed rule), we would redeem securities by purchasing them from current owners. The most equitable method for determining redemption prices is through a process in which market participants submit competitive offers to sell particular Treasury securities to the Treasury. We welcome comments about this proposed methodology.

Under the proposal, we would announce our intention to purchase specified Treasury securities, including the approximate total amount that we want to buy, and the deadlines for offers and settlement. We would accept offers on a multiple-price basis—that is, we would determine and accept the most attractive offers and each successful offeror would receive the price at which it offered securities. We could decide to buy back less than the announced amount if market conditions warranted.

For the reasons set forth below, we propose that the entities that have a trading relationship with the Federal Reserve Bank of New York (primary dealers) be eligible to submit offers. Other entities could submit offers through the primary dealers or an intermediary that has a relationship with a primary dealer.

Restricting direct offers to primary dealers would permit us to use the

[1] A Treasury security is ''on-the-run'' when it is the newest security issue of its maturity (*e.g.*, in October the two-year note issued September 30 would be ''on-the-run'' while the two-year note issued August 31 would be ''off-the-run''). An on-the-run security is normally the most liquid issue for that maturity.

Federal Reserve Bank of New York's existing electronic systems for executing open market transactions and facilitate transfers of securities to Treasury at settlement. No customer lists would be required under these proposed rules.

Redemption operation announcements would be in the form of an official Treasury press release, supplemented by a posting on the Bureau of the Public Debt's website (www.publicdebt.treas.gov) and on-line broadcast messages over the Federal Reserve's Fedline OM (Open Market) system. The Treasury securities eligible for redemption and the privately held amount of each security would be included in the redemption operation announcement.

To expedite tender processing and calculation and announcement of redemption operation results, we would accept competitive offers only. Price-based offers would be most convenient for redemption operation participants since the eligible securities already would be trading in the secondary market on a price basis.

The price format would be consistent with that already used by the Federal Reserve's open market operations. See § 375.13(b). The only limitation on the dollar amount of offers is that the total amount of offers from a submitter for any particular security could not exceed the total outstanding privately held amount of that security.

Calculation of redemption operation results would occur at the Federal Reserve Bank of New York, acting as Treasury's fiscal agent, using a methodology determined by Treasury. There would be no limitation on the number of offers for each security. We also would not limit the aggregate amount of offers for securities that Treasury would accept from any one submitter.[2]

It is possible that, in a particular redemption operation, the calculations could result in our redeeming only one security. We also would not set any limits on the amount or percentage of the outstanding amount of a security that could be redeemed. It is possible, therefore, that following a redemption operation or redemption operations, the privately held amount still outstanding of a particular security could be very small.

Once the redemption operation calculations have been completed, Treasury would announce the results through an official press release, including a listing of the amount of each security we accept for redemption. We would also post the results to Public Debt's website and other on-line broadcast messages. The Federal Reserve Bank of New York would transmit results messages to the submitters who participated in the redemption operation. A results message would inform a submitter only of the acceptance or rejection of the offers it submitted. Submitters would in turn notify customers of successful offers in the redemption operation.

Settlement would occur on the business day after the deadline for submission of offers (tenders). Successful submitters would transfer the securities they submitted offers for in the redemption operation to Treasury, via the Federal Reserve Bank of New York. This next-day delivery requirement follows current market convention for other Treasury securities transactions. The settlement amount would include any accrued interest payable by Treasury through the settlement date. We request specific comment on this proposed requirement or any other settlement-related issues.

The securities delivered may be in either book-entry (electronic) or definitive (paper) form. Those delivering book-entry securities would transfer via Fedwire the correct par amount of securities against payment for the correct settlement amount to the account specified on the redemption operation announcement. A submitter planning to deliver definitive securities would be required to contact the Federal Reserve Bank of New York within two hours of the announcement of the redemption operation results and make arrangements for delivery.

We encourage comments on any aspect of this proposed rule to ensure that we address the concerns of market participants and Treasury. In addition, this proposed rule has been drafted using plain language. We specifically request comment on the clarity of this rule and how we can make it easier to understand.

## III. Procedural Requirements

This proposed rule is not a ''significant regulatory action'' under Executive Order 12866. Although we are issuing this proposed rule in proposed form to benefit from public comment, the notice and public procedures requirements of the Administrative Procedure Act do not apply, under 5 U.S.C. 553(a)(2).

Since no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

[2] In other words, there is no limitation similar to the ''35-percent limit'' on awards in the auction process. See 31 CFR 356.22(b).

### List of Subjects in 31 CFR Part 375

Bonds, Federal Reserve System, Government securities, Securities.

For the reasons stated in the preamble, the Treasury proposes to amend 31 CFR chapter II, subchapter B, by adding new part 375 to read as follows:

## PART 375—MARKETABLE TREASURY SECURITIES REDEMPTION OPERATIONS

**Subpart A—General Information**

Sec.



**Subpart B—Offering, Certifications, and Delivery**



**Subpart C—Determination of Redemption Operation Results; Settlement**



**Subpart D—Miscellaneous Provisions**



**Authority:** 5 U.S.C. 301; 31 U.S.C. 3111; 12 U.S.C. 391.

### Subpart A—General Information

#### § 375.0 What authority does the Treasury have to redeem its securities?

Section 3111 of Title 31 of the United States Code authorizes the Secretary of the Treasury to use money received from the sale of an obligation and other money in the general fund of the Treasury to buy, redeem, or refund, at or before maturity, outstanding bonds, notes, certificates of indebtedness, Treasury bills, or savings certificates of

the United States Government. For the purposes of this part, we will refer to these outstanding obligations as ''securities.''

**§ 375.1 Where are the rules for the redemption operation located?**

The provisions in this part and the redemption operation announcement govern the redemption of marketable Treasury securities under 31 U.S.C. 3111. (See § 375.10.)

**§ 375.2 What special definitions apply to this rule?**

The definitions in 31 CFR part 356 govern this part except as follows:

*Accrued interest* means an amount payable by the Treasury as part of the settlement amount for the interest income earned between the last interest payment date and the settlement date.

*Bank* means the Federal Reserve Bank of New York.

*Customer* means a person or entity on whose behalf a submitter has been directed to submit an offer of a specified amount of securities in a specific redemption operation.

*Definitive security* means a security that is issued and maintained as a certificate. Definitive securities are in either registered or bearer form.

*Minimum offer amount* means the smallest par amount of a security that may be offered to the Treasury. We will state the minimum offer amount in the redemption operation announcement.

*Multiple* means the smallest additional par amount of a security that may be offered to the Treasury. We will state the multiple in the redemption operation announcement.

*Offer* means an offer to deliver for redemption a stated par amount of a specific security to the Treasury at a stated price.

*Price* means the price of a security as offered by a submitter or its customer and excludes accrued interest.

*Privately held amount* means the total amount outstanding of a security eligible for redemption less holdings of the Federal Reserve System and Federal Government accounts.

*Redemption amount* means the maximum par amount of securities that we are planning to redeem through a redemption operation. We will state the redemption amount in the redemption operation announcement.

*Redemption operation* means a competitive process by which the Treasury accepts offers of marketable Treasury securities that by their terms are not immediately payable.

*Security* means an outstanding unmatured obligation of the United States Government that the Secretary is authorized to buy, redeem or refund under section 3111 of Title 31 of the United States Code.

*Settlement* means full and complete delivery of and payment for securities redeemed.

*Settlement amount* means the par amount of each security that we redeem, multiplied by the price we accept in a redemption operation, plus any accrued interest.

*Settlement date* means the date specified in the redemption operation announcement on which you must deliver a security to the Treasury for payment.

*Submitter* means an entity submitting offers directly to the Treasury for its own account, for the account of others, or both. (See § 375.11(a).)

*Tender* means a computer transmission or document submitted in a redemption operation that contains one or more offers.

*We* (''us'') means the Secretary of the Treasury and his or her delegates, including the Treasury Department, Bureau of the Public Debt, and their representatives. The term also includes the Federal Reserve Bank of New York, acting as fiscal agent of the United States.

*You* means a prospective submitter in a redemption operation.

**§ 375.3 What is the role of the Federal Reserve Bank of New York in this process?**

As fiscal agent of the United States, the Federal Reserve Bank of New York performs various activities necessary to conduct a redemption operation under this part. These activities include but are not limited to:

(a) Accepting and reviewing tenders;

(b) Calculating redemption operation results;

(c) Issuing notices of redemptions;

(d) Accepting deliveries of Treasury securities at settlement; and

(e) Processing the Treasury payment for securities delivered at settlement.

## Subpart B—Offering, Certifications, and Delivery

**§ 375.10 What is the purpose of the redemption operation announcement?**

We provide public notice that we are redeeming Treasury securities by issuing a redemption operation announcement. This announcement lists the details of each proposed redemption operation, including the total redemption amount, the eligible securities, the total privately held amount of each eligible security, and the redemption operation and settlement dates. The redemption operation announcement and this part specify the terms and conditions of a redemption operation. If anything in the redemption operation announcement differs from anything in this part, the redemption operation announcement will apply. Accordingly, you should read the applicable redemption operation announcement along with this part.

**§ 375.11 Who may participate in a redemption operation?**

(a) *Submitters.* To be a submitter, you must be an institution that the Federal Reserve Bank of New York has approved to conduct open market transactions with the Bank.

(b) *Others.* A person or entity other than a submitter may participate only if it arranges to have an offer or offers submitted on its behalf by a submitter.

**§ 375.12 How do I submit an offer?**

As a submitter, you must submit an offer in a tender to the Treasury via the Federal Reserve Bank of New York through its Trading Room Automated Processing System (TRAPS). You must submit any tenders in an approved format and the Bank must receive them prior to the closing time in the redemption operation announcement. If we do not receive your tenders timely, we will reject them. Tenders are binding on their submitter after the closing time specified in the redemption operation announcement. You are responsible for ensuring that the Federal Reserve Bank of New York receives your tenders on time. We will not be responsible in any way for any unauthorized tender submissions or for any delays, errors, or omissions in submitting tenders.

**§ 375.13 What requirements apply to offers?**

(a) *General.* You may only submit competitive offers (specifying a price). All offers must state the CUSIP number or security description, par amount, and price of each security offered. All offers must equal or exceed the minimum offer amount, and be in the multiple, stated in the redemption operation announcement.

(b) *Price format.* You must express offered prices in terms of price per $100 of par with three decimals, *e.g.*, 102.172. The first two decimals represent fractional 32nds of a dollar. The third decimal represents eighths of a 32nd of a dollar, and must be a 0, 2, 4, or 6. For example, an offer of 102.172 means one hundred two and seventeen 32nds and two eighths of a 32nd, or in decimals, 102.5390625.

(c) *Maximum amount offered.* The total amount of your offers for any individual security may not exceed the total privately held amount of the

security. If it does, we will recognize only your lowest-priced offer, through successively higher-priced offers, until we reach the total privately held amount. A list of the privately held amount of each eligible security will appear in the redemption operation announcement.

(d) *Maximum number of offers.* There is no limit on the number of offers you may make of each eligible security. There is also no limit on the number of eligible securities you may offer.

**§ 375.14 Do I have to make any certifications?**

By submitting a tender offering a security or securities for sale, you certify that you are in compliance with this part and the redemption operation announcement.

**§ 375.15 Who is responsible for delivering securities?**

As a submitter, you are responsible for delivering any securities we accept in the redemption operation. (See § 375.23.) All securities you deliver must be free and clear of all liens, charges, claims, and any other restrictions.

## Subpart C—Determination of Redemption Operation Results; Settlement

**§ 375.20 When will the Treasury decide on which offers to accept?**

We will determine which offers or portions of offers to accept after the closing time for receipt of tenders. All such determinations will be final.

**§ 375.21 When and how will the Treasury announce the redemption operation results?**

We will make an official announcement of the redemption operation results through a press release. For each security we redeem, the press release will include such information as the amounts offered and accepted, the highest price accepted, and the remaining privately held amount outstanding.

**§ 375.22 Will I receive any additional information and, if I am submitting offers for others, do I have to provide confirmations?**

(a) *Confirmations to submitters.* We will provide a confirmation of acceptance or rejection in the form of a results message to submitters of offers by the close of the business day of the redemption operation.

(b) *Confirmation of customer offers.* If you submit a successful offer for a customer, you are responsible for notifying that customer of the impending redemption.

**§ 375.23 How does the securities delivery process work?**

(a) *Deliveries of book-entry securities.* If any of the offers you submitted are accepted and you are delivering book-entry securities, you must transfer them in the correct par amount against the correct settlement amount on the settlement date. You must deliver the securities to the account specified in the redemption operation announcement.

(b) *Deliveries of definitive securities.* If any of the offers you submitted are accepted and you are delivering definitive securities, you must notify the Federal Reserve Bank of New York within two hours of the announcement of the redemption operation results. You must deliver them in the correct par amount on the settlement date. Registered securities must be properly assigned. Unless otherwise specified in the offering announcement, bearer securities must have all of their unmatured coupons attached. Deliver them to us at the address for the Federal Reserve Bank of New York provided in the redemption operation announcement. On the day the Bank receives them, it will credit the settlement amount to the depository institution's funds account you specified when you notified the Bank of your intention to deliver definitive securities.

## Subpart D—Miscellaneous Provisions

**§ 375.30 Does the Treasury have any discretion in this process?**

(a) We have the discretion to:

(1) Accept or reject any offers or tenders submitted in a redemption operation;

(2) Redeem less than the amount of securities specified in the redemption operation announcement;

(3) Add to, change, or waive any provision of this part; or

(4) Change the terms and conditions of a redemption operation.

(b) Our decisions under this part are final. We will provide a public notice if we change any redemption operation provisions, terms or conditions.

**§ 375.31 What could happen if someone does not fully comply with the redemption operation rules or fails to deliver securities?**

(a) *General.* If a person or entity fails to comply with any of the redemption operation rules in this part, we will consider the circumstances and take appropriate action. This could include barring the person or entity from participating in future redemption operations under this part and future auctions under 31 CFR part 356. We also may refer the matter to an appropriate regulatory agency.

(b) *Liquidated damages.* If you fail to deliver securities on time, we may require you to pay liquidated damages of up to 1% of your settlement amount.

Dated: July 29, 1999.

**Donald V. Hammond,**

*Fiscal Assistant Secretary.*

[FR Doc. 99–19957 Filed 8–4–99; 8:45 am]

BILLING CODE 4810–39–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[DC25–2018b; FRL–6412–4]**

## Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; 15 Percent Plan for the Metropolitan Washington, D.C. Ozone Nonattainment Area

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to convert our conditional approval of the District of Columbia's State Implementation Plan (SIP) revision to achieve a 15 percent reduction in volatile organic compound emissions (15% plan SIP revision) in the Metropolitan Washington, D.C. ozone nonattainment area to a full approval. In the ''Rules and Regulations'' section of this **Federal Register**, we are converting our conditional approval of the District's 15% plan SIP revision to a full approval as a direct final rule because we view this as a noncontroversial amendment and because we anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If we receive no adverse comments, we will not undertake further action on this proposed rule. If we receive adverse comments, we will withdraw the direct final rule, and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Anyone interested in providing comments on this action should do so at this time.

**DATES:** Comments must be received in writing by September 7, 1999.

**ADDRESSES:** Written comments should be addressed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant

to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the District of Columbia Department of Public Health, Air Quality Division, 2100 Martin Luther King Avenue, S.E., Washington, DC 20020.

**FOR FURTHER INFORMATION CONTACT:** Christopher Cripps, (215) 814–2179, at the EPA Region III address above, or by e-mail at cripps.christopher@epa.gov.

**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: July 23, 1999.

**W. Michael McCabe,**

*Regional Administrator, Region III.*

[FR Doc. 99–19904 Filed 8–4–99; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

**[FRL–6410–2]**

### Wisconsin: Final Authorization of State Hazardous Waste Management Program Revision

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA proposes to grant final authorization to the hazardous waste program revisions submitted by Wisconsin. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is authorizing the State's program revisions as an immediate final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. The Agency has explained the reasons for this authorization in the preamble to the immediate final rule. If EPA does not receive adverse written comments, the immediate final rule will become effective and the Agency will not take further action on this proposal. If EPA receives adverse written comments, EPA will withdraw the immediate final rule and it will not take effect. EPA will then address public comments in a later final rule based on this proposal. EPA may not provide further opportunity for comment. Any parties interested in commenting on this action must do so at this time.

**DATES:** Written comments must be received on or before September 7, 1999.

**ADDRESSES:** Mail written comments referring to Docket Number ARA 6 to Mr. Daniel F. Chachakis, U.S. EPA Region 5 Waste, Pesticides and Toxics Division, Waste Management Branch (DM–7J), 77 W. Jackson Blvd., Chicago, IL 60604. You can examine copies of the materials submitted by Wisconsin during normal business hours at the following locations: EPA Region 5 Waste, Pesticides and Toxics Division, Waste Management Branch, State Programs and Authorization Section, 7th Floor, 77 West Jackson Blvd., Chicago, IL 60604, phone number (312) 886–2022; or Wisconsin Department of Natural Resources, 101 South Webster Street, Madison, WI 53707–7921, phone number (608) 267–2761.

**FOR FURTHER INFORMATION CONTACT:** Mr. Daniel F. Chachakis, Environmental Protection Specialist, at the above address and phone number.

**SUPPLEMENTARY INFORMATION:** For additional information, please see the immediate final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

**David A. Ullrich,**

*Acting, Regional Administrator, Region 5.*

[FR Doc. 99–19735 Filed 8–4–99; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

**[FRL–6412–6]**

### National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

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

**ACTION:** Notice of intent to delete the Kassouf-Kimerling Superfund Site from the National Priorities List (NPL): request for comments.

**SUMMARY:** The United States Environmental Protection Agency (EPA) Region 4 announces its intent to delete the Kassouf-Kimerling Superfund Site from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the Florida Department of Environmental Protection (FDEP) have determined that the site poses no significant threat to public health or the environment and therefore, further response measures pursuant to CERCLA are not appropriate.

**DATES:** Comments concerning the proposed deletion of this site from the NPL may be submitted on or before September 7, 1999.

**ADDRESSES:** Comments may be mailed to: Richard D. Green, Director, Waste Management Division, United States Environmental Protection Agency, Region 4, 61 Forsyth Street, Atlanta, Georgia 30303–8909.

Comprehensive information on this site is available through the EPA Region 4 public docket, which is available for viewing at the information repositories at two locations. Locations, contacts, phone numbers and viewing hours are: Record Center, U.S. EPA Region 4, 61 Forsyth Street, Atlanta, Georgia 30303–8909, (404) 562–9530, hours: 8:00 a.m. to 4:00 p.m., Monday through Friday by appointment only; Tampa/Hillsborough County Public Library/Special Collections, 900 North Ashley, Tampa, Florida 33602, (813) 273–3652, hours: 9:00 a.m. to 9:00 p.m., Monday through Thursday, 9:00 a.m. to 5:00 p.m., Friday through Saturday.

**FOR FURTHER INFORMATION CONTACT:** Randa Chichakli, U.S. EPA Region 4, Waste Management Division, 61 Forsyth Street, Atlanta, Georgia 30303–8909, (404) 562–8928.

**SUPPLEMENTARY INFORMATION:**

#### Table of Contents



#### I. Introduction

EPA Region 4 announces its intent to delete the Kassouf-Kimerling Superfund Site, Hillsborough County, Tampa, Florida, from the National Priorities List (NPL), Appendix B of the National Contingency Plan (NCP) and requests comments on this deletion. The EPA identifies sites on the NPL that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Trust Fund. Pursuant to 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

EPA will accept comments on the proposal to delete this site from the NPL for thirty calendar days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how this site meets the deletion criteria.

**II. NPL Deletion Criteria**

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425 (e), sites maybe deleted from or re-categorized on the NPL where no further response is appropriate. In making this determination, EPA shall consider, in consultation with the state, whether any of the following criteria have been met:

1. Responsible parties or other persons have implemented all appropriate response actions required;
2. ALL appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or
3. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

If a site is deleted from the NPL where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, EPA's policy is that a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without the application of the Hazardous Ranking System.

**III. Deletion Procedures**

EPA will accept and evaluate public comments before making a final decision on deletion from the NPL. Comments from the local community may be the most pertinent to deletion decisions. The following procedures were used for the intended deletion of the Site:

1. EPA has recommended deletion and has prepared the relevant documents;
2. FDEP has concurred with the deletion decision;
3. Concurrently with this Notice of Intent to Delete, notices have been published in local newspapers and have been distributed to appropriate federal, state and local officials and other interested parties announcing a 30-day public comment period on the proposed deletion from the NPL;
4. EPA has made all relevant documents available at the information repositories;
5. EPA will respond to significant comments, if any, submitted during the public comment period.

Deletion of the site from the NPL does not itself create, alter, or revoke any individual rights or obligations. The NPL is designed primarily for informational purposes to assist Agency management. EPA will prepare a Responsiveness Summary, if necessary, which will address the comments received during the public comment period.

A deletion occurs when the Regional Administrator places a Notice of Deletion in the **Federal Register**. Any deletions from the NPL will be reflected in the next NPL update. Public notices and copies of the Responsiveness Summary, if necessary, will be made available to local residents by the Regional office.

**IV. Basis for Intended Site Deletion**

The following site summary provides the Agency's rationale for the intention to delete this Site from the National Priorities List.

The Kassouf-Kimerling Superfund Site (also referred to as the 58th Street Landfill or the Site) is located in Hillsborough County, just north of Columbus Drive on the east side of 58th in Tampa, Florida. The Site is approximately 60 feet wide by 700 feet long and lies just east of 58th Street and west of the marsh separating the Site from Peninsular Fisheries. A canal was cut through the landfill in the late 1970's and connects a marsh located west of 58th Street to the marsh just east of the Site.

Prior to 1978, the soil and sediment at the Site were excavated and sold for their peat content. The excavation was then backfilled with refuse from a local battery-cracking and lead recovery facility. The landfill material consisted of rubber and plastic lead-acid battery casings covered by a thin layer of sand. The depth of the landfill material varied from 6 to 12 feet, with an estimated total fill volume of 11,350 cubic yards.

The initial evaluation of the Kassouf-Kimerling Site was conducted by Florida Department of Environmental Regulation in 1981, along with several regulatory agencies, including EPA. Considering the possible threats the Site was proposed for inclusion on the National Priorities List (''NPL'') in October 1981. The Site appeared on the National Priorities List in EPA's first **Federal Register** citation in 1982. EPA and FDEP then conducted the Remedial Investigation (RI). The detailed study of the nature and extent of contamination was conducted from September 1985 to June 1988. The RI included geophysical investigations, soil borings, soil sampling, sediment sampling, groundwater sampling, and surface water sampling. These investigations identified lead contamination in soil and groundwater at the landfill as well as in the surface water and sediment of the adjacent marsh. The final RI report, Feasibility Study (FS), and Post FS Wetlands Impact Study were completed in 1989. The contaminants of concern are arsenic, cadmium, and lead. The cleanup levels for groundwater are outlined by the Florida Administrative Code for each contaminant of concern. For the soil and sediment, the Extraction Procedure (EP) Toxicity Test and the Toxicity Characteristic Leaching Procedure (TCLP) were used to establish acceptable concentrations.

EPA issued two Records of Decision (RODs) to document the cleanup remedies selected for the Site. The first ROD, which was designated Operable Unit 1–OU1, addressed the source of contamination in the landfill area. The OU1 ROD was signed in 1989. The second ROD (Operable Unit 2–OU2), which was signed in 1990, addressed contamination found in the marsh/wetlands.

The selected remedy for the OU1 ROD included the following components:

- Excavation of approximately 11, 356 cubic yards of contaminated materials;
- Contaminated materials were excavated at a maximum depth of 12 feet;
- Solidification/stabilization of excavated materials;
- Placement of solidified material on-site in the landfill area.
- The selected remedy for the OU2 ROD included the following components:
- Excavation and solidification of the upper two feet of marsh sediments near the landfill and in the canal east of the Site;
- Placement of solidified marsh waste on-site with treated landfill wastes. Backfill the marsh area and re-vegetate with grass and plants;
- Redesign the canal area so that the marsh will be flooded year round; and
- Initiate mitigation to components for wetlands impacted by the Site.

The McKay Bay Nature Park was initially proposed to be the mitigation site, but EPA and FDEP determined that it was unacceptable since the portions of the bay were found to be contaminated.

EPA decided to designate Mobbly Bay as the location for the wetlands mitigation and formalized this substitution with the March 1997 Explanation of Significant Differences.

In a Consent Decree (CD) signed with EPA, Gulf Coast Recycling (GCR) agreed to perform the Remedial Design/ Remedial Action (RD/RA) as well as reimburse EPA for past costs and the cost for wetlands mitigation. Under the CD with EPA, GCR established a trust fund to ensure that the Site would have sufficient funds to conduct the Remedial Action, including the wetlands mitigation project.

To date, all construction outlined in the OU1 ROD has been completed. The requirements of the OU2 ROD have also been completed. Annual groundwater and surface water monitoring will continue to confirm that groundwater levels remain below cleanup standards. The remedies selected for the OU1 and OU2 at the Kassouf-Kimerling Site are still effective and continue to protect human health, welfare and the environment.

EPA conducted a five-year review on June 18, 1999 and concluded that the Remedial Action Objectives have been achieved, the remedy is effective and functioning as designed, and continues to remain protective of human health and the environment. EPA, has consulted with the Florida Department of Environmental Protection in evaluating the Site for deletion, and has determined that all appropriate actions at the Kassouf-Kimerling Superfund Site have been completed in accordance with the site Records of Decision, and that no further remedial action is necessary. Therefore, EPA is proposing deletion of the site from the NPL.

Dated: July 26, 1999.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 99–20039 Filed 8–4–99; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 61

**RIN 3067–AD02**

## National Flood Insurance Program (NFIP); Insurance Coverage and Rates

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Proposed rule.

**SUMMARY:** We, FEMA, are proposing to apply full-risk premium rates under the National Flood Insurance Program to structures that have suffered multiple flood losses and whose owners decline an offer of funding to eliminate or reduce future flood damage.

**DATES:** Please send your comments on the proposal on or before September 7, 1999.

**ADDRESSES:** Please send your comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472, (facsimile) 202–646–4536, or (email) *rules@fema.gov.*

**FOR FURTHER INFORMATION CONTACT:** Howard Leikin, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, 202–646–2784, (facsimile) 202–646–7970, (email) *Howard.Leikin@fema.gov.*

**SUPPLEMENTARY INFORMATION:**

### Definition

One of our (FEMA's) highest priorities is to correct the problem of multiple flood losses to older structures insured under the National Flood Insurance Program (NFIP). For the purpose of this proposal, we call a sub-category of these structures ''target repetitive loss'' buildings and define a ''target repetitive loss building'' as a ''building with four or more losses, or with two or more flood losses cumulatively greater than the building's value.'' This definition is more specific than the broader category of buildings with multiple flood losses which many stakeholders of the NFIP may be more familiar with and which we have used frequently in the past to describe this national problem.

### Scope of the Problem

The broader definition of a building with multiple losses, which we commonly use in the NFIP, is a building that has suffered within a ten-year period two or more losses, each resulting in at least a $1,000 claim payment. We know that there are about 87,000 such buildings in the country, and the total amount of claims paid by the NFIP since its inception for multiple loss buildings is $3.5 billion. Multiple loss buildings have accounted for 36 percent of all claims dollars paid under the program.

About half of those buildings, however, are no longer in the NFIP's book of business for a variety of reasons. Some property owners have dropped their policies because we have imposed limitations on flood insurance coverage, such as not insuring personal property in basements. FEMA's mitigation projects have reduced the flood risk of a number of properties with repetitive losses through elevation or flood-proofing. In addition, some of these properties are now protected by flood control projects and storm water management projects. Also, the enforcement by State and local governments of the NFIP's flood plain management standards for elevating or flood-proofing substantially damaged properties has had a positive effect in reducing the exposure to flood loss of a number of these properties.

In spite of this, the NFIP still insures about 43,000 multiple loss buildings. We have already paid $2 billion in flood insurance claims on these currently insured buildings, and we estimate that the continuing cost to the NFIP for these properties insured under the NFIP will average $200 million each year.

### Target Buildings

Of the 43,000 multiple loss buildings insured under the NFIP, about 8,800 have had four or more losses. In addition to these, there are another 1,300 insured buildings that have had two or three losses that cumulatively exceed the building's value. We have concluded from our actuarial studies that employing mitigation strategies for these roughly 10,000 buildings, such as relocating or elevating them, will be cost effective. These buildings will be the ''target repetitive loss buildings'' of this proposal.

### Repetitive Loss Strategy: Objectives

We are aware that there are some multiple loss properties that demand immediate attention where the residents are at a high personal risk because of their exposure to flooding. There are other properties—often celebrated in the media—where we have made claims payments under the NFIP that exceed the value of the building, and where it makes good business sense to reduce their exposure to loss. We cannot merely shift the costs of the NFIP to other programs. So we must adopt a comprehensive approach under the NFIP that uses both mitigation, such as

relocating buildings out of harm's way or elevating above estimated flood elevations, and insurance such as an adjustment of premium rates.

**Insurance for Pre-FIRM Properties**

The National Flood Insurance Act of 1968, as amended, authorizes us to offer flood insurance at less than full-risk premiums for older structures in return for a community's enforcement of flood plain management requirements. Congress recognized that in authorizing the flood insurance program there would be a trade-off: federally-backed flood insurance would be available for structures at a high flood risk built without the benefit of detailed flood risk information. In return, the local government would adopt and enforce flood mitigation standards that make future construction resistant to future flood loss. To make such efforts effective, we have worked with more than 19,000 communities and their state governments to develop the kind of detailed flood risk information needed for flood mitigation efforts.

Properties built *before* the publication of the Flood Insurance Rate Map (FIRM) have been eligible for less than full risk premiums. (For this proposed rule, we call buildings constructed before the effective date of the FIRM ''pre-FIRM'' buildings.) Our actuarial studies show that the owners of repetitively flooded buildings insured under the NFIP do not pay premiums that truly reflect the risk. What that means is that property owners who have collected claims payments have been paying and continue to pay less than full-risk premiums.

**Insurance Component of the Repetitive Loss Strategy**

This proposed rule would apply full-risk premiums for flood insurance coverage to the ''target repetitive loss buildings'' whose owners declined an offer of mitigation funding authorized by FEMA. Under this proposal, if the owner of a target repetitive flood loss building declines such an offer of mitigation funding to relocate, elevate, or flood-proof the structure, then that owner would upon the next policy renewal have to pay full-risk premiums for flood insurance coverage under the NFIP. To allow us to consistently track and to minimize the burden on companies writing flood insurance under the Write Your Own program, we plan for companies to begin referring on May 1, 2000, all renewals for coverage of target repetitive loss buildings and new policy applications for such buildings to the NFIP Servicing Facility. In this way, we can centralize the processing and data collection needed to implement this strategy.

**National Environmental Policy Act**

Pursuant to section 102 (2) (C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4371 *et seq.*, and the implementing regulations of the Council on Environmental Quality, 40 CFR parts 1500–150, FEMA is conducting an environmental assessment of this proposed rule. This assessment will be available for inspection through the Rules Docket Clerk, Federal Emergency Management Agency, room 840, 500 C St. SW., Washington, DC 20472.

**Executive Order 12866, Regulatory Planning and Review**

This proposed rule is not a significant regulatory action within the meaning of sec. 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, and has not been reviewed by the Office of Management and Budget. Nevertheless, this proposed rule adheres to the regulatory principles set forth in E.O. 12866.

**Paperwork Reduction Act**

This proposed rule does not contain a collection of information and is therefore not subject to the provisions of the Paperwork Reduction Act.

**Executive Order 12612, Federalism**

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

**Executive Order 12778, Civil Justice Reform**

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

**List of Subjects in 44 CFR Part 61**

Claims, Flood insurance.

Accordingly, we propose to amend 44 CFR part 61 as follows:

## PART 61—INSURANCE COVERAGE AND RATES

1. The authority citation for Part 61 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978; 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. In § 61.8, paragraphs (b) and (c) are redesignated as paragraphs (c) and (d), respectively, and a new paragraph (b) is added, reading as follows:

**§61.8 Applicability of risk premium rates.**

* * * * *

(b) Any target repetitive loss building whose owner has declined an offer of mitigation assistance authorized under any FEMA mitigation program. (A target repetitive loss building is one that has had within a ten-year period two or more losses, each resulting in at least a $1,000 claim payment. In addition, the building has suffered four or more insured flood losses or two insured flood losses cumulatively greater than the building's value.)

* * * * *

Dated: July 27, 1999.

**Jo Ann Howard,**

*Administrator, Federal Insurance Administration.*

[FR Doc. 99–20171 Filed 8–4–99; 8:45 am]

BILLING CODE 6718–03–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 62

**RIN 3067–AC95**

### National Flood Insurance Program (NFIP); Assistance to Private Sector Property Insurers

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Proposed rule.

**SUMMARY:** We (the Federal Insurance Administration of FEMA) are proposing changes to the Financial Control Plan (Appendix B of 44 CFR Part 62) that sets standards for evaluating the performance of private insurance companies participating in the Write Your Own program. These changes are to streamline and simplify the regulations of the National Flood Insurance Program. This proposal is part of an agency-wide initiative by the Federal Emergency Management Agency to simplify regulations for easier use by our customers. The proposed changes would also be consistent with the approach we adopted several years ago to streamline the arrangement for the WYO program and to place operational details in a technical operations manual rather than in the agreement itself between the Government and WYO companies.

**DATES:** Please send your comments on the proposal on or before September 7, 1999.

**ADDRESSES:** Please send your comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (facsimile) 202–646–4536, or (email) *rules@fema.gov*.

**FOR FURTHER INFORMATION CONTACT:** Edward L. Connor, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street SW., Washington, DC 20472, 202–646–3429, (facsimile) 202–646–3445, (email) *Edward.Connor@fema.gov.*

**SUPPLEMENTARY INFORMATION:** FEMA is streamlining and simplifying the materials used by the customers of each of its programs. As part of that initiative, we (the Federal Insurance Administration) believe that we can serve our customers and partners better by producing and revising the guidance documents and regulations of the National Flood Insurance Program so that they are easier to read and easier to use. The effort involves rendering any new rule—proposed and final—in plain language and eliminating sections or parts of our regulations that fit better in guidance documents and technical manuals, which we reference in the regulations.

This proposed rule would streamline the Financial Control Plan that private insurance companies must follow as part of their financial assistance arrangement under the Write Your Own component of the National Flood Insurance Program. The proposed streamlining involves eliminating operational details from the text of the Financial Control Plan. This would allow the Government and its industry partners the flexibility to make operational adjustments and corrections more efficiently and more quickly while retaining the broad framework necessary for sound financial controls.

### National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. We have not prepared an environmental assessment.

### Executive Order 12866, Regulatory Planning and Review

This proposed rule is not a significant regulatory action within the meaning of § 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, and the Office of Management and Budget has not reviewed it. Nevertheless, this proposed rule adheres to the regulatory principles set forth in E.O. 12866.

### Paperwork Reduction Act

This proposed rule does not contain a collection of information and is therefore not subject to the provisions of the Paperwork Reduction Act.

### Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

### Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

### List of Subjects in 44 CFR Part 62

Claims, Flood insurance.

Accordingly, we propose to amend 44 CFR Part 62 as follows:

## PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

1. The authority citation for part 62 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. We amend § 62.23(j) by redesignating paragraphs (j)(2) through (j)(6) as paragraphs (j)(3) through (j)(7), and by revising paragraph (j)(1) and adding new paragraph (j)(2) to read as follows:

**§ 62.23 WYO Companies authorized.**

* * * * *

(j) * * *

(1) Have a biennial audit of the flood insurance financial statements conducted by an independent Certified Public Accountant (CPA) firm at the Company's expense to ensure that the financial data reported to us accurately represents the flood insurance activities of the Company. The CPA firm must conduct its audits in accordance with the generally accepted auditing standards (GAAS) and Government Auditing Standards issued by the Comptroller General of the United States (commonly known as ''yellow book'' requirements). The Company must file with us (the Federal Insurance Administration) a report of the CPA firm's detailed biennial audit, and, after our review of the audit report, we will convey our determination to the Standards Committee.

(2) Participate in a WYO Company/FIA Operation review. We will conduct a review of the WYO Company's flood insurance claims, underwriting, customer service, marketing, and litigation activities at least once every three (3) years. As part of these reviews, we will reconcile specific files with a listing of transactions submitted by the Company under the Transaction Record Reporting and Processing (TRPP) Plan (Part 5). We will file a report of the Operation Review with the Standards Committee.

* * * * *

3. We revise Appendix B to Part 62—National Flood Insurance Program to read as follows:

### Appendix B to Part 62—National Flood Insurance Program

*A Plan To Maintain Financial Control for Business Written Under the Write Your Own Program*

(a) *In general.* Under the Write Your Own (WYO) Program, we (the Federal Insurance Administration (FIA), Federal Emergency Management Agency (FEMA)) may enter into an arrangement with individual private sector insurance companies licensed to engage in the business of property insurance. The arrangement allows these companies—using their customary business practices—to offer flood insurance coverage to eligible property owners. To assist companies in marketing flood insurance coverage, the Federal Government will be a guarantor of flood insurance coverage for WYO policies issued under the WYO Arrangement. To account for and ensure appropriate spending of any taxpayer funds, the WYO companies and we will implement this Financial Control Plan (Plan). Only the Administrator may approve any departures from the requirements of this Plan.

(b) *Financial Control Plan.* 1. The WYO Companies are subject to audit, examination, and regulatory controls of the various States. Additionally, the operating department of an insurance company is customarily subject to examinations and audits performed by the company's internal audit or quality control departments, or both, and independent Certified Public Accountant (CPA) firms. This Plan will use to the extent possible the findings of these examinations and audits as they pertain to business written under the WYO Program

2. This Plan contains several checks and balances that can, if properly implemented by the WYO Company, significantly reduce the need for extensive on-site reviews of the Company's files by us or our designee. Furthermore, we believe that this process is consistent with customary reinsurance practices and avoids duplication of examinations performed under the auspices of individual State Insurance Departments, NAIC Zone examinations, and independent CPA firms.

(c) *Standards Committee established.* 1. We establish in this Plan a Standards Committee for the WYO Program to oversee the performance of WYO companies under this Plan and to recommend appropriate remedial actions to the Administrator. The Standards Committee will review and recommend to the Administrator remedies for any adverse action arising from the implementation of the Financial Control Plan. Adverse actions include, but are not limited to, not renewing a particular company's WYO Arrangement.

2. The Administrator appoints the members of the Standards Committee, which consists of five (5) members from FIA, one (1) member from FEMA's Office of Financial Management, and one (1) member from each

of the six (6) designated WYO Companies, pools, or other entities.

3. A WYO company must—

A. Have a biennial audit of the flood insurance financial statements conducted by a CPA firm at the Company's expense to ensure that the financial data reported to us accurately represents the flood insurance activities of the Company. The CPA firm must conduct its audits in accordance with generally accepted auditing standards (GAAS) and the Government Auditing Standards issued by the Comptroller General of the United States (commonly known as ''yellow book'' requirements). The Company must file with us a report of the CPA firm's detailed biennial audit, and, after our review of the audit report, we will convey our determination to the Standards Committee.

B. Participate in a WYO Company/FIA Operation review. We will conduct a review of the WYO Company's flood insurance claims, underwriting, customer service, marketing, and litigation activities at least once every three (3) years. As part of these reviews, we will reconcile specific files with a listing of transactions submitted by the Company under the Transaction Record Reporting and Processing Plan (Part 5). We will file a report of the Operation Review with the Standards Committee (Part 7).

C. Meet the recording and reporting requirements of the WYO Transaction Record Reporting and Processing (TRRP) Plan and the WYO Accounting Procedures Manual. The National Flood Insurance Program's (NFIP) Bureau and Statistical Agent will analyze the transactions reported under the TRRP Plan and submit a monthly report to the WYO company and to us. The analysis will cover the timeliness of the WYO submissions, the disposition of transactions that do not pass systems edits, and the reconciliation of the totals generated from transaction reports with those submitted on the WYO Company's reports. (Parts 2 and 6).

D. Cooperate with FEMA's Office of Financial Management on Letter of Credit matters.

E. Cooperate with us in the implementation of a claims reinspection program (Part 3).

F. Cooperate with us in the verification of risk rating information.

G. Cooperate with FEMA's Office of Inspector General on matters pertaining to fraud.

(d) This Plan references a separate document, ''The Write Your Own Program Financial Control Plan Requirements and Procedures,'' that contains the following parts and is applicable to the Financial Control Plan:

1. Part 1—Financial Audits, Audits for Cause, and State Insurance Department Audits;

2. Part 2—Transaction Record Reporting and Processing Plan Reconciliation Procedures;

3. Part 3—Claims Reinspection Program;

4. Part 4—Report Certifications and Signature Authorization;

5. Part 5—Transaction Record Reporting and Processing Plan;

6. Part 6—Write Your Own (WYO) Accounting Procedures Manual; and

7. Part 7—Operation Review Procedures.

(e) We will distribute copies of the ''The Write Your Own Program Financial Control Plan Requirements and Procedures'' to companies participating in the Write Your Own Program by October 1st of the Arrangement year. Interested members of the public may obtain a copy by contacting the FEMA Distribution Center, P.O. Box 2012, Jessup, MD 20794.

* * * * *

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: July 9, 1999.

**Jo Ann Howard,**

*Administrator, Federal Insurance Administration.*

[FR Doc. 99–19764 Filed 8–4–99; 8:45 am]

BILLING CODE 6718–03–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Chapter I

**[CC Docket No. 99–249; FCC 99–168]**

### Low-Volume Long-Distance Users

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of inquiry.

**SUMMARY:** This document seeks comment on the impact of certain flat-rated charges on single-line residential and business customers who make few, or no, interstate long-distance calls. The inquiry focuses on flat-rated charges attributable to universal service and access charge reform, but recognizes that other pro-competitive reforms also have resulted directly or indirectly in charges on consumers' bills.

**DATES:** Interested parties may file comments no later than September 20, 1999, and reply comments no later than October 20, 1999.

**ADDRESSES:** Submit written comments or replies to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Counter TWA 325, Washington, DC 20554. For detailed filing instructions, including electronic filing, see **SUPPLEMENTARY INFORMATION.**

The entire file is available for inspection and copying weekdays from 9:00 a.m. to 4:30 p.m. in the Commission's Reference Center, 445 Twelfth Street SW, Washington, DC 20554. Copies may be purchased from the Commission's duplicating contractor, ITS Inc., 1231 Twentieth St., NW, Washington, DC 20036, (202) 857–3800.

**FOR FURTHER INFORMATION CONTACT:** Neil Fried, Common Carrier Bureau, Competitive Pricing Division, (202) 418–1530; TTY: (202) 418–0484.

**SUPPLEMENTARY INFORMATION:**

#### Background

In May 1997 the Commission adopted for price cap local exchange carriers (price cap LECs) a new common line rate structure to align cost recovery with the manner in which costs are incurred. That structure, when fully implemented, will recover all interstate-allocated common line costs through flat subscriber line charges (SLCs) assessed on end users, and flat presubscribed interexchange carrier charges (PICCs) assessed on interexchange carriers (IXCs).

#### Discussion

The Commission recognized when it changed the common line rate structure in 1997 that it was reducing, and gradually eliminating, support flows that had previously run from high-volume to low-volume end users. For two reasons, however, the Commission did not anticipate that these changes would have immediate, significant effects on the telephone bills of those low-volume users. First, the Commission initially set the primary residential and single-line business PICCs at levels approximately equal to a universal service charge that the Commission eliminated when it adopted the PICC. Second, IXCs had not previously imposed flat charges on end users to recover that universal service charge. In any case, the Commission believed that, even if IXCs did pass on the modest initial PICCs as flat charges, most consumers would enjoy benefits in the form of lower long-distance rates, and that those benefits would outweigh the burden of a small, flat monthly charge. That belief has proven correct for some consumers, in that long-distance rates overall have continued to decline.

Some customers of long-distance service, however, are now paying additional flat charges that IXCs claim recover some of the costs that the customers were previously paying in per-minute charges under the old access charge regime. A number of factors the Commission did not anticipate have affected consumers who make few interstate long-distance calls.

First, AT&T, MCI, and Sprint each charge their residential customers with a single presubscribed line a flat, averaged, monthly PICC pass-through charge of $1.51, $1.07, and 85 cents, respectively. The Commission has not prohibited IXCs from using such charges to recover their PICC costs. The Commission did, however, take steps

intended to make it more likely that any such charges would be modest in size. Specifically, as discussed above, the Commission decided to phase the PICC in gradually, setting the initial price-cap LEC ceiling for the charge on primary residential lines at 53 cents. Notwithstanding these prudent steps, the Commission recognizes that access reform requires the Commission to unravel and rationalize an entrenched, complex web of implicit subsidies, all at a time when competition and technological innovation are making unprecedented changes to the industry. Reforms of this magnitude and complexity will sometimes yield unanticipated effects, regardless of how careful the Commission is to avoid them. Second, AT&T and MCI have initiated monthly minimum usage charges for their basic-rate residential customers, which their customers must pay even if they make no long-distance calls in a month. AT&T residential customers are subject to a $3.00 minimum. Residential customers who subscribed to an MCI calling plan before January 3, 1998, are subject to a $5.00 minimum; thereafter, customers who subscribed to any MCI residential service are subject to a $3.00 minimum. Third, AT&T also has chosen to recover some of its contribution to the Universal Service Fund through a flat charge of 99 cents per month on its residential customers, even though its contributions are not calculated as a flat charge. Thus, a residential customer with a single telephone line who selects AT&T as her presubscribed carrier, but who makes no interstate long-distance telephone calls in a particular month, may pay $5.50 to AT&T that month. An MCI customer with the same calling pattern will pay $6.07 or $4.07, depending on how recently the customer signed up for service. Previously, such customers would have paid nothing to their presubscribed IXCs in a month in which they made no long-distance calls.

In light of these significant developments, the Commission wishes to inquire whether the flat charges imposed on consumers who make few long-distance calls are appropriate. Commenters should address whether the introduction of flat rate charges or minimum usage requirements is the result of competitive market dynamics, and whether it is reasonable to assume that implicit subsidies could be eliminated and competition introduced into previously regulated markets without some customers (those previously subsidized) paying more.

The Commission also seeks comment on the extent to which the Commission should rely on competition to provide services suitable to the needs of low-volume residential customers. The Commission notes that a telephone customer is not required to have a presubscribed interexchange carrier in order to place long-distance calls. A customer who chooses not to presubscribe will pay the PICC directly to the LEC, but may not have to pay marked up, minimum-usage, or universal-service charges. That customer will not be able to make a long-distance call simply by dialing ''1+area code+number,'' but will be able to ''dial around'' by first dialing a seven digit code (typically ''10–10–XXX''). Dial-around carriers advertise heavily, and some have plans that feature favorable per-minute rates without additional monthly or per-call charges. The Commission seeks comment on whether the availability of dial-around services means that the Commission does not need to take special measures to protect low-volume users. The Commission also seeks comment on what evidence of consumer choice would be sufficient to indicate that customers have adequate alternatives to calling plans that include these types of non-usage sensitive charges.

The Commission also observes that, as mentioned above, some of the costs presubscribed IXCs claim users impose on them even when they make no calls may be attributable to account and billing maintenance. The customers' LECs, on the other hand, already incur that kind of cost in providing local exchange service to the customers, and would presumably experience little incremental costs if they became the customers' presubscribed IXCs as well. The Commission seeks comment, therefore, on whether the entry of Bell Operating Companies (BOCs) into the long-distance market will mitigate the problems currently experienced by low-volume long-distance users.

In the event the Commission determines based on the record that regulatory intervention is warranted to protect consumers from some of the actions described above, the Commission seeks comment on the scope, method, and its jurisdiction for such intervention. Are there measures the Commission can take that do not require direct regulation of IXCs, but that would give this Commission greater control over the manner in which access charges and universal service assessments are passed on to consumers? The Commission also seeks comment on whether efforts by the Commission, states, and consumer groups to educate consumers regarding choices they can exercise in the marketplace—choices which could minimize the impacts on consumers of these sorts of actions by carriers—could be used to reduce or eliminate the need for additional regulation to accomplish the same purpose. The Commission also seeks comment on the relationship between the impact of access reform and universal service charges on low volume consumers and its universal service obligations pursuant to section 254 of the Act. As the Commission has stated, in addition to seeking comment on the consumer impact of charges associated with access and universal service reform, the Commission also would like suggestions on how best to understand and manage the impact on consumers of charges attributable to pro-competitive actions other than access and universal service reform.

**Filing Requirements**

Interested parties may file comments no later than September 20, 1999, and reply comments no later than October 20, 1999. Interested parties may file using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24,121 (1998). All filings should reference the CC Docket No. 99–249.

Parties submitting pleadings through the ECFS can send their comments and replies as electronic files via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, interested parties need to file only one copy of an electronic submission. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, interested parties must transmit one electronic copy of the pleading to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, interested parties should include their full name, postal service mailing address, and the applicable docket or rulemaking number. Interested parties may also file by Internet e-mail. To get filing instructions for e-mail submission, interested parties should send an e-mail message 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.

Interested parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, interested parties must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's

Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Counter TWA 325, Washington, DC 20554.
Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

[FR Doc. 99–20128 Filed 8–4–99; 8:45 am]

**BILLING CODE 6712–01–P**

# Notices

**Federal Register**

Vol. 64, No. 150

Thursday, August 5, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Information Collection; Request for Comments; Forest Industries Data Collection System

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intention to request a reinstatement of a previously approved information collection. The Forest Service will survey wood-using mills to determine the volume of logs (roundwood) and wood chips the mills received. This information will enable the agency to assess the trends in the use of logs and wood chips as required by statute.

**DATES:** Comments must be received in writing on or before October 4, 1999.

**ADDRESSES:** All comments should be addressed to: Eric Wharton, Forest Inventory and Analysis, Northeastern Research Station, 5 Radnor Corporate Center, Suite 200, Forest Service, USDA, Radnor, PA 19087–4585.

Comments also may be submitted via facsimile to (610) 975–4200 or by email to: ewharton/ne__fia@fs.fed.us.

The public may inspect comments received at the Northeastern Research Station, 5 Radnor Corporate Center, Suite 200, Radnor, Pennsylvania.

**FOR FURTHER INFORMATION CONTACT:** Eric Wharton, Northeastern Research Station, at (610) 975–4052; or Bruce Hansen, Northeastern Research Station, at (304) 431–2727.

**SUPPLEMENTARY INFORMATION:**

#### Background

The Forest and Range Renewable Resources Planning Act of 1974 and the Forest and Rangeland Renewable Resources Research Act of 1978 require the Forest Service to evaluate trends in the use of logs and wood chips, to forecast anticipated levels of logs and wood chips, and to analyze changes in the harvest of these resources. The information will be collected by Forest Service personnel at the following Forest Service research stations: Northeastern Research Station (Radnor, PA), North Central Research Station (St. Paul, MN), Southern Research Station (Asheville, NC), Rocky Mountain Research Station (Ogden, UT), and Pacific Northwest Research Station (Portland, OR).

Upon reinstatement of this information collection, the Forest Service will collect information from primary wood-using mills, which includes small, part-time mills, as well as large corporate entities. Primary wood-using mills are facilities that use harvested wood in log or chip form, such as sawlogs, veneer logs, pulpwood, and pulp chips, to manufacture a secondary product, such as lumber or paper.

To collect the information, Forest Service personnel will use the following questionnaires: Pulpwood Received, [State, Year] and Logs and Other Roundwood Received, [State, Year]. The questionnaires will be mailed to mills in a number of different States. The title of each questionnaire includes the State and the calendar year for which information will be collected. Respondents will return the completed questionnaires by mail in self-addressed, postage-paid envelopes.

Respondents will answer questions that include the type of logs or wood chips that have been harvested, the volume of logs or wood chips that have been received by the mill, the geographic locations from which the logs or wood chips have been harvested, the variety of tree species that have been harvested and received by the mill, the prices the mill has paid for the logs or wood chips, and the volume of byproducts that have been produced as a result of the manufacturing process, such as bark, sawdust, and slabs.

#### Description of Information Collection

The following describes the information collection to be reinstated:

*Title:* Pulpwood Received.

*OMB Number:* 0596–0010.

*Expiration Date of Approval:* December 31, 1998.

*Type of Request:* Request for reinstatement of a previously approved information collection.

*Abstract:* Questionnaires will be mailed to large paper companies, as well as to a few smaller pulping companies. Forest Service personnel will evaluate the information collected from the pulp mills to monitor the volume, types, species, sources, and prices of timber products harvested throughout the Nation. The data collected will be used to provide essential information about the current drain on the Nation's timber resources for pulpwood industrial products.

Data from this collection of information is not available from other sources.

*Estimate of Burden:* 0.5 hours.

*Type of Respondents:* Primary users of industrial pulpwood and wood chips.

*Estimated Annual Number of Respondents:* 222.

*Estimated Annual Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 111 hours.

#### Description of Information Collection

The following describes the information collection to be reinstated:

*Title:* Logs and Other Roundwood Received.

*OMB Number:* 0596–0010.

*Expiration Date of Approval:* December 31, 1998.

*Type of Request:* Request for reinstatement of a previously approved information collection.

*Abstract:* Questionnaires will be mailed to primary wood-using mills, which include small, part-time mills as well as large corporate entities. The collected information will be evaluated by Forest Service personnel to monitor the volume, types, species, sources, and prices of timber products harvested throughout the Nation. The data collected is used to provide essential information about the current drain on the Nation's timber resources for use as industrial products, other than pulpwood products.

Data from this collection of information is not available from other sources.

*Estimate of Burden:* .84 hour.

*Type of Respondents:* Primary users of industrial roundwood products.

*Estimated Number of Respondents:* 2,687.

*Estimated Number of Responses per Respondent: 1.*

*Estimated Total Annual Burden on Respondents:* 2,257 hours.

**Comment Is Invited**

The agency invites comments on the following: (a) Whether the proposed collection of information is necessary for the stated purposes or the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**Use of Comments**

All comments, including names and addresses when provided, will become a matter of public record. Comments received in response to this notice will be summarized and included in the request for Office of Management and Budget approval.

Dated: July 23, 1999.

**Robert Lewis, Jr.,**

*Deputy Chief for Research & Development.*

[FR Doc. 99–20178 Filed 8–4–99; 8:45 am]

BILLING CODE 3410–11–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Quartzite Watershed Management Project, Colville National Forest, Stevens County, Washington

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare environmental impact statement.

**SUMMARY:** The Forest Service, USDA, as lead agency, will prepare an environmental impact statement (EIS) on a proposal to conduct vegetation and road management, and implement riparian and wetland management. The Proposed Action will be in compliance with the 1988 Colville National Forest Land and Resource Management Plan (Forest Plan) as amended, which provides the overall guidance for management of this area. The Proposed Action is within portions of the Thomason Creek, Sherwood Creek, and Upper Cottonwood Creek drainages on the Colville Ranger District and is scheduled for implementation in fiscal year 2001. The Forest Service invites written comments and suggestions on the scope of the analysis. The agency will give notice of the full environmental analysis and decision making process so interested and affected people may be able to participate and contribute in the final decision.

**DATES:** Comments concerning the scope of the analysis should be postmarked by September 3, 1999.

**ADDRESSES:** Send written comments and suggestions concerning the management of this area to Catherine H. Lay, Acting District Ranger, 255 West 11th Kettle Falls, Washington, 99141.

**FOR FURTHER INFORMATION CONTACT:** Questions about the Proposed Action and EIS should be directed to Catherine H. Lay, Acting District Ranger, or to Ed Shaw, Planner, 755 S. Main Street, Colville, Washington 99114 (phone: 509–684–7000).

**SUPPLEMENTARY INFORMATION:** As a result of ecosystem analysis, the Colville National Forest is proposing watershed management activities in the Quartzite Watershed. We recently completed the Quartzite Ecosystem Analysis, an analysis that considered all lands within the Thomason, Sherwood, and Upper Cottonwood drainages. One of the key findings of the analysis is that fire exclusion has changed forest vegetation. These changes in upland forest density, understory composition, and tree species have increased forest susceptibility to insects, disease, drought and atypical fire. The objective of vegetation management proposals is to improve ecosystem integrity by moving the vegetation toward the natural range of variation; by developing forest matrix, patches and corridors that are consistent with fire landscapes; and by improving the landscape patterns of native species habitats. A second ecosystem analysis finding is that vegetation diversity and in-stream fish habitat in low elevation riparian areas has deteriorated. The objective of riparian and wetland management is to improve ecosystem integrity by increasing the diversity of vegetation, and by improving in-stream fish habitat in low elevation riparian areas. A third ecosystem analysis finding concerns roads. Forest roads provide access to conduct needed management. The benefits of forest roads are many. However, the ecosystem analysis notes that road corridors create habitat for noxious weeds that displace native plants. They also have introduced change to a variety of wildlife habitats. The connectiveity of wildlife travel corridors has been disrupted in many places where roads cross riparian areas. In addition, road access has fragmented seclusion habitat for large home range vertebrates. Objectives for road management proposals are to upgrade, maintain and develop those roads which are necessary for long-term land management and important to public access, and to eliminate unneeded roads.

The Proposed Action includes vegetation management using pre-commercial and commercial thinning and harvest on about 4,600 acres. Prescribed Fire would be used on up to 6,500 acres. A variety of road management activities are included. To increase vegetation management feasibility the proposed action includes 11.5 miles of new road construction. (The National Forest will develop alternatives to the proposed action that do not construct new roads.) To improve wildlife habitat and water quality, 1.25 miles of road will be closed in the Woodward Meadows area. And to improve public safety, a steep section (0.25 miles) of the Jay Gould Ridge Road will be closed. In addition, the proposed action would improve fisheries by applying gravel to roads and improving road drainage at seven stream crossings. The Proposed Action also includes 100 acres of riparian and wetland improvement activities in Woodward Meadows, which is located in the Upper Cottonwood Creek drainage. These activities include dechanneling previously channeled streams through the meadow (roughly 2000 feet), creating pot holes and planting native riparian plants to improve wildlife habitat.

The projects would be located approximately 2 to 10 miles east of U.S. Highway 395 near Chewelah, Washington. The Quartzite Watershed Management Projects are proposed within the Thomason Creek, Sherwood Creek, and Upper Cottonwood Creek drainages on the Colville Ranger District. This analysis will evaluate a range of alternatives for implementation of the project activities. The area being analyzed is approximately 23,300 acres, of which 10,600 acres are National Forest System lands. The other ownership areas are included only for analysis of effects. The breakdown of management emphasis on the National Forest System Lands is as follows: 2% is for old growth dependent species habitat; 3% is for recreation; 18% is for big game winter range; 20% is for scenic/winter range; 20% is for wood/forage; and 37% is for scenic/timber. The project area does not include any wilderness, RARE II, or inventoried roadless areas.

Some of the preliminary issues that were identified include: scenery, water

quality, road construction, road closures, and timber commodities.

A range of alternatives will be considered, including a no-action alternative. Based on issues identified to date, alternatives to date, alternatives to be considered include: (1) The number, sizes, and locations of areas considered for treatment; (2) the amount of road constructed for access; (3) the type of harvest and post-harvest treatments prescribed; and (4) the number, types, and locations of other integrated resource projects.

Initial scoping began in May, 1999. The scoping process will include the following: identify and clarify issues; identify key issues to be analyzed in depth; explore alternatives based on themes which will be derived from issues recognized during scoping activities; and identify potential environmental effects of the proposed Action and alternatives.

A public meeting is planned to be held at the Chewelah Municipal Building on July 28th 1999, at 5:00 pm. The Forest Service is seeking information, comments, and assistance from other agencies, organizations, Indian Tribes, and individuals who may be interested in or affected by the Proposed Action. This input will be used in preparation of the draft EIS. Your comments are appreciated throughout the analysis process.

Comments received in response to this notice, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

The draft EIS is to be filed with the Environmental Protection Agency (EPA) and to be available for public review by March, 2000. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, Indian Tribes, and members of the public for their review and comment. The EPA will publish a Notice of Availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the **Federal Register**. It is important that those interested in the management of the Colville National Forest participate at that time.

The Forest Service believes it is important to give reviewers notice at this early stage, of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS 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 Corp* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS 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 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. 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.

The final EIS is scheduled to be available by August, 2000. In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period for the draft EIS. The responsible official is Colville National Forest Supervisor, Robert L. Vaught. The responsible official will decide which, if any, of the alternatives will be implemented. His decision and rationale for the decision will be documented in the Record of Decision, which will be subject to Forest Service Appeal Regulations (36 CFR Part 215).

Dated: July 26, 1999.

**Robert L. Vaught,**

*Forest Supervisor.*

[FR Doc. 99–20115 Filed 8–4–99; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

### Information Collection Activity; Comment Request

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service's (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

**DATES:** Comments on this notice must be received by October 4, 1999.

**FOR FURTHER INFORMATION CONTACT:** F. Lamont Heppe, Jr., Program Development & Regulatory Analysis, Rural Utilities Service, USDA, 1400 Independence Ave., SW., STOP 1522, Room 4034, South Building, Washington, DC 20250–1522. Telephone: (202) 720–0736. FAX: (202) 720–4120.

**SUPPLEMENTARY INFORMATION:**

*Title:* Mergers and Consolidations of Electric Borrowers.

*OMB Control Number:* 0572–0114.

*Type of Request:* Extension of a previously approved collection.

*Abstract:* The Rural Electrification Act of 1936, as amended, authorizes the Rural Utilities Service (RUS) to make and guarantee loans for rural electrification. Due to deregulation and restructuring activities in the electric industry, RUS borrowers find it advantageous to merge or consolidate to meet the challenges of industry change. This information collection addresses the requirements of RUS polices and procedures for mergers and consolidations of electric program borrowers and affects three aspects of merger activities.

The first is documentation required to do business with a successor. Most mergers do not require RUS approval. However, RUS as a secured lender

needs documentation to legally advance loan funds and conduct other business activities with the new or surviving entity. The specific documents required vary according to state law and the particular circumstances of the merger. Most of the information required by RUS consists of copies of documents that the borrower must file with state and local authorities.

The second concerns transitional assistance. Short-term financial stress can follow mergers and consolidations that will in the long term benefit rural America and enhance government loan security. Title 7 CFR part 1717, subpart D, offers transitional assistance to mitigate these stresses. This information collection includes documentation from borrowers requesting such assistance.

Third are the unusual situations where RUS approval of a merger is required. This collection includes the list of documents that RUS needs to approve a merger. Except for a formal transmittal letter and board resolution from each of the companies involved, RUS believes that the information required is prepared by any prudent business attempting to enter into a merger.

RUS may not require borrower to either merge or to study the possibility of merger. The provisions of the rule may be utilized only at the borrower's request. This collection of information encompasses the procedures for borrowers who wish to enter into mergers or who request transitional assistance.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 10 hour per response.

*Respondents:* Small cooperatives or similar organizations.

*Estimated Number of Respondents:* 25.

*Estimated Number of Responses per Respondent:* 1.

*Estimate Total Annual Burden on Respondents:* 249 hours.

Copies of this information collection can be obtained from Dawn Wolfgang, Program Development and Regulatory Analysis, at (202) 720–0812.

Comments are invited on (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques on other forms of information technology. Comments may be sent to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW, Stop 1522, Room 4034 South Building, Washington, DC 20250–1522.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: July 30, 1999.

**Blaine D. Stockton, Jr.**

*Acting Administrator, Rural Utilities Service.*

[FR Doc. 99–20173 Filed 8–4–99; 8:45 am]

BILLING CODE 3410–15–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:* Office of the Secretary.

*Title:* Survey of Business Leaders Accompanying the Secretary on Trade Missions.

*Agency Form Number:* None.

*OMB Approval Number:* 0690–0017.

*Type of Request:* Reinstatement of a collection previously approved.

*Burden:* 5 hours.

*Number of Respondents:* 100 (approximately 20 per trade mission).

*Average Hours Per Response:* 3 minutes.

*Needs and Uses:* Trade missions are one of the most visible means for the Secretary to provide support to the business community in expanding exports. When he leads a mission, a quick survey of business leaders who accompany him on the trip is made. Its purpose is to assess their opinions on the market area they are visiting. The information is used to stimulate discussions during the trip.

*Affected Public:* Businesses or other for profit organizations.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* David Rostker (202) 395–3897.

Copies of the above information collection program can be obtained by calling or writing Linda Engelmeier, Departmental Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: July 30, 1999.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 99–20138 Filed 8–4–99; 8:45 am]

BILLING CODE 3510–FP–P

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

**[Docket No.: 97–BXA–20]**

### Re: Aluminum Company of America

On Friday, February 26, 1999, the **Federal Register** published the Decision and Order issued by the Under Secretary for Export Administration, Bureau of Export Administration, United States Department of Commerce (BXA) on February 19, 1999 (64 FR 9471). However, the Recommended Decision and Order of the Administration Law Judge (ALJ) was inadvertently not included with the Order of the Under Secretary. This notice is to hereby publish the December 21, 1998, Recommended and Decision Order of the ALJ.

Dated: July 21, 1999.

**William A. Reinsch,**

*Under Secretary for Export Administration.*

**Recommended Decision and Order**

Appearance for Respondents: Edward L. Rubinoff, Esq, Samuel C. Straight, Esq., of Akin, Gump, Strauss, Hauer & Feld, L.L.P., Michael D. Scott, Aluminum Company of America.

Appearance for Agency: Jeffrey E.M. Joyner, Esq., Office of the Chief Counsel for Export Administration, U.S. Department of Commerce.

Before: Hon. Parlen L. McKenna, United States Administrative Law Judge.

**Preliminary Statement**

This is a civil penalty proceeding initiated pursuant to the legal authority contained under the Export Administration Act of 1979, as amended (50. U.S.C.A. §§ 2401–2420 (1991 & Supp. 1997) (hereinafter known as the ''ACT''). It was conducted in accordance with the procedural requirements as found in 15 CFR Parts 768–799 (1991–1995). Those

Regulations were reorganized and restructured in 1997. The current Regulations are found at 15 CFR Parts 730–744 (1997) which govern these proceedings.

On December 12, 1997, Aluminum Company of America (''ALCOA'') was issued a charging letter by the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (''BXA'') alleging that ALCOA committed 100 violations of the Export Administration Regulations (''EAR'') between 1991 and 1995.[1] The alleged violations are as follows:

*CHARGES 1–50:* On 50 separate occasions between June 14, 1991, and December 7, 1995, ALCOA exported potassium fluoride and sodium fluoride from the United States to Jamaica and Suriniam, without obtaining from BXA the validated export licenses required by Section 772.1(b) of the former regulations. By exporting U.S.—origin commodities to any person or to any destination in violation of or contrary to the provisions of the Act or any regulation, order, or license issued thereunder, ALCOA violated Section 7878.6 of the former Regulations on 50 separate occasions, for a total of 50 violations.

*CHARGES 51–100:* In connection with the exports described in Charges 1–50 above, on 50 separate occasions between June 14, 1991, and December 7, 1995, ALCOA used Shipper's Export Declarations, as defined in Section 770.2 of the former regulations, on which it represented, potassium fluoride and sodium fluoride, qualified for exports from the United States to Jamaica and Surinam under general license G–DEST. These chemicals required a validated license for export from the United States to both of those destinations. By making false or misleading statements of material fact, directly or indirectly, to a United States agency in connection with the use of export control documents to effect exports from the United States, ALCOA violated Section 787.5(a) of the former Regulations in connection with each of the 50 exports, for a total of 50 additional violations.

The maximum civil penalty assessment for each violation is $10,000 (*See* 15 CFR § 764.3(a) (1)). In addition to the penalty assessment, a denial of export privileges could be imposed (see Section 764.3(a) (2)) and the exclusion from practice (*See* Section 764.3(a) (3)). BXA proposed a civil penalty assessment of $7,500 for each of the 50 violations of Section 787.6 of the former Regulations and $7,500 for each of the 50 violations of Section 787.5(a) of the former Regulations, for a total civil penalty of $750.000.

On February 9, 1998, a telephonic pre-hearing conference was held which included both parties and the undersigned. As a result of that conference, it was agreed by the parties that no hearing would be required since the facts of the case were not in dispute. Accordingly, a schedule was established for the submission of joint stipulations of fact and the filing of initial and reply briefs. Joint Stipulations were filed on March 27, 1998. ALCOA had previously filed its Answer to the Charging Letter on January 20, 1998. BXA Replied to ALCOA's Answer on May 1, 1998. On May 7, 1998, the undersigned issued on order permitting ALCOA to submit a response to BXA's Reply which was filed on May 13, 1998. In that Reply, Counsel for ALCOA took exception to BXA's assertion that the parties agreed during the February 9, 1998 prehearing conference that this matter could be resolved without a hearing because the facts were not in dispute. Subsequently, another telephonic conference was heard between the parties and the undersigned. At that time, after listening to the arguments of counsel for ALCOA, it became clear to me that Mr. Rubinoff was only asking for Oral Argument and not an evidentiary hearing. Given the complex nature of this case and my desire to insure that ALCOA's due process rights were fully protected, I granted Oral Argument. Oral Argument in this matter was held in Washington, DC on Monday, July 20, 1998. A transcript of the Oral Argument was released thereafter and the matter is now ripe for decision.

The findings of fact and conclusions of law which follow are prepared upon my analysis of the entire record, and applicable regulations, statutes, and case law. Each submission of the parties, although perhaps not specifically mentioned in this decision, has been carefully reviewed and given thoughtful consideration.[1]

**Law and Regulation** [2]

The United States, like many other industrialized nations, restricts the export of goods and services for reasons of national security. The United States Congress, under the President's signature, statutorily defined the penalties for violating such restrictions in Title 50 of the United States Code—''War and National Defense'' as follows:

§ 2410 Violations

(a) In general

Except as provided in subsection (b) of this section, whoever knowingly violates or conspires to or attempts to violate any provision of this Act [section 2401 to 2420 of this Appendix] or any regulation, order, or license issued thereunder shall be fined not more than five times the value of the exports involved or $50,000, whichever is greater, or imprisoned not more than 5 years, or both.

(b) Willful violations

(1) Whoever willfully violates or conspires to or attempts to violate any provision of this Act [sections 2401 to 2420 of this Appendix] for any regulation, order, or license issued thereunder, with knowledge that the exports involved will be used for the benefit of, or that the destination or intended destination of the goods or technology involved is, any controlled country or any country to which exports are controlled for foreign policy purposes—

(A) Except in the case of an individual, shall be fined not more than five times the value of the exports involved or $1,000,000, whichever is greater; and

(B) In the case of an individual, shall be fined not more than $250,000, or imprisoned not more than 10 years, or both.

(2) Any person who is issued a validated license under this Act [sections 2401 to 2420 of this Appendix] for the export of any good or technology to a controlled country and who, with knowledge that such a good or technology is being used by such controlled country for military or intelligence gathering purposes contrary to the conditions under which the license was issued, willfully fails to report such use to the Secretary of Defense—

(A) Except in the case of an individual, shall be fined not more than five times the value of the exports involved or $1,000,000, whichever is greater; and

(B) In the case of an individual, shall be fined not more that $250,000, or imprisoned not more than 5 years, or both.

(3) Any person who possesses any goods or technology—

(A) With the intent to export such goods or technology in violation of an export control imposed under section 5 or 6 of this Act [section 2404 or 2405 of this Appendix] or any regulation, order, or license issued with respect to such control, or

(B) Knowing or reason to believe that the goods or technology would be so exported,

Shall, in the case of a violation of an export control imposed under section 5 [section 2404 of this Appendix] (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in paragraph (1) of this subsection and shall, in the case of a violation of an export control imposed under section 6 [section 2405 of this Appendix] (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in subsection (a).

(4) Any person who takes any action with the intent to evade the provisions of this Act [sections 2401 to 2420 of this Appendix] or any regulation, order, or license issued under this Act [sections 2401 to 2420 of this Appendix] shall be subject to the penalties set for in subsection (a), except that in the case of an evasion of an export control imposed under section 5 or 6 of this Act [section 2404 or 2405 of this Appendix] (or

[1] Each of these alleged violations were the result of separate and distinct shipments over a desperate four and one-half year period and were not based upon a continuing violation concept. The alleged violations are defined in the charging letter with reference to the EAR that were in effect at the time of the alleged incidents (*See* 15 CFR Parts 768–799 (1991–1995). These Regulations were issued pursuant to the Export Administration Act of 1979 and define the violations that BXA alleges occurred and are referred to hereinafter as the former regulations. Since that time, the regulations have been reorganized and restructured; the restructured regulations establish the procedures that apply to this matter. The Act expired on August 20, 1994. Executive Order 12924 (3 F.R.R. 1994 Comp. 917 (1995)), August 14, 1996 (3 CFR 1996 Comp. 298 (1997)), and August 13, 1997 (62 *FR* 43629, August 15, 1997), continued the Regulations in effect under the International Emergency Economic Powers Act (currently codified at 50 U.S.C.A. §§ 1701–1706 (1991 and Supp. 1998)).

[1] A list of the record evidence in this case is set forth in Appendix A, attached hereto.

[2] Because an evidentiary hearing was not held in this matter, a record was not developed which included exhibits that contained copies of each of the applicable laws and regulations. In order to aid the readers of this opinion, all applicable laws and regulations are set forth herein.

any regulation, order, or license issued with respect to such control), such person shall be subject to the penalties set forth in paragraph (1) of this subsection.

(5) Nothing in this subsection or subsection (a) shall limit the power of the Secretary to define by regulations violations under this Act [sections 2401 to 2420 of this Appendix].

(c) Civil penalties; administrative sanctions

(1) The Secretary (and officers and employees of the Department of Commerce specifically designated by the Secretary) may impose a civil penalty not to exceed $10,000 for each violation of this Act [sections 2401 to 2420 of this Appendix] or any regulation, order or license issued under this Act [sections 2401 to 2420 of this Appendix], either in addition to or in lieu of any other liability or penalty which may be imposed, except that the civil penalty for each such violation involving national security controls imposed under section 5 of this Act [section 2404 of this Appendix] or controls imposed on the export of defense articles and defense services under section 38 of the Arms Export Control Act [22 U.S.C.A. § 2778] may not exceed $100,000.

(2)(A) The authority under this Act [sections 2401 to 2420 of this Appendix] to suspend or revoke the authority of any United States person to export goods or technology may be used with respect to any violation of the regulations issued pursuant to section 8(a) of the Act [section 2407(a) of the Appendix].

(B) Any administrative sanction (including any civil penalty or any suspension or revocation of authority to export) imposed under this Act [sections 2401 to 2420 of this Appendix] for a violation of the regulations issued pursuant to section 8(a) of this Act [section 2407(a) of this Appendix] may be imposed only after notice and opportunity for an agency hearing on the record in accordance with sections 554 through 557 of title 5, United States Code [5 U.S.C.A. §§ 554 to 557].

(C) Any charging letter or other document initiating administrative proceedings for the imposition of sanctions for violations of the regulations issued pursuant to section 8(a) of the Act [section 2407(a) of the Appendix] shall be made available for public inspection and copying.

(3) An exception may not be made to any order issued under this Act [sections 2401 to 2420 of this Appendix] which revokes the authority of a United States person to export goods or technology unless the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate are first consulted concerning the exception.

(4) The President may by regulation provide standards for establishing levels of civil penalty provided in this subsection based upon the seriousness of the violation, the culpability of the violator, and the violator's record of cooperation with the Government in disclosing the violation.

**United States Department of Commerce Regulations**

*15 CFR 787—Enforcement*

§ 787.1 Sanctions

(a) Criminal (1) Violations of Export Administrative Act (i) General. Except as provided in paragraph (a)(1)(ii) of this section, whoever knowingly violates or conspires to or attempts to violate the Export Administration Act (''the Act'') or any regulation, order, or license issued under the Act is punishable for each violation by a fine of not more than five times the value of the exports involved or $50,000, whichever is greater, or by imprisonment for not more than five years, or both.

(ii) Willful violations. (A) Whoever willfully violates or conspires to or attempts to violate any provision of this Act or any regulation, order, license issued thereunder, with knowledge that the exports involved will be used for the benefit of or that the destination or intended destination of the goods or technology involved is any controlled country or any country to which exports are controlled for foreign policy purposes, except in the case of an individual, shall be fined not more than five times the value of the export involved or $1,000,000 whichever is greater; and in the case of an individual shall be fined not more than $250,000, or imprisoned not more than 10 years, or both.

(B) Any person who is issued a validated license under this Act for the export of any goods or technology to a controlled country and who with the knowledge that such export is being used by such controlled country for military or intelligence gathering purposes contrary to the conditions under which the license was issued, willfully fails to report such use to the Secretary of Defense, except in the case of an individual, shall be fined not more than five times the value of the exports involved or $1,000,000, whichever is greater; and in the case of an individual, shall be fined not more than $250,000, or imprisoned not more than five years, or both.

(C) Any person who possesses any goods or technology with the intent to export such goods or technology in violation of an export control imposed under section 5 or 6 of the Act or any regulation, order, or license issued with respect to such control, or knowing or having reason to believe that the goods or technology would be so exported, shall, in the case of a violation of an export control imposed under section 5 of the Act (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in paragraph (a)(1)(ii)(A) of this section and shall, in the case of a violation of an export control imposed under section 6 of the Act (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in paragraph (a)(1)(I) of this section.

(D) Any person who takes any action with the intent to evade the provisions of this Act or any regulation, order, or license issued under this Act shall be subject to the penalties set forth in paragraph (a)(1)(i) of this section, except that in the case of an evasion of an export control imposed under section 5 or 6 of the Act (or any regulation, order, or license issued with respect to such control), such person shall be subject to the penalties set forth in paragraph (a)(1)(ii)(A) of this section.

(2) Violations of False Statements Act. The submission of false or misleading information or the concealment of material facts, whether in connection with license applications, boycott reports, Shipper's Export Declarations, Investigations, compliance proceedings, appeals, or otherwise, is also punishable by a fine of not more than $10,000 or by imprisonment for not more than five years, or both, for each violation (18 U.S.C. 1001).

(b) Administrative [1]—(1) Denial of export privileges, Whoever violates any law, regulation, order, or license relating to export controls or restrictive trade practices and boycotts is also subject to administrative action which may result in suspension, revocation, or denial of export privileges conferred under the Export Administration Act (*See* § 788.3 et seq).

(2) Exclusion from practice. Whoever violates any law, regulation, order, or license relating to export controls or restrictive trade practices and boycotts is further subject to administrative action which may result in exclusion from practice before the Bureau of Export Administration (*See* § 790.2(a)).

(3) Civil penalty. A civil penalty may be imposed for each violation of the Export Administration Act or any regulation, order or license issued under the Act either in addition to, or instead of, any other liability or penalty which may be imposed. The civil penalty may not exceed $10,000 for each violation except that the civil penalty for each violation involving national security controls imposed under section 5 of the Act may not exceed $100,000. The payment of such penalty may be deferred or suspended, in whole or in part, for a period of time that may exceed one year. Deferral or suspension shall not operate as a bar in the collection of the penalty in the event that the conditions of the suspension or deferral are not fulfilled. When any person fails to pay a penalty imposed under this paragraph (b)(3), civil action for the recovery of the penalty may be brought in the name of the United States, in which action the court shall determine *de novo* all issues necessary to establish liability. Once a penalty has been paid, no action for its refund may be maintained in any court.[1]

(4) Seizure. Commodities or technical data which have been, are being, or are intended to be, exported or shipped from or taken out of the United States in violation of the Export

[1] Violations of the Act or regulations, or any order or license issued under the Act, may result in the imposition of administrative sanctions, and also or alternatively of a fine or imprisonment as described in paragraph (a) of this section, seizure or forfeiture of property under section 11(g) of this Act or 22 U.S.C. 401, or any other liability or penalty imposed by law. The U.S. Department of Commerce may compromise and settle any administrative proceeding brought with respect to such violations.

[1] The U.S. Department of Commerce may refund the penalty at any time within two years of payment if it is found that there was a material error of fact or of law.

Administration Act or of any regulation, order, or license issued the Act are subject to being seized and detained, as are the vessels, vehicles, and aircraft carrying such commodities or technical data are subject to forfeiture (50 U.S.C. app. 2411(g)) (22 U.S.C. 401, see § 786.8(b)(6)).

*15 CFR 772.1(b)—Exports Requiring Validated Licenses*

No commodity or technical data subject to the Export Administration Regulations may be exported to any destination without a validated license issued by the Office of Export Licensing, except where the export is authorized by a general license or other authorization by the Office of Export Licensing.

*15 CFR 787.5—Misrepresentation and Concealment of Facts; Evasion*

(A)(1) Misrepresentation and Concealment. No person may make any false or misleading representation, statement, or certification, or falsify or conceal any material fact, whether directly to the Bureau of Export Administration, any Customs Office, or any official of any other United States agency, or indirectly to any of the foregoing through any other person or foreign government agency or official * * *

*15 CFR 787.6—Export, Diversion, Reexport, Transshipment*

Except as specifically authorized by the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may export, dispose of, divert, direct, mail or otherwise ship, transship, or reexport commodities or technical data to any person or destination or for any use in violation of or contrary to the terms, provisions, or conditions of any export control document, any prior representation, any form of notification a prohibition against such action, or any provision of the Export Administration Act or any regulation, order, or license issued under the Act.

*15 CFR 774.1—Reexport of U.S.-Made Equipment*

Unless the reexport of a commodity previously exported from the United States has been specifically authorized in writing by the Office of Export, Licensing prior to its reexport * * *, no person in a foreign country (including Canada) or in the United States may;

(a) Reexport such commodity * * * from the authorized country(ies) of ultimate destination * * *.

**Joint Stipulations of Fact**

Aluminum Company of America (ALCOA) and the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA) stipulated to the following facts:

1. ALCOA is a corporation organized under the laws of Pennsylvania with its principal offices located at 425 Sixth Avenue, ALCOA Building, Pittsburgh, Pennsylvania 15219.

2. ALCOA is one of the world's leading producers of aluminum and a primary participant in all segments of the industry mining, refining, smelting, fabricating, and recycling.

3. ALCOA is one of the world's largest producers of alumina, which is both an intermediate product in the production of aluminum and an important chemical product in itself.

4. During the period June 14, 1991 through December 7, 1995 (''the review period''), ALCOA, through its subsidiary ALCOA Minerals of Jamaica (''AMJ''), and the Government of Jamaica, through its subsidiary Clarendon Alumina Productions (''CAP''), owned an alumina refinery in Clarendon Parish, Jamaica. CAP and AMJ each owned a 50% interest in the alumina refinery.

5. Jamalco is a joint operation, located in Kingston, Jamaica, governed by a Joint Venture Agreement between AMJ and CAP dated March 1, 1988. The joint venture is governed by an eight member Executive Committee, four members each from CAP and AMJ. Article 5 of the Joint Venture Agreement provides that the Executive Committee will appoint a manager who will have full rights and responsibilities to manage and control the day to day conduct of the operations of the joint venture. Article 5 further requires that AMJ be appointed as the Manager. AMJ has acted as Manager at all times since 1988.

6. Prior to December 30, 1994, ALCOA operated mining, refining, and smelting operations in Suriname (Suralco). As of December 30, 1994, all of ALCOA's bauxite, alumina and alumina-based chemicals businesses, including Suralco, were restructured and combined into ALCOA Alumina and Chemicals, L.L.C. Subsequently, Suralco has been owned 98% by ALCOA Alumina and Chemicals, L.L.C., and 2% by ALCOA Caribbean Alumina Holdings, L.L.C., each of which is owned 60% by ALCOA and 40% by WMC Limited, an Australian corporation.

7. Since 1984, the alumina refinery in Paranarn, Suriname has been co-owned by Suralco and an affiliate of Billiton N.V., a Dutch corporation, and has been operated pursuant to a Refining Joint Venture Operating Agreement dated March 14, 1984, as amended. In accordance with Article 5.02 of the Refining Joint Venture Operating Agreement, Suralco was in 1984 appointed, and has since then acted as Manager of the Paranam refinery.

8. During the review period, the refineries in Jamaica and Suriname used potassium fluoride as the key reagent for refining alumina from bauxite, the raw ore for aluminum.

9. During the review period, the water treatment facility in Suriname used sodium fluoride to treat drinking water. Suralco's water treatment facility was located in the powerhouse which supplied electricity to and was located at Suralco's bauxite mine in Moengo, Suriname. In March 1994, Suralco sold its Moengo powerhouse and water treatment facility to Energie Bedrijven Suriname (EBS), a utility company owned by the government of Suriname. In conjunction with the sale of the powerhouse and water treatment facility, Suralco agreed to continue operating the water treatment facility for one year. Consequently, Suralco personnel were on-site at the water treatment facility at all times when ALCOA's Export Supply Division shipped sodium fluoride to Suralco. Also as part of the powerhouse sale agreement, Suralco agreed to provide the chemicals used in the water treatment facility for a period of two years following the sale.

10. During the review period, logistical support for Jamalco and Suralco was provided by ALCOA's Export Supply Division (''ESD''), located in New Orleans, Louisiana.

11. During the review period, Jamalco and Suralco purchased certain items from a scheduled buying list, while other times were purchased only as required in specific instances.

12. During the review period, ESD received requisitions from Jamalco and Suralco, located suppliers, purchased products, and shipped the requested items to Jamalco and Suralco.

13. During the review period, ESD prepared all export and shipping documentation for shipments to Jamalco and Suralco.

14. ESD was responsible for determining the applicable export licensing requirements for items ordered by Jamalco and Suralco during the review period.

15. For each shipment of specially-ordered items to Jamalco and Suralco during the review period, the export compliance procedures in place provided that ESD was to review the Export Administration Regulations to determine the applicable export licensing requirement.

16. On several occasions during the review period, ESD obtained validated licenses from BXA to export specially-ordered items, such as computers, to Jamalco and Suralco.

17. By contrast, once ESD made an initial determination of the export licensing requirements for items on the scheduled buying list, ESD did not thereafter review the Export Administration Regulations for each subsequent shipment of ''scheduled buying lists'' goods to Jamalco and Suralco.

18. Both potassium fluoride and sodium fluoride were on ESD's scheduled buying list for Jamalco and Suralco both before and during the review period.

19. Both potassium fluoride and sodium fluoride were routinely purchased against periodic requisitions regularly submitted by Jamalco and Suralco both before and during the review period.

20. Under the export compliance procedures in place during the review period, ESD did not perform a complete export compliance check for each shipment of potassium fluoride and sodium fluoride to Jamalco and Suralco.

21. Prior to March 13, 1991, exporters were not required to obtain from BXA a validated license to export potassium fluoride and sodium fluoride from the United States to Jamalco and Suralco.

22. Prior to March 13, 1991, ESD lawfully exported potassium fluoride and sodium fluoride on a regular basis to Jamalco and Suralco under general license authority.

23. On March 13, 1991, through a notice published in the Federal Register, entitled Expansion of Foreign policy Controls on Chemical Weapons Precursors (56 Fed. Reg 10756), the Department of Commerce

amended the Commerce Control List of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730–774 (1997)),[2] ''by expanding the number of countries for which a validated license is required for 39 precursor chemicals. Under the rule, the 39 chemicals will require a validated license for export to all destinations except NATO member countries, Australia, Austria, Ireland, Japan, New Zealand, and Switzerland.'' Potassium fluoride and sodium fluoride were included on the list of 39 chemicals subject to the regulatory change.

24. As potassium fluoride and sodium fluoride were routinely ordered by Jamalco and Suralco, ESD failed to attach any significance to the March 1991 amendment, missed the regulatory change, and continued to export these commodities to the refineries during review period without first obtaining from BXA the validated export license required under the Regulations.

25. During the review period, ESD made 47 shipments of potassium fluoride to Jamalco and Suralco without validated license. The total value of these shipments was $104,637.00.

26. During the review period, ESD made three shipments of sodium fluoride to Suralco without validated licenses. The total value of these shipments was $6.603.00.

27. During the review period, ESD used Shippers Export Declarations (''SEDs''), an export control document as defined in the Export Administration Regulations, to effect the export of potassium fluoride and sodium fluoride from the United States to Jamaica and Suriname.

28. With eight exceptions, ALCOA identified the chemicals shipped to Jamalco and Suralco on the SEDs by their specific nomenclature.

29. As a result of missing the March 1991 regulatory amendment, ALCOA, during the review period, indicated on each SED used for the export of the chemicals from the United States to Jamaica and Suriname that the goods qualified for export from the United States to Jamaica and Suriname under general license G–DEST, when in fact the chemicals required a validated license for export from the United States to both destinations.

30. ESD had no intent to make any false or misleading statements on the SEDs accompanying the shipments of potassium fluoride and sodium fluoride to Jamalco and Suralco during the review period.

31. The exports of potassium fluoride and sodium fluoride during the review period were made to countries that are not suspected of engaging in illicit weapons development.

32. All of the potassium fluoride and sodium fluoride shipped by ESD to Jamalco and Suralco during the review period was completely consumed on the premises of the refinery and water treatment facilities in Jamaica and Suriname.

33. Once BXA informed ALCOA that ESD had shipped potassium fluoride and sodium fluoride to Jamaica and Suriname during the review period without the required validated export license, ALCOA cooperated fully with BXA in its investigation.

34. After BXA brought to ALCOA's attention the regulatory change imposing a validated licensing requirements on exports of potassium fluoride and sodium fluoride to Jamaica and Suriname, ALCOA applied for, and BXA granted, validated license for shipments of potassium fluoride to Jamaica and Suriname made after the review period.

35. During the review period, there was a presumption of approval, on a case-by-case basis, for license to export potassium fluoride and sodium fluoride from the United States to Jamaica and Suriname.

36. Prior to the initiation of the investigation by BXA, ALCOA retained outside counsel and experts to assist in improving and strengthening ALCOA's export compliance procedures.

37. As a result of these efforts, ALCOA developed and implemented a new export compliance program that includes an export compliance manual (with specific procedures and policies applicable to all exports by ALCOA), training seminars, instructional videos, and other measures.

38. 15 CFR 787.4(a) provides:

(a) No person may order, buy, receive, conceal, store, use, sell, loan, dispose of, transfer, transport, finance, forward, or otherwise service, in whole or in part, any commodity or technical data exported or to be exported from the United States or which is otherwise subject to the Export Administration Regulations, with knowledge or reason to know that a violation of the Export Administration Act or any regulation, order, or license has occurred, is about to occur, or is intended to occur with respect to any transaction.

The parties stipulated at the Oral Argument that this regulation does not have a strict liability trigger since it contains a knowledge element (TR–33).

39. 15 CFR § 787.4(b) provides:

(b) No person may possess any commodities or technical data, controlled for national security or foreign policy reasons under section 5 or 6 of the Act:

(1) With the intent to export such commodities or technical data in violation of the Export Administration Act or any regulation, order, license or other authorization under the Act, or;

(2) Knowing or having reason to believe that the commodities or technical data would be so exported.

The parties stipulated at the Oral Argument that this regulation does not have a strict liability trigger since it contains a knowledge or intent element (TR–33).

40. 15 CFR 787.5(b) provides:

(b) Evasion. No person may engage in any transaction or take any other action, either independently or through any other person, with intent to evade the provision of the Act, or any regulation, order, license or other authorization issued under the Act.

The parties stipulated at the Oral Argument that this regulation does not have a strict liability trigger since it contains a knowledge or intent element (TR–33).

**Findings of Fact** [1]

1. The Respondent and BXA entered into forty (40) Joint Stipulations of Fact which are set forth above. Each and every one of those Joint Stipulations of Fact are hereby accepted by the undersigned and adopted as a Finding of Fact in this proceeding.

2. Aluminum Company of America (ALCOA), the Respondent, was at all times herein a Corporation authorized to and doing business in the United States. As such, the Respondent clearly fails within the definition of ''person'' set forth in 15 CFR 770.2; currently codified at 15 Code of Federal Regulations, Parts 730–774 (1997), issued the Regulations 768–799) hereinafter known as the former Regulations (*see* Joint Stipulations of Fact Nos. 1, 2, and 3).

3. Potassium fluoride is the key reagent used during the refining of alumina from its bauxite ore. Bauxite is crushed and mixed with a caustic soda solution. This solution dissolves the alumina present in the bauxite. Potassium fluoride is used to determine the level of dissolved alumina in the caustic solution. Only a small amount of potassium fluoride is used per metric ton of bauxite processed (*see* Respondent's Answer dated January 20, 1998, page 2).

4. Sodium fluoride was used by the ALCOA facility in Suriname to treat drinking water for people living in the Suralco refinery area. All of the sodium fluoride exported from the United States to Suriname was used by this ALCOA subsidiary facility and was fully consumed in the water treatment process. ALCOA sold the water treatment facility to the government of Suriname in July 1994. Therefore, Suralco no longer uses any sodium fluoride (*See* Respondent's Answer dated January 20, 1998, page 3).

5. All of the potassium fluoride and Sodium Fluoride exports at issue in this case were sent to ALCOA's refinery operations in Jamaica (Jamalco) and Suriname (Suralco). These refineries are located near bauxite mines. Bauxite is the raw ore for aluminum. The refineries process the bauxite so as to extract aluminum oride (alumina), which becomes the basic feedstock for ALCOA's metal and chemical businesses. Both refineries were directly controlled by ALCOA during the period June 14, 1991 through December 7, 1995 (*See* Respondent's Answer dated January 20, 1998, page 2).

6. Prior to March 13, 1991, validated licenses were not required under the EAR for exports of potassium fluoride and sodium fluoride either to Jamaica or Suriname. Therefore, prior to that date, ESD had lawfully exported these products to the refineries under the EAR general license authority. However, on March 13, 1991, the Department of Commerce amended the Commerce Control List of the EAR by expanding the number of countries for which a validated license was required for exports of thirty-nine (39) commodities.

7. Logistical support for the ALCOA refineries in Jamaica and Suriname was provided by ALCOA's Export Supply

[2] At the time BXA promulgated this rule, the Export Administration Regulations were found at 15 CFR Parts 768–799 (1991). Since that time, the Regulations have been reorganized and restructured.

[1] Neither Respondent nor Agency submitted Proposed Findings of Fact. As a result, no rulings are made thereon.

Division (''ESD''), located in New Orleans, LA. Through ESD, the refineries regularly purchased certain items from a scheduled buying list, while other items were purchased only as required in specific instances. In this capacity, ESD purchased everything from office surplus and repaired parts to replacements for equipment and operating supplies. ESD received requisitions from the refineries, located U.S. suppliers for the requested product, purchased the products, and shipped them to the refineries. ESD prepared all export and shipping documentation for shipments to the refineries (See Respondent's Answer dated January 20, 1998, page 3).

8. ESD's sole function was to support the Jamalco and Suralco refineries. It annually handled approximately 25,000 transactions involving 100,000 different items, with a total value of over $125 million. Before, during and after the time periods in question, ESD was aware of the EAR, and sought and obtained validated export licenses for a variety of products, including computer systems and related equipment (*See* Respondent's Answer dated January 20, 1998, page 3).

9. Both potassium fluoride and sodium fluoride were ESD's scheduled buying list for the refineries both before and during the time periods in question and were, in fact, purchased against requisitions submitted by Jamalco and Suralco. Indeed, during the time period in question, ESD made forty-seven (47) shipments of potassium fluoride to the Jamalco and Suralco refineries, and three (3) shipments of sodium fluoride to the Suralco refinery (*See* Respondent's Answer dated January 20, 1998, page 3).

10. On 50 separate occasions between June 14, 1991, and December 7, 1995, ALCOA exported potassium fluoride and sodium fluoride from the United States to Jamaica and Surinam, without obtaining from BXA the validated export licenses required by Section 772.1(b) of the former regulations. By exporting U.S.—origin commodities to any person or to any destination as set forth in Section 772.1(b) of the former regulations, ALCOA violated Section 787.6 of the former regulations on 50 separate occasions, for a total of 50 separate violations (See Respondent's plea of ''Admit'' to charges 1–50 in its January 1998 Answer, page 5).

11. On 50 separate occasions between June 14, 1991, and December 7, 1995. ALCOA used Shipper's Export Declarations as defined in Section 770.2 of the former Regulations, on which it represented that potassium fluoride and sodium fluoride, qualified for export from the United States to Jamaica and Surinam under general license G–DEST. Contrary to ALCOA's Shippers Export Declarations, the export of potassium fluoride and sodium fluoride to Jamaica and Surinam required a validated license to both of those destinations and did not qualify for export under general license G–DEST (*See* Respondent's plea of ''Admit'' to finding of Fact No. 9, above; and Joint Stipulation of Fact No. 29, above).

12. Based on the Respondent's admitted actions set forth in Finding of Fact No. 10 above, ALCOA violated 15 CFR 787.5(a) of the former regulations by making ''false or misleading representations[s], statement[s], or certification[s]'' of material fact to a United States agency in connection with the use of export control documents required under 15 CFR 772.1(b) to effectuate the export of potassium fluoride and sodium fluoride from the United States to Jamaica and Suriname (*See*, legal discussion below).

**Conclusions of Law**

1. That 15 CFR 787.5(a) of the former regulations does not require ''knowledge'' or ''intent'' in order for a finding that the Respondent violated said regulation. Liability and administrative sanctions are imposed on a strict liability basis once the Respondent commits the proscribed act;

2. That the Respondent, Aluminum Company of America, committed 50 violations of 15 CFR 787.5(a) during the period from June 14, 1991 through December 7, 1995 when potassium fluoride and sodium fluoride were exported from the United States to Jamaica and Suriname without obtaining validated export licenses required by 15 CFR 772.1(b);

3. That the Respondent, Aluminum Company of America, committed 50 violations of 15 CFR 787.6 during the period of June 14, 1991 through December 7, 1995 by making false and misleading statements of material fact to a United States agency in connection with the use of export control documents;

4. That based upon the entire record in this matter, the appropriate civil penalty for each of the 100 violations is $10,000 for a total of $1,000,000. The record does not support the suspension of part of the civil penalty assessment on probation.

**Discussion**

Based upon the stipulations of the parties, there are only two questions to be answered in this proceeding:

(I) Is ''knowledge'' or ''intent'' a necessary element of a violation of § 787.5(a) of the former regulations? and

(II) What is the appropriate level of sanctions in this case?

I. *SECTION 787.5(a) OF THE FORMER REGULATIONS DOES NOT REQUIRE ''KNOWLEDGE'' OR ''INTENT'' IN ORDER FOR A FINDING THAT THE RESPONDANT VIOLATED SAID REGULATION. LIABILITY AND ADMINISTRATIVE SANCTIONS ARE IMPOSED ON A STRICT LIABILITY BASIS ONCE THE RESPONDANT COMMITS THE PROSCRIBED ACT.*

Contrary to the arguments of the Respondent, the answer to this issue is clearly set forth in *Iran air* v. *Kugelman*, 996 F.2d 1253 (D.C. Cir. 1993). In that case, then-Judge Ruth Bader Ginsburg found that the ''essential question is whether the agency, in its reading of the current regulations, reasonably construed the statute, 50 U.S.C.A. App. § 2410, to allow the imposition of civil sanctions on a strict liability basis.'' The answer in *Iran Air* was clearly yes. Therein, the Acting Under Secretary of Commerce for Export Administration determined that an exporter's knowledge need not be shown as a prerequisite to the imposition of civil penalties under the Export Administration Act of 1979, § 11(c), 50 U.S.C.A. App. § 2410(c).[1]

The court in the *Iran Air* case stated:

It is not unusual for Congress to provide for both criminal and administrative penalties in the same statute and to permit the imposition of civil sanctions without proof of the violator's knowledge. Here, the agency maintains, Congress has allowed for an array of penalties for violations of the Export Act: criminal fine and/or imprisonment for the knowing violator; more severe criminal fine and/or longer prison terms for the willful violator; and civil penalties against any violator. Supporting the agency's position that subsection (a)'s knowledge requirement need not be read into subsection (c), Congress expressly provided that nothing in subsection (a) or (b) ''limits the power of the Secretary to define by regulations violations under this Act.'' 50 U.S.C. App. § 2410(b)(5). Furthermore, Congress specifically authorized the executive to establish ''levels of civil penalty * * * based upon the seriousness of the violation, the culpability of the violator, and the violator's record of cooperation with the Government in disclosing the violation.'' *Id.* At 2420(c)(4). The provisions appear to leave room for civil penalty regulations that include a knowledge requirement * * * or that allow * * * the imposition of strict liability. *Id.* At 1258.

Therefore, there can be no question that the United States Congress authorized the Secretary of Commerce to promulgate regulations on a strict liability basis pursuant to § 2410 of the Export Administration Act. In order to determine if the Secretary intended to impose a civil sanction for an unwitting violation of the Act (*i.e.*, strict liability), we must look at the regulation that ALCOA was charged with violating:

*15 CFR 787.5 Misrepresentation and Concealment of Facts; Evasion*

(a)(1) Misrepresentation and Concealment. No person may make any false or misleading representation, statement, or certification, or falsify or conceal any material fact, whether directly to the Bureau of Export Administration, any Bureau of Export Administration, any Customs Office, or an official of any other United States agency, or indirectly to any of the foregoing through any other person or foreign government agency or official. * * *

The drafting of agency regulations has evolved into an art form since the passage of the Administrative Procedure Act (5 U.S.C. § 551 *et seq.*) in 1946. As the Court noted in the *Iran Air* case, *Id.* at 1256, the answer to whether a regulation has a strict liability trigger is determined by whether the Secretary, in drafting the regulation, included a ''state of mind'' requirement. A clear and unbiased reading of this regulation reveals no such requirement and therefore liability attaches on a strict liability basis.

The Respondent acknowledges that this regulation does not contain a ''state of mind'' element such as ''knowledge to cause'' (§ 787.2), with ''knowledge or reason to

[1] In the *Iran Air,* case, *Id.*, the court specifically found that 15 CFR §774.1 of the regulations had a strict liability trigger.

know'' (§ 787.4(a)), ''with intent'' or ''knowing or having reason to believe'' (§ 787.4(b)), and ''with intent to evade'' (§ 787.5(b) (*See* Joint Stipulations of Fact Nos. 38, 39 and 40). However, the Respondent argues that since neither the statute nor the regulations define ''false or misleading statements'', the judge must use the ''accumulated settled meaning'' of these terms as defined in Black's Law Dictionary and the legal precedent applicable thereto. The Respondent argues that Black's Law Dictionary defines a ''false statement'' as one that is made with *knowedge* that it is false. The word ''misleading'' is defined as delusive—*calculated* to lead astray or lead into error. The Respondent cites *Feld* v. *Mans,* 116 S. Ct. 437, 445–46 (1995) for the proposition that it is established practice to find meaning in the generally shared common-law when common-law terms are used without further specification.[1]

The government disagrees with what it calls the Respondent's ''attenuated lexicographical-based arguments''. The government argues that as to the federal statute issue, had the Congress intended to include a ''knowledge'' element in the civil penalty provision, it would have explicitly done so (*See e.g.,* False Claims Act, 31 U.S.C. § 3729(a). I agree. 50 U.S.C. App. § 2410(c)(1) does not include a ''knowledge'' element and it is clear in the *Iran Air* case, *Id* at 1258, that Congress explicitly left the issue of strict liability vs. knowledge/intent with the Secretary of Commerce. Indeed, the Secretary promulgated a regulatory scheme that included both types of regulations. Thus, where the Secretary intended that a regulation include a ''knowledge'' or ''intent'' element, the regulation contained explicit language (*See e.g.,* §§ 787.4(a), 787.4(b), 787.5(b), § 387.2 (1980) and joint stipulations of fact Nos. 38, 39, and 40). Conversely, where the Secretary intended no such ''knowledge'' or ''intent'' element, the regulations did not include such a trigger (*See e.g.* §§ 774.1(a), 787.2, 787.5(a)).

The case of *People* v. *Chevron Chemical Co.,* 191 Cal.Rptr 537 (App. 1983) is very informative on the issue at hand. The fact that it is a California criminal case rather than a federal civil penalty case is even more compelling. In that case, the state brought an action against Chevron, charging it with violating the Fish and Game Code for depositing substances deleterious to fish, plant or bird life into state waters—a criminal misdemeanor penalty. The sole issue presented in that case was whether the offense should be construed as a strict liability offense, or one that requires proof of criminal negligence or criminal intent.[1] In ruling on that issue, the Court stated;

In more recent times, the California Supreme Court found *mens rea* unnecessary and upheld the conviction of a meat market proprietor for ''short-weighting'' in the sale of meat by his employee. The court noted that ''where qualifying words such as knowingly, intentionally, or fraudulently are omitted from provisions creating the offense, it is held that guilty knowledge and intent are not elements of the offense''. The court went on to quote from an Ohio case which stated the basic principle: 'There are many acts that are so destructive of the social order, or where the ability of the state to establish the element of criminal intent would be so extremely difficult if not impossible of proof, that in the interest of justice the legislature has provided that the doing of the act constitutes a crime, regardless of knowledge or criminal intent on the part of the defendant'. (*In re Marley* (1946) 29 Cal.2d 525, 529, 175 P. 2d 832).

In the *Chevron* case, *supra* at 539, the court discusses the well recognized public welfare offenses exception to the *mens rea* requirement in criminal prosecution. While not a criminal case, nor the traditional public welfare offense (*e.g.,* water pollution, use of unlicensed poison, sale of improperly branded motor oil, and liability of pharmacist for compounding of prescriptions by unlicensed persons), the regulatory violation herein involves materials that could be used for weapons of mass destruction and the injury or death of untold numbers of people. Accordingly, since these regulations deal with the most profound public welfare/national defense issues, the public interest demands that they be strictly construed in the absence of express ''knowledge'' or ''intent'' language.

The Respondent asserts that the case of *Ceasar Electronics, Inc.,* 55 Fed. Reg. 53016 (Dept Commerce 1990) supports it's position that 15 CFR § 787.5(a) requires that liability is imposed only when there exists a relatively high level of knowledge and intent to make false statements. I disagree. The factual circumstances involved therein proceeded on two tracks—a criminal indictment and conviction for violating 15 CFR § 787.5(a)(3) of the Regulations by one of the Respondent's Vice-Presidents and a subsequent administrative proceeding against the Corporation for violation of 15 CFR § 787.5(a)(1)(ii)(1984). The Order from the United States District Court in criminal case served as the underlying factual basis for the joint stipulations of the parties in the administrative case against the corporation. Thus, while the decision and order in the administrative case discussed knowledge and intent in relation to a § 787.5(a) violation, such predicates were not necessary to a finding of a violation. Indeed, both counsel stipulated at the oral argument in this case that the issue of strict liability for § 787.5(a) has never been decided (TR–36, lines 15–19).[1]

The Respondent cities Section 523(a)(2)(A) of the Bankruptcy Code as support for its position that knowledge and intent to deceive is a prerequisite to any violation of § 787.5(a). I disagree. The *Iran Air* case, *supra,* clearly spells out that Congress authorized the Secretary of Commerce to promulgate strict liability and knowledge/intent based regulations. The Secretary differentiated between the two types of regulations by using ''state of mind'' language for violations which were not intended to employ a strict liability standard and eliminated such triggering language where strict liability was intended. Under this circumstance, any caselaw dealing with § 523(a)(2)(A) requiring knowledge and intent to deceive as a predicate to liability where the regulation is silent as to the issue of ''state of mind'' is simply inapplicable. Moreover, the legislative history, purpose, and construction of the Bankruptcy Code concerns a fresh start for the debtor while the Export Administration Act concerns regulations exports for reasons of national security and foreign policy.

Importantly, an agency has the power to authoritatively interpret its own regulations as a component of it's delegated rulemaking powers (See *Martin* v. *OSHRC,* 499 U.S. 144, 113 L.Ed. 2d 117, 11 S. Ct. 1171.) This delegation of interpretive authority is ordinarily subject to full judicial review. However, because of the national security and/or foreign policy issues involved in regulations exports that could become component parts of weapons, the United States Congress made these Secretarial determinations final and only subject to limited judicial review (*See,* 50 U.S.C. App. § 2412(c)(1) and (3).

**II What Is the Appropriate Level of Sanctions in This Case?**

The Respondent has been found to have 50 separate violations of 15 CFR 787.6 of the former Regulations and 50 separate violations of 15 CFR 787.5(a) of the former regulations for a total of 100 violations.

Congress has provided for an array of penalties for violations of the Export Administration Act and the regulations promulgated thereunder. These penalties include a criminal fine and/or imprisonment for knowing violators, more severe criminal fines and/or longer prison terms for willful violators and civil penalties against any violator. Since the government apparently did not have proof of willful or intentional acts by the Respondent, criminal charges were not filed (TR–47). Thus, the government commenced this civil penalty action against the Respondent.

The maximum civil penalty assessment for each violation is $10,000 (*See* 15 CFR 764.3(a)(1)). In addition to the penalty assessment, the government could have requested a denial of export privileges (§ 764.3(a)(2)) and/or the exclusion from

[1] In support of its argument, the Respondent cites *NLRB* v. *Amax Coal Co.,* 453 U.S. 322, 329 (1981). In that case, the court held that ''where Congress uses terms that have accumulated settled meaning under either equity or the common law, a court must infer, unless the statute otherwise dictates, that Congress meant to incorporate the established meaning of these terms.''

[1] Fish and Game Code § 5650(f) provides that ''It is unlawful to deposit in, permit to pass into or place where it can pass into waters of this State any of the following: * * * (f) any substances or material deleterious to fish, plant life or bird life.''

[1] 50 U.S.C. App.§ 2412(c). (*Also see, Sparvr Optical Research, Inc.* v. *Baldrige,* 649 Supp, 1366 (D.C. Cir. 1986). This case was reversed, in part, in the *Iran Air* case, note No. 8 finding that a civil penalty may be imposed absent knowledge.); *Dart* v. *United States,* 848 F.2d 217 (D.C. Cir. 1988); and *Harrisiades* v. *Shavgnessy,* 342 U.S. 580, 589, 725, Ct. 512, 519, 96 L.Ed. 586 (1952). *The William A. Roessel, d/b/a Enigma Industries,* 62 Fed. Reg 4031 (Dep't Commerce 1997) and *Herman Kluever,* 56 FR 14916 (Dep't Commerce 1991) are similarly not dispositive of the issue since both cases also involved the aggravating factor of ''knowledge'' or ''intentional conduct''.

practice (§ 764.3(a)(3)). However, after investigating this case, the government determined that it would only seek $7,500 per violation and would not seek the denial of its export privileges or its exclusion from practice.

15 CFR 766.17(b)(2) requires that the presiding judge, after a *de novo* review of the entire record, recommend the appropriate administrative sanction or such other action as he or she deems appropriate.[1] 15 CFR 766.17(c) provides that any such penalty, or part thereof, may be suspended for a reasonable period of probation and remitted if no further violations occur during said probationary period. The Respondent argues that no administrative sanctions be imposed in this case or alternatively, that only a modest civil penalty be levied. ALCOA further argues that if the judge decides on the latter approach, that said penalty be suspended on probation.

In support of its position, the Respondent argues that any violations that occurred were not intentional or willful, that said violations resulted from its failure to comprehend the fact that the March 1991 **Federal Register** Notice added thirty-nine (39) chemicals to the list of chemicals that were identified as precursors for chemical weapons; that there was no risk that the chemicals would be diverted to chemical weapons use; that had the Respondent applied to BXA for the necessary validated licenses, they surely would have been granted; that the exports were entirely consumed at the refineries of the Respondent's subsidiary companies in Jamaica and Suriname; [1] that prior to the initiation of the government's investigation of this matter, the Respondent began developing and implementing an expanded and more comprehensive export compliance program, and that the Respondent has fully cooperated with the government in it's investigation of this matter.

In the government's reply to the Respondent's Answer, it argues that the retaining of outside counsel and experts to assist in improving its export compliance procedures prior to the initiation of the investigation is an aggravating rather than a mitigating factor; that the violations alleged herein are derived from errors that go to the very core of ALCOA's export compliance procedures; that ALCOA's methodology did not involve a periodic review of the Regulations for shipment of ''scheduled buying list goods'' after an initial determination was made concerning the export licensing of items on that list or a thorough monitoring of pertinent regulatory amendments published in the **Federal Register**; that outside counsel and experts retained by ALCOA should have revamped this system immediately upon being retained; that such changes in procedures were not implemented until after the commencement of the investigation; that this investigation did not arise in the context of a voluntary self-disclosure pursuant to § 764.4 of the Regulations; and that given this, the favorable weight accorded such self-disclosures in determining appropriate sanctions is not a factor to be considered.

The government goes on to argue that an ''exporter cannot reasonably 'fail to attach significance' to a regulatory change, bemoan the fact that he/she has been 'tripped-up' by changes in the law, and them argue that, by some stretch of the imagination, he/she should not be penalized for 'inadvertently' violating the law''; that ignorance of the law is no excuse; that the fact that the total value of the 50 shipments was under $112,000 is of no consequence in determining the proper amount of the civil penalty; and that the lack of intent to make false or misleading statements is irrelevant since liability attaches on a strict liability basis. Finally, the government notes that since the March 13, 1991 amendments were properly published in The **Federal Register**, the Respondent was charged with notice of the contents of the changes (*See* 44 U.S.C.A. § 1507 (1991)).

In ALCOA's response to the government's arguments, it states that there are numerous undisputed mitigating circumstances in this case and no aggravating factors; that under the circumstances, it is appropriated to waive or suspend sanctions; that included within the mitigating factors are that the Respondent has no prior violations; that the chemicals were shipped to countries that are not suspected of illegal weapons development; that there was a presumption of approval, on a case by case basis, for licenses to export these chemicals from the United States to Jamaica and Suriname; that the failure of the Respondent to obtain validated licenses should be viewed as technical violations; that the government's logic is distorted since it implies that it is somehow more appropriate to impose a civil penalty on the Respondent because its compliance program was imperfect rather than if ALCOA had had no export compliance program at all; that while the Act and Regulations may not mention the value of exports as a standard for Administrative sanctions, the Judge may consider that issue as a factor in his determination; that the government's proposed penalties are nearly seven (7) times larger than the value of the shipments in this case; that given the lack of harm to U.S. national security or foreign policy interests as a result of these exports, this huge multiple illustrates that the proposed penalty is excessive and overly punitive; that recent government settlement agreements in other cases demonstrate that the proposed penalty is unreasonable; that the Respondent has no prior violations; and that there are numerous cases with similar or even more egregious facts in which the settlement proposal ranged from $2,000 to $5,000 per violation, large portions of which were suspended.

After fully considering the arguments of the parties as to the appropriate sanction in this case, I find that the Respondent's civil penalty shall be $10,000 for each of the 100 violations for a total of $1,000,000. While this assessment exceeds that requested by the government, I find that it is warranted under the facts of this case. The passage of the Export Administration Act of 1979 had one main purpose—to control exports from the United States to other countries. As was noted in the Legislative history of this Act referring to S 737:

Exports contribute significantly to U.S. production and employment, and improved export performance helps pay for expanding U.S. imports of oil and other commodities. There are circumstances, however, in which the economic benefits and the presumption against government interference with participation in international commerce by United States citizens are outweighed by the potential adverse effect of particular exports on the national security * * * of the United States.[1]

By **Federal Register** Notice (Volume 56, No. 49, dated March 13, 1991), the Department of Commerce expanded export control of certain chemical weapons precursors (*i.e.*, chemicals that can be used in the manufacture of chemical weapons). The Notice amended the extant Commodity Control List, by expanding the number of countries for which a validated license was required for 39 precursor chemicals. In issuing this Notice, the Department of Commerce underscored its concern about chemical and biological weapons indicating that serious consideration is being given to eliminating the then-existing contract sanctity provisions of the regulations (*See* Respondent's July 27, 1998 submission, Tab 6). Thus, as the world was becoming a more dangerous place subject to terrorist attacks, the United States Government responded by significantly increasing its regulation of specific chemicals and biological precursors.

In this regard, the government noted in it's May 1, 1998 Reply at page 10:

International trade has been regulated from the earliest days of the republic. While particular aspects or areas of regulations have varied, the fact of the matter is that those engaged in an industry in which government regulation is likely must be presumed to be aware of, and practitioners in the industry are charged with knowledge of as well as the responsibility to comply with, the duly promulgated regulations. [Citing *United States* v. *International Minerals and Chemical Corporation,* 402 U.S. 558 at 563 & 565, 29 L.Ed. 178(1971)].

[1] Importantly, BXA does not have a standard table of orders which lists offenses with a recommended penalty range (*e.g.*, misconduct: 1–3 month suspension) which provides guidance to the judge such as in United States Coast Guard license suspension and revocation cases (46 CFR § 5.569) or a penalty schedule for United States Department of Commerce, National Oceanic and Atmospheric Administration cases where the proposed penalty is based on a published penalty schedule promulgated by the NOAA general counsel and which carries a presumption as to reasonableness (*See In the Matter of William J. Verna,* 4 O.R.W. 64 (NOAA App. 1985)). In that case, the Acting Administrator of NOAA found that the published penalty schedule represents a reasonable starting point and if the judge substantially increases or decreases the amount, good reason for such departures should be stated (*Also see, In the Matter of Kuhnle,* 5 O.R.W. 514, (NOAA App. 1989).

[1] The Respondent notes that neither of these designations were included in Court Group D: 3, which identifies those designations of particular concern with respect to chemical weapons proliferation (*i.e.*, Iran, Syria, Libya. North Korea, and Cuba) *See* CFR ¶799.1, Supp. 1 (*See* 15 CFR § 799.1, Supp.1 (1995)).

[1] *See* Export Administrative Act, P.L. 96–92, 93 Stat. 503, Legislative History at 1148 (Purpose of the Legislation) which is part of the record herein.

I*n the Matter of Core Laboratories, Inc.*, ITA–AB–2–80, Initial Decision and Order on Remand of Administrative Law Judge Huge J. Dolan (May 4, 1982) aff'd, *In the Matter of Core Laboratories, Inc.*, ITA–AB–2–80, Decision on Appeal and Order (March 14, 1983), remanded on other grounds, *United States* v. *Core Laboratories, Inc.*, 759 F.2d 480 (5th Cir. 1985).

Of all the aggravating factors in this case, one is particularly damming—*that the Respondent, over a period of four and one-half (4.5) years, made 50 separate exports of potassium fluoride and/or sodium fluoride in violation of the Export Administration Regulations (emphasis added).* Importantly, ALCOA is not a new or small company that doesn't understand the foreign export regulatory process. Quite to the contrary, the Respondent is a large multinational corporation which had a separate division (Export Supply Division) specifically dedicated to receiving requisitions, locating suppliers, purchasing products, and shipping the requested items in accordance with applicable export licensing requirements. Thus, ALCOA's conduct, under this backdrop, was flatly inexcusable and the fact that the violations were not intentional or willful is only relevant to the fact that a federal criminal indictment was not handed down. Respondent's failure to comprehend the change in the Federal Register Notice, given the existence of its Export Supply Division, is also particularly troubling.[1] Moreover, the fact that the unlawful shipments consisted of precursors for chemical weapons, regardless of the lack of any potential diversion in these instances, is not something that should be viewed as a technical oversight and is clearly an aggravating factor.

In mitigation, ALCOA argues that had it applied for the necessary validated licenses, they would have been presumptively granted. This argument misses the point. Over the past 20 years, a terrorist threat has developed to our Republic and our interests aboard. In order to protect our country and our interests, laws and regulations were passed/implemented to allow the government to monitor and regulate the export of precursor chemicals and if necessary, prevent any such exports that pose a clear and present danger. Given the huge number of exports from the United States, how is the government suppose to monitor the export of precursor chemicals if it doesn't know that the shipments were being made over a four and one-half year period? ALCOA responds that it filed under general license G–DEST and implies that the government was aware of these 50 separate exports over a four and one-half year period (*See* Respondent's Answer dated January 20, 1998, page 8). I disagree. The Respondent did not submit any evidence to support this position. The Respondent cannot shift its responsibility to the government to do that which it is legally required to do. Given the volume of such exports and the limited public resources to regulate these shipments, the government placed a legal duty on the exporter to file the specific applications with the office charged with such oversight responsibility. The Respondent breached that duty and in so doing, deprived the government of the opportunity to monitor its export of precursor chemicals.

The Respondent also argues that all of the precursor chemicals were entirely consumed at the refineries of the Respondent's subsidiary companies in Jamaica and Suriname. Once again, ALCOA misses the point. The crucial point here is that the government was deprived of possible vital information in its fight to control terrorism. In other words, if the world-wide export of chemicals/biological agents were a puzzle being put together by a U.S. Department of Commerce security team, this information constituted 50 pieces of that puzzle that the government did not have. While it turned out that there was no problem, the fact remains that the government did not have the whole picture. Without the whole picture, or in this case, all of the information about precursor chemical exports, catastrophic errors in preventative decision-making could have occurred.

The Respondent argues that prior to the initiation of the investigation into this matter, it began developing and implementing an expanded and more comprehensive export compliance program. The Respondent notes that it developed export control matrices for each U.S. business unit to identify export control issues on a product-by-product basis; produced a video to increase awareness of export control requirements to be used in conjunction with on-site training for each business unit; appointed export liaison's for each of its business units including the Export Supply Division, who is responsible for disseminating export compliance information; that it's legal department now monitors the **Federal Register** daily for changes to the EAR effecting the Respondent's products and operations, and disseminates this information to the export liaisons; that the Respondent is also developing a Denial List search application on its new company-wide intranet; and that all key Exports Supply Division employees have attended export compliance training seminars.

While the Respondent's January 20, 1998 Answer details the above-recited improvements to its export compliance program, there is no record evidence submitted by the Respondent in Tab 2 of its January 20, 1998 Answer specifying when these improvements were implemented. The EAR amendment occurred on March 13, 1991. The violations occurred between June 14, 1991 and December 7, 1995. During this period of time, the Respondent's export compliance procedures did not involve a periodic review of the requirements for shipments of ''scheduled buying list goods'' or a through monitoring of pertinent regulatory amendments published in the **Federal Register** (*See* Stipulation of Fact No. 17). Thus, the record is void of any meaningful evidence as to what policies and procedures were in effect between March 13, 1991 and December 7, 1995.

Moreover, subsequent to December 7, 1995, the record does not indicate when the above-recited improvements were implemented and in what form those improvements were made. Indeed, the first memorandum from the Legal Department to the Export Supply Division is dated May 9, 1996. Interestingly, the only time this issue is discussed during this time period is set forth in the Joint Stipulations. However, as one can see from reading joint Stipulation of Fact Nos. 17, 20, 27, and 29, these factual recitations only recite what the Respondent *did not do* as opposed to what program it had in effect and what changes were made.

The Respondent states that anything more than a nominal fine in this case is unreasonable. In support of this position, ALCOA argues that recent BXA enforcement orders based on settlement agreements establish a range from $2,000 per violation to $5,000 per violation, large portions of which were suspended. The Respondent cites the following settlements in support of it's argument that the government's proposed $7,500 per violation is excessive and inconsistent with past BXA practice:

1. *Gateway 2000* case—This case involved the unlawful export of U.S.—origin computer equipment without a license in violation of § 787.4(a), § 787.5(a) and § 787.6 for a total of 87 violations. The agreed upon fine was $402,000 or $4,620 per violation.

2. *Allergan, Inc.* case—The Respondent was charged with 412 violations of § 787.6 for violating export controls on biological agents. the fine was $824,000 or $2,000 per violation.

3. *Sierra Rutil America, Inc.* case—The Respondent was charged with eight unlicensed exports of sodium fluoride to Sierra Leone over a two year period in violation of § 787.6. The settlement resulted in a $30,000 fine or $3,750 per violation with half of the fine remitted on probation. This case did not involve exports to controlled or affiliated entities.

4. *Herb Kimiatck and Kimson Chemical Inc.* case—The Respondent was charged with two counts of exporting sodium cyanide without a validated license in violation of § 787.6 and § 787.4(a) of the regulations. The fine was $20,000 or $10,000 per violation.

5. *Snytex* case—The Respondent was charged with 13 violations of unlawfully exporting hydrogen fluoride in violation of § 787.2. The fine was $65,000 or $5,000 per violation. One half of the fine was remitted for 2 years and then waived if there were no further violations.

6. *Palmeros Forwarding* case—The Respondent was charged with 10 violations wherein it used export control documents which represented that the Syntex hydrogen fluoride did not need export licenses. The fine was $50,000 or $5,000 per violation with a two year denial of export privileges. The fine was export privilege denial were suspended on probation.

7. *Villasana* case—This case also arose out of the *Syntex* case, The Respondent was charged with one count and fined $2500 and the denial of export privileges. The fine and export privilege denial were suspended on probation.

8. *Chemicals Export Company of Boston* case—The Respondent was charged with four counts of exporting sodium cyanide without

[1] As noted above, 44 U.S.C.A. § 1507 (1991) imputes knowledge of these changes to the Respondent.

a valid export permit in violation of § 787.6. The fine was $16,000 or $4,000 per violation.

9. *Southern Information Systems* case—The Respondent was charged with five counts for the unlawful export of digital microwave systems in violation of § 787.6. The fine was $25,000 or $5,000 per violation.

10. *Advanced Technology* case—The Respondent was charged with two counts of re-exporting electronic equipment from Belgium to Russia without a permit in violation of § 787.6. The fine was $10,000 or $5,000 per violation.

11. *LEP Profit International, Inc.*—The Respondent were charged with twelve counts of preparing shipping documents that contained false information in violation of § 0787.5(a). The fine was $60,000 or $5,000 per violation. A portion of the penalty, $15,000, was suspended for two years, then waived so long as LEP complies with the export control regulations.

12. *NF&M International Inc.*—The Respondent were charged with thirty-three violations for exporting titanium alloy products without the necessary export licenses in violation of § 787.6. The fine was $82,500 or $42,500 per violation. The Department agreed to suspend payment of $42,500 for one year and then to waive that payment provided NF&M complies with export control regulations.

13. *DATRAC AG*—The Respondent was charged with one count for re-exporting U.S.-origin data communications equipment from Switzerland to Singapore without obtaining the required export license in violation of § 787.6. The fine was $2,500.

14. *Lasertechnics Inc.*—The Respondent in this case was charged with thirty-six violations for exporting U.S.-origin thyratrons from the United States to Hong Kong, Ireland, Malaysia, and Singapore without obtaining the individual validated export licenses in violation of § 787.6. The fine was $180,000 or $5,000 per violation. Pursuant to § 766.18(c), the remaining balance of $80,000 was suspended for three years and shall thereafter be waived, provided that, during the period of suspension, the Respondent has committed no violation of the Act, or any regulation, order, or license issued thereunder.

15. *President Titanium*—The Respondent was charged with twenty-five violations for exporting U.S.-origin titanium bars to various countries without obtaining the required validate licenses in violation of 787.6. The fine was $125,000 or $5,000 per violation. Pursuant to § 766.18(c), the remaining balance of $50,000 was suspended for one year provided that, during the period of suspension, the Respondent commit no violation of the Act, or any regulation, order, or license issued thereunder.

16. *Allvac*—The Respondent was charged with forty-eight counts for exporting titanium alloy solid cylindrical forms with diameters greater than three inches from the United States to various countries and exported maraging steel to Germany without the required validated license in violation of § 787.6. The fine was $122,500 or $2,552 per violation. Pursuant to § 766,18(c) payment of the remaining balance of $47,500 was suspended for one year provided that, during the period of suspension, the Respondent commit no violation of the Act, or any regulation, order, or license issued thereunder.

17. *EC Company*—The Respondent was charged with four violations of making false or misleading statements on an export control document; exported U.S.—origin spare parts from the United States to Vietnam without validated license in violation of § 787.6; and two counts for exporting spare parts from the United States to Singapore that Respondent knew would be re-exported from Singapore to Vietnam in violation of § 787.4(a). The fine was $8,000 or $2,000 per violation.

I find the Respondent's argument regarding the previous settlement of cases by BXA with lower civil penalty assessments to be unpersuasive. Settlements are reached based upon the facts of each case. These facts include the relative strengths and weaknesses of each party's case; the desires of one or both sides to extricate themselves from the litigation for whatever reason; and a determination that such a settlement is a good business decision in the case of a Respondent or satisfies the public interest in the case of the government. Moreover, the reasons behind each party's decision to enter into a settlement are rarely, if ever, made public where foreign policy and/or national security issues are involved. As the government points out, this phenomenon is especially true in export cases (TR. 42).

During the Oral Argument in this matter, Counsel for the government stated:

All parties in this courtroom know that citing a series of case names and corresponding settlement figures knowing nothing of the details of what actually transpired during the settlement negotiations, much less any internal discussions of litigation strategy or what not, is really not particularly helpful.

BXA does not maintain a rubric. It does not have a penalty matrix or a cookie cutter into which to force every case it prosecutes. Rather, each case is individually evaluated, and considerations that apply in one, may not apply in another, or may not be given the same impact depending on the facts of each case.

The Respondent argues in mitigation that it has no prior record of violations. I find this argument is entitled to little or no weight given the fact that for four and one-half years, the Respondent committed one hundred violations of the EAR. Indeed, It is not the prior record that is important here, but the aggravating factor of 100 violations and the continuing course of conduct over such a long period. Under this circumstance, I find that the Respondent's actions constitute a gross and long standing neglect of it's undisputed legal duty which totally outweighs the lack of a prior record of violations.

As noted above, the government recommends a $7,500 civil penalty assessment for each of the 100 violations. The Respondent argues for a zero level of civil penalty. However, the Respondent states that it would accept a nominal fine per violation under the suspension on probation procedures. The Respondent also states that the government's recommended sanction is close to the $10,000 maximum and is therefore unreasonable. Indeed, it argues that if you look at the cited cases that were settled, the maximum range should not exceed $2,000 to $5,000. I disagree. Congress established a statutory scheme which provided for a full panoply of penalties ranging from federal prison time and/or severe monetary fines to mere administrative action which could involve civil penalties, denial of export privileges, exclusion from practice or any combination thereof. When viewed in this context, it becomes readily apparent that the government has recommended *an unreasonably low sanction* (*emphasis added*).

Indeed, the government might well have opted to argue in a criminal forum that ALCOA's conduct was so grossly negligent as to constitute a willful disregard of federal law. In this case, the amount of care demanded by the standard of reasonable conduct on the part of the Respondent must be in proportion to the apparent risk. As the danger becomes greater, the Respondent is required to exercise caution commensurate with that increased risk. Since the Respondent was dealing with precursors for chemical weapons, the March 13, 1991 Federal Register Notice constructively put it on notice that it must exercise a great amount of care because the risk is great. It failed to do so.

Importantly, the government voluntarily lowered the sanction bar all the way down to the level of an administrative civil penalty in this case. That having been done, the Respondent argues that the government is being harsh and should lower the bar further. In effect, the Respondent is attempting to have the government negotiate with itself. This is wrong. Based upon the detailed discussion set forth above, I find the appropriate sanction for each of these unlawful shipments is $10,000. The Respondent is a huge multi-national corporation. As such, a $10,000 penalty per violation is minuscule for ALCOA who describes itself as ''one of the world's leading producers of aluminum.* * *''. At no time during this proceeding, did ALCOA's counsel raise financial hardships for mitigating any civil penalty. At some point, ALCOA has to stand up and take responsibility for it's gross and long-standing breach of legal duty. Conversely, the United States government must set its civil penalties at a high enough level to insure that large multi-national corporations don't ignore the law and if they get caught, merely consider the fine as a cost of doing business.

*Accordingly, it is ordered* that Aluminum Company of America, having been found by preponderant evidence to have one hundred violations of the Export Administration Regulations, pay a civil penalty in the amount of $10,000 per violation for a total of $1,000,000. [1]

[1] In addition to the arguments made herein as to the appropriate amount of the monetary penalty for each violation in this case, I hereby accept the arguments of the government as reasonable to the extent they are not inconsistent with the rational set forth in Section II, above. To the extent that the Respondent's arguments as to sanction are inconsistent with the Recommended Decision and Order, they are specifically rejected.

*It is Further Ordered* that a copy of this Recommended Decision and Order shall be served on Aluminum Company of America and the Department of Commerce in accordance with § 778.16(b)(2) of the Regulations.

Done and Dated on this 21sth day of December 1998, Alameda, California.

Hon. Parlen L. McKenna,

*United States Administrative Law Judge.*

To be considered in the thirty (30) day statutory review process which is mandated by 50 U.S.C.A. § 2412(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, Bureau of Export Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW., Room H–3898, Washington, DC 20230, within twelve (12) days. Replies to the other party's submission are to be made within the following eight (8) days (*See* 15 CFR 766.22(b) and 50 Fed. Reg. 53134 (1985)). Pursuant to 50 U.S.C.A. § 2412(c)(3) of the Act and 15 CFR 766.22(e) of the Final Order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within fifteen (15) days of its issuance.

[FR Doc. 99–19095 Filed 8–4–99; 8:45 am]

**BILLING CODE 3510–DT–M**

## DEPARTMENT OF COMMERCE

### Under Secretary for Export Administration

**[Docket Number 98–BXA–10]**

### In the Matter of: TIC LTD. Suite C, Regent Centre, Explorers Way, Freeport, Bahamas, Respondent; Decision and Order

On August 12, 1998, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter ''BXA''), issued a charging letter initiating an administrative proceeding against TIC Ltd. (hereinafter ''TIC''). The charging letter alleged that TIC committed 112 violations of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730–774 (1999)) (hereinafter the ''Regulations''),[1] issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. sections 2401–2420 (1991 & Supp. 1999)) (hereinafter the ''Act'').[2]

Specifically, the charging letter alleged that, beginning in June 1994 and continuing through about July 1996, TIC conspired with Thane-Coat, Inc., Jerry Vernon Ford, Preston John Engebretson, and TIC Ltd. to bring about acts that constituted violations of the Act, or any regulation, order, or license issued thereunder. The purpose of the conspiracy was for TIC and the others to export U.S.-origin commodities to Libya, a country subject to a comprehensive economic sanctions program. To accomplish their purpose, the conspirators devised and employed a scheme to export U.S.-origin items from the United States through the United Kingdom to Libya, without applying for and obtaining the export authorizations that the conspirators knew or had reason to know were required under U.S. law, including the Regulations. *See* 15 CFR 764.4, previously codified at 15 CFR 785.7 of the former Regulations, and 15 CFR 772.1 of the former Regulations. BXA alleged that, by conspiring or acting in concert with one or more persons in any manner or for any purpose to bring about or to do any act that constitutes a violation of the Act, or any regulation, order or license issued thereunder, TIC violated Section 787.3(b) (redesignated as Section 787A.3(b) on March 25, 1996) of the former Regulations.

BXA alleged that, in furtherance of the conspiracy described above, on 37 separate occasions between on or about February 12, 1995 and on or about April 25, 1996, TIC, as a co-conspirator, exported polyurethane (isocyanate/polyol) and polyether polyurethane (hereinafter collectively referred to as ''pipe coating materials'') from the United States to Libya, without obtaining from the Department the validated export licenses that TIC knew or had reason to know were required under Section 772.1(b) (redesignated as Section 772A.1(b) on March 25, 1996) of the former Regulations. BXA alleged that, by exporting U.S.-origin commodities to any person or to any destination in violation of or contrary to the provisions of the Act, or any regulation, order, or license issued thereunder. TIC, as a co-conspirator, violated Section 787.6 or Section 787A.6 of the former Regulations in connection with each shipment. Specifically, BXA alleged that TIC, as a co-conspirator, committed 32 violations of Section 787.6 and five violations of Section 787A.6 of the former Regulations, for a total of 37 violations.

BXA also alleged that, by selling, transferring, or forwarding commodities exported or to be exported from the United States with knowledge or reason to know that a violation of the Act, or any regulation, order, or license issued thereunder occurred, was about to occur, or was intended to occur with respect to the transactions, TIC, as a co-conspirator, violated Section 787.4(a) or Section 787A.4(a) of the former Regulations in connection with each shipment. Specifically, BXA alleged that TIC committed 32 violations of Section 787.4(a) and five violations of Section 787A.4(a) of the former Regulations, for a total of 37 violations.

Finally, BXA also alleged that, in furtherance of the conspiracy described above and to effect the 37 exports described above, on 37 separate occasions between on or about February 12, 1995 and on or about April 25, 1996, TIC used Shipper's Export Declarations or Bills of Lading, export control documents as defined in Section 770.2 (redesignated as Section 770A.2 on March 25, 1996) of the former Regulations, on which it represented that the commodities described thereon, pipe coating materials, were destined for ultimate end-use in the United Kingdom. In fact, the pipe coating materials were ultimately destined for Libya. BXA alleged that, by making false or misleading statements of material fact directly and indirectly to a United States agency in connection with the use of export control documents to effect exports from the United States, TIC, as a co-conspirator, violated Section 787.5(a) or Section 787A.5(a) of the former Regulations in connection with each shipment. Specifically, BXA alleged that TIC committed 32 violations of Section 787.5(a) and five violations of Section 787A.5(a)[3] of the former Regulations, for a total of 37 violations.

Thus, BXA alleged that TIC committed one violation of Section

[1] The alleged violations occurred during 1994, 1995, and 1996. The Regulations governing the violations at issue are found in the 1994, 1995 and 1996 versions of the Code of Federal Regulations (15 C.F.R. Parts 768–799 (1994 and 1995) and 15 C.F.R. Parts 768–799 (1996), as amended (61 *Fed Reg.* 12714, March 25, 1996)) (hereinafter the ''former Regulations''). The March 25, 1996 **Federal Register** publication redesignated, but did not republish, the existing Regulations as 15 C.F.C. Parts 768A–799A. In addition, the March 25, 1996 **Federal Register** publication restructured and reorganized the Regulations, designating them as an interim rule at 15 C.F.R. Parts 730–774, effective April 24, 1996. The former Regulations define the violations that BXA alleges occurred. The reorganized and restructured Regulations establish the procedures that apply to this matter.

[2] The Act expired on August 20, 1994. Executive order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), August 13, 1997 (3 C.F.R., 1997 Comp. 306 (1998)), and August 13, 1998 (3 C.F.R., 1998 Comp. 294 (1999)), continued the Regulations in effect under the International Emergency Economic Powers Act (currently codified at 50 U.S.C.A. §§ 1701–1706 (1991 & Supp. 1999)).

[3] BXA noted in its motion that, because of a typographical error, the charging letter incorrectly cites to Section 785A4(a) and requested that the ALJ authorize an amendment to the charging letter to provide the correct citation to the regulatory provision that spells out the false statement violation, Section 787A.5(a). The ALJ granted BXA's request and amended the charging letter to correct the citation to Section 787A.5(a).

787.3(b) (redesignated as Section 787A.3(b) on March 25, 1996); 32 violations of Section 787.4(a); five violations of Section 787A.4(a); 32 violations of Section 787.5(a); five violations of Section 787A.5(a); 32 violations of Section 787.6, and five violations of Section 787A.6, for a total of 112 violations of the former Regulations.

Section 766.3(b)(1) of the Regulations provides that notice of issuance of a charging letter shall be served on a respondent by mailing a copy by registered or certified mail addressed to the respondent at his last known address. In accordance with that section, on August 12, 1998, BXA sent to TIC, at its last known address, notice that it had issued a charging letter against it. Although not required by the Regulations, BXA also sent a copy of the letter to TIC's last-known agent in the Bahamas.

By letter dated September 24, 1998, counsel for TIC submitted a letter to Mark D. Menefee, Director of the Office of Export Enforcement (OEE), responding to the charging letter. On September 29, 1998, BXA filed a copy of that letter, together with a response to several assertions made by TIC in the letter, with the U.S. Coast Guard ALJ Docketing Center.[4]

On October 8, 1998, the ALJ issued an Order in which he found that TIC's September 24, 1998 letter was, in essence, a motion to dismiss the charging letter. For the reasons set forth in the ALJ's October 8, 1998 Order, the ALJ denied TIC's motion to dismiss and gave TIC additional time, until November 9, 1998, to respond to the allegations set forth in the charging letter. On October 20, 1998, the ALJ amended the October 8, 1998 Order to give TIC still more time, until November 20, 1998, to file its answer. TIC did not file an answer to the charging letter. Accordingly, because TIC did not answer the charging letter within the time established by the ALJ's Order, as required by and in the manner set forth in Section 766.6 of the Regulations, BXA moved for issuance of a default order.

Following BXA's motion, the ALJ issued a Recommended Decision and Order in which he found the facts to be alleged in the charging letter, and concluded that those facts constitute one violation of Section 787.3(b) (redesignated as Section 787A.3(b) on March 25, 1996); 32 violations of Section 787.4(a); five violations of Section 787A.4(a); 32 violations of Section 787.5(a); five violations of Section 787A.5(a); 32 violations of Section 787.6, and five violations of Section 787A.6, for a total of 112 violations of the former Regulations by TIC, as BXA alleged. The ALJ also agreed with BXA's recommendation that the appropriate penalty to be imposed for that violation is a denial, for a period of 20 years, of all of TIC's export privileges. As provided by Section 766.22 of the Regulations, the Recommended Decision and Order has been referred to me for final action.

Based on my review of the entire record, I affirm the findings of fact and conclusions of law in the Recommended Decision and Order of the ALJ.

*Accordingly, it is therefore ordered,*

*First,* that, for a period of 20 years from the date of this Order, TIC Ltd., Suite C, Regent Centre, Explorers Way, P.O. Box F–40775, Freeport, the Bahamas, and all of its successors or assigns, officers, representatives, agents, and employees when acting for or on behalf of TIC may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any items exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

*Second,* that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

*Third,* that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

*Fourth,* that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

*Fifth,* that this Order shall be served on TIC and on BXA, and shall be published in the **Federal Register.**

This Order, which constitutes the final agency action in this matter, is effective immediately.

Dated: July 12, 1999.

**William A. Reinsch,**

*Under Secretary for Export Administration.*

[FR Doc. 99–19927 Filed 8–4–99; 8:45 am]

BILLING CODE 3510–DS–M

[4] Although the charging letter advised TIC that a formal proceeding had been initiated against it and included the address for the U.S. Coast Guard ALJ Docketing Center so that TIC could file an answer to the charging letter with that Office, TIC addressed its response to the Director of OEE without providing a copy of that response to the U.S. Coast Guard ALJ Docketing Center.

## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

**[Order No. 1046]**

### Grant of Authority for Subzone Status CN Biosciences, Inc. Distribution and Processing Facility (Life Science Chemicals) San Diego, CA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, the City of San Diego, California, grantee of Foreign-Trade Zone 153, has made application to the Board for authority to establish special-purpose subzone status at the life science chemical distribution and processing facility of CN Biosciences, Inc., located in San Diego, California (FTZ Docket 17–95, filed 4/26/95);

Whereas, notice inviting public comment has been given in the **Federal Register** (60 FR 24830, 5/10/95); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application would be in the public interest if subject to restriction;

Now, therefore, the Board hereby grants authority for subzone status at the life science chemical distribution and processing facility of CN Biosciences, Inc., located in San Diego, California, (Subzone 153A), at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and further subject to a special restriction requiring that manufacturing/processing activity conducted under zone procedures and resulting in a change of HTSUS classification shall be limited to the level indicated in the application (5%), and further, all such activity shall be reported to the Board annually.

Signed at Washington, DC, this 27th day of July 1999.

**Robert S. LaRussa,**

*Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

[FR Doc. 99–20211 Filed 8–4–99; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

**[Order No. 1048]**

### Grant of Authority for Subzone Status Buffalo China, Inc.; (Dinnerware/Table Top Products), Buffalo, NY

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for '' * * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, the County of Erie, New York, grantee of Foreign-Trade Zone 23, has made application to the Board for authority to establish special-purpose subzone status at the dinnerware/table top products finishing and distribution (non-manufacturing) facility of Buffalo China, Inc., located in Buffalo, New York (FTZ Docket 29–98, filed 5/22/98);

Whereas, notice inviting public comment has been given in the **Federal Register** (63 FR 31717, 6/10/98); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application would be in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the dinnerware/table top products finishing and distribution facility of Buffalo China, Inc., located in Buffalo, New York, (Subzone 23C), at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 27th day of July 1999.

**Robert S. LaRussa,**

*Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

[FR Doc. 99–20212 Filed 8–4–99; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### Continuation of Antidumping Duty Order: Barbed Wire and Barbless Fencing Wire From Argentina

**[A–357–405]**

### International Trade Administration

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of continuation of antidumping duty order: barbed wire and barbless fencing wire from Argentina

**SUMMARY:** On April 7, 1999, the Department of Commerce (''the Department''), pursuant to sections 751(c) and 752 of the Tariff Act from 1930, as amended (''the Act''), determined that revocation of the antidumping duty order on barbed wire and barbless fencing wire from Argentina would be likely to lead to continuation or recurrence of dumping (64 FR 16899 (April 7, 1999)). On May 5, 1999, the International Trade Commission (''the Commission''), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order on barbed wire and barbless fencing wire from Argentina would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (64 FR 24171 (May 5, 1999)). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping duty order on barbed wire and barbless fencing wire from Argentina.

**FOR FURTHER INFORMATION CONTACT:** Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW, Washington, D.C. 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

**EFFECTIVE DATE:** May 12, 1999.

### Background

On December 2, 1998, the Department initiated, and the Commission

instituted, a sunset review (63 FR 66527 and 63 FR 66563, respectively) of the antidumping duty order on barbed wire and barbless fencing wire from Argentina pursuant to section 751(c) of the Act. As a result of this review, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the order to be revoked (*see Final Results of Expedited Sunset Review: Barbed Wire and Barbless Fencing Wire from Argentina*, 64 FR 16899 (April 7, 1999)).

On May 5, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on barbed wire and barbless fencing wire from Argentina would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Barbed Wire and Barbless Fencing wire from Argentina*, 64 FR 24171 (May 5, 1999) and USITC Pub. 3187, Inv. No. 731–TA–208 (Review) (May 1999)).

**Scope**

The merchandise covered by this antidumping duty orders is barbed wire and barbless fencing wire from Argentina, which is currently classifiable under Harmonized Tariff Schedule (HTS) item number 7313.00.00. The HTS item number is provided for convenience and customs purposes. The written product description remains dispositive.

**Determination**

As a result of the determinations by the Department and the Commission that revocation of this antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on barbed wire and barbless fencing wire from Argentina. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rate in effect at the time of entry for all imports of subject merchandise. Pursuant to section 751(c)(6)(A)(iii) of the Act, any subsequent five-year review of this order will be initiated not later than the fifth anniversary of the effective date of continuation of this order.

Normally, the effective date of continuation of a finding, order, or suspension agreement will be the date of publication in the **Federal Register** of the Notice of Continuation. As provided in 19 CFR 351.218(f)(4), the Department normally will issue its determination to continue a finding, order, or suspended investigation not later than seven days after the date of publication in the **Federal Register** of the Commission's determination concluding the sunset review and immediately thereafter will publish its notice of continuation in the **Federal Register**. In the instant case, however, the Department's publication of the Notice of Continuation was delayed. The Department has explicitly indicated that the effective date of continuation of this order is seven days after the date of publication in the **Federal Register** of the Commission's determination or, in this case, May 12, 1999. As a result, pursuant to sections 751(c)(2) and 751(c)(6)(A) of the Act, the Department intends to initiate the next five-year review of this order not later than April 2004.

Dated: July 30, 1999.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 99–20216 Filed 8–4–99; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–007]**

### Continuation of Antidumping Duty Order: Barium Chloride From the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of continuation of antidumping duty order: barium chloride from the People's Republic of China.

**SUMMARY:** On February 4, 1999, the Department of Commerce (''the Department''), pursuant to sections 751(c) and 752 of the Tariff Act from 1930, as amended (''the Act''), determined that revocation of the antidumping duty order on barium chloride from the People's Republic of China would be likely to lead to continuation or recurrence of dumping (64 FR 5633 (February 4, 1999)). On March 3, 1999, the International Trade Commission (''the Commission''), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order on barium chloride from the People's Republic of China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (64 FR 10317 (March 3, 1999)). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping duty order on barium chloride from the People's Republic of China.

**FOR FURTHER INFORMATION CONTACT:** Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

**EFFECTIVE DATE:** March 10, 1999.

**Background**

On October 1, 1998, the Department initiated, and the Commission instituted, a sunset review (63 FR 52683 and 63 FR 52750, respectively) of the antidumping duty order on barium chloride from the People's Republic of China pursuant to section 751(c) of the Act. As a result of this review, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the order to be revoked (*see Final Results of Expedited Sunset Review: Barium Chloride from the People's Republic of China*, 64 FR 5633 (February 4, 1999)).

On March 3, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on barium chloride from the People's Republic of China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Barium Chloride from the People's Republic of China*, 64 FR 10317 (March 3, 1999) and USITC Pub. 3163, Inv. No. 731–TA–149 (Review) (March 1999)).

**Scope**

The merchandise covered by this antidumping duty order is barium chloride, a chemical compound having the formula BaCl2 or BaCl2-2H2 0, from the People's Republic of China, currently classifiable under item 2827.38.00 of the Harmonized Tariff Schedules (HTS). The HTS item number is provided for convenience and customs purposes. The written description remains dispositive.

**Determination**

As a result of the determinations by the Department and the Commission that revocation of this antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on barium chloride from the People's Republic of China. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rate in effect at the time of entry for all imports of subject merchandise. Pursuant to section 751(c)(6)(A)(iii) of the Act, any subsequent five-year review of this order will be initiated not later than the fifth anniversary of the effective date of continuation of this order.

Normally, the effective date of continuation of a finding, order, or suspension agreement will be the date of publication in the **Federal Register** of the Notice of Continuation. As provided in 19 CFR 351.218(f)(4), the Department normally will issue its determination to continue a finding, order, or suspended investigation not later than seven days after the date of publication in the **Federal Register** of the Commission's determination concluding the sunset review and immediately thereafter will publish its notice of continuation in the **Federal Register**. In the instant case, however, the Department's publication of the Notice of Continuation was delayed. The Department has explicitly indicated that the effective date of continuation of this finding is March 10, 1999, seven days after the date of publication in the **Federal Register** of the Commission's determination. As a result, pursuant to sections 751(c)(2) and 751(c)(6)(A) of the Act, the Department intends to initiate the next five-year review of this order not later than February 2004.

Dated: July 30, 1999.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 99–20219 Filed 8–4–99; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–002]**

### Continuation of Antidumping Duty Order: Chloropicrin From the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce

**ACTION:** Notice of continuation of antidumping duty order: chloropicrin from the People's Republic of China.

**SUMMARY:** On March 9, 1999, the Department of Commerce (''the Department''), pursuant to sections 751(c) and 752 of the Tariff Act from 1930, as amended (''the Act''), determined that revocation of the antidumping duty order on chloropicrin from the People's Republic of China would be likely to lead to continuation or recurrence of dumping (64 FR 11440 (March 9, 1999)). On April 7, 1999, the International Trade Commission (''the Commission''), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order on chloropicrin from the People's Republic of China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (64 FR 16998 (April 7, 1999)). Therefore, pursuant to 19 CFR 351.218(e)(4), the Department is publishing notice of the continuation of the antidumping duty order on chloropicrin from the People's Republic of China.

**FOR FURTHER INFORMATION CONTACT:** Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–6397 or (202) 482-1560, respectively.

**EFFECTIVE DATE:** April 14, 1999.

**Background**

On November 2, 1998, the Department initiated, and the Commission instituted, a sunset review (63 FR 58709 and 63 FR 58761, respectively) of the antidumping duty order on chloropicrin from the People's Republic of China pursuant to section 751(c) of the Act. As a result of this review, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the order to be revoked (*see Final Results of Expedited Sunset Review: Chloropicrin from the People's Republic of China*, 64 FR 11440 (March 9, 1999)).

On April 7, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on chloropicrin from the People's Republic of China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Chloropicrin from the People's Republic of China*, 64 FR 16998 (April 7, 1999), and USITC Pub. 3175, Inv. No. 731–TA–130 (Review) (April 1999)).

**Scope**

The merchandise covered by this antidumping duty order is chloropicrin, also known as trichloronitromethane from the People's Republic of China. A major use of the product is as a pre-plant soil fumigant. Chloropicrin is currently classifiable under Harmonized Tariff Schedule (HTS) item number 2904.90.50. The HTS item number is provided for convenience and customs purposes. The written product description remains dispositive.

**Determination**

As a result of the determinations by the Department and the Commission that revocation of this antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on chloropicrin from the People's Republic of China. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rate in effect at the time of entry for all imports of subject merchandise. Pursuant to section 751(c)(6)(A)(iii) of the Act, any subsequent five-year review of this order will be initiated not later than the fifth anniversary of the effective date of continuation of this order.

Normally, the effective date of continuation of a finding, order, or suspension agreement will be the date of publication in the **Federal Register** of the Notice of Continuation. As provided in 19 CFR 351.218(e)(4), the Department normally will issue its determination to continue a finding, order, or suspended investigation not later than seven days after the date of publication in the **Federal Register** of the Commission's determination concluding the sunset review and immediately thereafter will publish its notice of continuation in the **Federal Register**. In the instant case,

however, the Department's publication of the Notice of Continuation was delayed. The Department has explicitly indicated that the effective date of continuation of this order is April 14, 1999, seven days after the date of publication in the **Federal Register** of the Commission's determination. As a result, pursuant to sections 751(c)(2) and 751(c)(6)(A) of the Act, the Department intends to initiate the next five-year review of this order not later than March 2004.

Dated: July 30, 1999.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 99–20215 Filed 8–4–99; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–003]**

### Final Results of Expedited Sunset Review: Cotton Shop Towels From the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of expedited sunset review: cotton shop towels from the People's Republic of China.

**SUMMARY:** On January 4, 1999, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty order on cotton shop towels from the People's Republic of China (64 FR 364) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of a domestic interested party and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

**EFFECTIVE DATE:** August 5, 1999.

#### Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) (''*Sunset Regulations*''). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

#### Scope

The merchandise subject to this antidumping duty order is cotton shop towels from the People's Republic of China. Shop towels are absorbent industrial wiping cloths made from a loosely woven fabric. The fabric may be either 100-percent cotton or a blend of materials. Shop towels are currently classifiable under item numbers 6307.10.2005 and 6307.10.2015 of the Harmonized Tariff Schedules of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding remains dispositive.[1]

This review covers imports from all manufacturers and exporters of Chinese shop towels.

#### History of the Order

On August 16, 1983, the Department issued its amended final determination of sales at less than fair value in the investigation of cotton shop towels from the People's Republic of China (48 FR 37055). The Department published weighted average dumping margins of 30.1 percent for China National Textile Import & Export Corporation and 37.2 percent for China National Arts & Crafts Import & Export Corporation. The Department also published a weighted average dumping margin of 36.2 percent for all other Chinese manufacturers/exporters.

The antidumping duty order on cotton shop towels from the People's Republic of China was published in the **Federal Register** on October 4, 1983 (48 FR 45277). Since that time, the Department has conducted six administrative reviews.[2] The order remains in effect for all manufacturers and exporters of the subject merchandise.

#### Background

On January 4, 1999, the Department initiated a sunset review of the antidumping duty order on cotton shop towels from the People's Republic of China (64 FR 364), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of Milliken & Company (''Milliken'') on January 19, 1999, within the deadline specified in § 351.218(d)(1)(i) of the *Sunset Regulations.* We received a complete substantive response from Milliken on February 3, 1999, within the 30-day deadline specified in the *Sunset Regulations* under § 351.218(d)(3)(i). Milliken claimed interested party status under section 771(9)(C) of the Act, as a domestic producer of shop towels. In addition, Milliken stated that it was the petitioner in the original investigation. We did not receive a substantive response from any respondent interested party to this proceeding. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day, review of this order.

The Department determined that the sunset review of the antidumping duty order on cotton shop towels from the People's Republic of China is extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.,* an order in effect on January 1, 1995). Therefore, on May 3, 1999, the Department extended the time limit for

[1] The Department determined that certain 18″x30″ dish towels (02/19/93) are within the scope of the order. Pursuant to court remand, the Department determined that certain cotton shop towels, hemmed or cut and hemmed in Honduras, are within the scope of the order (1/18/94). The Department determined that the following products are outside the scope of the order: towels assembled in Canada from cotton grey fabric from the People's Republic of China (8/21/90).

[2] *See Shop Towels of Cotton From the People's Republic of China; Final Results of Administrative Review of Antidumping Order,* 50 FR 26020 (June 24, 1985); *Shop Towels of Cotton From the People's Republic of China; Final Results of Administrative Review of Antidumping Order,* 55 FR 7756 (March 5, 1990); *Shop Towels of Cotton From the People's Republic of China; Final Results of Administrative Review of Antidumping Order,* 56 FR 4040 (February 1, 1991); *Shop Towels of Cotton From the People's Republic of China; Final Results of Administrative Review of Antidumping Order,* 56 FR 60969 (November 29, 1991); *Shop Towels of Cotton From the People's Republic of China; Final Results of Administrative Review of Antidumping Order,* 57 FR 30466 (July 9, 1992); *and Shop Towels of Cotton From the People's Republic of China; Final Results of Administrative Review of Antidumping Order,* 57 FR 43695 (September 22, 1992).

completion of the final results of this review until not later than August 2, 1999, in accordance with section 751(c)(5)(B) of the Act.[3]

**Determination**

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order, and it shall provide to the International Trade Commission (''the Commission'') the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, Milliken's comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

**Continuation or Recurrence of Dumping**

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (''URAA''), specifically the Statement of Administrative Action (''the SAA''), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin,* the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes of the subject merchandise declined significantly (*see* section II.A.3).

In addition to considering guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a response from any respondent interested party. Pursuant to § 351.218(d)(2)(iii) of the *Sunset Regulations,* this constitutes a waiver of participation.

In its substantive response, Milliken argues that the history of the case and the actions taken by Chinese producers and exporters of shop towels prior to and during the pendency of this proceeding clearly demonstrate that revocation likely would result in a recurrence of dumping of shop towels in the United States. Specifically, Milliken, citing *The World Trade Atlas* (Nov. 1998), asserts that Chinese producers and exporters significantly reduced their shipments to the United States and ultimately ceased exportation after the Department calculated extremely high dumping margins in subsequent reviews (*see* February 3, 1999, Substantive Response of Milliken at 4).

In conclusion, Milliken argues that the Department should determine that there is a likelihood that dumping would continue or recur were the order revoked because imports of the subject merchandise decreased significantly after the imposition of the order and continue to be virtually non-existent.

The Department agrees with Milliken that imports of the subject merchandise decreased substantially over the 16-year period from the imposition of the order in 1983 to the present. However, we disagree with Milliken's assertion that the Department should rest its decision on the basis that imports of subject merchandise have ceased. Despite a two-year cessation of imports between 1996 and 1997, shipments of the subject merchandise from the People's Republic of China continue.

With respect to dumping margins, an examination of the final results of administrative reviews confirms that dumping margins above *de minimis* levels have continued throughout the life of the order.[4] As discussed in section II.A.3 of the *Sunset Policy Bulletin,* the SAA at 890, and the House Report at 63–64, if companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed.

Based on this analysis, the Department finds that the existence of dumping margins after the issuance of the order is highly probative of the likelihood of continuation or recurrence of dumping. Deposit rates above *de minimis* levels continue in effect for exports of the subject merchandise by all known Chinese manufacturers/exporters. Therefore, given that dumping has continued over the life of the order, imports of subject merchandise declined significantly, and respondent interested parties have waived their right to participate in this review before the Department, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue if the order were revoked.

**Magnitude of the Margin**

In the *Sunset Policy Bulletin,* the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the ''all others'' rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin.*) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin.*)

The Department, in its final determination of sales at less than fair value, published weighted-average

[3] *See Steel Wire Rope From Japan, Shop Towels From the People's Republic of China, Shop Towels From Bangladesh, Candles From the People's Republic of China, Steel Wire Rope From Mexico, Shop Towels From Pakistan, Steel Wire Rope From South Korea, Malleable Cast Iron Pipe Fittings From South Korea, Malleable Cast Iron Pipe Fittings From Taiwan, Malleable Cast Iron Pipe Fittings From Japan: Extension of Time Limit for Final Results of Five-Year Reviews,* 64 FR 24573 (May 7, 1999).

[4] *See Shop Towels of Cotton From the People's Republic of China; Final Results of Administrative Review of Antidumping Order,* 50 FR 26020 (June 24, 1985); *Shop Towels of Cotton From the People's Republic of China; Final Results of Administrative Review of Antidumping Order,* 55 FR 7756 (March 5, 1990); *Shop Towels of Cotton From the People's Republic of China; Final Results of Administrative Review of Antidumping Order,* 56 FR 4040 (February 1, 1991); *Shop Towels of Cotton From the People's Republic of China; Final Results of Administrative Review of Antidumping Order,* 56 FR 60969 (November 29, 1991); *Shop Towels of Cotton From the People's Republic of China; Final Results of Administrative Review of Antidumping Order,* 57 FR 30466 (July 9, 1992); and *Shop Towels of Cotton From the People's Republic of China; Final Results of Administrative Review of Antidumping Order,* 57 FR 43695 (September 22, 1992).

dumping margins for two producers/exporters of cotton shop towels from the People's Republic of China (48 FR 37055, August 16, 1983).[5] The Department also published an ''all others'' rate in its determination. We note that, to date, the Department has not issued any duty absorption findings in this case.

In its substantive response, citing to the final results of the 1990/1991 administrative review, Milliken asserts that the margins found in the original investigation are far below the most recently calculated margins. Accordingly, Milliken argues that, consistent with the *Sunset Policy Bulletin* and legislative history, the Department should inform the Commission that the margins likely to prevail are the more recently calculated rates of 72.14 percent for Tianjin Arts & Crafts Import & Export Corporation and 122.81 percent for all other companies. Milliken notes that its suggested margins, from the 1990/1991 administrative review, reflect the most likely U.S. pricing levels for Chinese shop towels if the order were revoked (*see* February 3, 1999 Substantive Response of Milliken at 6).

The Department disagrees with Milliken's argument concerning the choice of the margins to report to the Commission. The Department finds the existence of higher margins after the initial investigation, as a sole criterion, provides insufficient reason for the Department to deviate from its stated policy.[6] Milliken has not presented any argument or evidence to suggest that such increases in margins have been coupled with increases in import volumes and, thus, increased dumping in an attempt to gain, or even maintain, market share. Absent such argument and evidence, the Department finds that the margins calculated in the original investigation are probative of the behavior of Chinese producers and/or exporters if the order were revoked as they are the only margins which reflect their actions absent the discipline of the order. As such, the Department will report to the Commission the company-specific and ''all others'' rates from the original investigation as contained in the Final Results of Review section of this notice.

[5] The dumping margins from this determination were subsequently amended. *See Cotton Shop Towels From the People's Republic of China; Amended Final Determination of Sales at Less Than Fair Value*, 48 FR 37055 (August 16, 1983).

[6] The Department recognizes that where a more recent dumping margin is ''more representative of a company's behavior in the absence of an order,'' such margin should be reported to the Commission *(see Sunset Policy Bulletin).* The ''more representative'' standard may be satisfied if the Department finds an ''increase in imports * * * corresponding to the increase in the dumping margin'' (*see Final Results of Expedited Sunset Review: Barium Chloride From the People's Republic of China*, 64 FR 5633 (February 4, 1999)).

**Final Results of Review**

As a result of this review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the margins listed below:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| China National Textile Import & Export Corp. | 30.1 |
| China National Arts & Crafts Import & Export Corp. | 37.2 |
| All Other Chinese Manufacturers/Exporters | 36.2 |

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: July 30, 1999.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 99–20222 Filed 8–4–99; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–538–802]**

### Final Results of Expedited Sunset Review: Cotton Shop Towels From Bangladesh

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of expedited sunset review: cotton shop towels from Bangladesh.

**SUMMARY:** On January 4, 1999, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty order on cotton shop towels from Bangladesh (64 FR 364) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of a domestic interested party and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

**EFFECTIVE DATE:** August 5, 1999.

**Statute and Regulations**

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) (''*Sunset Regulations*''). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

**Scope**

The merchandise subject to this antidumping duty order is cotton shop towels from Bangladesh. Shop towels are absorbent industrial wiping cloths made from a loosely woven fabric. The fabric may be either 100-percent cotton or a blend of materials. Shop towels are currently classifiable under item numbers 6307.10.2005 and 6307.10.2015 of the Harmonized Tariff Schedules of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding remains dispositive.

This review covers imports from all manufacturers and exporters of shop towels from Bangladesh.

**History of the Order:**

On February 3, 1992, the Department issued its final determination of sales at less than fair value in the investigation of cotton shop towels from Bangladesh (57 FR 3996). The Department published weighted average dumping margins of 42.31 percent for Eagle Star Textile Mills, Ltd., and 2.72 percent for Sonar Cotton Mills, Ltd. The Department also published a weighted average dumping margin of 4.60 percent for all other Bangladeshi manufacturers and/or exporters of the subject merchandise.

The antidumping duty order on cotton shop towels from Bangladesh was published in the **Federal Register** on March 20, 1992 (57 FR 9688). Since that time, the Department has conducted four administrative reviews.[1] We note that, to date, the Department has not issued any duty absorption findings in this case. The order remains in effect for all manufacturers and exporters of the subject merchandise.

**Background**

On January 4, 1999, the Department initiated a sunset review of the antidumping duty order on cotton shop towels from Bangladesh (64 FR 364), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of Milliken & Company (''Milliken'') on January 19, 1999, within the deadline specified in § 351.218(d)(1)(i) of the *Sunset Regulations*. We received a complete substantive response from Milliken on February 3, 1999, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). Milliken claimed interested party status under section 771(9)(C) of the Act, as a domestic producer of shop towels. In addition, Milliken stated that it was the petitioner in the original investigation. We did not receive a substantive response from any respondent interested party to this proceeding. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day, review of this order.

The Department determined that the sunset review of the antidumping duty order on cotton shop towels from Bangladesh is extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). (*See* section 751(c)(6)(C) of the Act.) Therefore, on May 3, 1999, the Department extended the time limit for completion of the final results of this review until not later than August 2, 1999, in accordance with section 751(c)(5)(B) of the Act.[2]

**Determination**

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order, and it shall provide to the International Trade Commission (''the Commission'') the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, Milliken's comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

**Continuation or Recurrence of Dumping**

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (''URAA''), specifically the Statement of Administrative Action (''the SAA''), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin,* the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In addition to considering guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a response from any respondent interested party. Pursuant to § 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

In its substantive response, Milliken argues that the history of the case and the actions taken by Bangladeshi producers and exporters of shop towels prior to and during the pendency of this proceeding demonstrate clearly that revocation likely would result in a recurrence of dumping shop towels in the United States. With respect to whether dumping continued after the issuance of the order, Milliken, citing the Department's final results of several administrative reviews, asserts that a number of manufacturers/exporters continued dumping above a *de minimis* level during the pendency of this proceeding. Further, Milliken argues that although certain manufacturers received zero or *de minimis* dumping margins in administrative reviews, these findings are due to the peculiarity of the Department's constructed value calculation.

With respect to whether imports of the subject merchandise ceased after the issuance of the order, Milliken asserts that, faced with continuing antidumping duties, two known Bangladeshi producers, Sonar Cotton, Ltd. (''Sonar''), and Eagle Star Textile Mills, Ltd. (''Eagle Star''), ceased exporting to the United States since the issuance of the order (*see* February 3, 1999, Substantive Response of Milliken at 5, 6).

[1] *See Shop Towels of Cotton From Bangladesh; Final Results of Antidumping Duty Administrative Review,* 62 FR 12600 (March 17, 1997); *Shop Towels of Cotton From Bangladesh; Amendment to Final Results of Antidumping Duty Administrative Review,* 62 FR 4253 (January 29, 1997); *Shop Towels of Cotton From Bangladesh; Final Results of Antidumping Duty Administrative Review,* 61 FR 55957 (October 30, 1996); *Shop Towels of Cotton From Bangladesh; Final Results of Antidumping Duty Administrative Review,* 61 FR 5377 (February 12, 1996); and *Shop Towels of Cotton From Bangladesh; Final Results of Antidumping Duty Administrative Review,* 60 FR 48966 (September 21, 1995).

[2] *See Steel Wire Rope From Japan, Shop Towels From the People's Republic of China, Shop Towels From Bangladesh, Candles From the People's Republic of China, Steel Wire Rope From Mexico, Shop Towels From Pakistan, Steel Wire Rope From South Korea, Malleable Cast Iron Pipe Fittings From South Korea, Malleable Cast Iron Pipe Fittings From Taiwan, Malleable Cast Iron Pipe Fittings From Japan: Extension of Time Limit for Final Results of Five-Year Reviews,* 64 FR 24573 (May 7, 1999).

In conclusion, Milliken argues that the Department should determine that there is a likelihood that dumping would continue or recur were the order revoked because (1) dumping margins above *de minimis* levels continued after the issuance of the order and (2) imports of the subject merchandise ceased after the imposition of the order (for some companies).

We agree with Milliken that dumping margins continued above *de minimis* levels after the issuance of the order. The Department, after examining the final results of the four administrative reviews, finds that dumping margins above *de minimis* levels continue for at least two of the six known Bangladeshi producers/exporters. As discussed in section II.A.3 of the *Sunset Policy Bulletin,* the SAA at 890, and the House Report at 63–64, if companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed.

The Department, utilizing U.S. Census Bureau IM146 Reports and U.S. Department of Commerce trade statistics, finds that imports of the subject merchandise have continued, and generally increased, over the life of the order. With respect to Milliken's assertion that imports from Sonar and Eagle Star have ceased, although the Department agrees that Eagle Star had no shipments during the 1993/1994 administrative review (61 FR 5377 (February 12, 1996)), the Department cannot conclude from the **Federal Register** notices of results of administrative reviews that Sonar ceased exporting or that there continue to be no shipments from these two companies.

Based on this analysis, the Department finds that the existence of dumping margins after the issuance of the order is highly probative of the likelihood of continuation or recurrence of dumping. Deposit rates above *de minimis* levels continue in effect for exports of the subject merchandise by two of the six known Bangladeshi producers/exporters. Therefore, given that dumping has continued over the life of the order and respondent interested parties have waived their right to participate in this review before the Department, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue if the order were revoked.

**Magnitude of the Margin**

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the ''all others'' rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

The Department, in its final determination of sales at less than fair value, published weighted-average dumping margins for two producers/exporters of cotton shop towels from Bangladesh (57 FR 3996, February 3, 1992). The Department also published an ''all others'' rate in this determination. We note that, to date, the Department has not issued any duty absorption findings in this case.

In its substantive response, Milliken, citing the *Sunset Policy Bulletin,* suggests that the Department report to the Commission the two company-specific margins and the ''all others'' rates established in the investigation because those are the only calculated rates that reflect the behavior of exporters without the discipline of the order in place.

The Department agrees with Milliken. Absent argument and evidence to the contrary, the Department finds that the margins calculated in the original investigation are probative of the behavior of Bangladeshi producers/exporters if the order were revoked as they are the only margins which reflect their actions absent the discipline of the order. As such, the Department will report to the Commission the company-specific and all others rates from the original investigation as contained in the Final Results of Review section of this notice.

**Final Results of Review**

As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the margins listed below:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| Eagle Star Textile Mills, Ltd. .... | 42.31 |
| Sonar Cotton Mills, Ltd. ..... | 2.72 |
| All Others ..... | 4.60 |

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: July 30, 1999.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 99–20223 Filed 8–4–99; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–351–605]**

### Continuation of Antidumping Duty Order: Frozen Concentrated Orange Juice From Brazil.

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of continuation of antidumping duty order: frozen concentrated orange juice from Brazil.

**SUMMARY:** On April 7, 1999, the Department of Commerce (''the Department''), pursuant to sections 751(c) and 752 of the Tariff Act from 1930, as amended (''the Act''), determined that revocation of the antidumping duty order on frozen concentrated orange juice from Brazil would be likely to lead to continuation or recurrence of dumping (64 FR 16901 (April 7, 1999)). On May 21, 1999, the International Trade Commission (''the Commission''), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order on frozen concentrated orange juice from Brazil would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (64 FR 27806 (May 21, 1999)). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping duty order on frozen concentrated orange juice from Brazil.

**FOR FURTHER INFORMATION CONTACT:** Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade

Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW, Washington, D.C. 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

**EFFECTIVE DATE:** May 28, 1999.

**Background**

On December 2, 1998, the Department initiated, and the Commission instituted, a sunset review (63 FR 66527 and 63 FR 66527, respectively) of the antidumping duty order on frozen concentrated orange juice from Brazil pursuant to section 751(c) of the Act. As a result of this review, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the order to be revoked (*see Final Results of Expedited Sunset Review: Frozen Concentrated Orange Juice from Brazil, 64 FR 16901 (April 7, 1999)).*

On May 21, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on frozen concentrated orange juice from Brazil would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Frozen Concentrated Orange Juice from Brazil,* 64 FR 27806 (May 21, 1999) and USITC Pub. 3195, Inv. No. 731–TA–326 (Review) (May 1999)).

**Scope**

The merchandise covered by this antidumping duty orders is frozen concentrated orange juice from Brazil. The merchandise is currently classifiable under subheading 2009.11.00 of the Harmonized Tarriff Schedule (HTS). The HTS subheading is provided for convenience and customs purposes. The written description remains dispositive.

**Determination**

As a result of the determinations by the Department and the Commission that revocation of this antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on frozen concentrated orange juice from Brazil. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rate in effect at the time of entry for all imports of subject merchandise. Pursuant to section 751(c)(6)(A)(iii) of the Act, any subsequent five-year review of this order will be initiated not later than the fifth anniversary of the effective date of continuation of this order.

Normally, the effective date of continuation of a finding, order, or suspension agreement will be the date of publication in the **Federal Register** of the Notice of Continuation. As provided in 19 CFR 351.218(f)(4), the Department normally will issue its determination to continue a finding, order, or suspended investigation not later than seven days after the date of publication in the **Federal Register** of the Commission's determination concluding the sunset review and immediately thereafter will publish its notice of continuation in the **Federal Register**. In the instant case, however, the Department's publication of the Notice of Continuation was delayed. The Department has explicitly indicated that the effective date of continuation of this order is May 28, 1999, seven days after the date of publication in the **Federal Register** of the Commission's determination. As a result, pursuant to sections 751(c)(2) and 751(c)(6)(A) of the Act, the Department intends to initiate the next five-year review of this order not later than April 2004.

Dated: July 30, 1999.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 99–20213 Filed 8–4–99; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–101]**

### Continuation of Antidumping Duty Order: Greige Polyester Cotton Printcloth From the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of continuation of antidumping duty order: Greige polyester cotton printcloth from the People's Republic of China.

**SUMMARY:** On March 18, 1999, the Department of Commerce (''the Department''), pursuant to sections 751(c) and 752 of the Tariff Act from 1930, as amended (''the Act''), determined that revocation of the antidumping duty order on greige polyester cotton printcloth from the People's Republic of China (''China'') would be likely to lead to continuation or recurrence of dumping (64 FR 13399 (March 18, 1999)). On April 19, 1999, the International Trade Commission (''the Commission''), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order on greige polyester cotton printcloth from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (64 FR 19195 (April 19, 1999)). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping duty order on greige polyester cotton printcloth from China.

**FOR FURTHER INFORMATION CONTACT:** Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

**EFFECTIVE DATE:** April 26, 1999.

**Background**

On November 2, 1998, the Department initiated, and the Commission instituted, a sunset review (63 FR 58709 and 63 FR 58763, respectively) of the antidumping duty order on greige polyester cotton printcloth from China pursuant to section 751(c) of the Act. As a result of this review, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the order to be revoked (*see Final Results of Expedited Sunset Review: Greige Polyester Cotton Printcloth from China,* 64 FR 13399 (March 18, 1999)).

On April 19, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on greige polyester cotton printcloth from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Greige Polyester Cotton Printcloth from China,* (64 FR 19195 (April 19, 1999) and USITC Pub. 3184, Inv. No. 731–TA–101 (Review) (April 1999)).

**Scope**

The merchandise covered by this antidumping duty order is shipments of greige greige polyester/cotton printcloth, other than 80 x 80 type, from China. Greige polyester/cotton printcloth is unbleached and uncolored printcloth.

The term ''printcloth'' refers to plain woven fabric, not napped, not fancy or figured, of single yarn, not combed, of average yarn number 26 to 40, weighing not more than 6 ounces per square yard, of a total count of more than 85 yarns per square inch, of which the total count of the warp yarns per inch and the total count of the filling yarns per inch are each less than 62 percent of the total count of the warp and filling yarns per square inch. This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item 52.10.11.60. The HTS item number is provided for convenience and customs purposes. The written description remains dispositive.

**Determination**

As a result of the determinations by the Department and the Commission that revocation of this antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on greige polyester cotton printcloth. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rate in effect at the time of entry for all imports of subject merchandise. Pursuant to section 751(c)(6)(A)(iii) of the Act, any subsequent five-year review of this order will be initiated not later than the fifth anniversary of the effective date of continuation of this order.

Normally, the effective date of continuation of a finding, order, or suspension agreement will be the date of publication in the **Federal Register** of the Notice of Continuation. As provided in 19 CFR 351.218(f)(4), the Department normally will issue its determination to continue a finding, order, or suspended investigation not later than seven days after the date of publication in the **Federal Register** of the Commission's determination concluding the sunset review and immediately thereafter will publish its notice of continuation in the **Federal Register**. In the instant case, however, the Department's publication of the Notice of Continuation was delayed. The Department has explicitly indicated that the effective date of continuation of this finding is April 26, 1999, seven days after the date of publication in the **Federal Register** of the Commission's determination. As a result, pursuant to sections 751(c)(2) and 751(c)(6)(A) of the Act, the Department intends to initiate the next five-year review of this order not later than March 2004.

Dated: July 30, 1999.

**Joseph Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 99–20221 Filed 8–4–99; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Final Results of Expedited Sunset Review: Internal-Combustion, Industrial Forklift Trucks From Japan [A–588–703]

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of expedited sunset review: certain internal-combustion, industrial forklift trucks from Japan.

**SUMMARY:** On April 1, 1999, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty order on industrial forklift trucks from Japan (64 FR 15727) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Kathryn B. McCormick or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, US Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–1560, respectively.

**EFFECTIVE DATE:** August 5, 1999.

**Statute and Regulations**

This review is being conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) (''*Sunset Regulations*'') and in CFR Part 351 (1998) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

**Scope**

The merchandise subject to this antidumping duty order is internal-combustion, industrial forklift trucks, with lifting capacity of 2,000 to 5,000 pounds, from Japan. The products covered are described as follows: assembled, not assembled, and less than complete, finished and not finished, operator-riding forklift trucks powered by gasoline, propane, or diesel fuel internal-combustion engines of off-the-highway types used in factories, warehouses, or transportation terminals for short-distance transport, towing, or handling of articles [1]. Less than complete forklift trucks are defined as imports which include a frame by itself or a frame assembled with one or more component parts. Component parts of the subject forklift trucks which are not assembled with a frame are not covered by this order. Imports of these products were classified under items 692.4025, 692.4030 and 692.4070 of the Tariff Schedules of the United States Annotated (''TSUSA''), and are currently classifiable under Harmonized Tariff Schedule of the United States (''HTSUS'') item numbers 8427.20.00, 8427.90.00, and 8431.20.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description remains dispositive.

**History of the Order**

On April 15, 1988, the Department published a final affirmative determination of sales at less than fair value with respect to certain internal-combustion, industrial forklift trucks from Japan (53 FR 12552). The order resulted in the following company margins:

| Manufacturer/Exporter | Margin (percent) |
|---|---|
| Toyota Motor Corp | 17.29 |
| Nissan Motor Corp | 51.33 |
| Komatsu Forklift Co., Ltd | 47.50 |
| Sumitomo-Yale Co., Ltd | 51.33 |
| Toyo Umpaki Co. Ltd | 51.33 |
| Sanki Industrial Co | 13.65 |
| Kasagi Forklift, Inc | 56.81 |

[1] *See Certain Internal-Combustion Industrial Forklift Trucks from Japan; Final Results of Antidumping Duty Administrative Review*, 62 FR 5592 (February 6, 1997).

| Manufacturer/Exporter | Margin (percent) |
|---|---|
| All Other Japanese Manufacturers/Exporters | 39.45 |

Since the imposition of the order, there have been four administrative reviews,[2] in which all the respondents subject to these reviews were found to have continued dumping. There were two scope rulings: first, at the request of Mitsubishi Heavy Industries to clarify whether a particular model forklift truck, the Mitsubishi FD–70, was within the scope of this antidumping duty order, the Department, by letter dated October 12, 1989, advised petitioner's counsel that it had determined that the Mitsubishi FD–70 internal-combustion, industrial forklift truck, was excluded from the scope of the order. Second, the Department published notice that it had determined that a particular model forklift truck produced by Nissan Motor Co., Ltd. and Nissan Forklift Truck Corporation, the Nissan F05–70, was not within the scope of this antidumping duty order (63 FR 6722, February 10, 1998).

At the request of the domestic industry, during the 1989–1990 administrative review period, the Department conducted an anticircumvention investigation of four groups of manufacturers of certain internal-combustion, industrial forklift trucks from Japan (55 FR 6028). The petitioners alleged that four groups of forklift truck manufacturers were circumventing the antidumping duty order on forklift trucks by exporting forklift truck parts to the United States for assembly. In its final anticircumvention determination, the Department concluded, pursuant to section 781(b) of the Act, as amended,19 U.S.C. § 1677j(b) (1988), that the difference in value between the parts imported into the United States and the trucks sold in the United States was not small, as required by the statute (55 FR 6028, February 21, 1990). Based on this conclusion, the Department determined that the manufacturers were not circumventing the antidumping duty order.

[2] *See Certain Internal-Combustion, Industrial Forklift Trucks from Japan; Final Results of Antidumping Duty Administrative Review*, 57 FR 3167 (January, 28, 1992); *Certain Internal-Combustion, Industrial Forklift Trucks from Japan; Final Results of Antidumping Duty Administrative Review*, 59 FR 1374 (January 10, 1994); *Certain Internal-Combustion, Industrial Forklift Trucks from Japan; Final Results of Antidumping Duty Administrative Review*, 62 FR 34216 (June 25, 1997); *Certain Internal-Combustion, Industrial Forklift Trucks from Japan; Final Results of Antidumping Duty Administrative Review*, 62 FR 5592 (February 6, 1997).

**Background**

On April 1, 1999, the Department initiated a sunset review of the antidumping order on certain internal-combustion, industrial forklift trucks from Japan (64 FR 15727), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of NACCO Materials Handling Group, Inc. (''NMHG'') and Clark Material Handling Company (''Clark'') within the applicable deadline (April 16, 1998) specified in section 351.218(d)(1)(i) of the Sunset Regulations. Clark and NMHG claimed interested party status under section 771(9)(C) of the Act as U.S. manufacturers of a domestic like product. We received their complete substantive responses to the notice of initiation on April 29, 1999 and May 3, 1999, respectively. Without a substantive response from respondent parties, the Department, pursuant to 19 CFR 351.218 (e)(1)(ii)(C), determined to conduct an expedited, 120-day review of this order.

**Determination**

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission (the Commission) the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, domestic interested parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

**Continuation or Recurrence of Dumping**

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (''URAA''), specifically the Statement of Administrative Action (''the SAA''), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) Dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section I I.A.3).

In addition to consideration of the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

In its substantive response, NMHG argues that actions taken by the manufacturers and exporters of Japanese internal-combustion, industrial forklift trucks during the life of the order, including the dramatic decline in imports from Japan consequent to the antidumping duty order and subsequent administrative reviews, particularly in combination with the fact that Japanese manufacturers and exporters continued to dump after the order was issued, are a strong indication that dumping in the United States is likely to recur should the order be revoked (*see* May 3, 1999 Substantive Response of NMHG at 8). With respect to whether dumping continued at any level above *de minimis* after the issuance of the order, NMHG and Clark assert that during the four administrative reviews since the 1989 imposition of the order, all respondents subject to the reviews were found to have continued dumping at substantial margins (*see* May 3, 1999 Substantive Response of NMHG at 10 and April 30, 1999 Substantive Response of Clark at 3).

With respect to whether imports of the subject merchandise ceased after the issuance of the order, or dumping was eliminated after the issuance of the

order and import volumes for the subject merchandise declined significantly, Clark asserts that two of the exporters initially assessed antidumping duties and subject to reviews, ceased importing after 1992 (see April 30, 1999 Substantive Response of Clark at 3). Both Clark and NMHG note a significant decline in the volume of imports of subject merchandise since the order was imposed. Citing U.S. Department of Commerce statistics, NMHG asserts that imports of the subject merchandise have decreased from 25,663 units in 1986, the year immediately preceding the filing of the petition, to 9,522 units in 1998 (*see* May 3, 1999 Substantive Response of NMHG at 20). Further, NMHG argues that recent data do not reflect imports of the subject merchandise, and should in fact be estimated to be lower, as the Japanese Industrial Vehicles Association (''JIVA'') reported only 384 internal-combustion trucks were shipped to the United States in 1998, many of which were over 15,000 lbs. capacity (*see* May 3, 1999 Substantive Response of NMHG at 20), and thus outside the scope of the order.

Additionally, Clark argues that there are other factors, such as Japan's domestic recession during the past three years, which support a finding that dumping would recur if the order were revoked. Clark argues that despite declining prices in the U.S. market during the past nine months, Japanese manufacturers are desperate to make export sales even at prices below costs (*see* April 30, 1999 Substantive Response of Clark at 4). Furthermore, if the dumping order were revoked, Japanese manufacturers would increase exports from their severely underutilized factories and, where they also own U.S. production factories, substitute imports for U.S. production (*see* April 30, 1999 Substantive Response of Clark at 4).

In conclusion, the domestic parties argue that the Department should determine that there is a likelihood that dumping would continue were the order revoked because (1) Dumping margins above *de minimis* levels have continued throughout the life of the order, (2) imports of subject merchandise have continued since the issuance of the order, but are significantly below pre-order levels, or ceased altogether, as in the case of two exporters subject to the original investigation and administrative reviews, (3) recent U.S. Department of Commerce data on imports of the subject merchandise are in fact overestimated, and (4) Japanese manufacturers, desperate to make export sales even at prices below costs, would increase exports from their severely underutilized factories and, where they also own U.S. production factories, substitute imports for U.S. production.

As discussed in Section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, if companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed. Dumping margins above *de minimis* levels continue to exist for shipments of the subject merchandise from all Japanese manufacturers/exporters (62 FR 5592, February 6, 1997).

Consistent with section 752(c) of the Act, the Department also considered the volume of imports before and after issuance of the order. By examining U.S. Census Bureau IM146 reports and the margins in the original investigation and subsequent administrative reviews, the Department finds imports of the subject merchandise decreased sharply following the imposition of the order. Moreover, although some imports continued throughout the life of the order, margins increased.

Based on this analysis, the Department finds that the existence of dumping margins after the issuance of the order is highly probative of the likelihood of continuation or recurrence of dumping. Deposit rates for exports of the subject merchandise by all known Japanese manufacturers and exporters exceed *de minimis* levels. Therefore, given that dumping has continued over the life of the order, respondent interested parties have waived their right to participate in this review before the Department, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue if the order were revoked.

**Magnitude of the Margin**

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the ''all others'' rate from the investigation (*see* section II.B.1 of the *Sunset Policy Bulletin*). Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations (*see* sections II.B.2 and 3 of the *Sunset Policy Bulletin*).

The Department, in its notice of the antidumping duty order on internal-combustion industrial forklift trucks from Japan, identified company-specific margins for imports of the subject merchandise from Japan as established in the original investigation (53 FR 20882, June 7, 1988). As noted above, the Department has conducted four administrative reviews of this order. Further, we note that, to date, the Department has not issued any duty absorption findings in this case.

Both Clark and NMHG argue that, with the exception of Toyota, the margins in the original investigation are probative of the behavior of Japanese forklift truck producers/exporters. NMHG asserts that Toyota's dumping at an even higher rate after the imposition of the order is compelling evidence that this respondent would dump at least to the same degree without the discipline of the antidumping duty order if revocation were to be granted (*see* May 3, 1999 Substantive Response of NMHG at 13). In its substantive response NMHG argues that the Department should therefore use, in its report to the Commission, Toyota's 47.79 percent margin calculated in the most recent administrative review (62 FR 5592 (February 6, 1997)) instead of the 17.29 percent margin from the original investigation.

With respect to the behavior of Japanese forklift truck producers/exporters other than Toyota, the Department finds that the margins in the original investigation are probative of their behavior if the order were to be revoked.

With respect to Toyota, we disagree with the domestic interested parties' assertion that we should use the most recently calculated margin for Toyota simply because it is higher than the original margin. However, we have reviewed the level of imports and Toyota's dumping margins over the life of the order. Since Toyota is not participating in this review and, therefore, we do not have company-specific export volume and value data, we relied on publicly available U.S. customs value data. Specifically, we found that import volumes decreased after the issuance of the order through 1992 (based on import statistics provided by NMHG). Further, we found that imports began increasing in 1993, and then increased significantly from 1993 to 1994, and again, from 1994 to 1995. During these same time periods, Toyota's dumping margin increased from a low of 6.87 percent to 31.58 percent and again to 47.79 percent. In addition, we note that the two other Japanese producers/exporters subject to

the administrative reviews covering these periods were found not to have made any shipments. Therefore, we view the order-wide data as an appropriate surrogate for Toyota.

According to the *Sunset Policy Bulletin*, ''a company may choose to increase dumping in order to maintain or increase market share. As a result, increasing margins may be more representative of a company's behavior in the absence of an order'' (*see* section II.B.2 of the *Sunset Policy Bulletin*). In addition, *the Sunset Policy Bulletin* notes that the Department will normally consider market share. However, absent information on market share, and absent argument or evidence to the contrary, we have relied on import values in the present case. Therefore, in light of the correlation between an increase in imports and an increase in Toyota's dumping margins, the Department finds Toyota's more recent rate from the last administrative review [3] (62 FR 5592 February 6, 1997)) to be the most probative of Toyota's behavior if the order were revoked. For all companies other than Toyota, the Department will report to the Commission the rate from the original investigation (53 FR 12552 April 15, 1988) as contained in the Final Results of Review section of this notice.

**Final Results of Review**

As a result of this review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the margin listed below:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| Toyota Motor Corp | 47.79 |
| Nissan Motor Corp | 51.33 |
| Komatsu Forklift Co., Ltd | 47.50 |
| Sumitomo-Yale Co., Ltd | 51.33 |
| Toyo Umpaki Co. Ltd | 51.33 |
| Sanki Industrial Co | 13.65 |
| Kasagi Forklift, Inc | 56.81 |
| All Other Japanese Manufacturers/Exporters | 39.45 |

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: July 30, 1999.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 99–20217 Filed 8–4–99; 8:45 am]

BILLING CODE 3510–DS–P

[3] *See Certain Internal-Combustion Industrial Forklift Trucks from Japan: Amended Final Results of Antidumping Duty Administrative Review*, 62 FR 12598 (March 17, 1997).

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–588–605, A–580–507, and A–583–507]**

### Final Results of Expedited Sunset Reviews: Malleable Cast Iron Pipe Fittings From Japan, South Korea, and Taiwan

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of expedited sunset reviews: Malleable cast iron pipe fittings from Japan, South Korea, and Taiwan.

**SUMMARY:** On January 4, 1999, the Department of Commerce (''the Department'') initiated sunset reviews of the antidumping duty orders on malleable cast iron pipe fittings from Japan, South Korea, and Taiwan (64 FR 364) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of notices of intent to participate and adequate substantive comments filed on behalf of domestic interested parties and inadequate responses (in these cases, no response) from respondent interested parties, the Department determined to conduct expedited reviews. As a result of these reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Reviews section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Martha V. Douthit or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, US Department of Commerce, 14th & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3207 or (202) 482–1560, respectively.

**EFFECTIVE DATE:** August 5, 1999.

**Statute and Regulations**

These reviews were conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) (''*Sunset Regulations*'') and 19 CFR 351 (1998) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

**Scope**

Imports covered by these orders are shipments of certain malleable cast iron pipe fittings, other than grooved, from Japan, South Korea, and Taiwan. In the original orders, these products were classified in the Tariff Schedules of the United States, Annotated (TSUSA), under item numbers 610.7000 and 610.7400. These products are currently classifiable under item numbers 7307.19.90.30, 7307.19.90.60, and 7307.19.90.80 of the Harmonized Tariff Schedule of the United States (HTSUS). By letter of February 8, 1989, the Department clarified that union heads, tails, and nuts fell within the scope of the antidumping duty order on malleable cast iron pipe fittings from South Korea.[1] The HTSUS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

These orders apply to all imports of certain malleable cast iron pipe fittings from Japan, South Korea, and Taiwan.

**History of the Orders**

*Japan*

The Department issued the antidumping duty order on malleable cast iron pipe fittings from Japan on July 6, 1987 (52 FR 25281). The order identified weighted-average margins of dumping of 57.79 percent for Hitachi Metals Ltd. and all others. The Department has not conducted an administrative review of the order.

*South Korea*

The Department issued the antidumping duty order on malleable cast iron pipe fittings from South Korea on May 23, 1986 (51 FR 18917). The order applied a weighted-average dumping margin of 12.48 percent to all producers/exporters. Although not

[1] *See* Letter to Thomas J. Lindmeier from Joseph A. Spetrini, February 8, 1989.

specified in the order, the investigation covered Mijin Metal Industrial Co., Ltd. (''Mijin''). The Department conducted one administrative review of the order, covering the period May 1, 1987, through April 30, 1988, and two Korean manufacturers; Mijin and Shin Han Cast Iron Co., Ltd. (*see* 54 FR 13090 (March 30, 1989)).

*Taiwan*

The Department issued the antidumping duty order on malleable cast iron pipe fittings from Taiwan on May 23, 1986 (51 FR 18918), as amended (53 FR 784 (January 13, 1988)). The order applied weighted-average dumping margins to five Taiwanese producers/exporters as well as to all others. The Department conducted two administrative reviews of the order covering the periods January 14, 1986, through April 30, 1987, and May 1, 1987, through April 30, 1988 (*see* 53 FR 16179 (May 5, 1988) and 54 FR 38713 (September 20, 1989)).

**Background**

On January 4, 1999, the Department initiated sunset reviews of the antidumping duty orders on malleable cast iron pipe fittings from Japan, South Korea, and Taiwan (64 FR 364) pursuant to section 751(c) of the Act. On January 19, 1999, the Department received Notices of Intent to Participate on behalf of the Cast Iron Pipe Fittings Committee and its members, Grinnell Corporation and Ward Manufacturing (collectively ''CIPFC''), within the applicable deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations.* The CIPFC claimed interested-party status under section 771(9)(F) of the Act as an *ad hoc* trade association consisting entirely of U.S. manufacturers of malleable cast iron pipe fittings.

We received complete substantive responses to the notice of initiation on February 3, 1999, on behalf of CIPFC. In its substantive responses, CIPFC stated that it and its two current members have been participants in these proceedings since the Department's original investigations. We did not receive a substantive response from any respondent interested party in any of the reviews.

The Department determined that the sunset reviews of the antidumping duty orders on malleable cast iron pipe fittings from Japan, South Korea, and Taiwan are extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). (*See* section 751(c)(6)(C) of the Act.) Therefore, on May 7, 1999, the Department extended the time limit for completion of the final results of these reviews until not later than August 2, 1999, in accordance with section 751(c)(5)(B) of the Act.[2]

**Determination**

In accordance with section 751(c)(1) of the Act, the Department conducted these reviews to determine whether revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the original investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order, and it shall provide to the Commission the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and magnitude of the margin likely to prevail are discussed below. In addition, CIPFC's comments with respect to continuation or recurrence of dumping and the magnitude of the margin likely to prevail are addressed within the respective sections below.

**Continuation or Recurrence of Dumping**

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (''URAA''), specifically the Statement of Administrative Action (''the SAA''), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2 of the *Sunset Policy Bulletin*). Additionally, the Department normally will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of Dumping where (a) Dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3.a of the *Sunset Policy Bulletin*).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of the order would be likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In these reviews, the Department did not receive a substantive response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations,* this constitutes a waiver of participation.

In its substantive responses, CIPFC argues that revocation of the antidumping duty orders would likely result in the continuation or resumption of dumping of malleable cast iron pipe fittings from Japan, South Korea, and Taiwan. CIPFC asserts that, in accordance with the *Sunset Policy Bulletin,* the Department normally will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where dumping continued at any level above *de minimis* after the issuance of the order. Further, CIPFC cites to the SAA and comments that continuation of dumping at any level above *de minimis* after the issuance of the order is highly probative of the likelihood of continuation or recurrence of dumping. CIPFC notes that a deposit rate based on the weighted-average dumping margin of 57.39 percent, as established in the antidumping duty order covering Japan, has remained unchanged over the life of the order. With respect to the margins established in the orders on South Korea and Taiwan, CIPFC asserts that the margins have increased as a result of administrative reviews. Specifically, CIPFC asserts that, as a result of an administrative review on the order covering imports from Korea, undertaken by the Department in 1989, company-specific margins for two Korean producers increased from 12.48 percent to 25.59 percent. Additionally, CIPFC asserts that, as a result of reviews on the order covering imports from Taiwan, the margins increased from a range of 7.95–80 percent to 37.09–138.81 percent.

Additionally, CIPFC asserts that the volume of imports of subject

[2] *See Steel Wire Rope From Japan, et. al.: Extension of Time Limit for Final Results of Five-Year Reviews,* 64 FR 24573 (May 7, 1999).

merchandise from all three countries declined after the issuance of the orders. CIPFC provided import statistics demonstrating that, in fact, imports from each country decreased substantially after the imposition of the orders and never achieved pre-order levels. Based on these policies, CIPFC asserts that dumping of malleable cast iron pipe fittings from Japan, South Korea, and Taiwan would continue or recur if the orders were to be revoked.

Finally, in further support of the likelihood of continuation or recurrence of dumping, in its substantive responses, CIPFC asserts that malleable cast iron pipe fittings are standardized products. Thus, imports and domestically manufactured pipe fittings are essentially interchangeable. CIPFC argues that, as a result, the domestic industry is vulnerable to unfairly priced imports.

As discussed in section II.A.3 of the *Sunset Policy Bulletin,* the SAA at 890, and the House Report at 63–64, the existence of dumping margins after the order is highly probative of the likelihood of the continuation or recurrence of dumping. If companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were revoked.

Deposit rates above *de minimis* remain in effect for all exports of malleable cast iron pipe fittings from Japan, South Korea, and Taiwan. Therefore, since dumping margins have continued over the life of the order, import volumes declined significantly after the imposition of the orders, respondent interested parties waived participation, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue or recur if the orders were revoked.

**Magnitude of the Margin**

In the *Sunset Policy Bulletin,* the Department stated that, consistent with the SAA and House Report, the Department normally will provide to the Commission a margin from the investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order or suspension agreement in place. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the ''all others'' rate from the investigation. *See* Section II.B.1 of the *Sunset Policy Bulletin.* Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations.

As noted above, the Department has not conducted an administrative review of the antidumping duty order on malleable cast iron pipe fittings from Japan. The Department conducted one administrative review of the antidumping duty order covering South Korea and two administrative reviews of the antidumping duty order covering Taiwan. The Department has not issued a duty absorption determination with respect to any of these orders.

In its substantive response in the review on Japan, CIPFC argues that, consistent with the provisions of the statute, SAA, and *Sunset Policy Bulletin,* the Department should determine that the margin likely to prevail if the antidumping duty order on Japan were revoked is the margin from the original investigation, as that is the only calculation margin available to the Department.

In its substantive response in the review on South Korea, CIPFC refers to the *Sunset Policy Bulletin* and argues that increasing margins may be more representative of a company's behavior absent the discipline of the order. CIPFC asserts further that no company-specific rate was published by the Department in the original investigation. Therefore, consistent with the Department's practice related to findings issued by the Treasury Department where no company-specific rate is published, CIPFC urges the Department to rely on the company-specific rates from the first administrative review, as these are the only company-specific rates available to the Department. Therefore, CIPFC asserts that the 25.59 percent margins applied to Mijin and Shin Han Cast Iron Co., Ltd., as a result of the administrative review are the rates likely to prevail were the order revoked.

With respect to the order on Taiwan, CIPFC cites to the *Sunset Policy Bulletin* and argues that the more recently calculated margins resulting from the administrative review in 1989 are more representative of Taiwanese producer's likely behavior if the order were to be revoked than are the original rates. CIPFC asserts that the Department should provide the highest company-specific dumping margins available to the Commission as this is representative of the magnitude of the margin likely to prevail.

We agree with CIPFC with respect to the selection of the margin likely to prevail were the order on Japan revoked. The Department finds that the margin from the original investigation is the only calculated rate that reflects the behavior of exporters without the discipline of the order and, thus, is probative of the behavior of Japanese producers/exporters.

With respect to CIPFC's argument that no company-specific margin was issued in the order on South Korea, we disagree. While the order and final and preliminary determinations of sales at less than fair value specify that the estimated weighted-average dumping margin applies to all imports, review of the notices of preliminary and final determinations makes clear that the margin was calculated on the basis of the response of Mijin.[3] Therefore, the 12.48 percent margin from the original investigation applied to Mijin and all others.

We disagree with CIPFC's suggestion that we should select the highest rates from the administrative reviews of the orders on South Korea and Taiwan as the margins likely to prevail if the orders were revoked. The *Sunset Policy Bulletin* refers to the selection of a recently calculated rate in cases where companies choose to increase dumping to maintain or increase market share. Based on the import statistics provided by CIPFC, this is clearly not the case with respect to these orders. Rather, as CIPFC argues, imports decreased after the issuance of the orders. There is no evidence that Korean or Taiwanese exporters increased dumping in order to maintain or increase market share.

Based on the above analysis, we find no reason to deviate from our policy of selecting the margins from the original investigation as probative of the behavior of the producers/exporters absent the discipline of the order. Therefore, the Department will report to the Commission the company-specific and the all others margins from the original investigations as contained in the ''Final Results of Reviews'' section of this notice.

**Final Results of Review**

As a result of these reviews, the Department finds that revocation of the antidumping duty orders would likely lead to the continuation or recurrence of dumping at the margins listed below:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| Japan: | |
| Hitachi Metals, Ltd. (HML) | 57.39 |
| All Others | 57.39 |
| Korea: | |
| Mijin Metal Industrial Co., Ltd | 12.48 |
| All Others | 12.48 |

[3] *See Malleable Cast Iron Pipe Fittings, Other than Grooved, From Korea,* 51 FR 1546 (January 14, 1986) and 51 FR 10900 (March 31, 1986).

| Manufacturer/exporter | Margin (percent) |
|---|---|
| Taiwan: | |
| San Yan Metal Industries Co., Ltd | 27.90 |
| De Ho | 13.12 |
| Tai Yang | 37.09 |
| Kwang Yu | 7.93 |
| Young Shieng | 80.00 |
| All Others | 28.27 |

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing the determination and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: July 30, 1999.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 99–20225 Filed 8–4–99; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–588–706]**

### Final Results of Expedited Sunset Review: Nitrile Rubber From Japan

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of expedited sunset review: Nitrile rubber from Japan.

**SUMMARY:** On April 1, 1999, the Department of Commerce (the ''Department'') initiated a sunset review of the antidumping order on nitrile rubber from Japan (64 FR 15727) pursuant to section 751(c) of the Tariff Act of 1930, as amended (the ''Act''). On the basis of a notice of intent to participate and adequate substantive response filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the ''Final Result of Review'' section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Eun W. Cho or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, US Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–1560, respectively.

**EFFECTIVE DATE:** August 5, 1999.

#### Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752(c) of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) (''*Sunset Regulations*''). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

#### Scope

The subject merchandise under consideration is butadiene acrylonitrile copolymer synthetic rubber (''nitrile rubber'') not containing fillers, pigments, or rubber-processing chemicals from Japan. Nitrile rubber refers to the synthetic rubber that is made from the polymerization of butadiene and acrylonitrile, and that does not contain any type of additive or compounding ingredient having a function in processing, vulcanization, or end use of the product. Latex rubber is excluded from this order.

Nitrile rubber is currently classifiable under item number 4002.59.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS item number is provided for convenience and Customs purposes only. The written product description of the scope of this order remains dispositive.

#### History of the Order

The antidumping duty order on nitrile rubber from Japan was published in the **Federal Register** on June 16, 1988 (53 FR 22553). In that order, the Department estimated that the weighted-average dumping margins for Nippon Zeon Co., Ltd. (''Nippon'') as well as for ''all-others'' were 146.50 percent. The Department has not conducted any administrative review since that time.[1] The order remains in effect for all manufacturers and exporters of the subject merchandise.

#### Background

On April 1, 1999, the Department initiated a sunset review of the antidumping duty order on nitrile rubber from Japan (64 FR 15727) pursuant to section 751(c)(6)(A)(i) of the Act. The Department received a Notice of Intent to Participate on behalf of Zeon Chemicals, L.P. (''Zeon'') on April 16, 1999, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations.* Zeon claimed interest party status under section 771(9)(C) of the Act as a domestic producer of nitrile rubber.

We received a complete substantive response from Zeon on May 3, 1999, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). Zeon noted that although Zeon did not exist at the time of the original antidumping determination, from which the present proceeding is derived, Zeon is currently the largest producer of nitrile rubber in the United States (*see* May 3, 1999, Substantive Response of Zeon at 3). Zeon further noted that the parent company of Zeon, the Japanese firm Nippon, had participated in the original investigation as a respondent interested party (*see id.*). Also, Zeon indicated that Zeon previously changed its name from ''Zeon Chemicals Incorporated'' to ''Zeon Chemicals, L.P.'' (*See id.*). We did not receive a substantive response from any respondent interested parties to this proceeding. Consequently, pursuant to section 351.218(e)(1)(ii)(C) of the *Sunset Regulations,* the Department determined to conduct an expedited, 120-day, review of this order.

#### Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of

[1] There has been only a single review requested by a Japanese firm, Japan Synthetic Rubber Co., Ltd. That request, however, was timely withdrawn by the same firm. Consequently, the Department terminated the review. *See Termination of Antidumping Duty Administrative Review,* 62 FR 54822 (October 22, 1997).

the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission (''the Commission'') the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, Zeon's comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

**Continuation or Recurrence of Dumping**

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (''URAA''), specifically the Statement of Administrative Action (''the SAA''), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin,* the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) Dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations,* this constitutes a waiver of participation.

In its substantive response, Zeon argues that dumping of the subject merchandise would resume if the antidumping duty order were revoked (*see,* May 3, 1999 Substantive Response of Zeon at 3). In support of its assertion, Zeon notes that the volume of imports of the subject merchandise immediately and dramatically decreased after the discipline of the antidumping order was put into effect. In addition, Zeon points to the existence of continued dumping above the *de minimis* level throughout the life of the order.

In addition to argument related to previously calculated dumping margins and the volume of imports before and after the issuance of the order, Zeon asserts that there are other facts that support a determination that revocation would result in resumption of dumping. Zeon notes that Japanese companies continue to manufacture the subject merchandise for export. Furthermore, Zeon asserts that the U.S. market has proven highly penetrable to imports of nitrile rubber. In conclusion, Zeon asserts that because nitrile rubber is highly fungible (and, therefore, U.S. purchasers quickly switch suppliers based on a small price changes), Japanese producers could easily regain customers by resuming dumping were the order revoked.

The Department agrees with Zeon's argument that imports have declined significantly since imposition of the order. Statistics drawn from U.S. Census Bureau IM146 reports (''IM146''), Import Special Information Service of the Journal of Commerce (''ISIS''), and Trade Information On-Line Service (''TIOS'') support Zeon's assertion that there was a substantial decrease of imports of the subject merchandise immediately after the issuance of the antidumping duty order. For instance, between 1987 and 1988 the imports of the subject merchandise fell 61 percent.[2] Moreover, between 1988 and 1998, the average volume of imports of the subject merchandise is a mere 18 percent of the pre-order level, some variations notwithstanding.[3]

With respect to the weighted-average dumping margins, as noted above, there has not been any administrative review with respect to the antidumping order under consideration. Consequently, the only weighted-average dumping margin available to the Department is the one that was determined in the original investigation: 146.50 percent. As a result, the Department finds that since the issuance of the antidumping duty order, imports of nitrile rubber from Japan have continued to be assessed the weighted-average dumping margin of 146.50 percent, which is significantly above *de minimis.*

In conclusion, considering the facts that respondent parties waived their right to participate in instant review, that dumping margins above *de minimis* level continued since the issuance of the order, and that import volumes substantially decreased after the issuance of the order, the Department finds that continuation or recurrence of dumping is likely if the antidumping duty order is revoked.

Since the Department based this determination on the facts that the import volume of the subject merchandise decreased substantially and that dumping continued at levels above *de minimis,* it is not necessary to address Zeon's additional arguments.

**Magnitude of the Margin**

In the *Sunset Policy Bulletin,* the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the ''all others'' rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin.*) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin.*)

The Department, in its notice of the antidumping duty order on nitrile rubber from Japan, established both company-specific and country-wide weighted-average dumping margins of 146.50 percent for all imports of the subject merchandise from Japan (53 FR 22553, June 16, 1988). We note that, to date, the Department has not issued any duty absorption findings in this case.

In its substantive response, Zeon asserts that revocation of the antidumping duty order would result in a resumption of dumping order at 146.50 percent, which is the weighted-average margin found in the investigation. Zeon argues that this is consistent with the SAA and *Sunset Policy Bulletin,* particularly in a case such as this where no administrative review has been conducted. In conclusion, Zeon argues that the decline in imports following the issuance of the order coupled with the fact that there

[2] As noted above, the antidumping duty order was issued on June, 1988.

[3] For example, in 1989, imports of the subject merchandise increased 28 percent compared to the reduced 1988 imports volume; however, this is still less than 50 percent of the pre-order level. More significantly, during the period from 1994 to 1998, the annual average import volume of the subject merchandise has fallen to 12 percent of the pre-order import volume.

have been no administrative reviews further suggests that the margins from the order accurately reflect the minimum level of dumping that Japanese companies must maintain to sell nitrile rubber in the U.S. market.

The Department agrees with the Zeon. Absent argument and evidence to the contrary, the Department finds the margins calculated in the original investigation are probative of the behavior of Japanese producers/exporters if the order were revoked, as they are the only margins which reflect their behavior absent the discipline of the order. Therefore, the Department will report to the Commission the company-specific and all other margins reported in the ''Final Results of Review'' section of this notice.

### Final Results of Review

Based on the above analysis, the Department finds that the revocation of the antidumping order would likely lead to continuation or recurrence of dumping at the margins listed below:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| Nippon Zeon Co. Ltd ..... | 146.50 |
| All others ..... | 146.50 |

This notice serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 99–20218 Filed 8–4–99; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–807]**

## Polyethylene Terephthalate Film, Sheet and Strip From Korea: Final Results of Antidumping Duty New Shipper Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of antidumping duty new shipper review.

**SUMMARY:** On May 10, 1999, the Department of Commerce (the Department) published the preliminary results of the new shipper review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET film) from the Republic of Korea (64 FR 25014). The review covers one manufacturer/exporter of the subject merchandise to the United States and the period June 1, 1997 through May 31, 1998. We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

We have determined that HSI Industries (HSI) made no U.S. sales below normal value, and we will instruct the U.S. Customs Service to assess no antidumping duties for HSI for the period covered by this new shipper review.

**EFFECTIVE DATE:** August 5, 1999.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Heaney or John Kugelman, AD/CVD Enforcement Group III, Office 8, Import Administration, International Trade Administration, US Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4475/0649.

### Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (1998).

**SUPPLEMENTARY INFORMATION:**

### Background

On May 10, 1999, the Department published in the **Federal Register** the preliminary results of its new shipper review of the antidumping duty order on PET film from Korea. We received no comments on our preliminary results. Therefore, we have only changed our preliminary results with respect to the currency conversion methodology discussed below.

### Scope of the Review

Imports covered by this review are shipments of all gauges of raw, pretreated or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. The films excluded from this review are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches (0.254 micrometers) thick. Roller transport cleaning film which has at least one of its surfaces modified by the application of 0.5 micrometers of SBR latex has also been ruled as not within the scope of the order.

PET film is currently classifiable under Harmonized Tariff Schedule (HTS) subheading 3920.62.00.00. The HTS subheading is provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of the product coverage.

The review covers the period June 1, 1997 through May 31, 1998. The Department is conducting this review in accordance wit section 751(a)(2)(B) of the Act.

### Currency Conversion

As previously stated by the Department, we have determined that the decline in the won at the end of 1997 was so precipitous an large that the dollar-won exchange rate cannot reasonably be viewed as having simply fluctuated during this time, *i.e.*, as having experienced only a momentary drop in value. *See* Emulsion Styrene Butadiene Rubber form the Republic of Korea: Notice of Final Determination of Sales at Less Than Fair Value, 64 FR 14865, 14867 (March 29, 1999). Therefore, the Department used daily rates exclusively for currency conversion purposes for home market sales matched to U.S. sales occurring between November 1 and December 31, 1997, and the standard exchange rate model with a modified benchmark for sales occurring between January 1, 1998 and February 28, 1998. The modified benchmark consisted of an average of the daily rates over the period January 1, 1998 through February 28, 1998. This methodology enabled us to use an up--to-date (post-precipitous drop) benchmark, but avoided undue day-to-day exchange rate fluctuations.

**Final Results of Review**

We determine that a margin of 0.00 percent exists for HSI for the period June 1, 1997 through May 31, 1998. We will disclose calculations performed in connection with these final results of review within 5 days after the date of any public announcement, or, if there is no public announcement, within 5 days of publication of this notice.

We will instruct the U.S. Customs Service not to assess antidumping duties on entries of the subject merchandise from HSI for the period of review.

Furthermore, the following deposit requirements shall be required for all shipments of PET film from the Republic of Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of this new shipper review, as provided by section 751(a)(1) of the Act: (1) No cash deposit shall be required for HSI; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the less-than-fair-value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review or the LTFV investigation; and (4) if neither the exporter nor the manufacturer is, a firm covered in this or any previous reviews, the cash deposit rate will be 21.5%, the ''all others'' rate established in the LTFV investigation.

This notice serves as the final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.305(a). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This new shipper review and notice are in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(d).

Dated: July 30, 1999.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 99–20226 Filed 8–4–99; 8:45 am]

BILLING CODE 3510–DS–M

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–588–028]**

### Revocation of Antidumping Finding: Roller Chain From Japan

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of revocation of antidumping finding: roller chain from Japan.

**SUMMARY:** Pursuant to section 751(c) of the Tariff Act from 1930, as amended (''the Act''), the United States International Trade Commission (''the Commission'') determined that revocation of the antidumping finding on roller chain from Japan is not likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (64 FR 36920 (July 8, 1999)). Therefore, pursuant to 19 CFR 351.222(i)(1), the Department of Commerce (''the Department'') is revoking the antidumping finding on roller chain from Japan. Pursuant to section 751(c)(6)(A)(iv) of the Act, the effective date of revocation is January 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, US Department of Commerce, 14th and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

**EFFECTIVE DATE:** January 1, 2000.

**Background**

On July 6, 1998, the Department initiated, and the Commission instituted, a sunset review (63 FR 26389 and 63 FR 36440, respectively) of the antidumping finding on roller chain from Japan pursuant to section 751(c) of the Act. As a result of the review, the Department found that revocation of the antidumping finding would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the finding to be revoked (*see Final Results of Expedited Sunset Review: Roller Chain from Japan*, 63 FR 63026 (November 10, 1998), as amended 63 FR 69262 (December 16, 1998)).

On July 8, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping finding on roller chain would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Roller Chain from Japan*, 64 FR 36920 (July 8, 1999) and USITC Pub. 3203, Inv. No. AA1921–111 (Review) (July 1999)).

**Scope**

The merchandise covered by this determination is roller chain, other than bicycle, from Japan. The term ''roller chain, other than bicycle,'' includes chain, with or without attachments, whether or not plated or coated, and whether or not manufactured to American or British standards, which is used for power transmissions and/or conveyance. This chain consists of a series of alternately-assembled roller links and pin links in which the pins articulate inside from the bushings and the rollers are free to turn on the bushings. Pins and bushings are press fit in their respective link plates. Chain may be single strand, having one row of roller links, or multiple strand, having more than one row of roller links. The center-plates are located between the strands of roller links. Such chain may be either single or double pitch and may be used as power transmission or conveyor chain. This order also covers leaf chain, which consists of a series of link plates alternately assembled with pins in such a way that the joint is free to articulate between adjoining pitches. Roller chain is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7315.11.00 through 7619.90.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description remains dispositive.

**Determination**

As a result of the determination by the Commission that revocation of this antidumping finding is not likely to lead to continuation or recurrence of material injury to an industry in the United States, the Department, pursuant to

section 751(d)(2) of the Act, will revoke the antidumping finding on roller chain from Japan. Pursuant to section 751(c)(6)(A)(iv) of the Act, this revocation is effective January 1, 2000. The Department will instruct the U.S. Customs Service to discontinue suspension of liquidation and collection of cash deposit rates on entries of the subject merchandise entered or withdrawn from warehouse on or after January 1, 2000 (the effective date). The Department will complete any pending administrative reviews of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: July 30, 1999.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 99–20214 Filed 8–4–99; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–588–054, A–437–601, A–485–602, A–588–604, A–427–801, A–427–801, A–427–801, A–428–801, A–428–801, A–428–801, A–475–801, A–475–801, A–588–804, A–588–804, A–588–804, A–485–801, A–559–801, A–401–801, A–401–801, A–412–801, A–412–801]**

### Tapered Roller Bearings, 4 Inches and Under From Japan, et al.; Extension of Time Limit for Final Results of Five-Year Reviews

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of extension of time limit for final results of five-year (''Sunset'') reviews.

**SUMMARY:** The Department of Commerce (''the Department'') is extending the time limit for the final results of the sunset reviews on the antidumping duty orders on tapered roller bearings, 4 inches and under form Japan, tapered roller bearings from Hungary, tapered roller bearings from Romania, tapered roller bearings, over 4 inches from Japan, cylindrical roller bearings from France, ball bearings from France, spherical plain bearings from France, spherical plain bearings from Germany, cylindrical roller bearings from Germany, ball bearings from Germany, ball bearings from Italy, cylindrical roller bearings from Italy, cylindrical roller bearings from Japan, spherical plain bearings from Japan, ball bearings from Japan, ball bearings from Romania, ball bearings from Singapore, ball bearings from Sweden, cylindrical roller bearings form Sweden, cylindrical roller bearings from the United Kingdom, ball bearings from the United Kingdom. Based on adequate responses from domestic interested parties and inadequate responses from respondent interested parties, the Department is conducting expedited sunset reviews to determine whether revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping. As a result of this extension, the Department intends to issue its final results not later than October 28, 1999.

**EFFECTIVE DATE:** August 5, 1999.

**FOR FURTHER INFORMATION CONTACT:** Scott E. Smith, Martha V. Douthit or Melissa G. Skinner, Import Administration, International Trade Administration, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW, Washington, DC 20230; telephone: (202) 482–6397, (202) 482–3207 or (202) 482–1560 respectively.

#### Extension of Final Results

The Department has determined that the sunset reviews of the antidumping duty orders on tapered roller bearings, 4 inches and under from Japan, tapered roller bearings from Hungary, tapered roller bearings from Romania, tapered roller bearings, over 4 inches from Japan, cylindrical roller bearings from France, ball bearings from France, spherical plain bearings from France, spherical plain bearings from Germany, cylindrical roller bearings from Germany, ball bearings from Germany, ball bearings from Italy, cylindrical roller bearings from Italy, cylindrical roller bearings from Japan, spherical plain bearings from Japan, ball bearings from Japan, ball bearings from Romania, ball bearings from Singapore, ball bearings from Sweden, cylindrical roller bearings from Sweden, cylindrical roller bearings from the United Kingdom, ball bearings from the United Kingdom are extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Tariff Act of 1930, as amended (''the Act''), the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). *See* section 751(c)(6)(C) of the Act. The Department is extending the time limit for completion of the final results of these reviews until not later than October 28, 1999, in accordance with section 751(c)(5)(B) of the Act.

Dated: July 30, 1999.

**Joseph A. Spetrini,**

*Acting Assistance Secretary for Import Administration.*

[FR Doc. 99–20220 Filed 8–4–99; 8:45 am]

**BILLING CODE 3510–DS–M**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–535–001]**

### Final Results of Expedited Sunset Review: Cotton Shop Towels From Pakistan

**AGENCY:** Import Administration, International Trade Administration, U.S. Department of Commerce.

**ACTION:** Notice of final results of expedited sunset review: cotton shop towels from Pakistan.

**SUMMARY:** On January 4, 1999, the Department of Commerce (''the Department'') initiated a sunset review of the countervailing duty order on cotton shop towels from Pakistan pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of the domestic party, and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailing subsidy. The net countervailable subsidy and the nature of the subsidy are identified in the Final Results of Review section to this notice.

**FOR FURTHER INFORMATION CONTACT:** Martha V. Douthit or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, DC 20230; telephone (202) 482–3207 or (202) 482–1560, respectively.

**EFFECTIVE DATE:** August 5, 1999.

#### Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) (''*Sunset Regulations*''). Guidance on methodological or analytical issues

relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

**Scope**

The subject merchandise is cotton shop towels from Pakistan. This merchandise is classifiable under item number 6307.10.20 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and customs purposes. The written description remains dispositive.

**History of the Order**

On January 11, 1984, the Department issued a final affirmative countervailing duty determination on cotton shop towels from Pakistan.[1] The Department found a country-wide estimated net subsidy rate of 12.67 percent *ad valorem* based on seven programs: 7.5 percent under the compensatory rebate program, 3.8 percent under the excise tax program, 0.11 percent under the sales tax rebate program, 0.37 percent under the customs duty rebate program, 0.013 percent under the income tax reduction program, 0.08 percent under the export financing program, and 0.8 percent under the export credit insurance program. Receipt of benefits under each of these programs was contingent upon exports. The Department also found that the import duty rebate program was not used.[2]

On March 9, 1984, the Department issued a countervailing duty order which confirmed the subsidy rates found in the original investigation.[3] Since the issuance of the order, the Department has conducted eight administrative reviews covering the eight programs investigated in the original investigation.[4]

During the administrative reviews covering April 1, 1984 through December 31, 1984 and January through December 1985, the Department determined that the compensatory rebate scheme had been repealed. In addition, during these same reviews, the Department found that Pakistan producers/exporters received countervailable benefits under the import duty rebate program at a rate of zero percent in 1984 and 0.000028 percent in 1985.

In the final results of the administrative review of the period January 1, 1993 through December 31, 1993, the Department, for the first time, issued company-specific rates in addition to a country-wide rate. Net subsidies of 11.50 percent and 11.54 percent were determined for Eastern Textiles, Ltd., and Creation (Pvt.) Ltd., respectively.

This review covers all producers and exporters of cotton shop towels from Pakistan.

**Background**

On January 4, 1999, the Department initiated a sunset review of the countervailing duty order on cotton shop towels from Pakistan pursuant to section 751(c) of the Act. On January 19, 1999, the Department received a Notice of Intent to Participate from Milliken & Company (''Milliken''), within the deadline specified in § 351.218(d)(1)(i) of the *Sunset Regulations*. Milliken claimed interested party status under § 771(9)(C) of the Act, as a domestic producer of cotton shop towels. Milliken asserted that it was the petitioner in the original countervailing duty investigation and has participated as a domestic interested party since that time. On February 3, 1999, the Department received Milliken's substantive response to the Department's notice of initiation, within the 30-day deadline specified in the *Sunset Regulations* in § 351.218(d)(3)(i). We did not receive a response from any respondent interested party, including the Government of Pakistan. As a result, pursuant to section 751(c)(3)(B) of the Act and our regulations (19 CFR 351.218(e)(1)(ii)(C)(2)), we determined to conduct an expedited review.

The Department determined that the sunset review of the countervailing duty order on cotton shop towels from Pakistan is extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). (*See* section 751(c)(6)(C) of the Act.) Therefore, on May 7, 1999, the Department extended the time limit for completion of the final results of this review until not later than August 2, 1999, in accordance with section 751(c)(5)(B) of the Act.[5]

**Determination**

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any change in the program which gave rise to the net countervailable subsidy has occurred that is likely to affect that net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the International Trade Commission (''the ITC'') the net countervailable subsidy likely to prevail if the order is revoked. In addition, consistent with section 752(a)(6), the Department shall provide the ITC information concerning the nature of the subsidy and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the 1994 WTO Agreement on Subsidies and Countervailing Measures (''Subsidies Agreement'').

The Department's determination concerning continuation or recurrence of a countervailable subsidy, the net countervailable subsidy likely to prevail if the order is revoked, and the nature of the subsidy are discussed below. In addition, Milliken's comments with respect to each of these issues are addressed within the respective sections.

**Continuation or Recurrence of a Countervailable Subsidy**

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreement Act (''URAA''), specifically the Statement of Administrative Action (''the SAA''), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No.103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the

[1] *Cotton Shop Towels From Pakistan; Final Affirmative Countervailing Duty Determination*, 49 FR 1408, (January 11, 1984).

[2] *Id.*

[3] *Cotton Shop Towels From Pakistan, Countervailing Duty Order*, 49 FR 8974 (March 9, 1984).

[4] *Cotton Shop Towels From Pakistan; Final Results of Administrative Review of Countervailing Duty Order*, 51 FR 5219 (February 12, 1986); *Cotton Shop Towels From Pakistan; Final Results of Countervailing Duty Administrative Review*, 54 FR 14671 (April 12, 1989); *Cotton Shop Towels From Pakistan; Final Results of Countervailing Duty Administrative Review*, 56 FR 28740 (June 24, 1991); *Cotton Shop Towels From Pakistan; Final Results of Countervailing Duty Administrative Review*, 57 FR 12475 (April 10, 1992); *Cotton Shop Towels From Pakistan; Final Results of Countervailing Duty Administrative Review*, 58 FR 48038, (September 14, 1993); and *Cotton Shop Towels From Pakistan; Final Results of Countervailing Duty Administrative Reviews*, 62 FR 24082 (May 2, 1997).

[5] *See Steel Wire Rope from Japan, et. al.: Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 24573 (May 7, 1999).

Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis (*see* section III.A.2 of the *Sunset Policy Bulletin*). Additionally, the Department normally will determine that revocation of a countervailing duty order is likely to lead to continuation or recurrence of a countervailable subsidy when (a) a subsidy program continues, (b) a subsidy program has been only temporarily suspended, or (c) a subsidy program has been only partially terminated (*see* section III.A.3.a of the *Sunset Policy Bulletin*). Exceptions to this policy are provided when a company has a long record of not using a program (*see* section III.A.3.b of the *Sunset Policy Bulletin*).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of a countervailable subsidy when a respondent interested party waives its participation in the sunset review. Pursuant to the SAA, at 881, in a review of a countervailing duty order, when the foreign government has waived participation, the Department shall conclude that revocation of the order would be likely to lead to a continuation or recurrence of a countervailable subsidy for all respondent interested parties.[6] In the instant review, the Department did not receive a response from the foreign government or from any other respondent interested party. Pursuant to § 351.218(d)(2)(iii) of the Sunset Regulations, this constitutes a waiver of participation.

In its substantive response, Milliken asserted that revocation of the countervailing duty order on cotton shop towels from Pakistan would likely result in the recurrence of countervailable subsidies. Milliken asserted that in the original investigation and in the subsequent administrative reviews, the Department found several programs to confer countervailable subsidies. Further, Milliken asserted that the Government of Pakistan's recent withdrawal of its administrative review request strongly suggests that there has been no change in the programs giving rise to countervailing subsidies.[7] In its substantive response, Milliken asserted that, with the exception of the compensatory rebate program, to the best of its knowledge, there is no evidence that the programs giving rise to the subsidies have been suspended or terminated, or that the respondent exporters have renounced the countervailable subsidies under these programs.[8]

In conclusion, Milliken argued that, based on the history of this case, the Department must determine that revocation of the countervailing duty order would likely lead to the recurrence of subsidized imports of cotton shop towels from Pakistan.

The *Sunset Policy Bulletin,* at section III.A.3, states that, consistent with the SAA at 888, continuation of a program will be probative of the likelihood of continuation or recurrence of countervailable subsidies. Temporary suspension or partial termination of a subsidy program also will be probative of continuation or recurrence of countervailable subsidies, absent significant evidence to the contrary. Additionally, the *Sunset Policy Bulletin* provides that, when a program has been officially terminated by the foreign government, this will be probative of the fact that the program will not continue or recur if the order is revoked (*see Sunset Policy Bulletin* at section III.A.5).

We agree with Milliken that Pakistan producers/exporters continue to benefit from several countervailable subsidy programs. The Department, in the most recent administrative review, determined that producers/exporters received countervailable benefits under the export financing program, the excise tax, sales tax, and customs duty rebate programs, and the income tax reduction program. The Department also listed two programs found not to be used that had previously been found countervailable.

As stated above, the continued use of a program is highly probative of the likelihood of continuation or recurrence of countervailable subsidies if the order were revoked. Additionally, the presence of programs that have not been used, but that also have not been terminated, is also probative of the likelihood of continuation or recurrence of a countervailable subsidy. Therefore, because there are countervailable programs that are currently being used and others that remain in existence, the foreign government and other respondent interested parties waived their right to participate in this review before the Department, and absent argument and evidence to the contrary, the Department determines that it is likely that a countervailable subsidy will continue if the order is revoked.

**Net Countervailable Subsidy**

In the *Sunset Policy Bulletin,* the Department stated that, consistent with the SAA and House Report, the Department normally will select a rate from the investigation, because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order or suspension agreement in place. The Department went on to clarify that this rate may not be the most appropriate rate if, for example, the rate was derived (in whole or in part) from subsidy programs which were found in subsequent reviews to be terminated, there has been a program-wide change, or the rate ignores a program found to be countervailable in a subsequent administrative review. Additionally, when the Department determined company-specific countervailing duty rates in the original investigation, the Department normally will report to the Commission those company-specific rates from the original investigation, or where no company-specific rate was determined for a company, the Department normally will provide to the Commission the country-wide or ''all others'' rate. (*See Sunset Policy Bulletin* at section III.B.2.)

Milliken suggested that the Department select the original subsidy rate of 12.67 percent as the net countervailable subsidy rate likely to prevail if the order is revoked. Milliken argued that, should the Department decide that adjustments to the original subsidy rate are warranted, the Department should provide the Commission the rates from the final results of the most recent administrative review: Eastern Textiles, Ltd., 11.50 percent *ad valorem,* and Creation (Pvt), Ltd., 11.54 percent *ad valorem,* and for all other producers/exporters of cotton shop towels from Pakistan, 8.49 percent *ad valorem;* the rates from the final results of the most recent administrative review (*see* Milliken's February 3, 1999, Substantive Response, at 9.)

We disagree with Milliken's arguments that we use either the unadjusted rate from the original investigation or the rates from the most recent administrative review. As stated above, the Department normally will select the rate from the investigation, because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the

[6] *See* 19 CFR 351.218(d)(2)(iv).

[7] *See* Milliken Substantive Response (February 3, 1999) at 4, and *Cotton Shop Towels From Pakistan; Termination of Countervailing Duty Administrative Review,* 62 FR 34046 (June 24, 1997).

[8] *See* Milliken Substantive Response (February 3, 1999) at 6.

discipline of the order in place. However, the *Sunset Policy Bulletin* (in section III.B.3.) also provides that adjustments may be made to the original net countervailable subsidy when programs have been terminated or when new programs have been added.

As Milliken noted in its substantive response, the compensatory rebate scheme was found to have been terminated. Additionally, over the life of this order, the Department found that producers/exporters received countervailable benefits under the import duty rebate program—a program found not used in the original investigation.

As a result of changes in programs since the imposition of the order, the Department determines that using the net countervailable subsidy rate as determined in the original investigation is no longer appropriate. Rather, we have adjusted the net countervailable subsidy from the original investigation by adding in the rate from the import duty rebate program (first used in the review covering April 1984 through December 1984) and subtracting out the subsidy from the compensatory rebate scheme which was terminated on May 29, 1986. (*See* calculation memo.)

**Nature of the Subsidy**

In the *Sunset Policy Bulletin*, the Department stated that, consistent with section 752(a)(6) of the Act, the Department will provide information to the Commission concerning the nature of the subsidy and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement. In this case, Milliken did not address this issue.

Because receipt of benefits under each of the countervailable programs is contingent upon exports, these programs fall within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement. Each of the countervailable programs is described below.

*Customs Duty Rebate*

The government provides a 2% customs duty rebate on exported goods. The program, is in effect, a duty drawback. The government pays this rebate on items not physically incorporated into the exported product.

*Rebates On Exportation*

The government of Pakistan provides exporters of shop towels with cash rebates which are calculated as a percentage of the f.o.b. value of the exported product.

*Income Tax Reduction*

The government of Pakistan provides a 55% reduction of taxes attributable to income generated by products made for export.

*Preferential Export Financing*

The government permits short-term export financing to be provided to exporters at rates considerably lower than those otherwise charged on short-term loans in Pakistan.

*Excise Tax and Sales Tax Rebate*

The government of Pakistan provides an excise tax rebate and sales tax rebate on exports of shop towels.

**Final Results of Review**

As a result of this review, the Department finds that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy at the rate listed below.

| Manufacturers/exporters | Margin (percent) |
|---|---|
| All manufacturers/exporters ..... | 5.17 |

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with § 351.305 of the Department's regulation (19 CFR 351.305).

Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: July 30, 1999.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 99–20224 Filed 8–4–99; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

**[Docket Number: 990302059–9206–03]**

**RIN ZA07**

### Public Telecommunications Facilities Program (PTFP)

**AGENCY:** National Telecommunications and Information Administration, Commerce.

**ACTION:** Notice of applications received.

**SUMMARY:** The National Telecommunications and Information Administration (NTIA) previously announced the solicitation of grant applications for the Pan-Pacific Education and Communications Experiments by Satellite (PEACESAT) Program to compete for funds from the Public Broadcasting, Facilities, Planning and Construction Funds account. This notice announces the list of applications received and notifies any interested party that it may file comments with the Agency supporting or opposing an application.

**FOR FURTHER INFORMATION CONTACT:** William Cooperman, Acting Director, Public Telecommunications Facilities Program, telephone: (202) 482–5802; fax: (202) 482–2156. Information about the PTFP can also be obtained electronically via Internet (send inquiries to http://www.ntia.doc.gov).

**SUPPLEMENTARY INFORMATION:** By **Federal Register** notice dated March 16, 1999, the NTIA, within the Department of Commerce, announced that it was soliciting grant applications for the Pan-Pacific Education and Communications Experiments by Satellite (PEACESAT) Program to compete for funds from the Public Broadcasting, Facilities, Planning and Construction Funds account. NTIA announced that the closing date for receipt of PTFP applications was 5 p.m. EST, April 15, 1999. By **Federal Register** Notice dated April 13, 1999, the closing date was revised to 5 p.m. April 22, 1999.

Notice is hereby given that the PTFP received one application from the following organization. Identification of any application only indicates its receipt. It does not indicate that it has been accepted for review, has been determined to be eligible for funding, or that an application will receive an award.

Any interested party may file comments with the Agency supporting or opposing an application and setting forth the grounds for support or opposition. PTFP will forward a copy of any opposing comments to the applicant. Comments must be sent to PTFP at the following address: NTIA/PTFP, Room 4625, 1401 Constitution Ave., NW, Washington, DC 20230.

The Agency will incorporate all comments from the public and any replies from the applicant in the applicant's official file.

File No. 99253 University of Hawaii, Social Science Research Institute, 2530 Dole St., Sakamaki Hall D–200, Honolulu, HI 96822. Contact: Dr. Norman Okamura, Telecommunications

Specialist, (808) 956–2909. Funds Requested: $598,442. Total Project Cost: $715,041. To support public service and development telecommunications services in the Pacific Island region, including the expansion of new digital services.

**Bernadette McGuire-Rivera,**

*Associate Administrator, Office of Telecommunications and Information Applications.*

[FR Doc. 99–20069 Filed 8–4–99; 8:45 am]

**BILLING CODE 3510–60–P**

## COMMODITY FUTURES TRADING COMMISSION

### Proposed Amendments to the Chicago Board of Trade Oats Futures Contract To Provide That Minneapolis/St. Paul Deliveries Will Be at Par With Chicago Deliveries

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of availability of proposed amendments.

**SUMMARY:** The Chicago Board of Trade (CBT or Exchange) has proposed amendments to its oats futures contract that will change the locational price differential for oats delivered at regular warehouses in Minneapolis/St. Paul, Minnesota to par from the current 7½ cents per bushel discount. The proposed amendments will apply only to oats futures contract months beginning with the July 2000 contract month. The proposed amendments were submitted under the Commission's 45-day Fast Track procedures which provide that, absent any contrary action by the Commission, the proposed amendments may be deemed approved on September 13, 1999—45 days after the Commission's receipt of the proposals. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purpose of the Commodity Exchange Act.

**DATES:** Comments must be received on or before August 20, 1999.

**ADDRESSES:** Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to *secretary@cftc.gov*. Reference should be made to the CBT oats Minneapolis/St. Paul par delivery amendments.

**FOR FURTHER INFORMATION CONTACT:** Martin Murray of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC, (202) 418–5276. Electronic mail: *mmurray@cftc.gov*.

**SUPPLEMENTARY INFORMATION:** The CBT oats futures contract calls for the delivery of 5,000 bushels of oats in regular warehouses located at Chicago, Illinois (including Burns Harbor, Indiana) and Minneapolis/St. Paul, Minnesota. Under current contract terms, delivery in Chicago is at par, and in Minneapolis/St. Paul is at a 7½ cents per bushel discount. Under the proposed amendments, delivery in Minneapolis/St. Paul would be made at par, along with delivery in Chicago.

The Exchange states that its proposal reflects the fact that Minneapolis/St. Paul is the leading cash market for oats and that most futures deliveries are made from this location.

The Commission particularly requests that commenters address the extent to which a zero price differential between Minneapolis/St. Paul and Chicago (that is, par delivery for both points) falls within the range of normal commercial price differences between these locations, and the extent to which the proposed amendments will affect economically deliverable supplies for the oats futures contract.

Copies of the proposed amendments are available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address, by phone at (202) 418–5100, or via the Internet on the CFTC website at *www.cftc.gov* under ''What's New & Pending.''.

Other materials submitted by the CBT in support of the proposal may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1997)), except to the extent that they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 45.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the CBT, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on July 30, 1999.

**John Mielke,**

*Acting Director.*

[FR Doc. 99–20149 Filed 8–4–99; 8:45 am]

**BILLING CODE 6351–01–M**

## COMMODITY FUTURES TRADING COMMISSION

### Proposed Amendments to Chicago Board of Trade Rough Rice Futures Contract Regarding Locational Price Differentials

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of availability of proposed amendments to contract terms and conditions.

**SUMMARY:** The Chicago Board of Trade (CBT or Exchange) has proposed amendments to Chicago Board of Trade rough rice futures contract that would remove the discount for deliveries at non-mill site warehouses. The proposed amendments were submitted under the Commission's 45-day Fast Track procedures which provides that, absent any contrary action by the Commission, the proposed amendments may be deemed approved on September 10, 1999—45 days after the Commission's receipt of the proposals. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

**DATES:** Comments must be received on or before August 20, 1999.

**ADDRESSES:** Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street, NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be

made to the proposed amendments to the CBT rough rice futures contract.

**FOR FURTHER INFORMATION, CONTACT:** Please contact John Bird of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581, telephone (202) 418–5274. Facsimile number: (202) 418–5527. Electronic mail: jbird@cftc.gov.

**SUPPLEMENTARY INFORMATION:** The existing terms of the rough rice futures contract provide for the delivery of rough rice in store at exchange-designated warehouses located in specified counties of central and eastern Arkansas. Regular delivery facilities are either co-located with mills and thus are known as ''mill site warehouses,'' or they are not co-located with mills and thus are known as ''non-mill site warehouses.'' Deliveries made at mill site warehouses are made at the contract price (par) while deliveries made at non-mill site warehouses are subject to a discount of 15 cents per hundredweight.

The proposed amendments will remove the current discount applicable to deliveries at non-mill site warehouses. Thus, rough rice at all regular warehouses would be deliverable at par. The CBT intends to apply the proposed amendments to the September 2000 contract month and all subsequently listed contract months following its receipt of notice of Commission approval.

In support of the proposed amendments, the CBT stated that:

> The 15-cent price differential at non-mill site warehouses was specified to reflect a supposed price differential that existed in the cash market between mill site and non-mill site warehouses. The theoretical reason for the price differential was that holders of warehouse receipts at a mill site could have the rice milled by the owner of the mill, a process known as ''toll milling.'' According to several participants in the rice industry, toll milling no longer takes place to any significant extent, and mills will not mill rice that they do not own. On June 9, 1999, a consensus was reached by a rice industry group assembled by the Chicago Board of Trade that toll milling indeed no longer takes place. The group also agreed that because toll milling no longer takes place, no differential exists in the cash-market price between rice at mill sites and non-mill sites. Therefore, the 15-cent per hundredweight discount for delivery at non-mill site warehouses is no longer appropriate.

The Commission requests that commenters address the extent to which the proposed amendment would reflect the relative value of rough rice stored at mill site warehouses versus rough rice stored at non-mill site warehouses and the potential effects of the proposed amendment on the supply of rough rice likely to be economically available for delivery on the contract as well.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581. Copies of the proposed amendments can be obtained through the Office of the Secretariat by mail at the above address, by phone at (202) 418–5100, or via the Internet on the CFTC website at www.cftc.gov under ''What's New & Pending''.

Other materials submitted by the CBT in support of the proposal may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitted written data, views, or arguments on the proposed amendments, or with respect to other materials submitted by the CBT, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on July 20, 1999.

**John R. Mielke,**

*Acting Director.*

[FR Doc 99–20150 Filed 8–4–99; 8:45 am]

**BILLING CODE 6351–01–M**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive Licensing

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice.

**SUMMARY:** In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patent for non-exclusive, partially exclusive or exclusive licensing. The listed patent as been assigned to the United States of America as represented by the Secretary of the Army, Washington, D.C.

This patent covers a wide variety of technical arts including: A High Output Acoustic Signal Device, A Microwave Powered Vehicle Stopper and a thermal Battery With Reduced Self-Discharge.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Public Law 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wish to license the U.S. patent listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by this patent.

*Title:* Thermal Battery With Reduced Self-Discharge.

*Inventor:* Frank C. Krieger.

*Patent Numbers:* 5,900,331.

*Issued Date:* May 4, 1999.

*Title:* Multiple Plasma Channel High Output Variable Electro-Acoustic Pulse Source.

*Inventor:* Bruce Benwell, Dave, DeTroye, Harold E. Boesch and Vincent Ellis.

*Patent Numbers:* 5,903,518.

*Issued Date:* May 11, 1999.

*Title:* In-Road Microwave Vehicle Stopper.

*Inventor:* Todd M. Turner, Mark D. Berry and Edward P. Scannell.

*Patent Numbers:* 5,907,290.

*Issued Date:* May 25, 1999.

**FOR FURTHER INFORMATION CONTACT:** Norma Cammaratta, Technology Transfer Office, AMSRL–CS–TT, U.S. Army Research Laboratory, Adelphi, MD 20783–1197 tel: (301) 394–2952; fax: (301) 394–5818.

**SUPPLEMENTARY INFORMATION:** None.

**Gregory D. Showalter,**

*Army Federal Register Liaison Officer.*

[FR Doc. 99–20198 Filed 8–4–99; 8:45 am]

**BILLING CODE 3710–08–M**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive Licensing

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice.

**SUMMARY:** In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patent for non-exclusive, partially exclusive or exclusive or exclusive licensing. The listed patent has been assigned to the United States of America as represented by the Secretary of the Army, Washington, D.C.

This patent covers a wide variety of technical arts including: An Optical

Alignment Sensor, an Optical Based pressure Sensor and a Device to Detect NO and $NO_2$.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Public Law 99-502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wish to license the U.S. patent listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by this patent.

*Title:* Device and Process For Detecting And Discriminating NO and $NO_2$ From Other Nitrocompounds In Real-Time And In Situ.

*Inventors: Rosario C. Sausa and Robert Pastel.*

*Patent Number:* 5,906,946.

*Issued Date:* May 25, 1999.

*Title:* G-Hardened Optical Alignment Sensor.

*Inventors:* David J. Hepner and Michael S.L. Hollis.

*Patent Number:* 5,909,275.

*Issued Date:* June 1, 1999.

*Title:* Optically-Based Pressure Sensor Having Temperature Compensation.

*Inventor:* Michael McQuaid.

*Patent Number:* 5,912,457.

*Issued Date:* June 15, 1999.

**FOR FURTHER INFORMATION CONTACT:** Michael Rausa, Technology Transfer Office, AMSRL–CS–TT, U.S. Army Research Laboratory, Aberdeen Proving Ground, MD 21005–5055 tel: (410) 278–5028; fax: (410) 278–5820.

**SUPPLEMENTARY INFORMATION:** None.

**Gregory D. Showalter,**

*Army Federal Register Liaison Officer.*

[FR Doc. 99–20193 Filed 8–4–99; 8:45]

**BILLING CODE 3710–08–M**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Corps of Engineers

### Revised Draft Environmental Impact Statement for Proposed Open-Water Placement of Dredged Material at Site 104, Queen Anne's County, Maryland

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice.

**SUMMARY:** Reference previous **Federal Register** notice, Volume 64, Number 126, page 35634, dated July 1, 1999, announcing the Baltimore District's extension of comment period to July 31, 1999. the Baltimore District is announcing that it will prepare a revised Draft Environmental Impact Statement (DEIS) for the proposed open-water placement of dredged material at Site 104, Queen Anne's County, Maryland. The public is encouraged to continue to submit its comments during this revision process. The revised DEIS will be made available to the public for 45 days once it's completed. The Baltimore District will consider all public comments received on the February 1999 DEIS, the revised DEIS, and the Final Environmental Impact Statement (FEIS) before making a decision.

**DATES:** The District expects to release the revised DEIS to the public in December 1999. The District expects to release the FEIS to the public in April 2000.

**ADDRESSES:** Questions and comments should continue to be directed to Mr. Wesley E. Coleman, Jr. at the Corps of Engineers Baltimore District (ATTN: CENAB–PL–P), P.O. Box 1715, Baltimore, MD 21203–1715 or by e-mail at wesley.e.coleman@usace.army.mil.

**FOR FURTHER INFORMATION CONTACT:** Mr. Wesley E. Coleman, Jr. at 1–800–295–1610 or by facsimile at (410) 962–4698.

**SUPPLEMENTARY INFORMATION:** A Notice of Availability (NOA) and a summary of the proposed action was published in the **Federal Register** (64 FR 9480) on February 26, 1999. The U.S. Army Corps of Engineers, Baltimore's District is evaluating the potential use of Site 104 as an open-water placement area. Site 104 is located in the Chesapeake Bay one-half mile north of the Chesapeake Bay Bridge and one mile west of Kent Island. Open-water placement is proposed for approximately 18 million cubic yards of dredged material from the mainstem Chesapeake Bay channels leading to the port of Baltimore. This does not include material from the channels in the Patapsco River. The Maryland Port Administration has recommended the use of Site 104 for open-water placement of clean sediment. No decision has been made to use the site. The Baltimore District will consider all public comments received on the February 1999 DEIS, the revised DEIS, and the FEIS before making a decision.

**Gregory D. Showalter,**

*Army Federal Register Liaison Officer.*

[FR Doc. 99–20195 Filed 8–4–99; 8:45 am]

**BILLING CODE 3710–41–M**

## DEPARTMENT OF DEFENSE

### Corps of Engineers; Department of the Army

### Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Navigation Improvements at Akutan, AK

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** The U.S. Army Engineer District, Alaska, intends to prepare a DEIS for the construction of a boat harbor at Akutan, Alaska. The village of Akutan is an isolated, subsistence-based, Alaska Native community in the Aleutian Island chain. Although the Aleut population of the local village remains at 90–100, the fish processing activity in the area brings the total year-round population in Akutan to over 500, peaking during certain fisheries seasons at about 1,000. The village has no roads or airport. The harbor would serve local commercial and subsistence fishing vessels, and moor commercial and recreational transient vessels.

**FOR FURTHER INFORMATION CONTACT:** Wayne M. Crayton (907) 753–2672, Alaska District, Corps of Engineers, Environmental Resources Section (CEOPA–EN–CW–ER), P.O. Box 898, Anchorage, Alaska 99506–0898. E-mail *Wayne.M.Crayton@usace.army.mil*

**SUPPLEMENTARY INFORMATION:** This General Investigation feasibility study will consider structural alternatives including the construction of a breakwater, a dredged basin, and harbor related infrastructure. The initial evaluation identified two harbor locations. One alternative is at the head of Akutan Harbor and would require extensive excavation and fill in coastal wetlands. The second alternative is near the village and seafood processing plant, but in deeper water that would require a large breakwater and might require blasting. Both alternatives would require the construction of an access road. Other harbor locations and non-structural alternatives identified during the scoping process will be evaluated.

**Issues**

The DEIS will consider the needs of the village and commercial vessel operations, impacts to marine intertidal and subtidal communities, fish and wildlife, wetlands, threatened and endangered species, essential fish habitant, water quality, cultural resources, socio-economic resources, and other resources and concerns identified through scoping, public

involvement, and interagency coordination.

### Scoping

A copy of this notice and additional public information will be sent to interested parties to initiate scoping. All parties are invited to participate in the scoping process by identifying any additional concerns, issues, studies, and alternatives that should be considered. A scoping meeting will be announced. Project effects on wetlands and their importance to the ecology of the area and the potential for the project and project road to induce development have been identified as significant issues. The DEIS is scheduled for release in January 2001.

**Guy R. McConnell,**

*Chief, Environmental Resources Section.*

[FR Doc. 99–20194 Filed 8–4–99; 8:45 am]

BILLING CODE 3710–NL–M

## DEPARTMENT OF DEFENSE

## Corps of Engineers; Department of the Army

## Notice of Intent and Notice of Preparation for an Environmental Impact Statement and Environmental Impact Report for a Proposed Ecosystem Restoration of Middle Creek in Lake County, CA

**AGENCY:** U.S. Army Corps of Engineers (Corps), Sacramento District (Federal); California Department of Water Resources, Division of Flood Management (State); Lake County, California (local).

**ACTION:** Notice.

**SUMMARY:** The objectives of this project are to restore wetland habitat and enhance wildlife and fish habitat. Secondary objectives include preserving existing resources, improving lake water quality, enhancing recreation and tourism, reducing flood risk, and reducing maintenance cost and responsibility for Middle Creek along Rodman Slough. The intent of this project is to restore the ecosystem functions of a historic wetland at the mouth of Middle Creek.

**FOR FURTHER INFORMATION CONTACT:** Questions about the proposed action and EIS/EIR can be answered by Jerry Fuentes at (916) 557–6706 or by mail at U.S. Army Corps of Engineers, Planning Division, ATTN: CESPK–PD–R, 1325 J Street, Sacramento, California 95814–2922.

**SUPPLEMENTARY INFORMATION:**

### 1. Proposed Action

The Corps, in cooperation with the state (California Department of Water Resources and the local sponsor (Lake County), is conducting a feasibility investigation on the ecosystem restoration measures identified during the reconnaissance phase and described in the Middle Creek Ecosystem Restoration Study dated May, 1997. This ecosystem restoration investigation proposes to restore the wetland ecosystem functions associated with the historical wetland that existed at the mouth of Middle Creek.

### 2. Alternatives

The feasibility report will address an array of alternatives. Alternatives analyzed during the feasibility investigation will be a combination of one or more ecosystem restoration measures identified during the reconnaissance phase; additional measures may be considered. These alternative measures include expanding the natural floodplain, restoring open water and marsh habitat, restoring seasonal wetland and riparian habitat, enhancing upland habitat, plant marsh and riparian vegetation, planting marsh and riparian vegetation, excavating sloughs, channels, ponds, expanding lake shoreline and shallow aquatic habitat, and reducing height of levees no longer used for flood control.

a. No Action. There will be no ecosystem restoration measures implemented for Middle Creek, Lake County.

b. Expand the Natural Floodplain.

c. Restore Robinson Lake from Bloody Island to Clear Lake.

d. Restore Robinson Lake from Reclamation Road to Clear Lake.

### 3. Scoping Process

a. The project study plan provides for public scoping meeting and comment. The Corps has initiated a process of involving concerned individuals, local, state, and Federal agencies.

b. Significant issues to be analyzed in depth in the EIS/EIR include appropriate levels of the flood damaged reduction, adverse affects on vegetation and wildlife resources, special-status species, esthetics, cultural resources, recreation, and cumulative impacts of related projects in the study area.

c. The Corps will consult with the State Historic Preservation Officer and the U.S. Fish and Wildlife Service to provide a Fish and Wildlife Coordination Act Report an as appendix to the EIS/EIS.

d. A 45-day public review period will be provided for individuals and agencies to review and comment on the EIS/EIR. All interested parties should respond to this notice and provide a current address if they wish to be notified of the EIS/EIR circulation.

### 4. Public Meetings

The first of a series of public scoping meetings will be held on August 12, 1999, from 6:30 p.m. to 9:00 p.m. at Robinson Rancheria, Tribal Community Hall, 1545 East Highway 20, Upper Lake, California.

### 5. Availability

The EIS/EIR is scheduled to be available for public review and comment late in calendar year 2001.

Dated: July 29, 1999.

**Michael J. Walsh,**

*COL, EN, Commanding.*

[FR Doc. 99–20197 Filed 8–4–99; 8:45 am]

BILLING CODE 3710–EZ–M

## DEPARTMENT OF EDUCATION

**[CFDA No.: 84.019A, 84.021A, 84.022A]**

## Office of Postsecondary Education: Fulbright-Hays Faculty Research Abroad Fellowship Program, Fulbright-Hays Group Projects Abroad Program, and Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000

### Purpose of Programs

(a) The Faculty Research Abroad Fellowship Program offers opportunities to faculty members of institutions of higher education for research and study in modern foreign languages and area studies.

(b) The Group Projects Abroad Program provides grants to support overseas projects in training, research, and curriculum development in modern foreign languages and area studies for groups of teachers, students, and faculty engaged in a common endeavor. Projects may include short-term seminars, curriculum development or group research or study. The program does not support advanced intensive language projects under this competition.

(c) The Doctoral Dissertation Research Abroad Fellowship Program provides opportunities for graduate students to engage in full-time dissertation research abroad in modern foreign languages and area studies.

### Eligible Applicants

(a) Institutions of higher education are eligible to participate in the Faculty Research Abroad Fellowship Program

and the Doctoral Dissertation Research Abroad Fellowship Program.

(b) Institutions of higher education, State departments of education, nonprofit private educational organizations, and consortia of these entities are eligible to participate in the Group Projects Abroad Program.

**Deadline for Transmittal of Applications**

The dates of availability of applications and the deadlines for the transmittal of applications under each of these competitions are indicated in the chart contained in this notice.

**Available Funds**

The estimated amount of funds available for new awards under these competitions, as shown in the chart below, is based on the Administration's request for these programs for FY 2000. The actual level of funding, if any, is contingent on final congressional action.

| CFDA number and name of program | Applications available | Deadline for transmittal of applications | Estimated range of awards | Estimated average size of awards | Estimated number of award | Project period |
|---|---|---|---|---|---|---|
| 84.019A—Fulbright-Hays Faculty Research Abroad Fellowship Program. | August 25, 1999 | October 25, 1999. | $20,800–$75,000 | $43,000 | 23 fellowships ... | 3–12 months. |
| 84.021A—Fulbright-Hays Group Projects Abroad Program. | August 16, 1999 | October 25, 1999. | 30,000–65,000 | 55,000 | 28 ..... | 4–6 weeks for short-term seminars and curriculum development projects. 2–12 months for group research or study projects. |
| 84.022A—Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program. | August 25, 1999 | October 25, 1999. | 10,000–70,000 | 23,800 | 87 fellowships ... | 6–12 months. |

**Note:** The Department is not bound by any estimates in this notice.

**Applicable Regulations**

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86; and (b) The regulations for these programs as follows: 34 CFR part 662 governing the Doctoral Dissertation Research Abroad Fellowship Program; 34 CFR part 663 governing the Faculty Research Abroad Fellowship Program; and 34 CFR part 664 governing the Group Projects Abroad Program.

**Priorities**

*Fulbright-Hays Faculty Research Abroad Fellowship Program and Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program*

*Absolute Priority:* Under 34 CFR 105(c)(3) and 34 CFR 662.21(d) governing the Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program and 34 CFR 105(c)(3) and 34 CFR 663.21(d) governing the Fulbright-Hays Faculty Research Abroad Fellowship Program, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds only applications that meet this absolute priority:

*A research project funded under this priority must focus on one or more of the following areas:* Africa, East Asia, Southeast Asia and the Pacific, South Asia, the Near East, East Central Europe and Eurasia, and the Western Hemisphere (Canada, Central and South America, Mexico, and the Caribbean). Please note that applications that propose projects focused on Western Europe will not be funded.

*Group Projects Abroad Program*

*Absolute Priority:* Under 34 CFR 105(c)(3) and 34 CFR 664.34 governing the Fulbright-Hays Group Projects Abroad Program, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds only applications that this absolute priority:

*A group project funded under this priority must propose to focus on one or more of the following areas:* Africa, East Asia, South Asia, Southeast Asia and the Pacific, the Western Hemisphere (Central and South America, Mexico, and the Caribbean), East Central Europe and Eurasia, and the Near East. Please note that applications that propose projects focused on Australia, Canada or Western Europe will not be funded.

*Competitive Priority:* Within the absolute priority specified in this notice for the Group Projects Abroad Program, the Secretary gives preference to applications that meet the following competitive priority. Under 34 CFR 75.105(c)(2)(i) and 34 CFR 664.30(b), the Secretary awards up to five points to an application depending upon how well the application meets the priority. These points are in addition to any points the application earns under the selection criteria for the program.

*Short-term seminars that develop and improve foreign language and area studies at elementary and secondary schools.*

**FOR APPLICATIONS OR INFORMATION CONTACT:**

*Faculty Research Abroad Program:* Eliza Washington, U.S. Department of Education, International Education and Graduate Programs Service, 400 Maryland Avenue, SW., Suite 600 Portals Building, Washington, DC 20202–5331. Telephone: (202) 401–9777. The e-mail address for Ms. Washington is eliza__washington@ed.gov.

*Group Projects Abroad:* Lungching Chiao, U.S. Department of Education, International Education and Graduate Programs Service, 400 Maryland Avenue, SW., Suite 600 Portals Building, Washington, DC 20202–5332. Telephone: (202) 401–9772. The e-mail address for Ms. Chiao is lungching__chiao@ed.gov.

*Doctoral Dissertation Research Abroad Program:* Karla Ver Bryck Block, U.S. Department of Education, International Education and Graduate

Programs Service, 400 Maryland Avenue, SW., Suite 600 Portals Building Washington, DC 20202–5331. Telephone: (202) 401–9774. The e-mail address for Ms. Ver Bryck Block is karla__verbryckblock@ed.gov.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the appropriate contact persons listed in the preceding paragraphs. Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

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http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have any questions about using the PDF, call the U.S. Government Printing Office (GPO) toll free, at 1–888–293–6498; or in the Washington, D.C. area, at (202) 512–1530.

**Note:** The official version of a document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

**Program Authority:** 22 U.S.C. 2452(b)(6).

Dated: July 30, 1999.

**Claudio R. Prieto,**

*Acting Assistant Secretary, Office of Postsecondary Education.*

[FR Doc. 99–20155 Filed 8–4–99; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Supplemental Environmental Impact Statement for the Programmatic Environmental Impact Statement for Stockpile Stewardship and Management

**AGENCY:** Department of Energy.

**ACTION:** Amended notice of intent.

**SUMMARY:** The Department of Energy (DOE) is announcing a revised schedule for its preparation of a Draft Supplemental Environmental Impact Statement (SEIS) for the National Ignition Facility portion (Volume III, Appendix I) of the Programmatic Environmental Impact Statement for Stockpile Stewardship and Management (DOE/EIS–0236; September, 1997). This Draft SEIS is being prepared pursuant to a Joint Stipulation and Order approved and entered as an order of the court on October 27, 1997, in partial settlement of the lawsuit *NRDC* v. *Richardson,* Civ. No. 97–936 (SS) (D.D.C.).

**FOR FURTHER INFORMATION CONTACT:** For further information about this SEIS or to be placed on the document distribution list, please call, toll-free, (877) 388–4930, or call or write to Richard A. Scott, Document Manager, U.S. Department of Energy, L–293, P.O. Box 808, Livermore, CA 94550, Phone (925) 423–3022, Facsimile (925) 424–3755. For information about the DOE National Environmental Policy Act (NEPA) process, please contact: Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Ave, SW, Washington, DC 20585–0119, Phone: (202) 586–4600, Messages: (800) 472–2756, Facsimile: (202) 586–7031.

**SUPPLEMENTARY INFORMATION:** In a September 25, 1998, **Federal Register** notice (63 FR 51341), DOE announced that it expected to publish a Notice of Availability for the Draft SEIS in the **Federal Register** in December 1998. DOE now intends to publish the Notice of Availability no later than November 30, 1999. DOE has delayed the issuance of the Draft SEIS pending completion of a new investigation that was initiated in December 1998, in response to the discovery of contamination by polychlorinated biphenyls (PCBs) in soil that had been excavated from the Lawrence Livermore National Laboratory's East Traffic Circle, which is one of the areas covered by the Joint Stipulation and Order. After the discovery of the contaminated soil, DOE on December 23, 1998, notified the court and the plaintiffs in *NRDC* v. *Richardson* of the discovery; stated that the contaminated soil was being removed in accordance with applicable laws and regulations; and explained that a new investigation would be conducted into the extent of the contamination, and that DOE would delay issuance of the Draft SEIS pending the results of the new investigation.

Since then, DOE has filed two Quarterly Reports with the court, on March 24 and June 22, 1999, describing the progress that it has made in conducting the investigation and in analyzing its results for incorporation into the environmental impact analyses that will be included in the Draft SEIS. Copies of those Quarterly Reports, and of DOE's December 23, 1998 notice mentioned above, are available at the DOE Oakland Operations Office Public Reading Room on the first floor of the Federal Building, 1301 Clay Street, Oakland, CA; at the Lawrence Livermore National Laboratory Environmental Repository Public Reading Room, East Gate Visitors Center, Greenville Road, Livermore, CA; at the DOE Freedom of Information Act Public Reading Room, 1000 Independence Ave, SW, Washington, DC; or by calling Richard A. Scott at the telephone number provided above.

Issued in Washington, DC on July 30, 1999.

**Jonathan S. Ventura,**

*Acting Executive Assistant, Office of Defense Programs.*

[FR Doc. 99–20143 Filed 8–4–99; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

**[Docket No. EG99–206–000]**

### Federal Energy Regulatory Commission

### Astoria Generating Company, L.P.; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

July 30, 1999.

Take notice that on July 28, 1999, Astoria Generating Company, L.P. (Applicant), with its principal office at c/o Orion Holdings, Inc., 7 E. Redwood Street, 10th Floor, Baltimore, Maryland 21201, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant will be engaged in owning and operating certain facilities located in New York State. The eligible facilities consist of approximately of the Astoria Bundle sold by Consolidated Edison of New York, with a total summer net capacity of 1,855 MW. The Applicant will sell electric energy exclusively at wholesale. Electric energy produced by the eligible facilities is sold exclusively at wholesale.

Any person desiring to be heard concerning the application for exempt

wholesale generator status should file a motion to intervene or comments 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 385.214). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before August 12, 1999, and must be served on the applicant. 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 or on the Internet at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 99–20104 Filed 8–4–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP99–590–000]**

## McDay Energy Partners, Ltd.; Notice of Petition for Declaratory Order

July 30, 1999.

Take notice that on July 22, 1999, McDay Energy Partners, Ltd. (McDay Energy), filed in Docket No. CP99–590–000 an application pursuant to Section 16 of the Natural Gas Act (NGA) and Rule 207(a)(2) of the Commission's Rules of Practice and Procedure (18 CFR 385.207 (a)(2)), for a declaratory order disclaiming Commission jurisdiction under Section 1(b) of the NGA over certain facilities to be acquired from Northern Natural Gas Company (Northern) in a companion filing in Docket No. CP99–552–000, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Specifically, McDay Energy seeks a declaratory order from the Commission finding that the approximately 26 miles of 12-inch pipeline and appurtenant facilities located in Zavala and Dimmitt Counties, Texas, once acquired and integrated into McDay Energy's existing gathering lines, will perform a gathering function as defined under the Commission's modified primary function test, and therefore, should be exempt from Commission jurisdiction under Section 1(b) of the NGA.

Any person desiring to be heard or to make any protest with reference to said petition should on or before August 20, 1999, file with the Federal Energy Regulatory Commission, Washington, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 384.214 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.

**David P. Boergers,**

*Secretary.*

[FR Doc. 99–20105 Filed 8–4–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP99–589–000]**

## National Fuel Gas Supply Corporation; Notice of Application

July 30, 1999.

Take notice that on July 22, 1999, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203 filed, in Docket No. CP99–589–000, an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for an order permitting and approving the abandonment of certain facilities in Venango, Clarion, and Forest Counties, Pennsylvania, in connection with the sale of certain nonjurisdictional facilities to Van Hampton Gas & Oil Company, Inc. (Van Hampton), as more fully set forth in the application which is on file with the Commission and open to public inspection. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

Specifically, National Fuel proposes to abandon by sale to Van Hampton approximately 31 miles of 2-inch to 8-inch diameter gathering pipelines, including five receipt points and seven points of delivery located along the gathering pipelines. National Fuel states that the gathering pipelines, receipt points and points of delivery will perform a gathering function for Van Hampton and requests that the Commission determine that such facilities will not be subject to the Commission's jurisdiction after the sale.

National Fuel's application states that it has agreed to sell the nonjurisdictional gathering pipelines and metering facilities located at the receipt points, to Van Hampton for $1.00. National Fuel indicates that service will not be terminated to any of its shippers.

Any questions regarding this application should be directed to David W. Reitz, Assistant General Counsel for National Fuel, 10 Lafayette Square, Buffalo, New York 14203 at (716) 857–7949, or George L. Weber, Esq., Weber & Associates, P.C., 727 Fifteenth Street, NW, Washington, DC 20005 at (202) 628–0200.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 20, 1999, 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 and 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no protest or motion to intervene is filed within the time required herein. At that time, the Commission on its own review of the matter will determine whether granting permission and approval for the proposed abandonment is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that 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 National Fuel to appear or be represented at the hearing.

**David P. Boergers,**

*Secretary.*

[FR Doc. 99–20106 Filed 8–4–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP99–593–000]**

## Williston Basin Interstate Pipeline Company; Notice of Application To Abandon

July 30, 1999.

Take notice that on July 26, 1999, Williston Basin Interstate Pipeline Company (Williston Basin), 1250 West Century Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP99–593–000 an abbreviated application to amend the Certificate of Public Convenience and Necessity issued March 30, 1992 in Docket No. CP91–1897–000 pursuant to Sections 7(b) and 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

The name, address, and telephone number of the person to whom correspondence and communications concerning this application should be addressed is: Keith A. Tiggelaar, Manager, Regulatory Affairs, Williston Basin Interstate Pipeline Company, P.O. Box 5601, Bismarck, North Dakota 58506–5601, (701) 530–1560.

Williston Basin requests authorization to remove the Many Islands Pipe Line-Portal receipt point and to add the Baker Area Mainline receipt point to the transportation service provided to Northern States Power Company under Rate Schedule X–13 of Williston Basin's FERC Gas Tariff, Original Volume No. 2.

Any person desiring to be heard or to make any protest with reference to said application should, on or before August 20, 1999, 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 Rule 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 jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, or if the Commission on its own review of the matter finds that permission and approval for the proposed certificate and 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 Williston Basin to appear or be represented at the hearing.

**David P. Boergers,**

*Secretary.*

[FR Doc. 99–20107 Filed 8–4–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER98–2918–004, et al.]**

## Energy PM, Inc., et al.; Electric Rate and Corporate Regulation Filings

July 28, 1999.

Take notice that the following filings have been made with the Commission:

### 1. Energy PM, Inc.

[Docket No. ER98–2918–004]

Take notice that on July 23, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

### 2. IGI Resources, Inc., TransCanada Power Marketing Ltd. and Con Edison Energy, Inc.

[Docket No. ER95–1034–016, Docket No. ER98–564–004 and Docket No. ER98–2491–004]

Take notice that on July 22, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

### 3. Duquesne Light Company

[Docket Nos. ER97–1165–001 and OA97–221–001]

Take notice that on July 7, 1999, Duquesne Light Company (Duquesne) tendered for filing with the Federal Energy Regulatory Commission (Commission) its compliance filing required by the Commission's June 22, 1999 Order in the above-referenced dockets.

*Comment date:* August 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

### 4. Northeast Utilities Service Company

[Docket No. ER99–2738–002]

Take notice that on July 21, 1999, Northeast Utilities Service Company made a filing in compliance with the Commission's June 21, 1999, Order Conditionally Accepting for Filing Revised Service Agreement in Docket No. ER99–2738–000.

*Comment date:* August 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

### 5. Duke Power, a division of Duke Energy Corporation, Jersey Central Power & Light Company, et al., Kansas City Power & Light Company, Minnesota Agri-Power L.L.C. and Kincaid Generation L.L.C.

[Docket No. ER99–3624–000, Docket No. ER99–3625–000, Docket No. ER99–3630–000, Docket No. ER99–3639–000 and Docket No. ER99–3640–000]

Take notice that on July 19, 1999, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending June 30, 1999.

*Comment date:* August 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

**6. Hardee Power Partners Limited, Tampa Electric Company and Great Bay Power Corporation**

[Docket No. ER99–3647–000, Docket No. ER99–3648–000 and Docket No. ER99–3649–000]

Take notice that on July 20, 1999, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending June 30, 1999.

*Comment date:* August 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

**7. Occidental Power Marketing, L.P.**

[Docket No. ER99–3665–000]

Take notice that on July 21, 1999, Occidental Power Marketing, L.P. (Occidental), petitions the Commission for acceptance of Occidental Power Marketing, L.P. FERC Electric Rate Schedule No. 1; the granting of certain blanket authorizations, including authorization to sell electric capacity and energy at market-based rates; and the waiver of certain Commission Regulations.

Occidental intends to engage in wholesale electric capacity and energy purchases and sales as an electric power marketer. Occidental is not in the business of electric power generation or transmission. Occidental is affiliated, however, with a few ''qualifying facilities'' under PURPA and proposes to market some affiliate-generated electric power. Occidental is a wholly owned subsidiary of Occidental Petroleum Corporation, which, through affiliates, explores for, develops, produces and markets crude oil and natural gas and manufactures and markets a variety of basic chemicals as well as specialty chemicals.

*Comment date:* August 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

**8. Southwest Power Pool**

[Docket No. ER99–3666–000]

Take notice that on July 21, 1999, Southwest Power Pool (SPP), tendered for filing an executed service agreement for firm point-to-point transmission service under the SPP Tariff with ONEOK Power Marketing Company.

SPP requests an effective date of July 1, 1999 for this agreement.

Copies of this filing were served upon ONEOK.

*Comment date:* August 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

**9. Deseret Generation & Transmission Co-operative**

[Docket No. ER99–3667–000]

Take notice that on July 21, 1999, Deseret Generation & Transmission Co-operative (Deseret), tendered for filing an executed umbrella non-firm point-to-point service agreement with British Columbia Power Exchange Corporation under its open access transmission tariff. Deseret's open access transmission tariff is currently on file with the Commission in Docket No. OA97–487–000.

Deseret requests a waiver of the Commission's notice requirements for an effective date of June 23, 1999.

British Columbia Power Exchange Corporation has been provided a copy of this filing.

*Comment date:* August 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

**10. Duke Energy Merchants, L.L.C.**

[Docket No. ER99–3668–000]

Take notice that on July 21, 1999, Duke Energy Merchants, L.L.C. (DEM), tendered for filing an application requesting acceptance of its proposed market-based rate tariff, waiver of certain regulations and blanket approvals.

*Comment date:* August 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

**11. Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company**

[Docket No. ER99–3670–000]

Take notice that on July 21, 1999, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), tendered for filing an executed Service Agreement between GPU Energy and Constellation Power Source, Inc. (CON), dated July 13, 1999. This Service Agreement specifies that CON has agreed to the rates, terms and conditions of GPU Energy's Market-Based Sales Tariff (Sales Tariff) designated as FERC Electric Rate Schedule, Second Revised Volume No. 5. The Sales Tariff allows GPU Energy and CON to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus capacity and/or energy.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of July 13, 1999, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

*Comment date:* August 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

**12. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) and West Penn Power Company (Allegheny Energy)**

[Docket No. ER99–3671–000]

Take notice that on July 21, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) and West Penn Power Company (Allegheny Energy), tendered for filing Amendment Nos. 1 and 2 to Supplement No. 34 to the Standard Generation Service Tariff to incorporate Netting Agreements with Horizon Energy Company into the tariff provisions.

Allegheny Power and Allegheny Energy request a waiver of notice requirements to make the Amendments effective as of the effective dates therein, June 23, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

*Comment date:* August 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

**13. Idaho Power Company**

[Docket No. ER99–3674–000]

Take notice that on July 21, 1999, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission Service Agreements for Non-Firm Point-to-Point Transmission Service and Firm Point-to-Point Transmission Service between Idaho Power Company and The Montana Power Trading & Marketing Company.

*Comment date:* August 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

**14. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) and West Penn Power Company (Allegheny Energy)**

[Docket No. ER99–3675–000]

Take notice that on July 21, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) and West Penn Power Company (Allegheny Energy), tendered for filing Amendment Nos. 1 and 2 to Supplement No. 4 to the Standard Generation Service Tariff to incorporate Netting Agreements with Tennessee Power Company into the tariff provisions.

Allegheny Power and Allegheny Energy request a waiver of notice requirements to make the Amendments effective as of the effective dates therein, June 25, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

*Comment date:* August 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

**15. Entergy Services, Inc.**

[Docket No. ER99–3676–000]

Take notice that on July 21, 1999, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Mississippi, Inc. (EMI), tendered for filing a Letter Agreement between Entergy Services, as agent for EMI, and the South Mississippi Electric Power Association providing for certain modifications to the Monticello GP Substation.

*Comment date:* August 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

**16. CMS Generation Michigan Power, L.L.C.**

[Docket No. ER99–3677–000]

Take notice that on July 21, 1999, CMS Generation Michigan Power, L.L.C. (Michigan Power), tendered for filing, pursuant to Rule 205, 18 CFR 385.205, petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 2, to be effective at the earliest possible time, but no later than 60 days from the date of its filing.

Michigan Power intends to engage in electric power and energy purchases and sales. In transactions where Michigan Power sells electric energy, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party. As outlined in Michigan Power's petition, Michigan Power is an affiliate of CMS Energy, a public utility holding company and the parent company of Consumers Energy.

*Comment date:* August 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

**17. Smarr EMC**

[Docket No. ES99–49–000]

Take notice that on July 22, 1999, Smarr EMC submitted an application seeking authorization under Section 204 of the Federal Power Act to borrow up to $5 million under a line of credit agreement, or replacements therefor or renewals thereof, with the National Rural Utilities Cooperative Finance Corporation over a two-year period. Proceeds of the line of credit will be used to finance the continued operation of Smarr EMC's generating facility, and for other lawful corporate purposes. Smarr EMC requests that the Commission grant the requested authorization for such borrowing no later than August 26, 1999.

*Comment date:* August 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 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. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 99–20111 Filed 8–4–99; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Application Accepted for Filing and Request for Motions To Intervene and Protests

July 30, 1999.

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11769–000.

c. *Date filed:* June 21, 1999.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Mississippi Lock and Dam #9.

f. *Location:* At the existing U.S. Army Corps of Engineers' Lock and Dam #9 on the Mississippi River, near the town of Harpers Ferry, Crawford County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Jack Duckworth (202) 219–2808 or E-mail to: Jack.Duckworth@FERC.fed.us

j. *Comment Date:* 60 days from the issuance date of this notice.

k. *Description of Project:* The proposed project would use water from the existing U.S. Army Corps of Engineers' Mississippi River Lock and Dam #9, and would consist of the following facilities: (1) 5 steel penstock about 80 feet long and 114 inches in diameter from the outlet works to; (2) a new powerhouse, with exhaust apron, to be constructed on the downstream side of the dam below the outlet works, having an installed capacity of 10,000 kilowatts; (3) a new 200-foot-long, 14.7-kilovolt transmission line from the powerhouse to an existing transmission line to the east; and (4) appurtenant facilities. The project's proposed average annual energy generation is estimated to be 61 gigawatthours. The cost of the studies under the permit is estimated to be about $2,000,000.

m. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE,

Room 2–A, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Universal Electric Power Corp., Mr. Ronald S. Feltenberger, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at http://www.ferc.fed.us/online/rims.htm or call (202) 208–2222 for assistance.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 99–20108 Filed 8–4–99; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Application Accepted for Filing and Request for Motions To Intervene and Protests

July 30, 1999.

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11770–000.

c. *Dated filed:* June 21, 1999.

d. *Applicant:* Universal Electronic Power Corp.

e. *Name of Project:* Mississippi Lock and Dam #7.

f. *Location:* At the existing U.S. Army Corps of Engineers' Lock and Dam #7 on the Mississippi River, near the town of La Crescent, Winona County, Minnesota.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Jack Duckworth (202) 219–2808 or E-mail to: Jack.Duckworth@FERC.fed.us

j. *Comment Date:* 60 days from the issuance date of this notice.

k. *Description Project:* The proposed project would use water from the existing U.S. Army Corps of Engineers' Mississippi River Lock and Dam #7, and would consist of the following facilities: (1) 8 steel penstock about 80 feet long and 96 inches in diameter from the outlet works to; (2) a new powerhouse, with exhaust apron, to be constructed on the downstream side of the dam below the outlet works, having an installed capacity of 23,700 kilowatts; (3) a new 200-foot-long, 14.7-kilovolt transmission line from the powerhouse to an existing transmission line to the west; and (4) appurtenant facilities. The project's proposed average annual energy generation is estimated to be 78 gigawatthours. The cost of the studies under the permit is estimated to be about $2,000,000.

m. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commissions's Public Reference and Files Maintenance Branch, located at 888 First Street, NE., Room 2–A, Washington, DC 20426, by calling (202) 208–1371. A copy is also available for inspection and reproduction at Universal Electric Power Corp., Mr. Ronald S. Feltenberger, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115. A copy of the application may also be

viewed or printed by accessing the Commission's website on the Internet at http://www.ferc.fed.us/online/rims.htm or call (202) 208–2222 for assistance.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-name documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 99–20109 Filed 8–4–99; 8:45 am]

BILLING CODE 6717–01–M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6413–9]**

## Agency Information Collection Activities: Proposed Collection; Comment Request; Emergency Planning and Release Notification Requirements under Emergency Planning and Community Right-to-Know Act Sections 302, 303, and 304

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Emergency Planning and Release Notification Requirements under Emergency Planning and Community Right-to-Know Act Sections 302, 303, and 304, EPA ICR Number 1395.04. This ICR renews a previously approved ICR No. 1395.03 (expires January 31, 2000, OMB Control Number 2050–0092). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before October 4, 1999.

**ADDRESSES:** Chemical Emergency Preparedness and Prevention Office, SW, Washington DC 20460. Interested persons may obtain a copy of the ICR without charge by contacting the person in **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Sicy Jacob, 202–260–7249, fax no. 202–260–0927, or e-mail: Jacob.Sicy@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:**

*Affected entities:* Entities potentially affected by this action are those which have a threshold planning quantity of an extremely hazardous substance (EHS) listed in 40 CFR Part 355, Appendix A and those which have a release of any of the EHS above a reportable quantity. Entities more likely to be affected by this action may include chemical, non-chemical manufac-turers, retailers, petroleum refineries, utilities, etc.

*Title:* Emergency Planning and Release Notification Requirements under Emergency Planning and Community Right-to-Know Act Sections 302, 303, and 304, OMB Control No. 2050–0092, EPA ICR No. 1395.04.

*Abstract:* The authority for these requirements is sections 302, 303, and 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 1986 (42 U.S.C. § 11002, 11003, and 11004). EPCRA established broad emergency planning and facility reporting requirements. Section 302 requires facilities to notify their state emergency response commission (SERC) that the facility is subject to emergency planning. This activity has been completed; only new facilities are subject to this requirement. Section 303 requires the local emergency planning committees (LEPCs) to prepare emergency plans for facilities that are subject to section 302. This activity has been also completed; this ICR only covers any updates needed for these emergency response plans. Section 304 requires facilities to report to SERCs and LEPCs releases in excess of the reportable quantities listed for each extremely hazardous substance (EHS). This ICR also covers the notification and the written follow-up required under this section.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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.

*Burden Statement:* The average reporting burden for emergency planning under 40 CFR 355.30 is 17.65 hours for new and newly regulated facilities and 12.5 hours for existing facilities. For new and newly regulated facilities, this burden includes the time required to read and understand the regulations, to determine reporting status, notify the SERC that the facility is subject to emergency planning, designate a facility representative and otherwise participate in initial planning activities. For certain existing facilities, this burden includes the time required to inform the LEPC of any changes at a facility that may affect emergency planning, and provide information to the LEPC for planning purposes. The average reporting burden for facilities reporting releases under 40 CFR 355.40 is estimated to average approximately 5 hours per release, including the time for determining if the release is a reportable quantity, notifying the LEPC and SERC, or the 911 operator, and developing and submitting a written follow-up notice. There are no recordkeeping requirements for facilities under EPCRA Sections 302–304.

The average burden for emergency planning activities under 40 CFR 300.215 is 21 hours per plan for LEPCs, 16 hours per plan for SERCs. Each SERC and LEPC is also estimated to incur an annual recordkeeping burden of 10 hours. The total burden to facilities over the three-year information collection period is estimated to be 266,000 hours, at a cost of $7.8 million. The total burden for SERCs and LEPCs over the three-year information collection period is estimated to be 486,000 hours at a cost of $11.6 million.

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

Dated: July 30, 1999.

**David Speights,**

*Acting Director, Chemical Emergency Preparedness and Prevention Office.*

[FR Doc. 99–20201 Filed 8–4–99; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6413–8]**

## Agency Information Collection Activities: Proposed Collection; Comment Request; Community Right-to-Know Reporting Requirements Under Sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA)

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Community Right-to-Know Reporting Requirements under Sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA), EPA ICR Number 1352.07. This ICR renews a previously approved ICR No. 1352.04 (expires January 31, 2000, OMB Control Number 2050-0072). On February 11, 1999 (64 FR 7031), EPA revised sections 311 and 312 of EPCRA and amended the ICR (see ICR No. 1356.06). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before October 4, 1999.

**ADDRESSES:** Chemical Emergency Preparedness and Prevention Office, SW, Washington DC 20460. Interested persons may obtain a copy of the ICR without charge by contacting the person in **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Sicy Jacob, 202–260–7249, fax no. 202–260–0927, or e-mail: Jacob.Sicy@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:**

*Affected entities:* Entities potentially affected by this action are those facilities required to prepare or have available an MSDS for a hazardous chemical under the Hazard Communication Standard (HCS) of the Occupational Safety and Health Administration. Entities more likely to be affected by this action may include chemical, non-chemical manufacturers, retailers, petroleum refineries, utilities, etc.

*Title:* Community Right-to-Know Reporting Requirements under Sections 311 and 312 of the Emergency Planning

and Community Right-to-Know Act (EPCRA), EPA ICR Number 1352.07.

*Abstract:* The authority for these requirements is sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 1986 (42 U.S.C. 11011, 11012). EPCRA Section 311 requires owners and operators of facilities subject to OSHA HCS to submit a list of chemicals or MSDSs (for those chemicals that exceed thresholds, specified in 40 CFR Part 370) to the State Emergency Response Commission (SERC), Local Emergency Planning Committee (LEPC) and the local fire department (LFD) with jurisdiction over their facility. This is a one-time requirement unless a new facility becomes subject to the regulations or updating the information by facilities that are already covered by the regulations. EPCRA Section 312 requires owners and operators of facilities subject to OSHA HCS to submit an inventory form for those chemicals that exceed the thresholds to the SERC, LEPC, and LFD with jurisdiction over their facility. This activity is to be completed on March 1 of each year, on the inventory of chemicals in the previous calendar year.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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.

*Burden Statement:* The average burden for MSDS reporting under 40 CFR 370.21 is estimated at 1.6 hours for new and newly regulated facilities and approximately 0.6 hours for those existing facilities that obtain new or revised MSDSs or receive requests for MSDSs from local governments. For new and newly regulated facilities, this burden includes the time required to read and understand the regulations, to determine which chemicals meet or exceed reporting thresholds, and to submit MSDSs or lists of chemicals to SERC, LEPCs, and local fire departments. For existing facilities, this burden includes the time required to submit revised MSDSs and new MSDSs to local officials. The average reporting burden for facilities to perform Tier I or Tier II inventory reporting under 40 CFR 370.25 is estimated to be approximately 3.1 hours per facility, including the time to develop and submit the information. There are no recordkeeping requirements for facilities under EPCRA sections 311 and 312.

The average burden for state and local governments to respond to requests for MSDSs or Tier II information under 40 CFR 370.30 is estimated to be 0.17 hours per request. The average burden for state and local governments for managing and maintaining the reports is estimated to be 32.25 hours. The average burden for maintaining and updating the 312 database is 320 hours. The total burden to facilities over the three-year information collection period is estimated to be 5,182,000 hours, at a cost of $164 million, with an associated state and local burden of 439,000 hours at a cost of $8.4 million.

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

Dated: July 30, 1999.

**David Speights,**

*Acting Director, Chemical Emergency Preparedness and Prevention Office.*

[FR Doc. 99–20203 Filed 8–4–99; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[AMS–FRL–6414–3]**

## California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption—Notice of Waiver Decision and Within the Scope Determinations

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

**ACTION:** Notice regarding waiver of federal preemption and within the scope determinations.

**SUMMARY:** EPA is granting California a waiver of Federal preemption pursuant to section 209(b) of the Clean Air Act, as amended, 42 U.S.C. 7543(b) (Act), for 1996 to 1998 model year motor vehicle evaporative emission standards and test procedures. Additionally, EPA today has determined that California's amendments to its evaporative emission standards and test procedures for 1995 model year motor vehicles and California's amendments regarding ultra-small volume manufacturers in 1998 model year are within the scope of previous waivers of Federal preemption granted pursuant to section 209(b) of the Act and today's waiver decision.

**DATES:** Any objections to the findings in this document regarding EPA's determination that California's amendments to its evaporative emission standards and test procedures for 1995 model year or the requirements applicable to ultra-small volume manufacturers for 1998 model year are within the scope of both previous waivers and today's waiver of Federal preemption must be filed by September 7, 1999. Otherwise, at the end of this 30-day period, these findings will become final. Upon receipt of any timely objection, EPA will consider scheduling a public hearing to reconsider these findings in a subsequent **Federal Register** document.

**ADDRESSES:** Any objections to the within the scope findings described above should be filed with Mr. David J. Dickinson at the address noted below. The Agency's decisions as well as all documents relied upon in reaching these decisions, including those submitted by the California Air Resources Board (CARB), are available for public inspection in the Air and Radiation Docket and Information Center during the working hours of 8:00 a.m. to 4:00 p.m. at the Environmental Protection Agency, Air Docket (6102), Room M–1500, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460. All documents submitted in the

evaporative emission standards and test procedures waiver request, as well as the within the scope waiver requests noted above, can be found in Docket A–95–39. Copies of the Decision Document (which discusses both the waiver and the within the scope determinations) can be obtained from EPA's Vehicle Programs and Compliance Division by contacting David J. Dickinson, as noted below, or can be accessed on the EPA Office of Mobile Sources Internet Home Page, also noted below.

**FOR FURTHER INFORMATION CONTACT:** David J. Dickinson, Manager, Vehicles Programs and Compliance Division (6405J), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460. Telephone: (202) 564–9256, FAX: (202) 565–2057, E-Mail: Dickinson.David@EPAMAIL.EPA.GOV.

**SUPPLEMENTARY INFORMATION:**

## I. Obtaining Electronic Copies of Documents

Electronic copies of this Notice and the accompanying Decision Document are available via the Internet on the Office of Mobile Sources (OMS) Home Page (http://www.epa.gov/OMSWWW/). Users can find these documents by accessing the OMS Home Page and looking at the path entitled ''Regulations.'' This service is free of charge, except for any cost you already incur for Internet connectivity. The official **Federal Register** version of the Notice is made available on the day of publication on the primary Web site (http://www.epa.gov/docs/fedrgstr/EPA–AIR/).

Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, etc. may occur.

## II. Enhanced Evaporative Emission Standards and Test Procedures for 1996 to 1998 Model Year Waiver Request

I have decided to grant California a waiver of Federal preemption pursuant to section 209(b) of the Act for amendments to its motor vehicle pollution control program which will (1) establish a supplemental evaporative emission test procedure;(2) align California's evaporative emission enhanced test procedure (enhanced test procedure) with federal test procedures;(3) apply the enhanced test procedure to the complete heavy medium-duty vehicle class (8,501–14,000 lbs. gross weight vehicle rating (GVWR)), and (4) establish an amendment to the evaporative emission standard for the hot soak plus diurnal emissions test for medium-duty vehicles that have a GVWR of 6,001–8,500 lbs. and fuel tanks equal to or greater than 30 gallons from 2.0 to 2.5 grams per test. A comprehensive description of the California evaporative emission standards and accompanying program can be found in the Decision Document for this waiver and in materials submitted to the Docket by California and other parties.

Section 209(b) of the Act provides that, if certain criteria are met, the Administrator shall waive Federal preemption for California to enforce new motor vehicle emission standards and accompanying enforcement procedures. The criteria include consideration of whether California arbitrarily and capriciously determined that its standards are, in the aggregate, at least as protective of public health and welfare as the applicable Federal standards; whether California needs State standards to meet compelling and extraordinary conditions; and whether California's amendments are consistent with section 202(a) of the Act.

CARB determined that these standards and accompanying enforcement procedures do not cause California's standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standards. Information presented to me by a party opposing California's waiver request did not demonstrate that California arbitrarily or capriciously reached this protectiveness determination. Therefore, I cannot find California's determination to be arbitrary or capricious.

CARB has continually demonstrated the existence of compelling and extraordinary conditions justifying the need for its own motor vehicle pollution control program, which includes the subject standards and procedures. No information has been submitted to demonstrate that California no longer has a compelling and extraordinary need for its own program. Therefore, I agree that California continues to have compelling and extraordinary conditions which require its own program, and, thus, I cannot deny the waiver on the basis of the lack of compelling and extraordinary conditions.

CARB has submitted information that the requirements of its emission standards and test procedures are technologically feasible and present no inconsistency with Federal requirements and are, therefore, consistent with section 202(a) of the Act. Information presented to me by a party opposing California's waiver request did not satisfy the burden of persuading EPA that the standards are not technologically feasible within the available lead time, considering costs. Thus, I cannot find that California's amendments will be inconsistent with section 202(a) of the Act. Accordingly, I hereby grant the waiver requested by California.

My decision will affect not only persons in California but also the manufacturers outside the State who must comply with California's requirements in order to produce motor vehicles for sale in California. For this reason, I hereby determine and find that this is a final action of national applicability.

Under section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by October 4, 1999. Under section 307(b)(2) of the Act, judicial review of this final action may not be obtained in subsequent enforcement proceedings.

As with past waiver decisions, this action is not a rule as defined by section 1(a) of Executive Order 12291, 46 FR 13193 (February 12, 1981). Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12291. Nor is a Regulatory Impact Analysis being prepared under Executive Order 12291 for this determination, since it is not a rule.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Finally, the Administrator has delegated the authority to make determinations regarding waivers of Federal preemption under section 209(b) of the Act to the Assistant Administrator for Air and Radiation.

## III. 1995 Model Year Enhanced Evaporative Standards and Test Procedures Amendments Within the Scope Request

I have determined that California's amendments to its 1995 model year enhanced evaporative standards and test procedures are within the scope of previous waivers of Federal preemption granted pursuant to section 209(b) of the Act. The substantive amendments to the enhanced evaporative standards and test procedures emission which are applicable under California state law to 1995 model year passenger cars, light duty trucks, medium-duty vehicles, and

heavy-duty vehicles creates the following:

(1) A supplemental test procedure (similar to the federal supplemental test procedure) which consists of vehicle preconditioning (including canister loading), the federal test procedure (FTP) exhaust test, a hot soak, and a two-day diurnal test.

(2) A change to the evaporative emission standards for the hot soak and the diurnal emissions test for medium-duty vehicles (6,001–8,5000 lbs. GVWR) with fuel tanks greater than 30 gallons from 2.0 to 2,5 grams.

(3) An allowance for manufacturers to carry over 1995 model year enhanced certification data as long as the supplemental test data are provided and specified conditions are met.

In an August 21, 1995 letter to EPA, CARB notified EPA of the above-described amendments to its evaporative emission regulations affecting 1995 model year vehicles, and requested that EPA confirm that these amendments are within the scope of existing waivers of Federal preemption.[1] The Executive Officer stated that ''[t]he regulatory amendments approved herein will not cause California motor vehicle emissions standards, in the aggregate, to be less protective of public health and welfare as applicable Federal standards.'' [2]

In its August 1991 request, CARB explains why it limited its earlier request for a waiver of federal preemption to the 1995 model year. CARB desired to have a consistent set of evaporative emission test procedures for manufacturers and understood that EPA would be promulgating a supplemental test procedure that would be applicable to 1996 model year and thereafter. Therefore, CARB received an earlier waiver from EPA for its 1995 model year evaporative emission standards and test procedures on September 13, 1994.[3] By today's decision EPA is finding that CARB's amendments as they apply to the 1995 model year do not undermine California's determination that its standards, in the aggregate, are as protective of public health and welfare as comparable Federal standards.

As stated in CARB's letter, CARB's amendments do not affect the consistency of California's requirements with section 202(a) as they are merely meant to more closely align the California and federal requirements.[4] EPA agrees with this representation. As noted above, EPA has previously granted a waiver of federal preemption for CARB's 1995 model year evaporative emission standards and test procedures, therefore, EPA now has determined that these amendments do not undermine California's determination that its standards, in the aggregate, are as protective of public health and welfare as comparable Federal standards, are not inconsistent with section 202(a) of the Act, and raise no new issues affecting the Environmental Protection Agency's (EPA) previous waiver determination. Thus these amendments are within the scope of previous waivers determinations. A full explanation of EPA's decision is contained in a determination document which may be obtained from EPA as noted above.

## IV. 1998 Model Year Enhanced Evaporative Standards and Test Procedures for Ultra-Small Volume Manufacturers Within the Scope Request

I have determined that California's amendments to its 1998 model year enhanced evaporative standards and test procedures applicable to ultra-small volume manufacturers (USVMs) are within the scope of today's waiver (for 1996 through 1998 model year evaporative emission standards and test procedures) of Federal preemption granted pursuant to section 209(b) of the Act. California had originally exempted USVMs from the phase-in requirements of the evaporative emission requirements and instead required USVMs to achieve 100 percent compliance in the 1998 model year. California's amendments postpone the implementation of the 100 percent compliance of USVMs from 1998 to the 1999 model year.

As discussed above, EPA may consider an amendment to be within the scope of a previously granted waiver if the amendment does not undermine California's determination that its standards, in the aggregate, are as protective of public health and welfare as comparable Federal standards, does not affect the consistency of California's requirements with section 202(a) of the Act, and does not raise new issues affecting EPA's previous waiver determination.

On December 24, 1997, CARB requested that EPA find CARB's amendments to enhanced evaporative emission regulations applicable to USVMs to be within the scope of CARB's previously submitted waiver request of August 21, 1995 (this previous request is addressed by EPA in the full waiver of federal preemption noted above and also announced today). Because California's amendments for USVMs now more closely align with federal requirements (federal requirements for small volume manufacturers does not apply until the 1999 model year), and because of the small number of vehicles involved, EPA does not believe that CARB's protectiveness determination has been undermined. Additionally, the postponement of the requirement for USVMs does not pose any consistency issue with section 202(a) because lead time has now been extended for these manufacturers and CARB will allow such manufacturers to conduct their testing with federal fuel and test temperatures, thus eliminating and test procedure consistency concern. Thus, these amendments do not undermine California's determination that its standards, in the aggregate, are as protective of public health and welfare as comparable Federal standards, are not inconsistent with section 202(a) of the Act, and raise no new issues affecting EPA's previous waiver determination. A full explanation of EPA's decision is contained in a determination document which may be obtained from EPA as noted above.

Because these amendments are within the scope of previous waivers, a public hearing to consider them is not necessary. However, if any party asserts an objection to these findings by September 7, 1999, EPA will consider holding a public hearing to provide interested parties an opportunity to present testimony and evidence to show that there are issues to be addressed through a section 209(b) waiver determination and that EPA should reconsider its findings. Otherwise, these findings shall become final on September 7, 1999.

My decision will affect not only persons in California but also the manufacturers outside the State who must comply with California's requirements in order to produce motor vehicles for sale in California. For this reason, I hereby determine and find that this is a final action of national applicability.

Under section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by October 4, 1999. Under section 307(b)(2) of the Act, judicial review of this final action may not be obtained in subsequent enforcement proceedings.

This action is not a rule as defined by section 1(a) of Executive Order 12291, 46 FR 13193 (February 12, 1981).

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[1] Letter from James D. Boyd, Executive Officer, CARB, to Carol M. Browner, Administrator, EPA, dated August 21, 1995, at 2 (hereinafter ''CARB letter'').

[2] CARB letter at 7.

[3] 59 FR 46978 (September 13, 1994).

[4] CARB letter at 9.

Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12291. Nor is a Regulatory Impact Analysis being prepared under Executive Order 12291 for this determination, since it is not a rule.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Finally, the Administrator has delegated the authority to make determinations regarding waivers of Federal preemption under section 209(b) of the Act to the Assistant Administrator for Air and Radiation.

Dated: July 28, 1999.

**Robert Perciasepe,**

*Assistant Administrator for Air and Radiation.*

[FR Doc. 99–20200 Filed 8–4–99; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6413–7]**

### National Drinking Water Advisory Council; Small Systems Implementation Working Group, Notice of Conference Call

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

**ACTION:** Notice.

**SUMMARY:** Under Section 10(a)(2) of Public Law 92–423, ''The Federal Advisory Committee Act,'' notice is hereby given that a conference call of the Small Systems Implementation Working Group of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f *et seq.*), will be held on August 24, 1999, from 1:00 p.m. to 3:00 p.m. EDT. The call will be held at the U.S. Environmental Protection Agency, 401 M Street S.W., Room 1132 East Tower, Washington, D.C. The meeting is open to the public to observe, but seating will be limited.

The purpose of this meeting is to review draft papers on seven policy issues related to small systems. These papers are an initial step towards formulating the working group's recommendations to the National Drinking Water Advisory Council.

For more information, please contact Peter E. Shanaghan, Designated Federal Officer, Small Systems Implementation Working Group, U.S. EPA, Office of Ground Water and Drinking Water (4606), 401 M Street, S.W., Washington, D.C. 20460. The telephone number is 202–260–5813 and the email address is shanaghan.peter@epa.gov.

Dated: July 29, 1999.

**Elizabeth J. Fellows,**

*Acting Designated Federal Officer, National Drinking Water Advisory Council.*

[FR Doc. 99–20202 Filed 8–4–99; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6415–5]**

### Proposed Settlement Under Section 122 (h) (1) of the Comprehensive Environmental Response, Compensation and Liability Act

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed administrative settlement agreement and opportunity for public comment—Pijak Farm and Spence Farm Superfund sites.

**SUMMARY:** The United States Environmental Protection Agency (EPA) is proposing to enter into an administrative settlement to resolve certain claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA). Notice is being published to inform the public of the proposed settlement and the opportunity to comment. This settlement concerns the Pijak Farm and Spence Farm Superfund Sites in Plumsted Township, Ocean County, New Jersey and is intended to resolve the recovery of certain past costs incurred by EPA.

**DATES:** Comments must be provided by September 7, 1999.

**ADDRESSES:** Comments should be addressed to the United States Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, NY 10007, and should refer to: In the Matter of the Pijak Farm and Spence Farm Superfund Sites, Agreement for Recovery of Past Response Costs, U.S. EPA Index No. II–CERCLA–02–99–2018.

**FOR FURTHER INFORMATION CONTACT:** U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, NY 10007; Attention: Damaris Urdaz Cristiano, Esq. Ms. Cristiano can be reached at (212) 637–3140.

**SUPPLEMENTARY INFORMATION:** In accordance with section 122(i)(1) of CERCLA, notice is hereby given of a proposed administrative settlement concerning the Pijak Farm and Spence Farm Superfund Sites located in Plumsted Township, Ocean County, New Jersey. Section 122(h)(1) of CERCLA provides EPA with authority to settle certain claims for response costs incurred by the United States when the settlement has received the approval of the Attorney General of the United States of America. The settling parties will pay $16,526.72 to reimburse EPA for past response costs incurred at the Pijak Farm and Spence Farm Superfund Sites.

Dated: July 26, 1999.

**John S. Frisco,**

*Acting Director, Emergency and Remedial Response Division.*

[FR Doc. 99–20204 Filed 8–4–99; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[OPPTS–42190B; FRL–6090–6]**

### Dibasic Esters; Final Enforceable Consent Agreement and Testing Consent Order

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

**ACTION:** Notice.

**SUMMARY:** Under section 4 of the Toxic Substances Control Act (TSCA), EPA has issued a testing consent order (Order) that incorporates an enforceable consent agreement (ECA) with the Aceto Corporation, E.I. du Pont de Nemours and Company, and Solutia Inc. (the ''Companies''). The Companies have agreed to perform toxicity and dermal penetration rate testing on dimethyl adipate (CAS No. 627–93–0) (DMA), dimethyl glutarate (CAS No. 1119–40–0)(DMG), and dimethyl succinate (CAS No. 106–65–0)(DMS), known collectively as dibasic esters (DBEs). This notice announces the ECA and Order for DBEs and summarizes the terms of the ECA.

**DATES:** The effective date of the ECA and Order is August 5, 1999.

**FOR FURTHER INFORMATION CONTACT:** *For general information contact*: Christine M. Augustyniak, Associate Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone numbers: (202) 554–1404 and TDD: (202) 554–0551; e-mail address: TSCA-Hotline@epa.gov.

*For technical information contact*: George Semeniuk, Project Manager,

Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (202) 260–2134; fax number: (202) 260–8168; e-mail address: semeniuk.george@epa.gov.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does This Notice Apply To Me?*

The ECA and Order announced in this notice only affect those companies that signed the ECA for DBEs: the Aceto Corporation, E.I. du Pont de Nemours and Company, and Solutia Inc. However, as a result of the ECA and Order, EPA has initiated a rulemaking under TSCA section 12(b)(1) which, when finalized, will require all persons who export or intend to export DBEs to comply with the Agency's export notification regulations at 40 CFR part 707, subpart D.

### *B. How Can I Get Additional Information, Including Copies Of This Document Or Other Related Documents?*

1. *Electronically*. You may obtain electronic copies of this document and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page, select ''Laws and Regulations'' and then look up the entry for this document under ''**Federal Register**—Environmental Documents'' (http://www.epa.gov/fedrgstr/EPA-TOX/1999/). You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–42190B. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Rm.B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number is (202) 260–7099.

## II. Background

### *A. What Are DBEs?*

DBEs are component chemicals of solvent mixtures used in paint stripping formulations that are sold to the general public. Consumers can be significantly exposed to DBEs during use of these formulations. Three chemicals make up the class of chemicals known as DBEs: Dimethyl adipate (DMA), dimethyl glutarate (DMG), and dimethyl succinate (DMS). The Chemical Abstract Service (CAS) registry number for DMA is 627–93–0; for DMG, 1119–40–0; and for DMS, 106–65–0.

### *B. Why Is EPA Requiring Health Effects Testing On DBEs?*

The potential for consumers to be exposed significantly while using DBE paint stripping formulations, a reported adverse human effect—blurred vision—that resulted from the use of DBE paint strippers, and the results of limited toxicity testing of DBEs on rats has formed the foundation for the Agency's concern for the potential health risk that may be posed to consumers by DBE paint strippers.

## III. ECA Development and Conclusion

### *A. How Is EPA Going To Obtain Health Effects Testing On DBEs?*

EPA uses ECAs to accomplish testing where a consensus exists among EPA, affected manufacturers and/or processors, and interested members of the public concerning the need for and scope of testing (40 CFR 790.1(c)). In the March 22, 1995, **Federal Register** (see VI.A.2.a. of this document), EPA invited manufacturers and processors of DBEs that are used in paint strippers to develop and submit to EPA specific toxicity testing proposals for DBEs for the purpose of negotiating an ECA to conduct testing under Section 4 of TSCA.

The procedures for ECA negotiations are described at 40 CFR 790.22(b).

In response to EPA's request for proposals for ECAs, the Dibasic Esters Group (the DBE Group) submitted a proposal for a testing program on August 7, 1995 (Ref. 1). EPA responded to the DBE Group in a letter dated March 6, 1996, noting that while their proposal had potential merit and would expand the knowledge base of toxicity testing results on DBEs, the proposal did not constitute an adequate basis for proceeding with negotiation of an ECA (Ref. 2). EPA encouraged the DBE Group to consider EPA's comments on their proposal and submit a revised proposal. On October 22, 1996, the DBE Group submitted a revised testing proposal (Ref. 3). The Agency concluded that the revised proposal offered sufficient merit to proceed with ECA negotiations. Consequently, EPA published a document soliciting interested parties to monitor or participate in these negotiations (see VI.A.2.b. of this document).

EPA held a public meeting to negotiate an ECA for DBEs on January 29, 1997. Representatives of the Companies and other interested parties attended this meeting. The participants reached partial consensus on the testing to be required under the ECA at this meeting (Ref. 4) and complete consensus during a teleconference held on June 23, 1998 (Ref. 5). The Agency, the Companies, and an interested party participated in the telephone conference. On February 22, 1999, EPA received the ECA signed by the Companies. On July 28, 1999, EPA signed the ECA and accompanying Order.

### *B. What Testing Does The ECA For DBEs Require?*

This ECA requires toxicity testing by inhalation and dermal exposure and dermal penetration rate testing, as described in this unit and in Table 1 of this unit. This testing will allow EPA to characterize the potential hazards resulting from exposure to DBEs and to determine if additional toxicity testing is needed. Table 1 of this unit sets forth the required testing, test standards, and reporting requirements under the ECA for DBEs.

The testing program has three segments as follows: Initial Base Toxicity Testing; Program Review Testing; and, if deemed necessary following a Program Review, *In Vivo* Dermal Penetration Rate Testing. For more information about the testing that will be conducted under the ECA, copies of the ECA are available from sources described in Unit I.B. of this document.

Testing shall be conducted in accordance with the Test Standards listed in Table 1 of this unit.

TABLE 1.—REQUIRED TESTING, TEST STANDARDS, AND REPORTING REQUIREMENTS FOR DEBS

| Description of Test | Test Standard (40 CFR citation and/or study protocol) | Deadline for final report (months) | Interim reports required (number) |
|---|---|---|---|
| 90-day Subchronic Inhalation Toxicity Study with examination of special endpoints (in rats) [for each DBE; dose response determined using DMG] | Protocol (based on 799.9346, 799.9380, 799.9620, and incorporating a cell proliferation study) | 16[1] | 2[2] |
| Dermal (14-day) Toxicity Study (in rats) [for each DBE and for a 3:1:1 mixture of DMG, DMA, and DMS, respectively] | Protocol | 12[1] | 1[2] |
| Mutagenicity: *in vivo* rat bone micronucleus assay (via inhalation) [for DMG and DMA] | Protocol (based on 799.9539) | 16[1] | 2[2] |
| Mutagenicity: gene mutations in hamster ovary [for DMG] | Protocol (based on 799.9530) | 10[1] | 1[2] |
| Developmental Toxicity (in rabbits via inhalation) [for one DBE, selected by the EPA initial review process) after completion of Mutagenicity, 90-day Subchronic Inhalation Toxicity and 14-day Dermal Toxicity studies] | Protocol (based on 799.9370) | 12[3] | 1[4] |
| *In Vitro* Dermal Penetration Rate Study [for DBEs or DBE mixtures, selected by the EPA initial review process] | Protocol based on draft OECD Guideline for *In Vitro* Dermal Penetration | 12[3] | 1[4] |
| *In Vivo* Dermal Penetration Rate Study [for DBEs or DBE mixtures, selected by the EPA Program Review process] | 870.7485 | 12[5] | 1[6] |

[1] Number of months following the effective date of the Order.
[2] Interim reports are required every 6 months from the effective date of the ECA, unless otherwise noted, until the final report is submitted. This number indicates the number of interim reports required for each test based on the deadline set forth in the preceding column.
[3] Number of months beginning 60 days after the date of the EPA letter containing the decisions resulting from EPA's Initial Review (see VI.B. of the ECA).
[4] Interim reports are required every 6 months beginning 60 days after the date of the EPA letter containing decisions of the initial review, until the final report is submitted. This column shows the number of interim reports required for each test based on the deadlines set forth in the preceding column.
[5] Number of months beginning 60 days after the date of the EPA letter containing the decisions of the Program Review for *in vivo* testing, if needed (see VI.D. of the ECA).
[6] Interim reports are required every 6 months beginning 60 days after the date of the EPA letter containing decisions of the program review, until the final report is submitted. This column shows the number of interim reports required for the test based on the deadline set forth in the preceding column.

*C. What Are The Uses For The Test Data For DBEs?*

EPA would use the data obtained from testing to obtain a more complete toxicity profile of DBEs. Such a profile will be used in comparing the hazards of paint strippers based on DBEs to those of consumer paint strippers that are based on methylene chloride, *N*-methylpyrrolidone, or other common paint stripping solvents.

*D. What If EPA Should Require Additional Toxicity Testing On DBEs?*

If EPA decides in the future that it requires additional toxicity data on DBEs, the Agency will initiate a separate action.

## IV. Other Impacts Of The ECA For DBEs

The issuance of the ECA and Order under TSCA section 4 subjects the Companies that signed the ECA to export notification requirements under TSCA section 12(b)(1), as set forth at 40 CFR part 707, subpart D, if they export or intend to export any of the three DBEs.

On October 13, 1998, in the **Federal Register** (63 FR 54646, October 13, 1998) (FRL–6029–8), EPA proposed to amend 40 CFR 799.5000 by adding DMA, DMG, and DMS to the list of chemicals subject to testing consent orders. The listing of a chemical substance at 40 CFR 799.5000 serves as notification to all persons who export or intend to export any of these three chemical substances that:

1. The chemical substances are the subject of an ECA and Order; and

2. EPA's export notification regulations at 40 CFR part 707, subpart D, apply to those exporters who have signed the ECA, as well as those exporters who have not signed the ECA (40 CFR 799.19).

When a final rule based on the October 13, 1998, proposed rule is published in the **Federal Register**, all persons who export or who intend to export any of the DBEs will be subject to export notification requirements.

## V. Paperwork Reduction Act

The ECA and Order announced in this notice do not contain any information collection requirements that require additional approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq*. The information collection requirements related to test rules and ECAs issued under TSCA section 4 have already been approved by OMB under OMB control number 2070–0033 (EPA ICR No. 1139). The one-time public burden for this collection of information is estimated to be approximately 5,407 hours total. Under the PRA, ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For this collection it includes the time needed to review instructions; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the final rule, are listed in 40 CFR part 9. EPA will issue a final rule related to export notification requirements for DBEs. That rule will amend the listing at 40 CFR part 799, as well as the table at 40 CFR part 9.

## VI. Public Record

*A. Supporting Documentation*

The record for this proceeding contains the basic information considered in developing this ECA and Order and includes the following information.

1. Testing Consent Order for Dibasic Esters, with incorporated Enforceable Consent Agreement and associated testing protocols attached as appendices.

2. **Federal Register** notices pertaining to this notice, the Testing Consent Order and the Enforceable Consent Agreement, consisting of:

a. Notice of Solicitation of Testing Proposals for Negotiation of TSCA Section 4 Enforceable Consent Agreements (60 FR 15143, March 22, 1995) (FRL–4943–6).

b. Notice of Public Meeting; Dibasic Esters—Paint Stripper Chemicals (61 FR 67332, December 20, 1996) (FRL–5578–9).

3. Communications consisting of:

a. Written letters.

b. Meeting and teleconference summaries.

4. Reports—published and unpublished factual materials.

*B. References*

1. Dibasic Esters Group. Letter from Jorge C. Olguin to Charles M. Auer, EPA, Re: Solicitation of TSCA Section 4 Consent Agreements for Dibasic Esters, with attachment entitled ''Toxicity Literature Reviews From the DuPont Haskell Laboratory.'' Washington, DC. (August 7, 1995).

2. U.S. Environmental Protection Agency (USEPA). Letter from Charles M. Auer to Jorge C. Olguin, Dibasic Esters Group Re: toxicity testing proposal submitted by Dibasic Esters Group. Washington, DC. (March 6, 1996).

3. Dibasic Esters Group. Letter from Richard E. Opatick to Charles M. Auer, EPA, Re: Data Development on Dibasic Esters. Washington, DC. (October 22, 1996).

4. USEPA. Summary of EPA Public Meeting on DBEs Enforceable Consent Agreement. Washington, DC. (January 29, 1997).

5. USEPA. Summary of Teleconference on DBEs Enforceable Consent Agreement. Washington, DC. (June 23, 1998).

### List of Subjects

Environmental protection, Hazardous chemicals.

Dated: July 28, 1999.

**Susan H. Wayland,**

*Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.*

[FR Doc. 99–20205 Filed 8–4–99; 8:45 am]
BILLING CODE 6560–50–F

## FEDERAL COMMUNICATIONS COMMISSION

**[CC Docket No. 92–237; DA 99–1526]**

### Next Meeting of the North American Numbering Council

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** On August 2, 1999, the Commission released a public notice announcing the August 24 and August 25, 1999, meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its Agenda.

**FOR FURTHER INFORMATION CONTACT:** Jeannie Grimes, at (202) 418–2313 or via the Internet at jgrimes@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, 2000 M Street, NW, Suite 235, Washington, DC 20554. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

**SUPPLEMENTARY INFORMATION:** Released: August 2, 1999.

The next meeting of the North American Numbering Council (NANC) will be held on Tuesday, August 24, from 8:30 a.m., until 5:00 p.m., and on Wednesday, August 25, 1998, from 8:30 a.m., until 12 Noon. The meeting will be held at the Federal Communications Commission, Portals II, 445 Twelfth Street, S.W., Room TW-C305, Washington, D.C.

This meeting will be open to members of the general public. The FCC will attempt to accommodate as many people as possible. Admittance, however will be limited to the seating available. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before each meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Jeannie Grimes at the address under **FOR FURTHER INFORMATION CONTACT,** stated above.

### Proposed Agenda

The proposed agenda for the August 24–25, 1999, is as follows:

1. Approval of the July 20–21, 1999 meeting minutes.

2. Local Number Portability Administration (LNPA) Working Group Report. Update on attempt to lower the failure rate of service provider failures to receive broadcasts. Further discussion of the *Second Report on Wireline Wireless Integration*. Update on finalization of methods and scope, forms and process flows relating to LNP problem identification (PIM).

3. Industry Numbering Committee (INC) Report. Discussion regarding Central Office Utilization Survey (COCUS) report of utilization and forecasting data by resellers. TRA Reseller Association to provide recommendation for discussion.

4. Number Resource Optimization Working Group Report. NANC to take final action on definition of reserved telephone number and use of the term ''legally enforceable written agreement.'' Working Group will address need to include in the recommended practice the need for service providers to notify end user customers of changes in the reserved number practice.

5. Review and finalize NANC letter to FCC regarding NANC's position and recommendation concerning the splitting of rate centers as part of a NPA relief plan.

6. NANC obligations under the *Notice of Proposed Rulemaking*, CC Docket 99–200, (rel. June 2, 1999): Issue Management Group (IMG) report on recommendation in response to paragraph 38, which administrative measures should be adopted as FCC rules. Issue Management Group report regarding conclusions and recommendations in response to paragraph 165, examination of number pooling on NANP exhaust.

7. North American Number Plan Administration (NANPA) Oversight Working Group Report.

*Wednesday, August 25, 1999*

8. Cost Recovery Working Group Report. NECA report regarding service provider revenue reporting for NANPA cost recovery under FCC 98–71.

9. Audit Issue Management Group (IMG) report on Lockheed Martin responsibility with regard to ''show cause'' audits. Review and finalization

of report to FCC in response to paragraph 90, under CC Docket 99–200.

10. Steering Group Report.

11. Establishment of meeting dates for the first half of the year 2000.

12. Other Business.

Federal Communications Commission.

**Blaise A. Scinto,**

*Deputy Chief, Network Services Division, Common Carrier Bureau.*

[FR Doc. 99–20266 Filed 8–4–99; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL ELECTION COMMISSION

**[Notice 1999–16]**

## Filing Dates for the California Special Election

**AGENCY:** Federal Election Commission.

**ACTION:** Notice of filing dates for special election.

**SUMMARY:** California has scheduled a special election on September 21, 1999, to fill the U.S. House seat in the Forty-second Congressional District vacated by the late Congressman George E. Brown, Jr. Under California law, a majority winner in a non-partisan special election is declared elected. Should no candidate achieve a majority vote, a Special Runoff Election will be held on November 16, 1999, among the top vote-getters of each qualified political party, including independent candidates.

Committees participating in the California special elections are required to file pre- and post-election reports. Filing dates for these reports are affected by whether one or two elections are held.

**FOR FURTHER INFORMATION CONTACT:** Ms. Bobby Zarin, Information Division, 999 E Street, NW, Washington, DC 20463. Telephone: (202) 694–1100; Toll Free (800) 424–9530.

**SUPPLEMENTARY INFORMATION:** All principal campaign committees of candidates who participate in the California Special General and Special Runoff Elections and all other political committees not filing monthly which support candidates in these elections shall file a 12-day Pre-General Report on September 9, 1999, with coverage dates from the close of the last report filed, or the day of the committee's first activity, whichever is later, through September 1, 1999; a Pre-Runoff Report on November 4, 1999, with coverage dates from September 2 through October 27, 1999; and a Post-Runoff Report on December 16, 1999, with coverage dates from October 28 through December 6, 1999.

All principal campaign committees of candidates in the Special General Election *only* and all other political committees not filing monthly which support candidates in the Special General Election shall file a 12-day Pre-General Report on September 9, with coverage dates from the close of the last report filed, or the date of the committee's first activity, whichever is later, through September 1, and a Post General Report on October 21, with coverage dates from September 2 through October 11, 1999.

All political committees not filing monthly which support candidates in the Special Runoff *only* shall file a 12-day Pre-Runoff Report on November 4, with coverage dates from the last report filed or the date of the committee's first activity, whichever is later, through October 27, and a Post-Runoff Report on December 16, with coverage dates from October 28 through December 6, 1999.

CALENDAR OF REPORTING DATES FOR CALIFORNIA SPECIAL ELECTIONS

| Report | Close of books [1] | Reg./cert. mailing date [2] | Filing date |
|---|---|---|---|
| **IF ONLY THE SPECIAL GENERAL IS HELD (09/21/99), COMMITTEES MUST FILE:** | | | |
| Pre-General | 09/01/99 | [3] 09/07/99 | 09/09/99 |
| Post-General | 10/11/99 | 10/21/99 | 10/21/99 |
| **IF TWO ELECTIONS ARE HELD, BUT A COMMITTEE IS INVOLVED ONLY IN THE SPECIAL GENERAL (09/21/99):** | | | |
| Pre-General | 09/01/99 | [3] 09/07/99 | 09/09/99 |
| Year End | 12/31/99 | 01/31/00 | 01/31/00 |
| **FOR COMMITTEES INVOLVED IN THE SPECIAL GENERAL (09/21/99) AND SPECIAL RUNOFF (11/16/99):** | | | |
| Pre-General | 09/01/99 | [3] 09/07/99 | 09/09/99 |
| Pre-Runoff | 10/27/99 | 11/01/99 | 11/04/99 |
| Post-Runoff | 12/06/99 | 12/16/99 | 12/16/99 |
| **COMMITTEES INVOLVED ONLY IN THE SPECIAL RUNOFF (11/16/99) MUST FILE:** | | | |
| Pre-Runoff | 10/27/99 | 11/01/99 | 11/04/99 |
| Post-Runoff | 12/06/99 | 12/16/99 | 12/16/99 |

[1] The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

[2] Reports sent registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.

[3] The mailing date has been adjusted because the computed mail date would have fallen on a federal holiday.

Dated: July 30, 1999.

**Scott E. Thomas,**

*Chairman, Federal Election Commission.*

[FR Doc. 99–20101 Filed 8–4–99; 8:45 am]

BILLING CODE 6715–01–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Guidance for Developing State, Tribal, and Local Radiological Emergency Response Planning and Preparedness for Transportation Accidents

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice of availability.

**SUMMARY:** FEMA announces the availability of the document ''Guidance for Developing State, Tribal, and Local Radiological Emergency Response Planning and Preparedness for Transportation Accidents, FEMA–REP–5, Revision 2,'' and requests comments.

**DATES:** Comments and responses should be sent no later than November 3, 1999.

**ADDRESSES:** Comments on ''FEMA–REP–5, Rev. 2'' should be sent to the Rules Docket Clerk, Office of the General Counsel, room 840, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (facsimile) (202) 646–4536.

**FOR FURTHER INFORMATION CONTACT:** William F. McNutt, Senior Policy Advisor, Chemical and Radiological Preparedness Division, Preparedness, Training, and Exercises Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2857, (facsimile) (202) 646–3508.

**SUPPLEMENTARY INFORMATION:** FEMA–REP–5 was prepared by the Transportation Accidents Subcommittee of the Federal Radiological Preparedness Coordinating Committee. It represents the efforts of several federal agencies, state organizations, and a Native American organization. The intended use of FEMA–REP–5 is to provide guidance to State, Tribal and local government officials who must prepare or revise emergency response plans for transportation accidents involving radioactive materials. Although use of the guidance is not mandatory, it is recommended for use to develop a hazard specific plan, as part of an all-hazards emergency response plan, at all levels of government.

Published first in March 1983, this guidance document was revised and published in June 1992 as Revision 1. The current revision is intended to supersede all previous issues. When the defined objectives are applied, planning will include all aspects of preparedness from pre-accident coordination and assignment of responsibilities, to post-accident operations, cleanup, and site restoration. The State, Tribal or local government office that adheres to the expressed concepts and recommendations found in FEMA–REP–5, Rev. 2, will be able to prepare an emergency operations plan that satisfies the need to protect both workers and citizens while safely responding to a radioactive materials transportation accident. The plan can be appended to the overall emergency operations plan for the jurisdiction.

Our goal is to provide guidance by means of a useful document that enables officials at all levels of government to plan for possible hazardous accidents. We welcome your comments on this document. All comments will be considered.

Dated: July 30, 1999.

**Kay C. Goss,**

*Associate Director for Preparedness, Training, and Exercises.*

[FR Doc. 99–20172 Filed 8–4–99; 8:45 am]

BILLING CODE 6718–06–P

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 19, 1999.

**A. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

*1. James Lawrence Matteucci,* Roswell, New Mexico, and Anna Maria Matteucci, Roswell, New Mexico; each to acquire additional voting shares of New Mexico National Financial, Inc., Roswell, New Mexico, and thereby indirectly acquire additional voting shares of Bank of the Southwest, Roswell, New Mexico.

Board of Governors of the Federal Reserve System, July 30, 1999.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 99–20096 Filed 8–4–99; 8:45 am]

BILLING CODE 6210–01–F

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 30, 1999.

**A. Federal Reserve Bank of San Francisco** (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

*1. Bank On It, Inc.*, Stockton, California; to become a bank holding company by acquiring up to 100 percent of the voting shares of Community Bank of San Joaquin, Stockton, California.

Board of Governors of the Federal Reserve System, July 30, 1999.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 99–20094 Filed 8–4–99; 8:45 am]

**BILLING CODE 6210–01–F**

## FEDERAL RESERVE SYSTEM

### Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 19, 1999.

**A. Federal Reserve Bank of New York** (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

*1. Citigroup, Inc., and Citicorp*, both of New York, New York; to acquire through Citicorp Strategic Technology Corporation, New York, New York, an investment in GlobeSet, Inc., Austin, Texas, and engage in the development, manufacture, and distribution of software designed to provide electronic banking services to consumer and business customers, pursuant to § 225.28(b)(14)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, July 30, 1999.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 99–20095 Filed 8–4–99; 8:45 am]

**BILLING CODE 6210–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30DAY–19–99]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

**Proposed Projects**

1. Application for Training for the CDC Distance Learning Program, Laboratory Training, and Other Training—(0920–0017)—Reinstatement—The Public Health Practice Program Office (PHPPO) is requesting an emergency clearance to resume data collection for the training forms associated with this clearance. We also plan on modifying/revising segments of the application forms. PHPPO in conjunction with the Public Health Training Network (PHTN) and the National Laboratory Training Network (NLTN) at CDC includes the Distance Learning Program which offers self-study, computer-based training, satellite broadcast, video courses, instructor-led field courses, and lab courses related to public health professionals worldwide. Employees of hospitals, universities, medical centers, laboratories, state and federal agencies, and state and local health departments apply for training in an effort to learn up-to-date public health procedures. The ''Application for Training'' forms are the official applications used for all training activities conducted by the CDC.

The Continuing Education (CE) Program, which includes CDCs accreditation to provide Continuing Medical Education (CME), Continuing Nurse Education (CNE) and Continuing Education Unit (CEU) for almost all training activities, requires a unique identifying number, preferably the respondent's Social Security Number (SSN), to positively identify and track individuals who have been awarded CE credit. It is often necessary to identify individuals currently enrolled in courses, or to retrieve historical information as to when a particular individual completed a course or several courses over a time period. This information provides the basis for producing a requested transcript or determining if a person is enrolled in more than one course. The use of the SSN is the only positive way of assigning a unique number to a unique individual for this purpose. However, the use of the SSN is voluntary; if a student chooses not to submit a SSN, CDC assigns a unique identifier. The reason the SSN, rather than an arbitrary assigned number is preferred, is because students are not likely to remember an arbitrary number. A student's participation in the curriculum of self-study courses sometimes spans a number of years. The SSN is necessary for eliminating duplicate enrollments; for properly crediting students with completed course work who have similar names or have changed addresses; for generating transcripts of previous completed course work on a cumulative basis. Due to the volume of enrollments, CDC Form 36.5 has been previously approved and used for years as an optical mark scan form. Use of this form, along with the use of the Social Security Number, greatly enhances CDC's capability to process a much greater volume of enrollments in less time with much greater accuracy. The total burden hours are 8,025.

| Respondents | Number of respondents | Number of responses/respondent | Avg. burden/response (in hrs.) |
|---|---|---|---|
| Application for Training—CDC 0.759A | 6,300 | 1 | 0.0833 |
| Application for Laboratory Training—CDC 32.1 | 10,000 | 1 | 0.0833 |
| Application for Distance Learning Program—CDC 36.5 | 40,000 | 1 | 10/60 |

**Nancy Cheal,**

*Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 99–20117 Filed 8–4–99; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Implementation of the Fertility Clinic Success Rate and Certification Act of 1992–A Model Program for the Certification of Embryo Laboratories; Correction

In notice document beginning on page 39374, in the **Federal Register** issue of Wednesday, July 21, 1999, make the following date corrections:

1. On page 39380, second column, line 14, change date ''July 20'' to ''July 21''
2. On page 39386, second column, line 23, change date ''July 20'' to ''July 21''
3. On page 39387, first column, section c. fourth line, change date ''July 20'' to ''July 21''; same page, in the second column, section c. fourth line, change date ''July 20'' to ''July 21''

Dated: July 30, 1999.

**Joseph R. Carter,**

*Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention.*

[FR Doc. 99–20116 Filed 8–4–99; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 99F–2533]**

### Hercules, Inc.; Filing of Food Additive Petition

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Hercules, Inc., has filed a petition proposing that the food additive regulations be amended to permit a change in the softening point specifications of currently listed gum or wood rosin derivatives and provide for their safe use as plasticizing materials (softeners) in chewing gum base.

**DATES:** Written comments on the petitioner's environmental assessment by September 7, 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:** Mary E. LaVecchia, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3072.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9A4655) has been filed by Hercules, Inc., c/o 1001 G St. NW., Washington, DC 20001. The petition proposes to amend the food additive regulations in § 172.615 *Chewing gum base* (21 CFR 172.615) to permit a change in the softening point specifications of currently listed gum or wood rosin derivatives and provide for their safe use as plasticizing materials (softeners) in chewing gum base. More specifically, the petition proposes to eliminate the upper limits on the permissible softening point ranges for these gum or wood rosin derivatives.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations issued under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before September 7, 1999, submit to the Dockets Management Branch (address above) written comments. 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. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: July 9, 1999.

**Alan M. Rulis,**

*Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.*

[FR Doc. 99–20090 Filed 8–4–99; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 91F–0328]**

### Yoshitomi Fine Chemicals, Ltd.; Withdrawal of A Food Additive 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 the food additive petition (FAP 1B4275) proposing that the food additive regulations be amended to provide for the safe use of 4,5-dichloro-1,2-dithiol-3-one as a slimicide in the manufacture of paper and paperboard articles intended to contact food.

**FOR FURTHER INFORMATION CONTACT:** Mark A. Hepp, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3098

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of September 19, 1991 (56 FR 47478), FDA announced that food additive petition (FAP 1B4275) had been filed by Yoshitomi Pharmaceutical Industries, Ltd., now Yoshitomi Fine Chemicals, Ltd., c/o suite 1000, 1625 K St. NW., Washington, DC 20006–1604. The petition proposed to amend the food additive regulations in § 176.300 *Slimicides* (21 CFR 176.300) to provide for the safe use of 4,5-dichloro-1,2-dithiol-3-one as a slimicide in the manufacture of paper and paperboard articles intended to contact food. Yoshitomi Fine Chemicals, Ltd. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: July 20, 1999.

**Laura M. Tarantino,**

*Deputy Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.*

[FR Doc. 99–20139 Filed 8–4–99; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 99D–2167]**

## Medical Devices; Draft Guidance on the Likelihood of Facilities Inspections When Modifying Devices Subject to Premarket Approval; Availability

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''Draft Guidance on the Likelihood of Facilities Inspections When Modifying Devices Subject to Premarket Approval.'' The industry has experienced difficulties in planning the implementation of manufacturing and/or other changes involving a device with an approved premarket approval application (PMA), product development protocol (PDP), or humanitarian device exemption (HDE), when an FDA inspection may or may not be necessary. This draft guidance will help firms determine whether an FDA inspection is needed and more easily manage the timeframes associated with implementing changes in manufacturing while maintaining necessary safeguards. This guidance is not final nor is it in effect at this time.

**DATES:** Written comments concerning this draft guidance must be submitted by November 3, 1999.

**ADDRESSES:** See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance. Submit written requests for single copies on a 3.5'' diskette of the guidance entitled ''Draft Guidance on the Likelihood of Facilities Inspections When Modifying Devices Subject to Premarket Approval'' to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–443–8818.

Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Walter W. Morgenstern, Center for Devices and Radiological Health (HFZ–305), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4699.

**SUPPLEMENTARY INFORMATION:**

### I. Background

During recent FDA/medical device industry grassroots forums, industry representatives discussed difficulties they have experienced in planning for changes related to devices with applications approved through the premarket approval (PMA), product development protocol (PDP) or humanitarian device exemption (HDE) processes. The industry representatives indicated that much of the difficulty was caused by uncertainty about FDA policies on what circumstances require submission of a PMA supplement, when a PMA inspection may be required, or when documenting the change in the firm's files may be adequate.

FDA, with input from interested parties, developed this draft guidance in an effort to help firms manage the timeframes associated with implementing changes in manufacturing facilities, manufacturing methods or procedures, labeling or performance.

This draft guidance identifies factors that are involved in determining the following: (1) Whether a change in manufacturing methods or procedures can be implemented and the device can be distributed without prior notice to FDA without any delay except that necessary to achieve compliance with the requirements of the Quality System/GMP regulation (21 CFR part 820); (2) whether a change in manufacturing methods or procedures can be implemented and the device can be distributed 30 days after prior written notice has been filed with FDA (30-Day Notice) in accordance with section 515(d)(6)(A)(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(6)(A)(i)) and 21 CFR 814.39, unless FDA notifies the holder of the PMA that the notice is inadequate; or (3) whether a change in facilities can be accelerated when a firm meets the prerequisite conditions for an Express PMA Supplement for Facilities Change.

The guidance is intended to reduce the regulatory burdens and concomitant delays in the implementation of a manufacturing change while maintaining necessary safeguards. The factors that an applicant and/or FDA should take into consideration when determining the need for submission of a supplement and the likelihood of an inspection are presented in a model decision procedure.

This draft guidance represents the agency's current thinking on changes to devices with approved PMA's, PDP's or HDE's. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulation, or both.

The agency has adopted good guidance practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This document is issued as a Level 1 draft guidance consistent with GGP's.

### II. Electronic Access

In order to receive the ''Draft Guidance on the Likelihood of Facilities Inspections When Modifying Devices Subject to Premarket Approval'' via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts. At the second voice prompt press 2, and then enter the document number (1269) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the World Wide Web (WWW). CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the WWW. Updated on a regular basis, the CDRH home page includes the draft guidance on device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at ''http://www.fda.gov/cdrh''.

### III. Comments

Interested persons may, on or before November 3, 1999, submit to the Dockets Management Branch (address above) written comments regarding this draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 27, 1999

**Linda S. Kahan,**

*Deputy Director for Regulations Policy, Center for Devices and Radiological Health.*

[FR Doc. 99–20089 Filed 8–4–99; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 99N092075]**

### Global Harmonization Task Force; Draft Document on Proposal for Reporting of Use Errors with Medical Devices; Availability

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a Global Harmonization Task Force (GHTF) draft document entitled ''Proposal for Reporting of Use Errors with Medical Devices.'' The draft guidance includes information for regulatory authorities about reporting of adverse events that result in death or serious injury or certain types of near incidents. This draft document has been prepared by members of the GHTF Study Group 2 (SG2) on Medical Devices Vigilance/Postmarket Surveillance Reporting Systems. The draft document represents a harmonized proposal. Elements of the approach set forth in this draft document may not be consistent with current U.S. regulatory requirements. FDA is requesting comments on this draft document.

**DATES:** Written comments by September 7, 1999. After the close of the comment period, written comments may be submitted at any time to Deborah Y. Blum (address below).

**ADDRESSES:** Submit written comments on the draft document to the Dockets Management Branch (HFA09305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document. If you do not have access to the World Wide Web (WWW), submit a written request for a 3.5″ diskette of the draft document entitled ''Proposal for Reporting of Use Errors with Medical Devices'' to the Division of Small Manufacturers Assistance (HFZ09220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your requests, or fax your request to 30109443098818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft document.

**FOR FURTHER INFORMATION CONTACT:** Deborah Y. Blum, Office of Surveillance and Biometrics (HFZ09520), Center for Devices and Radiological Health, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 30109594092985.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

FDA has participated in a number of activities to promote the international harmonization of regulatory requirements, as described in an FDA notice on these activities published in the **Federal Register** of October 11, 1995 (60 FR 53078). As part of this effort, FDA has been actively involved since 1992 with GHTF. GHTF has formed four study groups, each tasked with assignments to draft documents and carry on other activities, designed to facilitate global harmonization. The purpose of this notice is to seek public comments on a draft document that has been prepared by one of the GHTF study groups.

SG2 was formed by GHTF in February 1996 and tasked with the responsibility to examine the requirements for the reporting of adverse incidents involving medical devices; consider postmarket surveillance and other forms of vigilance; and recommend ways of harmonizing these requirements. SG2 was also requested to promote the dissemination of relevant information concerning these matters. SG2 helps to improve protection of the health and safety to patients, users, and others; evaluate reports and disseminate information which may reduce the likelihood of or prevent repetitions of adverse events, or alleviate consequences of such repetitions; and define postmarket medical device reporting and surveillance requirements and guidelines on an international basis.

Reporting of adverse events involving medical devices is an important element in any good postmarketing surveillance system and can be achieved only through mutual confidence among all parties concerned. The obligation to report adverse events differs widely among countries. Some systems are voluntary, while others are mandatory. The common thread that could tie all of the worldwide reporting systems together is the obligation for manufacturers to report adverse events or incidents of which they are aware that involve medical devices.

It is the premise of the work of GHTF SG2 that an international system for reporting adverse events can be developed to handle information provided by the manufacturer to the authorities.

FDA is announcing the availability of a draft document entitled ''Proposal for Reporting of Use Errors with Medical Devices.'' The GHTF SG2 has developed a reference for manufacturers regarding adverse event reporting. This draft document is referenced as SG2 N21R8 . It includes information for regulatory authorities about reporting of adverse events that result in death or serious injury or certain types of near incidents. It includes the consideration that certain types of failures may be exempt from reporting under regulatory vigilance procedures, but does not include a specific proposal on reporting of use errors. ''Proposal for Reporting of Use Errors with Medical Devices'' gives an overview on emerging process standards which are streamlining the handling of use errors by industry and makes a proposal to regulatory authorities on how to handle use errors under adverse event reporting procedures.

#### II. Electronic Access

Persons interested in obtaining a copy of the draft document may also do so using the WWW. CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the WWW. Updated on a regular basis, the CDRH home page includes the the draft document entitled ''Proposal for Reporting of Use Errors with Medical Devices,'' device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on videoconferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at ''http://www.fda.gov/cdrh''.

#### III. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

After September 7, 1999, written comments regarding the draft document may be submitted at any time to the contact person (address above).

Dated: July 20, 1999.

**Linda S. Kahan,**

*Deputy Director for Regulations Policy, Center for Devices and Radiological Health.*

[FR Doc. 99–20140 Filed 8–4–99; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[Document Identifier: HCFA–R–205 & HCFA–R–206]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Health Care Financing Administration.

**ACTION:** Comment request; notice.

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:* Information Collection Requirements Referenced in HIPAA for the Individual Market and Supporting Regulations in 45 CFR section 148;

*Form No.:* HCFA–R–205 (OMB# 0938–0703);

*Use:* These information collection requirements help ensure access to the individual insurance market for certain individuals and allows the States to implement their own program to meet the HIPAA requirements for access to the individual market. The information collection requirements outlined in this document are necessary for issuers and States to ensure individuals receive protection under section 111 of HIPAA.

*Frequency:* On occasion;

*Affected Public:* Business or other for-profit, Individuals or Households, Not-for-profit institutions, Federal Government, and State, Local or Tribal Government;

*Number of Respondents:* 1,040;

*Total Annual Responses:* 3,230,000;

*Total Annual Hours:* 921,000.

(2) *Type of Information Collection Request:* Extension of a currently approved collection;

*Title of Information Collection:* Information Collection Requirements Referenced in HIPAA for the Group Market and Supporting Regulations in 45 CFR Section 146;

*Form No.:* HCFA–R–206 (OMB# 0938–0702);

*Use:* This regulation and related information collection requirements will ensure that group health plans provide individuals with documentation necessary to demonstrate prior creditable coverage, and the group health plans notify individuals of their special enrollment rights in the group health insurance market.

*Frequency:* On occasion;

*Affected Public:* Business or other for-profit, Individuals or Households, Not-for-profit institutions, Federal Government, and State, Local or Tribal Government;

*Number of Respondents:* 2,030;

*Total Annual Responses:* 43,000,000;

*Total Annual Hours:* 2,700,000.

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 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 29, 1999.

**John P. Burke III,**

*HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.*

[FR Doc. 99–20098 Filed 8–4–99; 8:45 am]

**BILLING CODE 4120–03–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[Document Identifier: HCFA–R–291]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Health Care Financing Administration.

**ACTION:** Comment request; notice.

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.

*Type of Information Collection Request:* New Collection;

*Title of Information Collection:* Multi-State Evaluation of Dual Eligibles Demonstrations: Wisconsin Partnership Program;

*Form No.:* HCFA–R–291 (OMB# 0938–NEW);

*Use:* This survey provides information needed to evaluate dual eligible demonstrations on issues of satisfaction and gathers health and functional status to be used in other analyses. Dual eligible demonstrations are designed to create alternative delivery services for acute and long-term care services to elderly and disabled persons which provide increased coordination, improve access to quality services and control or more appropriately allocate future costs. Respondents to the survey

include demonstration enrollees both living in the community and in institutions, their families, disenrollees and corresponding comparison groups. Information collected will pertain to description of the person, information regarding enrollment/disenrollment, quality of life, satisfaction, general health, functional status, access to services, and informal care giving. This data will be combined with secondary data on utilization of services to analyze the coordination of care, utilization, outcomes, and cost of providing services.;

*Frequency:* Other: One-time;

*Affected Public:* Individuals or Households;

*Number of Respondents:* 5,945;

*Total Annual Responses:* 5,945;

*Total Annual Hours:* 3,830.

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 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 29, 1999.

**John P. Burke III,**

*HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.*

[FR Doc. 99–20100 Filed 8–4–99; 8:45 am]

BILLING CODE 4120–03–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

**Proposed Project: National Fetal and Infant Mortality Review (FIMR) Program Evaluation—New**

The Johns Hopkins Women's and Children's Health Policy Center, under a cooperative agreement with the Maternal and Child Health Bureau (MCHB) of the Health Resources and Services Administration (HRSA) is conducting a national evaluation of the Fetal and Infant Mortality Review Program. FIMR is community based, aimed at guiding communities to identify and solve problems contributing to poor reproductive outcomes and infant health by using the sentinel event of an infant death to systematically examine a wide array of factors that are related to infant mortality. FIMR findings are used to stimulate policy development and quality improvement efforts. The purpose of this evaluation is to look at the effect of FIMRs and other community-level perinatal systems initiatives on health systems, with an eye toward characterizing the unique contributions of the FIMR model and process.

The main objectives of the FIMR evaluation are: (1) to compare the impact of FIMR on the health and related service systems for women, infants, and families with infants with that of other perinatal systems related initiatives, and (2) to compare the implementation of public health functions related to policies, programs, and practices for women, infants, and families with infants across a number of community systems initiatives. The study will utilize three survey instruments for data collection.

The estimated response burden is as follows:

| Survey | Number of respondents | Responses per respondent | Total respondents | Hours per response | Total burden hours |
|---|---|---|---|---|---|
| FIMR | 80 | 1 | 80 | 1.75 | 140 |
| Local Health Dept | 80 | 1 | 80 | 1.5 | 120 |
| Perinatal Initiatives | 160 | 1 | 160 | 1.25 | 200 |
| Total | | | 320 | | 460 |

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Wendy A. Taylor, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 29, 1999.

**Jane Harrison,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. 99–20091 Filed 8–4–99; 8:45 am]

BILLING CODE 4160–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Research Resources; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities.

*Date:* October 14, 1999.

*Open:* 8:00 am to 9:00 pm.

*Agenda:* To discuss program planning and program accomplishments.

*Place:* Holiday Inn Bethesda, Delaware Room, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Closed:* 9:00 am to Adjournment.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Bethesda, Delaware Room, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* D.G. Patel, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, Bethesda, MD 20892, 301–435–0824.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: July 28, 1999.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 99–20080 Filed 8–4–99; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung and Blood Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Heart, Lung, and Blood Advisory Council.

*Date:* September 16–17, 1999.

*Open:* September 16, 1999, 8:30 am to 3:00 pm.

*Agenda:* For discussion of program policies and issues.

*Place:* National Institutes of Health, Building 31, C Wing, Conference Room 10, 9000 Rockvile Pike, Bethesda MD 20892.

*Closed:* September 16, 1999, 3:00 pm to Adjournment.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 31, C Wing, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* Robert Carlsen, Acting Director, Division of Extramural Affairs, Nat. Heart, Lung, and Blood Institute, NIH, Two Rockledge Center, Room 7100, 6701 Rockledge Drive, Bethesda, MD 20892, 301/435–0260.

(Catalogue of Federal Domestic Assistance Program Nos. 93–233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 29, 1999.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 99–20079 Filed 8–4–99; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel: Determinants of Thiopurine Response in Children.

*Date:* August 10, 1999.

*Time:* 11:30 am to 2:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* 6100 Executive Blvd., Room 5E01, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Gopal M. Bhatnagar, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child, Health and Human Development, National Institutes of Health, PHS, DHHS, 9000 Rockville Pike, 6100 Bldg., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 99–20077 Filed 8–4–99; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Dental and Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions sets forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Dental Research Special Emphasis Panel: RFP No. NIH–NIDCR–12–99–3.

*Date:* July 30, 1999.

*Time:* 10:30 am to 12:30 pm.

*Agenda:* To review and evaluate contract proposals.

*Place:* Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* H. George Hausch, PhD, Chief, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Dental Research Special Emphasis Panel: 99–62, Review of R44.

*Date:* August 17, 1999.

*Time:* 10:00 am to 11:30 am.

*Agenda:* To review and evaluate grant applications.

*Place:* Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Philip Washko, PhD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

*Name of Committee:* National Institute of Dental Research Special Emphasis Panel: 99–73, Review of R03, K23, K24.

*Date:* August 25, 1999.

*Time:* 10:00 am to 11:30 am.

*Agenda:* To review and evaluate grant applications.

*Place:* Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* William J. Gartland, PhD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institute of Dental & Craniofacial Res, Bethesda, MD 20892, (301) 594–2372.

*Name of Committee:* National Institute of Dental Research Special Emphasis Panel: 99–79, Review of F32 & K24.

*Date:* September 2, 1999.

*Time:* 11:30 am to 12:30 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* William J. Gartland, PhD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institute of Dental & Craniofacial Res., Bethesda, MD 20892, (301) 594–2372.

*Name of Committee:* National Institute of Dental Research Special Emphasis Panel: 99–57, Review of R44.

*Date:* September 14, 1999.

*Time:* 10:00 am to 11:30 am.

*Agenda:* To review and evaluate grant applications.

*Place:* Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Philip Washko, PhD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

*Name of Committee:* National Institute of Dental Research Special Emphasis Panel: 99–69, P01 Review.

*Date:* September 14, 1999.

*Time:* 11:55 am to 2:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* H. George Hausch, PhD, Chief, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: July 29, 1999.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy, NIH.*

[FR Doc. 99–20078 Filed 8–4–99; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant application and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* August 2, 1999.

*Time:* 2:00 pm to 3:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Thomas A. Tatham, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892, (301) 435–0692.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* August 3, 1999.

*Time:* 2:00 pm to 3:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Anita Miller Sostek, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–0910.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* August 9, 1999.

*Time:* 10:30 am to 1:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* David Monsees, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3199, MSC 7770, Bethesda, MD 20892, (301) 435–0684, monseesd@drg.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* August 9, 1999.

*Time:* 11:00 am to 1:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Sami A. Mayyasi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel: General Medicine A–1 Study Section.

*Date:* August 9, 1999.

*Time:* 3:00 pm to 4:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Harold M. Davidson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892, (301) 435–1776.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* August 9, 1999.
*Time:* 4:00 pm to 4:30 pm.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
*Contact Person:* Harold M. Davidson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892, (301) 435–1776.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* August 10, 1999.
*Time:* 10:00 am to 1:00 pm.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
*Contact Person:* Arnold Revzin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7806, Bethesda, MD 20892, (301) 435–1153.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel: ZRG1–IFCN8–05.
*Date:* August 10, 1999.
*Time:* 11:30 am to 1:30 pm.
*Agenda:* To review and evaluate grant application.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
*Contact Person:* Samuel Rawlings, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5160, MSC 7844, Bethesda, MD 20892, (301) 435–1243.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* August 10, 1999.
*Time:* 2:00 pm to 3:00 pm.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
*Contact Person:* Joseph Kimm, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178 MSC 7844, Bethesda, MD 20892, (301) 435–1249.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* August 10, 1999.
*Time:* 12:00 pm to 1:00 pm.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
*Contact Person:* Martin Slater, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7808, Bethesda, MD 20892, (301) 435–1149.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* August 11, 1999.
*Time:* 8:00 am to 12:00 pm.
*Agenda:* To review and evaluate grant applications and/or proposals.
*Place:* Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
*Contact Person:* Alexander D. Politis, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, (301) 435–1225, politisa@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* August 11, 1999.
*Time:* 1:00 pm to 6:00 pm.
*Agenda:* To review and evaluate grant applications and/or proposals.
*Place:* Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
*Contact Person:* Alexander D. Politis, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Dive, Room 4204, MSC 7812, Bethesda, MD 20892, (301) 435–1225, politisa@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* August 11, 1999.
*Time:* 1:00 pm to 2:30 pm.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 10892 (Telephone Conference Call).
*Contact Person:* Ronald Dubois, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 4156, MSC 7806, Bethesda, MD 20892, (301) 435–1722, dubois@drg.nih.gov
*This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* August 11, 1999.
*Time:* 12:00 pm to 2:00 pm.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
*Contact Person:* Larry Pinkus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel: Visual Sciences A.
*Date:* August 12, 1999.
*Time:* 10:00 am to 5:00 pm.
*Agenda:* To review and evaluate grant applications.
*Place:* Hilton Philadelphia Airport, 4509 Island Ave, Philadelphia, PA 19153.
*Contact Person:* Luigi Giacometti, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7850, Bethesda, MD 20892, (301) 435–1246.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel: ZRG1–IFCN7–05.
*Date:* August 12, 1999.
*Time:* 2:00 pm to 4:00 pm.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
*Contact Person:* Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892, (301) 435–1242.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review and Special Emphasis Panel.
*Date:* August 13, 1999.
*Time:* 2:00 pm to 4:00 pm.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
*Contact Person:* Marcelina B. Powers, DVM, MS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7804, Bethesda, MD 20892, (301) 435–1720.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93–306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HSS).

Dated: July 29, 1999.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 99–20081 Filed 8–4–99; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Service

### National Toxicology Program, National Institute of Environmental Health Sciences, Center for the Evaluation of Risks to Human Reproduction; Announces an Expert Panel Review of Phthalates, August 17–19, 1999 in Alexandria, VA

#### Background

The National Toxicology Program (NTP) and the National Institute of Environmental Health Sciences have established the NTP Center for the Evaluation of Risks to Human Reproduction (63 FR 68782, No 239). The purpose of the Center is to provide timely and unbiased, scientifically sound evaluations of human and experimental evidence for adverse effects on reproduction, including development, caused by agents to which humans may be exposed. The evaluations produced through the Center will be published as monographs in Environmental Health Perspectives; a special effort will be made to summarize the reports in terms that can be understood by those who are not scientifically trained.

#### Expert Panel Review of Phthalates

Seven phthalate esters will be evaluated by an expert panel under the auspices of the NTP Center (64 FR 18921–18922, No 73). These were selected based on their high production volume, extent of human exposures, use in children's products, or published evidence of reproductive or developmental toxicity. The chemicals to be evaluated are listed below with their Chemical Abstract Service registry numbers.

butyl benzyl phthalate (85–68–7)
di(2-ethylhexyl) phthalate (117–81–7)
di-isodecyl phthalate (26761–40–0, 68515–49–1)
di-isononyl phthalate (28553–12–0, 68515–48–0)
di-n-butyl phthalate (84–74–2)
di-n-hexyl phthalate (84–75–3)
di-n-octyl phthalate (117–84–0)

#### Review Panel and Charge to Panel

To date, a panel of 14 scientists have been selected for their expertise in various aspects of reproductive toxicology and other relevant areas to conduct the review. The roster of these experts follows:

**Phthalates Expert Panel**

*Name and Affiliation*

Kim Boekelheide, MD, PhD—Brown University, Providence, RI
Bob Chapin, PhD—NIEHS, Research Triangle Park, NC
Mike Cunningham, PhD—NIEHS, Research Triangle Park, NC
Elaine Faustman, PhD—University of Washington, Seattle, WA
Paul Foster, PhD—Chemical Industry Institute of Toxicology, Research Triangle Park, NC
Mari Golub, PhD—Cal/EPA, Davis, CA
Rogene Henderson, PhD—Inhalation Toxicology Research Institute, Albuquerque, NM
Irwin Hinberg, PhD—Health Canada, Ottawa, Ontario, Canada
Bob Kavlock, PhD—EPA/ORD, Research Triangle Park, NC
Jennifer Seed, PhD—EPA/OPPT, Washington, DC
Katherine Shea, MD—North Carolina State University, Raleigh, NC
Shelly Tyl, PhD—Research Triangle Institute, Research Triangle Park, NC
Paige Williams, PhD—Harvard University, Cambridge, MA
Tim Zacharewski, PhD—Michigan State University, East Lansing, MI

#### Charge to Expert Panel

Rigorously evaluate all relevant data and reach a conclusion regarding the strength of scientific evidence that exposure to a chemical may or may not present a risk to human reproduction or development.

1. Evaluate all reproductive and developmental toxicity studies—in humans and animals—for quality, completeness, and sufficiency. Determine consistency of reported effects within and among species. Briefly summarize relevant individual studies.

2. Review and summarize related studies paying particular attention to studies of general toxicity, pharmacokinetics, genetic toxicity, and mechanisms of toxicity, within and across species. Both *in vivo* and *in vitro* studies will be included.

3. Determine, to the extent possible, patterns of use (such as timing, duration) and exposure (such as dose, route) to humans.

4. Integrate this information, using a weight of evidence approach. Determine how human, animal and other data can reasonably be used to predict reproductive or developmental effects in humans under particular exposure conditions.

5. Provide judgments, including qualitative statements of the certainty of the judgments, that an agent presents a potential risk to human reproduction and/or development.

Describe the major factors that contributed to these judgments. State the exposure circumstances under which such risk might be expected to exist.

6. Identify specific areas of uncertainty (such as inadequate pharmacokinetic data in a given species) that would prevent a more definitive assessment of human risk.

7. Identify research and testing needs that, if met, would significantly reduce the uncertainty inherent in the stated judgments of risk.

#### Meeting Open to the Public

The preliminary agenda for the panel meeting follows:

*August 17 (Beginning at 8:30 a.m.)*

Opening remarks by Dr. Michael Shelby, NIEHS and Director of the Center, Dr. George Lucier, Director of the NIEHS' Environmental Toxicology Program, and Dr. Robert Kavlock, EPA, and Chair of the Expert Panel.

Panel members will present summaries of the literature they will have individually reviewed in advance of the meeting.

The Phthalate Esters Panel of the Chemical Manufacturers Association, Health Care Without Harm, and the American Council on Science and Health will summarize the deliberations of their recent literature reviews of the possible reproductive and developmental health risks of phthalate exposures.

Panel discussion will follow to identify areas where there is broad panel agreement as well as issues requiring further discussion by workgroups of the panel.

Time will be available to members of the public for comment.

*August 17 (PM)—18–19*

The remainder of the meeting will be an iterative series of workgroup discussions and plenary sessions. Significant conclusions and judgments reached by the panel workgroups will be presented, discussed, and agreed to by the entire expert panel in plenary sessions. Definitive judgments will be made for each of the seven phthalates.

*August 19, 11:00 a.m. (Tentatively)*

Closing plenary session, review of panel conclusions.

The review will take place from August 17–19 at the Embassy Suites Hotel, 1900 Diagonal Road, Alexandria,

VA with some workgroup sessions at Sciences, International, Inc., 1800 Diagonal Road, Suite 500, Alexandria, VA (limited seating availability). The meeting will commence at 8:30 AM on August 17 in the Virginia Ballroom of the Embassy Suites Hotel.

The review will be open to the public with an opportunity scheduled for oral public comment. Attendance will be limited only by the availability of space. For registration information please contact: Ms. Peggy Sheren, CERHR, 1800 Diagonal Road, Suite 500, Alexandria, VA 22314–2808, Phone: (703) 838–9440.

Dated: July 28, 1999.

**Samuel H. Wilson,**

*Deputy Director, NIEHS.*

[FR Doc. 99–20076 Filed 8–4–99; 8:45 am]

**BILLING CODE 4140–01–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–15453]

*Applicant:* Oakhill Center for Rare & Endangered Species, Luther, OK.

The applicant requests a permit to export 2 captive born white tigers (*Panthera tigris*) to Itozu Zoological Park, Japan, for the purpose of propagation and public display.

[PRT–15452]

*Applicant:* Oakhill Center for Rare & Endangered Species, Luther, OK.

The applicant requests a permit to export 1 captive born white tiger (*Panthera tigris*) to Shirotori Zoological Gardens, Japan, for the purpose of propagation and public display.

[PRT–14251]

*Applicant:* Henry Doorly Zoo, Omaha, Nebraska.

The applicant requests a permit to import DNA samples collected from wild geometric tortoises (*Psammobates geometricus*) from South Africa, 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.

The following applicants have applied for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR 18).

[PRT–015311]

*Applicant:* Larry Smith, West Harrison, IN.

The applicant requests a permit to import a polar bear (*Ursus maritimus*), sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

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: July 30, 1999.

**Kristen Nelson,**

*Acting Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 99–20112 Filed 8–4–99; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Issuance of Permit for Marine Mammals

On April 16, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 73, Page 18926, that an application had been filed with the Fish and Wildlife Service by Joseph Jerry Wright for a permit (PRT–009689) to import one polar bear (*Ursus maritimus*) trophy taken from the Lancaster Sound population, Canada for personal use.

Notice is hereby given that on June 24, 1999, 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 April 29, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 82, Page 23095, that an application had been filed with the Fish and Wildlife Service by Dan S. Meske for a permit (PRT–010369) to import one polar bear (*Ursus maritimus*) trophy taken from the Lancaster Sound population, Canada for personal use.

Notice is hereby given that on June 28, 1999, 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 April 29, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 82, Page 23095, that an application had been filed with the Fish and Wildlife Service by Normand Berube for a permit (PRT–010432) to import one polar bear (*Ursus maritimus*) trophy taken from the Lancaster Sound population, Canada for personal use.

Notice is hereby given that on June 24, 1999, 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 April 29, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 82, Page 23095, that an application had been filed with the Fish and Wildlife Service by Raymond N. Berube for a permit (PRT–010433) to import one polar bear (*Ursus maritimus*) trophy taken from the Lancaster Sound population, Canada for personal use.

Notice is hereby given that on June 24, 1999, 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 April 29, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 82, Page 23095, that an application had been filed with the Fish and Wildlife Service by Donald D. Meske for a permit (PRT–010367) to import one polar bear (*Ursus maritimus*) trophy taken from the Lancaster Sound population, Canada for personal use.

Notice is hereby given that on June 24, 1999, 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 April 29, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 82, Page 23095, that an application had been filed with the Fish

and Wildlife Service by Roger Berube for a permit (PRT–010434) to import one polar bear (*Ursus maritimus*) trophy taken from the Lancaster Sound population, Canada for personal use.

Notice is hereby given that on June 24, 1999, 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 April 29, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 82, Page 23095, that an application had been filed with the Fish and Wildlife Service by Raymond N. Berube for a permit (PRT–010433) to import one polar bear (*Ursus maritimus*) trophy taken from the Lancaster Sound population, Canada for personal use.

Notice is hereby given that on June 24, 1999, 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 April 29, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 82, Page 23095, that an application had been filed with the Fish and Wildlife Service by Donald D. Meske for a permit (PRT–010367) to import one polar bear (*Ursus maritimus*) trophy taken from the Lancaster Sound population, Canada for personal use.

Notice is hereby given that on June 24, 1999, 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 April 29, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 82, Page 23095, that an application had been filed with the Fish and Wildlife Service by Roger Berube for a permit (PRT–010434) to import one polar bear (*Ursus maritimus*) trophy taken from the Lancaster Sound population, Canada for personal use.

Notice is hereby given that on June 24, 1999, 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 April 29, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 82, Page 23095, that an application had been filed with the Fish and Wildlife Service by Derin Kartak for a permit (PRT–010493) to import one polar bear (*Ursus maritimus*) trophy taken from the Lancaster Sound population, Canada for personal use.

Notice is hereby given that on June 24, 1999, 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 April 29, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 82, Page 23095, that an application had been filed with the Fish and Wildlife Service by Carl W. Reinsel for a permit (PRT–010430) to import one polar bear (*Ursus maritimus*) trophy taken from the Lancaster Sound population, Canada for personal use.

Notice is hereby given that on June 24, 1999, 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 April 29, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 82, Page 23095, that an application had been filed with the Fish and Wildlife Service by Otto Cerni Jr. for a permit (PRT–010657) to import one polar bear (*Ursus maritimus*) trophy taken from the Southern Beaufort Sea population, Canada for personal use.

Notice is hereby given that on July 1, 1999, 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 May 13, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 92, Page 25899, that an application had been filed with the Fish and Wildlife Service by John Gall for a permit (PRT–011392) to import one polar bear (*Ursus maritimus*) trophy taken from the Northern Beaufort Sea population, Canada for personal use.

Notice is hereby given that on July 1, 1999, 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 May 20, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 97, Page 27596, that an application had been filed with the Fish and Wildlife Service by Gilbert Kostelec for a permit (PRT–011658) to import one polar bear (*Ursus maritimus*) trophy taken from the Lancaster Sound population, Canada for personal use.

Notice is hereby given that on July 7, 1999, 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 April 29, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 82, Page 23095, that an application had been filed with the Fish and Wildlife Service by Edward Belkin for a permit (PRT–010653) to import one polar bear (*Ursus maritimus*) trophy taken from the Southern Beaufort Sea population, Canada for personal use.

Notice is hereby given that on July 14,1999, 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 April 29, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 82, Page 23096, that an application had been filed with the Fish and Wildlife Service by Leslie Barnhart for a permit (PRT–010662) to import one polar bear (*Ursus maritimus*) trophy taken from the Southern Beaufort Sea population, Canada for personal use.

Notice is hereby given that on July 13, 1999, 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 May 20, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 97, Page 27595, that an application had been filed with the Fish and Wildlife Service by Louis Rupp for a permit (PRT–011855) to import one polar bear (*Ursus maritimus*) trophy taken from the McClintock Channell population, Canada for personal use.

Notice is hereby given that on July 19, 1999, 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 May 20, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 97, Page 27595, that an application had been filed with the Fish and Wildlife Service by Edward Turowski for a permit (PRT–011713) to import one polar bear (*Ursus maritimus*) trophy taken from the Northern Beaufort Sea population, Canada for personal use.

Notice is hereby given that on July 20, 1999, 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: July 30, 1999.

**Pamela Hall,**

*Acting Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 99–20121 Filed 8–4–99; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Submission of Paperwork Reduction Act Requests to Office of Management and Budget

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice announces that the Information Collection Requests for the Tribal Colleges and Universities Annual Report Form, OMB No. 1076–0105, the Tribal Colleges and Universities Grant Application Form, OMB No. 1076–0018, and Higher Education Grant Program Annual Report Form, OMB No. 1076–0106 have been submitted to the Office of Management and Budget for approval under the provision of the Paperwork Reduction Act (44 U.S.C., Chapter 25).

**DATES:** Submit your comments and suggestions on or before September 7, 1999.

**ADDRESSES:** Written comments should be sent directly to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, Room 10102, 7225 17th Street, NW, Washington, DC 20503. Send a copy of your comments to: Garry R. Martin, Bureau of Indian Affairs, Office of Indian Education Programs, 1849 C Street, NW, Washington, DC 20240–0001.

**FOR FURTHER INFORMATION CONTACT:** Copies of the information collection may be obtained by contacting Garry R. Martin at 202–208–3478.

**SUPPLEMENTARY INFORMATION:**

**Abstract**

The information collection is necessary to assess the need for tribally controlled community college programs and the Higher Education Grant Program in accordance with 25 CFR part 41. A request for comments regarding the information collection forms for 1076–0018 and 1076–0105 was published in the **Federal Register** on January 22, 1998 (63 FR 3333–3341). The request for comments for 1076–0106 was published in the **Federal Register** on February 24, 1998 (63 FR 9241–9242).

No comments were received pertaining to the Tribally Controlled Community College Grant Application, OMB No. 1076–0018. One response from tribal organization representing tribal colleges and universities contained six responses from various tribal institutions. After careful consideration of the responses, specific changes in the collection of information were made to eliminate duplication of information and to reduce the burden of reporting by the institutions. Specific changes regarding section 1 were rewritten and placed in section 5 entitled, ''Current Funds Revenue By Source.'' Data tables involving the collection of revenue by sources and grant expenditures tables were reformatted for easier use. A total of three respondents provided six comments during the comment period for the higher education programs, 1076–0106. One comment was favorable to the streamlined annual report form and remarked that it will make reporting a more efficient process. One respondent observed that part-time student data was utilized in the collection of information and that it was misleading as funding is for full time students. The Bureau considered this comment and has decided to remove the reference to part-time students from the data collection. The respondent also commented that the information requested in the Graduate Listing portion has never been utilized by employment agencies which negates the need to maintain such a specific database. The Bureau will continue requesting the number of graduates but will no longer request specific information concerning the individual graduate. The respondent also commented that there is no need for the Financial Profile as it may be detrimental to higher education funding. The Bureau considered this comment and will retain this section for comparing specific educational funding programs to financial aid programs frequently used by most college students applying for educational grants and loans. One respondent commented that the reporting period should be based upon the fiscal year of each individual contract; also that the length of time to gather and maintain data for completion is more than three hours. The Bureau considered these comments and contend that the time frame in reporting data reflects an academic period instead of a specific fiscal year and will continue using a reporting period that is consistent with institutional enrollments. The Bureau acknowledges that in some extenuating circumstances the data gathering may exceed the time as estimated; however, because of changes to the form and the lack of other comments concerning time, the Bureau will maintain the estimated burden of three hours to compile this information.

**Request for Comments**

Comments are invited on (a) Whether the collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on respondents, including through the use of automated collection techniques or other forms of information technology.

The Office of Management and Budget has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, comments submitted in response to this notice should be submitted to that office within 30 days in order to assure their maximum consideration.

*Title:* Tribally Controlled Community College Grant Application Form.
*OMB approval number:* 1076–018.
*Frequency:* Annual.
*Description of respondents:* Tribal colleges and universities.
*Estimated completion time:* 3 hours.
*Annual responses:* 25.
*Annual burden hours:* 75.

*Title:* Tribally Controlled Community College Annual Report Form.
*OMB approval number:* 1076–0105.
*Frequency:* Annual.
*Description of respondents:* Tribal college and universities.
*Estimated completion time:* 3 hours.
*Annual responses:* 25.
*Annual burden hours:* 75.

*Title:* Bureau of Indian Affairs Higher Education Grant Program Annual Report Form.

*OMB approval number:* 1076–0106.
*Frequency:* Annual.
*Description of respondents:* Higher Education Grant program contractors.
*Estimated completion time:* 3 hours.
*Annual responses:* 125.
*Annual burden hours:* 375.

Dated: July 9, 1999.

**Kevin Gover,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 99–20151 Filed 8–4–99; 8:45 am]

**BILLING CODE 4310–02–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY–020–1220–00–0208]**

### Seasonal Closure of Public Land in the Bald Ridge Area, Park, County, Wyoming, Cody Field Office, Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of seasonal closure.

**SUMMARY:** Notice is hereby given to extend the emergency seasonal closure of the Bald Ridge area that was published in the **Federal Register** Vol. 61 No. 62 on Friday, March 29, 1996. The Bald Ridge area located south of the Clarks Fork of the Yellowstone River and west and north of Hogan Reservoir of Park County, Wyoming on public land administered by the Bureau of Land Management (BLM), Cody Field Office, is closed from December 15 through April 30 of each winter and spring season to all use (such as hiking, horseback riding, mountain bike riding, crosscountry skiing, and all motorized use) except specifically authorized activities. This action is being taken for resource protection of essential wintering habitat for elk and mule deer. No access into this area will be allowed unless permitted by the Authorized Officer (BLM Cody Field Manager).

**EFFECTIVE DATES:** This emergency seasonal closure was effective March 18, 1996 and will remain in effect until modified or rescinded by the Authorized Officer.

**FOR FURTHER INFORMATION CONTACT:** Dennis Saville, Wildlife Biologist or Michael Blymyer, Field Manager, Cody Field Officer, P.O. Box 518, 1002 Blackburn Avenue, Cody, Wyoming 82414–0518. Telephone (307)-587–2216.

**SUPPLEMENTARY INFORMATION:** The Cody Field Office is responsible for the management of essential wildlife habitat in the Bald Ridge area of the Absaroka Front and other crucial habitat areas located throughout the Bighorn Basin. These essential habitat areas and management thereof are covered under the Cody Resource Management Plan (RMP), which was signed on November 8, 1990. ''Seasonal restrictions will be applied as appropriate to surface-disturbing and disruptive activities and land uses on big game crucial habitat, including winter ranges and elk calving areas.'' (Cody RMP, p. 40).

The Bald Ridge area is crucial wintering habitat for big game. Increasing visitor activity, such as horseback riding, hiking and antler hunting has caused unacceptable impacts to the wintering elk and deer herds. These activities are stressing game animals during a period when the animals are most susceptible to stress-related health affects that could cause death. These activities also force the herds to be displaced from their crucial winter habitat. The Cody Field Office has completed the Travel Management Environmental Assessment for the Bald Ridge area and has determined that this closure is necessary to address these concerns.

The following described BLM-administered lands south of the Clarks Fork of the Yellowstone River and west of Hogan Reservoir are included in this seasonal closure: T. 56 N., R. 103 W., sections 7, 8, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, and 33 from the west end of Hogan Reservoir. Hogan Reservoir remains open for fishing and nonmotorized travel within 100 yards of the reservoir's high-water line. Authority for closure and restriction orders is provided under 43 CFR subpart 8341.2 (a and b), 8364.1, 8372.0–7, 8372.1–2. Violations of this closure are punishable by a fine not to exceed $1,000 and (or) imprisonment not to exceed 12 months.

Dated: July 21, 1999.

**Michael Blymyer,**

*Cody Field Manager.*

[FR Doc. 99–20164 Filed 8–4–99; 8:45 am]

**BILLING CODE 4310–22–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY–020–1220–00–0208]**

### Closure of Certain Roads and Trails on Public Land in the Rattlesnake Mountain Area, Park County, Wyoming, Cody Field Office, Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of closure.

**SUMMARY:** Notice is hereby given that effective July 20, 1999, some roads and trails on public land administered by the Bureau of Land Management (BLM), Cody Field Office, will be closed to all motorized travel. These roads and trails are located in the Rattlesnake Mountain area south and west of Trail Creek. As of the effective date, only designated roads are available for use. All roads and trails not designated are closed to motorized use. Designated access roads include the main trunk road on top of Rattlesnake Mountain (BLM #1207) and the BLM portion of the existing trail on the southeast face of Rattlesnake Mountain. Access to the Rattlesnake main trunk road from Monument Hill road (County 7UH) is subject to an easement through private lands which provides public access for timber related purposes only (such as firewood removal or timber harvest). A BLM firewood cutting permit allows motorized vehicle access to this area for firewood removal only. Motorized travel on the southeast face trail is restricted to All Terrain Vehicles (ATVs) with wheelbase lengths less than 60 inches, 6 inches or more tread width on each tire, and 5 pounds or less air pressure in each tire. All other roads and trails are open to foot and horseback travel and other forms of nonmotorized travel (such as mountain bike riding). Additional roads and trails may be temporarily opened to motorized travel for timber and firewood sales. This motorized vehicle use will be managed as stated in 43 CFR 8341.1(a–h). Limited motorized use of nondesignated roads may be allowed for certain permitted uses (such as Right-of-Way [ROW] holders and grazing permittees). Travel by snow machines will be allowed whenever there is adequate snow cover. This applies to all public land administered by the BLM on Rattlesnake Mountain, unless administratively restricted for the protection of wintering big game herds. As stated in the decision record of the Rattlesnake Mountain Travel Management Environmental Assessment (WY–017–EA6–038). ''This decision can be modified within the original scope of this analysis, without further notice if determined by the authorized officer that changes in adjacent land ownership, new data acquisition, or public access needs dictate a revision of this decision.''

**EFFECTIVE DATES:** This closure will be effective July 20, 1999 and will remain in effect until modified or rescinded by the Authorized Officer.

**FOR FURTHER INFORMATION CONTACT:** Tom Hare, Cody Assistant Field Manager or Michael Blymyer, Cody Field Manager, P.O. Box 518, 1002 Blackburn Avenue,

Cody, Wyoming 82414–0518. Telephone (307) 587–2216.

**SUPPLEMENTARY INFORMATION:** The Cody Field Office is responsible for off-road vehicle management which includes designation of roads for vehicular use and seasonal travel restrictions as described in the Cody Resource Management Plan (RMP), signed November 8, 1990. The Rattlesnake Mountain area has suffered resource damage due to uncontrolled motorized vehicle use of temporary logging roads. The purpose of this closure is to reduce resource damage to both public and private lands in the area. This order will aid in the rehabilitation of the logging roads and reduce resource damage caused by motorized vehicles.

The Rattlesnake Mountain area provides habitat for both summering and wintering deer and elk. Unrestricted motorized vehicle use has historically pushed both species onto the steeper side slopes of the mountain. Motorized vehicle use limited to designated roads will reduce the negative impacts on the wildlife.

The main trunk road on Rattlesnake Mountain (BLM #1207) passes through the following described BLM-administered public lands south and west of Trail Creek: Sixth Principal Meridian, Township 53 North, Range 103 West, sections 8, 9, 17, 21, 22, 23, 26, 35, and 36. The trail on the southeast face of Rattlesnake Mountain passes through Township 53 North, Range 102 West, sections 32, 33 and also Township 52 North, Range 102 West, West section 6. Authority to close roads and trails to motorized vehicle use is provided under 43 CFR 8341.2 (a and b), and 8364.1. Violations are punishable by a fine not to exceed $1,000 and (or) imprisonment not to exceed 12 months.

Dated: July 21, 1999.

**Michael Blymyer,**

*Cody Field Manager.*

[FR Doc. 99–20165 Filed 8–4–99; 8:45 am]

**BILLING CODE 4310–22–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NV–055–1610–00]**

### Public Hearing on the Red Rock Canyon National Conservation Area Proposed General Management Plan and Draft Environmental Impact Statement

**AGENCY:** Bureau of Land Management.

**ACTION:** The Las Vegas Field Office of the Bureau of Land Management announces the scheduling of a Public Hearing on the Proposed General Management Plan (GMP) and Draft Environmental Impact Statement (DEIS) for the Red Rock Canyon National Conservation Area (NCA). The hearing is scheduled for August 23, 1999 from 4 PM to 8:30 PM at the West Sahara Library, 9600 West Sahara, Las Vegas, NV.

**SUMMARY:** A formal Public Hearing for the purpose of recording public testimony on the Proposed General Management Plan and Draft Environmental Impact Statement (GMP/DEIS) for the Red Rock Canyon National Conservation Area will be held on August 23, 1999 at the time and location listed above. Each individual wishing to testify will be allowed three (3) minutes. Individuals wanting more time may be granted additional time after all other persons have been heard. Testimony will be taken on a first-come basis. To reserve a time to testify in advance call the BLM Las Vegas Field Office, 702–647–5000.

**DATES:** The Public Hearing is scheduled for August 23, 1999 at the West Sahara Library, 9600 West Sahara, Las Vegas NV.

**ADDRESSES:** Written testimony and comments should be sent to Bureau of Land Management, Attention: Red Rock GMP, 4765 W. Vegas Drive., Las Vegas, NV 89108. Comments may also be hand delivered to the same address.

**FOR FURTHER INFORMATION CONTACT:** Gene Arnesen, GMP Team Leader, at (702)–647–5000.

**SUPPLEMENTARY INFORMATION:** Written testimony may be submitted in place of or in addition to verbal testimony. Written and verbal testimony will be given the same weight when all comments on the GMP/DEIS are reviewed. Written comments do not have to be turned in at the hearing but may be submitted by simply sending them to the address listed above prior to September 30, 1999. Copies of the GMP/DEIS may be acquired by calling (702) 647–5000 or writing the address listed above. The GMP/DEIS may also be found on the U.S. Department of the Interior, Bureau of Land Management, Nevada web site.

Dated: July 23, 1999.

**Michael F. Dwyer,**

*Field Office Manager, Las Vegas.*

[FR Doc. 99–20168 Filed 8–4–99; 8:45 am]

**BILLING CODE 4310–HC–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[OR–050–1020–00; GP9–0266]**

### Notice of Meeting of John Day-Snake Resource Advisory Council

**AGENCY:** Bureau of Land Management, Prineville District Office, Interior.

**ACTION:** Meeting of John Day-Snake Resource Advisory Council: Pendleton, Oregon; September 8 and 9, 1999.

**SUMMARY:** A meeting of the John Day-Snake Resource Advisory Council will be held on September 8 from 10 a.m. to 5 p.m. and on September 9 from 8 a.m. to 3 p.m. at the Doubletree Inn, 304 SE Nye Avenue, Pendleton, Oregon. The meeting is open to the public. Public comments will be received at 1 p.m. on September 8. Topics to be discussed by the Council will include: John Day River Plan review and Hells Canyon NRA subgroup update; threatened and endangered species effects on public land grazing; forest health update; Standards and Guidelines update; ICBEMP update; and a 15 minute round table for general issues.

**FOR FURTHER INFORMATION CONTACT:** James L. Hancock, Bureau of Land Management, Prineville District Office, 3050 NE Third Street, P.O. Box 550, Prineville, Oregon 97754, or call 541–416–6700.

Dated: July 27, 1999.

**James L. Hancock,**

*District Manager and Designated Federal Official, John Day-Snake Resource Advisory Council.*

[FR Doc. 99–20166 Filed 8–4–99; 8:45 am]

**BILLING CODE 4310–33–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WO–200–09–1020–00]**

### Science Advisory Board; Public Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Bureau of Land Management (BLM) announces a public meeting of the Science Advisory Board to examine the use of science for improving the management of the Nation's public lands and resources. Topics of discussion will include the BLM's National Applied Resources Science Center, and research associated with population management of wild horses and burros.

**DATES:** BLM will hold the public meeting on Tuesday, September 7, 1999, from 9:00 a.m. to 4:00 p.m. local time.

**ADDRESSES:** BLM will hold the public meeting in Room 7000 B of the Main Interior Building, 1849 C Street, N.W., Washington, D.C. 20240

**FOR FURTHER INFORMATION CONTACT:** Christine Jauhola, Bureau of Land Management, 1849 C Street, N.W., LSB–204, Washington, D.C. 20240, (202) 452–7761.

**SUPPLEMENTARY INFORMATION:** This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Pub. L. 92–463).

### I. The Agenda for the Public Meeting Is as Follows

9:00 a.m.
- Welcome, introductions
- Review Minutes of Previous Meeting
- Report from Deputy Assistant Secretary for Land and Minerals Management
- Report from the Bureau of Land Management

9:45 a.m. USGS Review of Fertility Control for Wild Horse and Burro Program
11:30 a.m. Lunch
1:00 p.m. Executive Order on Weeds
2:30 p.m. National Applied Resources Science Center
3:30 p.m. Public Comments
3:45 p.m. Next Meeting and Other Items
4:00 p.m. Adjourn

### II. Public Comment Procedures

Participation in the public meeting is not a prerequisite for submittal of written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. The BLM appreciates any and all comments, but those most useful and likely to influence decisions on BLM's use of science are those that are either supported by quantitative information or studies, or those that include citations to and analysis of applicable laws and regulations. Except for comments provided in electronic format, commenters should submit two copies of their written comments, where practicable. The BLM will not necessarily consider comments received after the time indicated under the **DATES** section or at locations other than that listed in the **ADDRESSES** section.

In the event there is a request under the Freedom of Information Act (FOIA) for a copy of your comments, we intend to make them available in their entirety, including your name and address (or your e-mail address if you file electronically). However, if you do not want us to release your name and address (or e-mail address) in response to a FOIA request, you must state this prominently at the beginning of your comment. We will honor your wish to the extent allowed by the law. All submissions from organizations or business, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be in their entirety, including names and addresses (or e-mail addresses).

Electronic Access and Filing Address: Commenters may transmit comments electronically via the Internet to: Chris__Jauhola@blm.gov. Please include the identifier ''Science4'' in the subject of your message and your name and address in the body of your message.

### III. Accessibility

The meeting sites are accessible to individuals with disabilities. An individual with a disability who will need an auxiliary aid or service to participate in the hearing, such as interpreting service, assistive listening device, or materials in an alternate format, must notify the person listed under **FOR FURTHER INFORMATION CONTACT** two weeks before the scheduled hearing date. Although BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

Dated: July 30, 1999.

**Peggy Olwell,**

*Acting Group Manager, Fish, Wildlife, and Forest Group.*

[FR Doc. 99–20152 Filed 8–4–99; 8:45 am]

**BILLING CODE 4310–84–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY–921–41–1310; WYW144602]**

### Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

July 27, 1999.

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 WYW144602 for lands in Sweetwater 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 administration 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 WYW144602 effective April 1, 1999, 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. 99–20158 Filed 8–4–99; 8:45 am]

**BILLING CODE 4310–22–M**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Pictured Rocks National Lakeshore

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of intent to prepare a general management plan and environmental impact statement for Pictured Rocks National Lakeshore, Michigan.

**SUMMARY:** The National Park Service (NPS) will prepare a general management plan (GMP) and an associated environmental impact statement (EIS) for Pictured Rocks National Lakeshore, Michigan, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). This notice is being furnished as required by NEPA Regulations 40 CFR 1501.7.

To facilitate sound planning and environmental assessment, the NPS intends to gather information necessary for the preparation of the EIS, and to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are invited.

Participation in the planning process will be encouraged and facilitated by various means, including newsletters and open houses. The NPS will conduct a series of public scoping meetings to explain the planning process and to solicit opinion about issues to address in the GMP/EIS. Notification of all such meetings will be announced in the local press and in NPS newsletters or other mailings. Current GMP information also will be provided on the park's web site, http://www.nps.gov/piro/

**DATES:** Public open houses will be held from Friday, August 27, through

Wednesday, September 1. All open houses are tentatively scheduled for afternoon or evening hours. Open houses will be held in the following cities: August 27—Detroit, Michigan; August 28—Grand Rapids, Michigan; August 30—Grand Marais, Michigan; August 31—Marquette, Michigan; and September 1—Green Bay, Wisconsin. The specific locations for the open houses have not been finalized. More information about the open houses is available from the Superintendent, Pictured Rocks National Lakeshore, at the address and telephone number below.

**ADDRESSES:** Written comments and information concerning the scope of the EIS and other matters, or requests to be added to the project mailing list should be directed to: Mr. Grant Petersen, Superintendent, Pictured Rocks National Lakeshore, P.O. Box 40, Munising, Michigan 49862. Telephone: 906–387–2607, E-mail: piro__superintendent@nps.gov

**FOR FURTHER INFORMATION CONTACT:** Superintendent, Pictured Rocks National Lakeshore, at the address and telephone number above.

**SUPPLEMENTARY INFORMATION:** Pictured Rocks is nationally recognized for the geographic and scientifically significant Lake Superior shoreline and related features it encompasses. The area became the first of America's authorized national lakeshores on October 15, 1966. The national lakeshore today encompasses 71,405 acres of land and water. A GMP prepared approved in 1981 currently guides management and development of the national lakeshore. Many provisions of that plan have now been accomplished. A revised GMP is necessary to address changes in resource conditions, knowledge about resources, policies, and laws that have occurred since 1981.

In accordance with NPS Park Planning policy, the GMP will ensure the Memorial has a clearly defined direction for resource preservation and visitor use. It will be developed in consultation with Servicewide program managers, interested parties, and the general public. It will be based on an adequate analysis of existing and potential resource conditions and visitor experiences, environmental impacts, and costs of alternative courses of action.

The environmental review of the GMP/EIS for historic site will be conducted in accordance with requirements of the NEPA (42 U.S.C. 4371 *et seq.*), NEPA regulations (40 CFR 1500–1508), other appropriate Federal regulations, and National Park Service procedures and policies for compliance with those regulations.

Dated: July 27, 1999.

**William W. Schenk,**

*Regional Director.*

[FR Doc. 99–20209 Filed 8–4–99; 8:45 am]

**BILLING CODE 4310–70–U**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Sleeping Bear Dunes National Lakeshore

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of intent to prepare a general management plan and environmental impact statement for Sleeping Bear Dunes National Lakeshore, Michigan.

**SUMMARY:** Management plan (GMP) and an associated environmental impact statement (EIS) for Sleeping Bear Dunes National Lakeshore, Michigan, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). This notice is being furnished as required by NEPA Regulations 40 CFR 1501.7.

To facilitate sound planning and environmental assessment, the NPS intends to gather information necessary for the preparation of the EIS, and to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are invited.

Participation in the planning process will be encouraged and facilitated by various means, including newsletters and open houses. The NPS will conduct a series of public scoping meetings to explain the planning process and to solicit opinion about issues to address in the GMP/EIS. Notification of all such meetings will be announced in the local press and in NPS newsletters or other mailings.

**ADDRESSES:** Written comments and information concerning the scope of the EIS and other matters, or requests to be added to the project mailing list should be directed to the Superintendent, Sleeping Bear Dunes National Lakeshore, 9922 Front Street, Empire, Michigan 49630. Telephone: 616–326–5134, E-mail: slbe__superintendent@nps.gov

**FOR FURTHER INFORMATION CONTACT:** Superintendent, Sleeping Bear Dunes National Lakeshore, at the address and telephone number above.

**SUPPLEMENTARY INFORMATION:** Sleeping Bear Dunes National Lakeshore is an essential and major component of the Great Lakes ecosystem with over 100 km of Lake Michigan shoreline, inland lakes and rivers, glacial landforms (kettles, bogs, moraines, massive perched sand dunes), and old growth forest remnants. About 50 percent of the Lakeshore is designated for potential wilderness. The Lakeshore is a destination recreation resource accessible to residents of major population centers (Chicago and Detroit). The Lakeshore has extensive evidence of human history including archeological resources of prehistoric Indian occupation, early European settlement, agriculture and logging, and Lake Michigan maritime development including transportation, fishing, and lifesaving.

In accordance with NPS park planning policy, the GMP will ensure the lakeshore has a clearly defined direction for resource preservation and visitor use. It will be developed in consultation with Servicewide program managers, interested parties, and the general public. It will be based on an adequate analysis of existing and potential resource conditions and visitor experiences, environmental impacts, and costs of alternative courses of action.

The environmental review of the GMP/EIS for the historic site will be conducted in accordance with requirements of the NEPA (42 U.S.C. 4371 *et seq.*), NEPA regulations (40 CFR 1500–1508), other appropriate Federal regulations, and NPS procedures and policies for compliance with those regulations.

Dated: July 27, 1999.

**William W. Schenk,**

*Regional Director.*

[FR Doc. 99–20210 Filed 8–4–99; 8:45 am]

**BILLING CODE 4310–70–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Bassett Furniture Industries, Inc.*, C.A. No. 4:99–CV–0044, was lodged on July 21, 1999, with the United States District Court for the Western District of Virginia. The consent decree resolves violations of the visible emission limit and the particulate mass emission regulation provisions of the Commonwealth of Virginia's State Implementation Plan (''State SIP''). The violations occurred at several Bassett facilities located in

Virginia. The subject provisions of the State Sip are federally-enforceable pursuant to the Clean Air Act (''CAA'') and 40 CFR part 52.

Under the consent decree, Bassett agreed to and has implemented remedial measures that have brought its facilities into compliance with the CAA and the State SIP. These measures include, but are not limited to, mailing specified repairs to boilers and installing new equipment on boilers at several of its Virginia facilities. Bassett has also agreed to perform two Supplemental Environmental Projects, which include installation and operation of pollution reduction equipment at several of its Virginia facilities and performance of a Pollution Prevention Assessment at four of its Virginia facilities. Further, Bassett has agreed to pay a civil penalty in the amount of $575,000.

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. *Bassett Furniture Industries, Inc.*, DOJ Reference No. 90–5–2–1–2210.

The proposed consent decree may be examined at the office of the United States Attorney, Suite One, Thomas B. Mason Building, 105 Franklin Road, SW, Roanoke, Virginia 24011–2305; the Region III Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029; and the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 2005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $15.25 (.25 cents per page production costs), payable to the Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 99–20161 Filed 8–4–99; 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 CFR 50.7, notice is hereby given that a proposed Consent Decree in *Cordova Chemical Company of Michigan, et al., CA No. G89–0961–CA and CPC International, Inc.* v. *Aeroject-General Corporation, et.al. CA No. G89–10503–CA* (W.D. Michigan) was lodged on July 20, 1999, with the United States District Court for the Western District of Michigan. With regard to the Defendants, Aerojet-General Corporation, Cordova Chemical Company of California and Cordova Chemcial Company of Michigan, (''Settling Defendants''), the Consent Decree resolves a claim filed by the United States on behalf of the United States Environmental Protection Agency (''EPA'') purusuant to the Comprehensive Environmental Response, Compensation and Liability Act, *as amended* 42 U.S.C. 9601, *et seq.*

The United States entered into the Consent Decree in connection with the Ott/Story/ Cordova Site located in Muskegon, Michigan. The Consent Decree provides that the Settling Defendants will be responsible for implementing injunctive relief related to contaminated soil at 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 Settlement Order. 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 *Cordova Chemical Company of Michigan, et al., and CPC International, Inc.* v. *Aerojet-General Corporation, et al.*, DOJ Ref. #90–11–2–481.

The proposed Consent Decree may be examined at the office of the United States Attorney, 330 Ionia Avenue, NW., Suite 301, Grand Rapids, Michigan 49503; the Region 57 office of the Environmental Protection Agency, 77 West Jackson Street, Chicago, Ill 60604; 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 refer to the referenced case and enclose a check in the amount of $49.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section.*

[FR Doc. 99–20159 Filed 8–4–99; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### United States v. Suiza Foods Corp. and Broughton Foods Co.; Public Comments and Response

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that Public Comments and Plaintiff's Response have been filed with the United States District Court for the Eastern District of Kentucky, London Division, in *United States* v. *Suiza Foods Corporation and Broughton Foods Company*, Dkt. No. 99–CV–130.

On March 18, 1999, the United States filed a civil antitrust Complaint in the United States District Court for the Eastern District of Kentucky, London Division, alleging that the proposed acquisition of Broughton Foods Company (''Broughton'') by Suiza Foods Corporation (''Suiza'') would violate section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that Suiza and Broughton compete to sell milk to school districts, that in 55 school districts located in South Central Kentucky the acquisition is likely to substantially lessen competition in the sale of school milk, and that therefore school districts and students would likely pay higher school milk prices or experience lower school milk quality and service.

A proposed Final Judgment embodying the settlement of this case was filed with the Court on April 28, 1999, along with a Competitive Impact Statement describing the Complaint and proposed Final Judgment. The Competitive Impact Statement and invitation for public comments were published in the **Federal Register** on May 17, 1999. Such comments, and the response thereto, are hereby published in the **Federal Register** and filed with the Court.

Copies of the Complaint, Stipulation, proposed Final Judgment, Competitive Impact Statement, Public Comments and Plaintiff's Response also may be inspected in Room 3233 of the Antitrust Division, Department of Justice, Tenth Street and Pennsylvania Avenue, NW., Washington, DC 20530 (telephone: 202/633–2481) and at the office of the Clerk of the United States District Court for

the Eastern District of Kentucky, London Division, 300 South Main Street, London, Kentucky 40741.

Copies of any of these materials may be obtained upon request and payment of a copying fee.

**Constance K. Robinson,**

*Director of Operations & Merger Enforcement.*

**United States District Court Eastern District of Kentucky, London Division**

[Civil Action No. 99–CV–130]

United States of America, Plaintiff, vs. Suiza Foods Corporation, d/b/a Louis Trauth Dairy, Land O'Sun Dairy, and Flav-O-Rich Dairy, and Broughton Foods Company, d/b/a Southern Belle Dairy, Defendants.

**Plaintiff's Response to Public Comments**

Plaintiff, the United States of America, pursuant to the Antitrust Procedures and Penalties Act (''Tunney Act''), 15 U.S.C. 16(b)–(h), hereby files the Response to Public Comments relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

*I. Nature and Purpose of the Proceeding*

Plaintiff filed a civil antitrust Complaint on March 18, 1999, in United States District Court for the Eastern District of Kentucky, London Division, alleging that the proposed acquisition of Broughton Foods Company (''Broughton'') by Suiza Foods Corporation (''Suiza'') would violate section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that Suiza and Broughton compete to sell milk to school districts, that in 55 school districts located in South Central Kentucky the acquisition is likely to substantially lessen competition in the sale of school milk, and that therefore school districts and students would likely pay higher school milk prices or experience lower school milk quality and service.

The prayer for relief seeks: (a) An adjudication that the transaction described in the Complaint would violate section 7 of the Clayton Act; (b) preliminary and permanent injunctive relief preventing the consummation of the transaction; (c) an award to the United States of the costs of this action; and (d) such other relief as is proper.

After this suit was filed, a proposed settlement was reached that permits Suiza to complete its acquisition of Broughton while preserving competition in the sale of milk in South Central Kentucky school districts where the transaction has raised competitive concerns. A Stipulation and proposed Final Judgment embodying the settlement were filed with the Court on April 28, 1999, along with a Competitive Impact Statement describing the Complaint and proposed Final Judgment. The Competitive Impact Statement and invitation for public comments were published in the **Federal Register** on May 17, 1999.

If entered by the Court, the proposed Final Judgment would order Suiza to divest the entire operations of one of Broughton's dairy plants, Southern Belle Dairy, based in Pulsaki County, Kentucky, and all its related assets. Southern Belle dairy is the one Broughton entity that competes for the sale of milk in all of the school districts alleged in the Complaint to be affected by the merger. Unless the plaintiff grants a time extension, Suiza must divest Southern Belle Dairy and related assets within six (6) months after the filing of the proposed Final Judgment in this action or within five (5) business days after notice of entry of the Final Judgment, whichever is later. If Suiza does not divest Southern Belle Dairy and related assets within that period, the Court, upon plaintiff's application, is to appoint a trustee to sell it. The proposed Final Judgment also requires that, until divestiture has been accomplished, Suiza and Broughton shall take all steps necessary to maintain and operate Southern Belle Dairy as an active competitor such that the sale and marketing of its products shall be conducted separate from, and in competition with, all of Suiza's products, shall maintain sufficient management and staffing,and shall maintain Southern Belle Dairy in operable condition at current capacity configurations.

The 60-day period to submit public comments expired on July 16, 1999. As of the date of the filing of this Response, the United States had received only one public comment. This came from the Food Service Director of Lincoln County Public Schools in Stanford, Kentucky. Lincoln County is one of the 55 school districts alleged in the Complaint to be impacted by the proposed acquisition.

*II. Plaintiff's Response to Public Comments*

The one public comment received in this matter is essentially an expression of gratitude to the United States Department of Justice staff for intervening in the proposed acquisition and for helping to preserve Southern Belle Dairy as an independent competitor. The Department staff appreciates this comment and has no other response. The single comment reflects the consistent concerns about the acquisition that the Department staff heard from many school food services directors during its investigation. The plaintiff also notes that the lack of any negative public comments indicates generally that there is no sector of the public likely to be dissatisfied with the proposed settlement.

The Court's responsibility under the Tunney Act is to determine whether entry of the proposed Final Judgment is ''within the reaches of the public interest.'' *United States* v. *Western Elec. Co.*, 993 F.2d 1572 (D.C. Cir. 1993). After due consideration of the public comment received, the plaintiff concludes that entry of the proposed Final Judgment as written will provide an effective and appropriate remedy for the antitrust violation alleged in the Complaint and is therefore in the public interest. The plaintiff intends to move the Court to enter the proposed Final Judgment after the public comments and this Response have been published in the **Federal Register**, as required by the Tunney Act, 15 U.S.C. 16(d).

Dated: July 29, 1999.

Respectfully submitted,

James K. Foster,

*Litigation II Section, U.S. Department of Justice, 1401 H Street, NW, Suite 4000, Washington, DC 20530, (202) 307–0001.*

By Facsimile:

Lincoln County Board of Education, 305 Danville Ave., Stanford, Kentucky 40104, USA.

To: U.S. Department of Justice—Antitrust Attn: Craig Conrath

Dear Sir,

Thank you for your intervention in the proposed merger between Flav-O-Rich and Southern Belle Dairy. We were concerned that we would have only one choice and the prices would go out of sight.

We appreciate what you did for our food service program.

Sincerely,

Carolyn Spangler,

*Food Service Director, April 29, 1999.*

*Certificate of Service*

I, James K. Foster, hereby certify that, on July 29, 1999, I caused the foregoing document to be served on defendants Suiza Foods Corporation and Broughton Foods Company, by fasimile and first-class mail, postage pre-paid, to:

Paul Denis, Esq., Swidler Berlin Shereff Friedman, LLP, 3000 K Street, NW., Suite 300, Washington, DC 20007, facsimile: 202/424–7645

William Kolasky, Esq., Wilmer, Cutler & Pickering, 2445 M Street, NW., Washington, DC 20037, facsimile: 202/663–6363

James K. Foster,

[FR Doc. 99–20162 Filed 8–4–99; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

### Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations; ERISA Procedure 76–1, Advisory Opinion Procedure

**AGENCY:** Pension and Welfare Benefits Administration, DOL.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, provides the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of a currently approved collection of information included in ERISA Procedure 76–1, Advisory Opinion Procedure. A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

**DATES:** Written comments must be submitted on or before October 4, 1999.

**ADDRESSES:** Gerald B. Lindrew, Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Washington, DC 20210, (202) 219–4782, FAX (202) 219–4745 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

#### I. Background

Under the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 *et seq.* (ERISA), the Secretary of Labor has responsibilities for administering reporting, disclosure, fiduciary and other standards for pension and welfare benefit plans. ERISA Procedure 76–1, Advisory Opinion Procedure (ERISA Procedure) sets forth the administrative procedures to be used by the public (*e.g.*, plan administrators) when requesting a legal interpretation from the Department regarding specific facts and circumstances (an advisory opinion). The ERISA Procedure informs individuals, organizations, and their authorized representatives of the procedures to be followed when requesting an advisory opinion. The ERISA Procedure promotes efficient handling of these requests. The information required by the ERISA Procedure is used by the Department to determine the substance of the response and to determine whether the Department's response should be in the form of an advisory opinion or information letter. Advisory opinions and information letters issued under this ERISA Procedure help fiduciaries, employers, and other interested parties understand a particular provision of the law and promote compliance with ERISA. Advisory opinions are also useful to the Department as a means of clarifying Departmental policy on certain issues.

#### II. Review Focus

The Department of Labor (Department) is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

#### III. Current Actions

The Office of Management and Budget's approval of this ICR will expire on November 30, 1999. The existing collection of information should be continued because the individuals or organizations affected directly or indirectly by ERISA from time to time need legal interpretations from the Department as to their status under ERISA and as to the effect of certain actions and transactions. Requests for advisory opinions are voluntary. The information is used by the Department to determine the substance of the response and to determine whether the Department's response should be in the form of an advisory opinion or information letter.

*Agency:* Department of Labor, pension and Welfare Benefits Administration.

*Title:* ERISA Procedure 76–1, Advisory Opinion Procedure.

*Type of Review:* Extension of a currently approved collection.

*OMB Number:* 1210–0066.

*Affected Public:* Business or other for-profit, Not-for-profit institutions, Individuals or households.

*Total Respondents:* 83.

*Total Responses:* 83.

*Frequency of Response:* On occasion.

*Average Time Per Response:* 12⅔ hours.

*Estimated Total Burden Hours:* 101 hours.

*Total Burden Cost (Operating and Maintenance):* $87,883.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 29, 1999.

**Gerald B. Lindrew,**

*Deputy Director, Pension and Welfare Benefits Administration, Office of Policy and Research.*

[FR Doc. 99–20120 Filed 8–4–99; 8:45 am]

**BILLING CODE 4510–29–M**

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

**[Prohibited Transaction Exemption 99–32; Exemption Application No.D–09708, et al.]**

### Grant of Individual Exemptions; RREEF America L.L.C. (RREEF), et al.

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at

the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

**Statutory Findings**

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

**RREEF America L.L.C. (RREEF) Located in San Francisco, California**

[Prohibited Transaction Exemption 99–32; Exemption Application No. D–09708]

*Exemption*

The Department is granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990.)

Part I—Exemption for Payment of Certain Fees to RREEF

The restrictions of sections 406(b)(1) and (b)(2) of the Act and the taxes imposed by section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply, effective as of (i) May 16, 1994, with respect to a single client, separate account established on behalf of the Shell Pension Trust (the Shell Account), and (ii) the date this final exemption is published in the **Federal Register**, with respect to any single client, separate account (Single Client Account) or any multiple client account (Multiple Client Account) formed on, or after, such a date, to the payment of certain initial investment fees (the Investment Fee), annual management fees based upon net operating income (the Asset Management Fee), and performance fees (the Performance Fee) to RREEF by employee benefit plans for which RREEF provides investment management services (the Client Plans) [1] pursuant to an investment management agreement (the Agreement) entered into between RREEF and the Client Plans either individually, through an establishment (or amendment) of a Single Client Account, or collectively as participants in a newly established Multiple Client Account (collectively, the Accounts), provided that the conditions set forth below in Part III are satisfied.

Part II—Exemption for Investments in a Multiple Client Account

The restrictions of section 406(a)(1)(A) through (D) of the Act and the taxes imposed by section 4975(c)(1)(A) through (D) of the Code, shall not apply to any investment by a Client Plan in a Multiple Client Account managed by RREEF formed on, or after, the date the final exemption is published in the **Federal Register**, provided that the conditions set forth below in Part III are satisfied.

Part III—General Conditions

(a)(1) The investment of plan assets in a Single or Multiple Client Account, including the terms and payment of any Investment Fee, Asset Management Fee and Performance Fee (collectively; the Fees), shall be approved in writing by a fiduciary of a Client Plan which is independent of RREEF and its affiliates (the Independent Fiduciary).

(2) For purposes of the Fees, the fair market value of the Accounts' real property assets (other than in the case of actual sales) will be based on appraisals prepared by independent qualified appraisers that are Members of the Appraisal Institute (MAI Appraisers). In this regard, every agreement by which an appraiser is retained will include the appraiser's representation that: (1) Its ultimate client is the Account and its underlying Client Plan (and non-Plan) investors, and (2) it will perform its duties in the interest of such Account (and investors). In addition, following the date this final exemption is published in the **Federal Register**, every agreement shall advise the appraiser that it owes a professional obligation to the Account when making an appraisal for properties held by the Account.

(b) The terms of any investment in an Account and of the Fees, shall be at least as favorable to the Client Plans as those obtainable in arm's-length transactions between unrelated parties.

(c) At the time any Account is established (or amended) and at the time of any subsequent investment of assets (including the reinvestment of assets) in such Account:

(1) Each Client Plan in a Single Client Account shall have total net assets with a value in excess of $100 million, and each Client Plan that is an investor in a Multiple Client Account shall have total net assets with a value in excess of $50 million; and provided that seventy-five percent (75%) or more of the units of beneficial interests in a Multiple Client Account are held by Client Plans or other investors having total assets of at least $100 million. In addition, 50 percent (50%) or more of the Client Plans investing in a Multiple Client Account shall have assets of at least $100 million. A group of Client Plans maintained by a single employer or controlled group of employers, any of which individually has assets of less than $100 million, will be counted as a single Client Plan if the decision to invest in the Account (or the decision to make investments in the Account available as an option for an individually directed account) is made by a fiduciary other than RREEF, who exercises such discretion with respect to Client Plan assets in excess of $100 million.

(2) No Client Plan shall invest, in the aggregate, more than 5% of its total assets in any Account or more than 10% of its total assets in all Accounts established by RREEF.

(d) Prior to making an investment in any Account (or amending an existing Account), the Independent Fiduciary of each Client Plan investing in an Account shall have received offering materials from RREEF which disclose all material facts concerning the purpose, structure, and operation of the Account, including any Fee arrangements (provided that, in the case of an amendment to the Fee arrangements, such materials need address only the amended fees and any other material change to the Account's original offering materials).

[1] The Client Plans (including employee benefit plans that may become Client Plans in the future) consist of various pension plans as defined in section 3(2) of the Act and other plans as defined in section 4975(e)(1) of the Code with respect to which RREEF serves as a trustee or an investment manager.

(e) With respect to its ongoing participation in an Account, each Client Plan shall receive the following written information from RREEF:

(1) Audited financial statements of the Account prepared by independent public accountants selected by RREEF no later than 90 days after the end of the fiscal year of the Account;

(2) Quarterly and annual reports prepared by RREEF relating to the overall financial position and operating results of the Account and, in the case of a Multiple Client Account, the value of each Client Plan's interest in the Account. Each such report shall include a statement regarding the amount of fees paid to RREEF during the period covered by such report;

(3) Periodic appraisals (as agreed upon with the Client Plans) indicating the fair market value of the Account's assets as established by an MAI appraiser independent of RREEF and its affiliates. In the case of any appraisal that will serve as the basis for any ''deemed sale'' of such property for purposes of calculating the Performance Fee payable to RREEF (as discussed in paragraph (j) below), then:

(i) In the case of any Single Client Account, such MAI appraiser shall be either (A) selected by the Independent Fiduciary of the Client Plan subject to the affirmative approval of RREEF, or (B) selected by RREEF subject to approval by the Independent Fiduciary of the Client Plan;

(ii) In the case of any Multiple Client Account, such MAI appraiser shall be approved in advance by the Responsible Independent Fiduciaries (as defined in Part IV(e) below) owning a majority of the interests in the Accounts, determined according to the latest valuation of the Account's assets performed no more than 12 months prior to such appraisal, which approval may be by written notice and deemed consent by such Fiduciaries' failure to object to the appraiser within 30 days of such notice; and

(iii) In either case, the selected MAI appraiser shall acknowledge in writing that the Client Plan(s) and other investors (in the case of a Multiple Client Account), rather than RREEF, is (are) its clients, and that in performing its services for the Account it shall act in the sole interest of such Client Plan(s) and other investors. In addition, following the date this final exemption is published in the **Federal Register**, every appraiser selected shall acknowledge that it owes a professional obligation to the Client Plan(s) and other investors in the Account in performing its services as an appraiser for properties in the Account. If an MAI appraiser selected by RREEF, or an appraisal performed by a previously approved appraiser, is rejected by the Independent Fiduciary for a Single Client Account or the Responsible Independent Fiduciaries for the Multiple Client Account, determined according to the latest valuation of the Account's assets performed no more than 12 months prior to such appraisal, the fair market value of the assets for any ''deemed sale'', relating to the payment of a Performance Fee (as described in paragraphs (i) and (j) below) shall be determined as follows: (A) the Client Plans shall appoint a second appraiser and, if the value established for the property does not deviate by more than 10% (or such lesser amount as may be agreed upon between RREEF and the Client Plan(s)), then the two appraisals shall be averaged; (B) if the values differ by more than 10%, then the two appraisers shall select a third appraiser, that is independent of RREEF and its affiliates, who will attempt to mediate the difference; (C) if the third appraiser can cause the first two to reach an agreement on a value, that figure shall be used; however, (D) if no agreement can be reached, the third appraiser shall determine the value based on procedures set out in the governing agreements of the Account or, if no such procedures are established, shall conduct its own appraisal and the two closest of the three shall be averaged;

(4) In the case of any Multiple Client Account, a list of all other investors in the Account;

(5) Annual operating and capital budgets with respect to the Account, to be distributed to a Client Plan within 60 days prior to the beginning of the fiscal year to which such budgets relate; and

(6) An explanation of any material deviation from the budgets previously provided to such Client Plan for the prior year.

(f) The total fees paid to RREEF shall constitute no more than ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(g) The Investment Fee shall be equal to a specified percentage of the net value of the Client Plan assets allocated to the Account which shall be payable either:

(1) At the time assets are deposited (or deemed deposited in the case of reinvestment of assets) in the Account; or

(2) In periodic installments, the amount (as a percentage of the aggregate Investment Fee) and timing of which have been specified in advance based on the percentage of the Client Plan's assets invested in real property as of the payment date; provided that (i) the installment period is no less than three months, and (ii) if the percentage of the Client Plan assets which have actually been invested by a payment date is less than the percentage required for the aggregate Investment Fee to be paid in full through that date (both determined on a cumulative basis), the Investment Fee paid on such a date shall be reduced by the amount necessary to cause the percentage of the aggregate Investment Fee paid to equal only the percentage of the Client Plan assets actually invested by that date. The unpaid portion of such Investment Fee shall be deferred to and payable on a cumulative basis on the next scheduled payment date (subject to the percentage limitation described in the preceding sentence).

(h) The Asset Management Fee shall be payable for each quarter from the net operating income (NOI) of the Account. The amount of the Asset Management Fee, expressed as a percentage of the NOI of the Account, shall be established by the Agreement and agreed to by the Independent Fiduciaries of the Client Plans:

(1) The Asset Management Fee for any Account will be calculated as follows. The Asset Management Fee for a specific Account real property will be based solely on items of operating income and expense that are identified as line items on an operating budget for such property disclosed to each Client Plan that participates in the Account. The disclosures have to be made at least 30 days in advance of the fiscal year to which the budget relates, and approved in the manner described in (2) below;

(2) Each Client Plan must provide affirmative approval of the operating budget. Specifically, when the proposed budget (or any material deviation therefrom) is sent to a Client Plan, it will be accompanied by a written notice that the Client Plan may object to the budget or any specific line item therein, for purposes of calculating the Asset Management Fees for the next fiscal year. The written notice will contain a statement that affirmative approval of the budget is required prior to the end of the 30-day period following such disclosure. In the case of a Multiple Client Account, affirmative approval by a majority of investors (by interest) will constitute approval of the proposed budget (or deviation); and

(3) In the event of any subsequent decrease in previously approved budgeted operating expenses for the fiscal year in excess of the limits previously described (*i.e.*, no more than 15% for any line item or 5% overall), then the resulting increase in NOI (*i.e.*, over and above the allowable deviation)

will not be taken into account in calculating RREEF's management fee *unless* affirmative approval for the payment of such fee is obtained in writing from the Independent Fiduciary for the Client Plan in the Single Client Account or the Responsible Independent Fiduciaries for the Multiple Client Account.

(i) In the case of any Multiple Client Account, the Performance Fee shall be payable after the Client Plan has received distributions from the Account in excess of an amount equal to 100% of its invested capital plus a pre-specified annual compounded cumulative rate of return (the Threshold Amount or Hurdle Rate). However, in the case of RREEF's removal or resignation, RREEF shall be entitled to receive a Performance Fee payable either at the time of removal or, in the event of RREEF's resignation, upon sale of the assets to which the Performance Fee is allocable or upon termination of the Account as the case may be, subject to the requirements of paragraph (l) below, as determined by a deemed distribution of the assets of the Account based on an assumed sale of such assets at their fair market value (in accordance with independent appraisals), only to the extent that the Client Plan would receive deemed distributions from the Account in excess of an amount equal to the Threshold Amount at the time of RREEF's removal or resignation. Both the Threshold Amount and the amount of the Performance Fee, expressed as a percentage of the net proceeds from a capital event distributed (or deemed distributed) from the Account in excess of the Threshold Amount, shall be established by the Agreement and agreed to by the Independent Fiduciaries of the Client Plans.

(j) In the case of any Single Client Account, the Performance Fee shall be determined and paid either: (1) in the same manner as in the case of a Multiple Client Account, as described in paragraph (i) above; or (2) at the end of any pre-specified period of not less than one year, provided that such Fee is based upon the sum of all actual distributions from the Account during such period, plus deemed distributions of the assets of the Account based on an assumed sale of all such assets at their fair market value as of the end of such period (in accordance with independent appraisals performed within 12 months of the calculation) which are calculated to be in excess of the Threshold Amount or the Hurdle Rate through the end of such period. For this purpose, the Performance Fee measuring period shall be established by the Agreement and agreed to by the Independent Fiduciary of the Client Plan, provided that such period is not less than one year. In addition, RREEF shall provide notice to the Client Plan within 60 days of each Performance Fee calculation for a Single Client Account that the Independent Fiduciary of the Client Plan has the right to request updated appraisals of the properties held by the Account if such Fiduciary determines that the existing independent appraisals (performed within 12 months of the calculation) are no longer sufficient.

(k) The Threshold Amount for any Performance Fee shall include as least a minimum rate of return to the Client Plan, as defined below in Part IV, paragraph (f).

(l) In the event RREEF resigns as investment manager for an Account, the Performance Fee shall be calculated at the time of resignation as described above in paragraph (i) and allocated among each property, based on the appraised value of such property in relationship to the total appraised value of the Account. Each amount arrived at through this calculation shall be multiplied by a fraction, the numerator of which will be the actual sales price received by the Account on subsequent disposition of the property (or in the case of a property which has not been sold prior to the termination of a Multiple Client Account, the appraised value of the property as of the termination date), and the denominator of which will be the appraised value of the property which was used in connection with determining the Performance Fee at the time of resignation, provided that this fraction shall never exceed 1.0. The resulting amount for each property shall be the Performance Fee payable to RREEF upon the sale of such property or termination of the Multiple Client Account, as the case may be.

(m) In cases where RREEF does have discretion to reinvest proceeds from capital events, the reinvested amount shall not be treated as a new contribution of capital by the Client Plan for purposes of the Investment Fee, as described above in paragraph (g), or having been distributed for purposes of the payment of Performance Fee as described above in paragraphs (i) and (j);

(n) RREEF or its affiliates shall maintain, for a period of six years, the records necessary to enable the persons described in paragraph (o) of this Part III to determine whether the conditions of this exemption have been met, except that: (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of RREEF or its affiliates, the records are lost or destroyed prior to the end of the six year period; and (2) no party in interest, other than RREEF, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (o) below.

(o)(1) Except as provided in paragraph (o)(2) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (n) of this Part III shall be unconditionally available at their customary location for examination during normal business hours by:

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(ii) Any fiduciary of a Client Plan or any duly authorized employee or representative of such fiduciary;

(iii) Any contributing employer to a Client Plan or any duly authorized employee or representative of such employer; and

(iv) Any participant or beneficiary of a Client Plan or any duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described above in paragraph (o)(1)(ii)–(iv) shall be authorized to examine the trade secrets of RREEF and its affiliates or any commercial or financial information which is privileged or confidential.

(p) RREEF shall provide a copy of the proposed exemption and a copy of the final exemption to all Client Plans that invest in any Single Client Account or any Multiple Client Account formed on, or after, the date the final exemption is published in the **Federal Register**.

Part IV—Definitions

(a) An ''affiliate'' of a person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative of, or partner of any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term ''management services'' means:

(1) Development of an investment strategy for the Account and identification of suitable real estate-related investments;

(2) Directing the investments of the assets of the Account, including the determination of the structure of each investment, the negotiation of its terms and conditions and the performance of all requisite due diligence;

(3) Determination of the timing of, and directing, the disposition of assets of the Account and directing the liquidation of the Account upon termination;

(4) Administration of the overall operation of the investments of the Account, including all applicable leasing, management, financing and capital improvement decisions;

(5) Establishing and maintaining accounting records of the Account and distributing reports to Client Plans as described in Part III; and

(6) Selecting and directing all service providers of ancillary services as defined in this Part IV; provided, however, that some or all of the foregoing management services may be subject to the final discretion of the Independent Fiduciary(ies) for the Client Plan(s).

(d) The term ''ancillary services'' means:

(1) Legal services;

(2) Services of architects, designers, engineers, construction managers, hazardous materials consultants, contractors, leasing agents, real estate brokers, and others in connection with the acquisition, construction, improvement, management and disposition of investments in real property;

(3) Insurance brokerage and consultation services;

(4) Services of independent auditors and accountants in connection with auditing the books and records of the Accounts and preparing tax returns;

(5) Appraisal and mortgage brokerage services; and

(6) Services for the development of income-producing real property.

(e) The term ''Independent Fiduciary'' with respect to any Client Plan means a fiduciary (including an in-house fiduciary) independent of RREEF and its affiliates. With respect to a Multiple Client Account, the terms ''Independent Fiduciary'' or ''Responsible Independent Fiduciaries'' mean the Independent Fiduciaries of the Client Plans invested in the Account and other authorized persons acting for investors in the Account which are not employee benefit plans as defined under section 3(3) of ERISA (such as governmental plans, university endowment funds, etc.) that are independent of RREEF and its affiliates, and that collectively hold more than 50% of the interests in the Account.

(f) The terms ''Threshold Amount'' or ''Hurdle Rate'' mean, with respect to any Performance Fee, an amount which equals all of a Client Plan's capital invested in an Account plus a pre-specified annual compounded cumulative rate of return that is at least a minimum rate of return determined as follows:

(1) A ''floating'' or non-fixed rate which is at least equal to the lesser of seven percent, or the rate of change in the consumer price index (CPI), during the period from the deposit of the Client Plan's assets into the Account until the determination date; or

(2) A fixed rate which is at least equal to the lesser of seven percent or the average rate of change in the CPI over some period of time specified in the Agreement, which shall not exceed 10 years.

(g) The terms ''Net Operating Income'' or ''NOI'' means all operating income of the Account (i.e., rents, interest, and other income from day-to-day investment activities of the Account) less operating expenses, determined on an accrual basis in accordance with generally accepted accounting principles, but without regard to depreciation (or other non-cash) expense and capital expenditures and without regard to payments of interest and principal with respect to any acquisition indebtedness relating to the property.

(h) The term ''Net Proceeds of a Capital Event'' means all proceeds from capital events of an Account (i.e., sales or non-recourse refinances of real property investments owned by the Account) less repayment of debt with respect to such property, closing expenses paid, and reasonable reserves established in connection therewith, whether such reserves are for repayment of existing or anticipated obligations or for contingent liabilities.

**EFFECTIVE DATE:** This exemption is effective as of (i) May 16, 1994, with respect to the Shell Account, and (ii) the date this final exemption is published in the **Federal Register**, with respect to any Single Client Account and any Multiple Client Account formed on, or after, such date.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published on June 3, 1999 at 64 FR 29896.

*Written Comments*

The Department received one written comment (the Comment) with respect to the Notice and no requests for a public hearing. The Comment was filed by RREEF and generally requests clarifications and modifications to the Notice. Set forth below in section I is RREEF's discussion concerning RREEF's notification of interested parties. Section II discusses those aspects of the Comment which relate to the language of the final exemption (the Exemption). In addition, section III below discusses those aspects of the Comment which relate to the Summary of Facts and Representations (the Summary) contained in the Notice.

I. Discussion Concerning Notification of Interested Persons

RREEF represents that RREEF notified all interested parties of the Notice by First Class Mail on June 8, 1999, and informed such persons that they would have thirty-one (31) days from the date of mailing (i.e., 36 days from the date of the Notice's publication in the **Federal Register**) to file comments with the Department. Although the Notice stated that the comment period would be sixty (60) days from the date of publication in the **Federal Register**, it is RREEF's understanding that the Department's purpose in establishing the 60-day period was to give RREEF up to 30 days to mail the Notices and to give interested parties at least thirty (30) days after such mailing to comment. RREEF, however, did not require the initial 30-day period to mail the Notices and, after discussion with the Department staff, shortened the overall time period to reflect the actual date of mailing. All interested parties retained the 30-day comment period and were advised by RREEF that the correct comment deadline date would be July 9, 1999.

Notwithstanding the foregoing, RREEF also had an understanding with the Department that if comments from the general public were received within a reasonable time after July 9, 1999, the Department would require RREEF to respond. However, no such comments were received.

The Department acknowledges RREEF's modification of the notification of interested persons, and, based upon the representations made by RREEF's counsel, has determined that the notice requirements contained in the Department's exemption procedures (see 29 CFR 2570.43) have been met.

II. Discussion Concerning the Exemption

1. Part I of the Exemption states, in relevant part, that the restrictions of section 406(b)(1) and (b)(2) of the Act and the taxes imposed by section 4975 of the Code, by reason of section

4975(c)(1)(E) of the Code, shall not apply, as of the date the final exemption is published in the **Federal Register**, to the subject transactions ''* * * with respect to any single client, separate account (Single Client Account) or any multiple Client account (Multiple Client Account) formed on, or after, such a date * * *'' (see (ii) of Part I). RREEF wishes to confirm that the phrase ''* * * formed on, or after, such a date * * *'' refers only to Multiple Client Accounts.

The Department confirms RREEF's understanding of this phrase.

2. Under Part III(i) of the Exemption, a Performance Fee shall be payable to RREEF after the Client Plan has received distributions from the Account in excess of the applicable Threshold Amount. Part III(i) also discusses the possible payment of a Performance Fee to RREEF in the case of RREEF's removal or resignation, as determined by a deemed distribution of the assets of the Account based on an assumed sale of such assets at their market value, but only to the extent that the Client Plan would receive distributions from the Account in excess of an amount equal to the Threshold Amount at the time of RREEF's removal or resignation. In this regard, the Comment relates to the phrase in Part III(i) which states, in relevant part, that ''* * * the Client Plan would receive distributions from the Account in excess of an amount equal to the Threshold Amount at the time of RREEF's removal or resignation.'' RREEF suggests adding the word ''deemed'' to this phrase so that Part III(i) reads, in relevant part, ''* * * the Client Plan would receive *deemed* distributions from the Account * * *'' [Emphasis added].

The Department acknowledges RREEF's clarification, and has modified the language of Part III(i) of the Exemption accordingly.

3. Part IV(f) of the Exemption states, in relevant part, that ''the terms ''Threshold Amount'' or ''Hurdle Rate'' mean, with respect to any Performance Fee, an amount which equals all of a Client Plan's capital invested in an Account plus a pre-specified annual compounded cumulative rate of return * * *'' RREEF wishes to confirm that it may use a Hurdle Rate that is compounded more frequently than annually, e.g., quarterly or monthly, if so negotiated with the Client Plans.[2]

The Department acknowledges RREEF's confirmation.

[2] RREEF also notes references to annual compounding in Paragraphs 5 and 12 of the Summary.

III. Discussion Concerning the Summary

In the Comment, RREEF wishes to clarify the description of the Performance Fees in the Summary as applied to Single Client Accounts. RREEF notes that there is a substantial difference between the proposed Performance Fee calculation as applied to Multiple Client Accounts (described in Part III(i) of the Notice) and the Fee calculation applicable to Single Client Accounts (described in Part III(j) of the Notice). RREEF states that Part III(i) clearly reflects that although distributions from operations serve to reduce the Threshold Amount with respect to Multiple Client Accounts, once the Threshold Amount is reduced to zero the Performance Fee for Multiple Client Accounts is payable only with respect to subsequent distributions from capital events. However, Part III(j) of the Exemption provides that the Performance Fee for Single Client Accounts may be paid ''* * * based on the sum of all actual distributions from the Account during such period, plus deemed distributions * * *.''

RREEF represents that the difference in the language was intentional. In the case of a Multiple Client Account, since periodic Performance Fees are not available under the Exemption, RREEF states that it is highly unlikely that any Performance Fee will be calculated and paid until the Account has reached the end of its term and is in liquidation.

In contrast, RREEF states that distributions from any source, including operating revenues, would continue to enter into the Performance Fee calculation for Single Client Accounts even after the Threshold Amount is reduced to zero (as reflected in the language of Part III(j) of the Exemption).

Accordingly, RREEF wishes to make several clarifications to the information contained in the Summary.

1. Paragraph 5(iii) of the Summary contains a description of the Performance Fee. RREEF requests that the word ''*certain*'' be inserted into Paragraph 5(iii) and that the words ''* * * of capital proceeds'' be deleted such that it reads, in relevant part, ''* * * the Performance Fee, a fee charged upon *certain* actual or deemed distributions from the Account in excess of a Client Plan's invested capital * * *.'' [Emphasis added].

2. RREEF requests that the phrase ''* * * will not be payable until'' be substituted for ''will be payable with respect to'' in the third section of Paragraph 13 of the Notice, such that the sentence reads, in relevant part, ''Because the Threshold Amount has been reduced to $0 at year 6, an additional Performance Fee *will not be payable until* any subsequent distribution of cash from a capital event * * *.'' [Emphasis added].

3. RREEF requests that the word ''the'' be deleted in the last sentence of Paragraph 14 of the Notice, and that the sentence should read ''* * * Such proceeds, net of these expenses and reserves, generally will be distributable net proceeds of capital events upon which the Performance Fee may be payable.''

4. RREEF states it wishes to clarify for the record that because the calculation of the Shell Account's Performance Fee will be done retroactively, such Fee will be based solely on actual property sales. Accordingly, all references in the Summary to appraisals and appraisers with respect to the Shell Account are irrelevant.

5. RREEF notes that the second section of Paragraph 1 of the Summary requires certain clarifications. RREEF wishes to clarify this information as follows (RREEF's modifications are in italic):

''On January 27, 1998, *substantially all of the assets of* RREEF America L.L.C. and its affiliate, RREEF Corporation (collectively, RREEF), were acquired by RoProperty Services, B.V. (RoProperty), a major Dutch investment advisory firm, *now known as RoProperty Investment Management, N.V.* As a result, the *assets of* RREEF's *advisory* entities were combined into a newly created Delaware limited liability company, which continues to use the name ''RREEF America L.L.C.'' RREEF operates as an autonomous entity which continues to provide investment management services, and its affiliate, RREEF Management Company, continues to provide property management services.'' [Emphasis added].

6. Paragraph 3 of the Summary contains footnote 2 which states:

''* * * The applicant represents that in some instances a Client Plan's investment in a Multiple Client Account that is a common or collective trust fund maintained by a bank would be exempt from the restrictions of section 406(a) of the Act by reason of section 408(b)(8). The Department expresses no opinion herein whether all the conditions of section 408(b)(8) will be satisfied in such transactions.''

RREEF states that this footnote, while legally accurate, should be deleted because it is inapplicable to RREEF since RREEF is not a bank.

7. RREEF requests that in paragraph 3(f) of the Summary, the phrase ''also has'' be changed to ''also may have'' such that the modified paragraph 3(f) reads as follows:

''RREEF also *may have* complete discretion in the selection and direction of the ancillary services (Ancillary Services) defined in Part IV, paragraph (d) above.'' [Emphasis added].

8. RREEF wishes to clarify certain information contained in Paragraph 7 of the Summary, which discusses the services for which RREEF receives an Asset Management Fee. Specifically, RREEF makes the following points:

(a) The Asset Management Fee is not intended to compensate RREEF for selection of properties and other assets for acquisition by an Account; this service is effectively covered by the Investment Fee.

(b) The Asset Management Fee does not compensate RREEF for ''performance'' (as stated therein) of property management and leasing services, because such services are provided by separate parties for separate compensation. However, this Fee does compensate RREEF for ''supervising and overseeing the performance'' of such services, including the hiring of those separate parties.

(c) RREEF states that the phrase ''* * * and maintaining'' should be added to section (v) of paragraph 7 so that the modified section reads as follows: ''establishing *and maintaining* tax-exempt title-holding corporations under section 501(a) of the Code for the properties''. [Emphasis added].

(d) RREEF also states that the Asset Management Fee also covers supervising the preparation and filing of tax (and other) reports.

9. RREEF also notes that paragraph 8 of the Summary states that RREEF's current property management agreements permit no more than a 15% variance in individual budget line items and 5% overall. However, RREEF states that these figures were used as an example and were not intended to be fixed at such percentages for all property management agreements. In this regard, it is possible that a Client Plan may negotiate a lesser variance in the future, or a lesser variance for a single line item.

RREEF also notes that at the end of the second paragraph in paragraph 8 of the Summary, the last two sentences should be deleted and following two sentences substituted in their place:

''Property management agreements used by RREEF permit no more than a 15% variance between any individual line item expense in the operating budget *and actual expenditures, without the Client's approval.* In addition, *without the Client's approval, actual expenditures for any year typically may not exceed* budgeted expenses by more than 5% in the aggregate.'' [Emphasis added].

In this regard, the Department has also modified the language of paragraph (h)(3) of Part III as follows:

''* * * (3) In the event of any subsequent decrease in previously approved budgeted operating expenses for the fiscal year in excess of the limits previously described (i.e., no more than 15% for any line item, or 5% overall), then the resulting increase in NOI * * *.'' [Emphasis added].

10. RREEF also requests that in the last sentence of Paragraph 12 of the Summary, the word ''by'' be replaced by the word ''to'' so that the sentence reads, in relevant part: * * * the Threshold Amount would be increased to the full amount of the deemed distribution * * *'' [Emphasis added.]

11. RREEF also requests that the phrase ''* * * either the Client Plan(s) or'' be added at the beginning of last sentence of paragraph 16 of the Summary to clarify that the discretion used by the appropriate fiduciaries for an Account, as discussed therein, will be exercised by someone other than RREEF. Therefore, the revised sentence should have read as follows:

''*Either the Client Plan(s) or* the replacement investment manager of the Account (unrelated to RREEF) will have discretion as to when the property is sold or when the Account is terminated.'' [Emphasis added].

The Department acknowledges all of RREEF's clarifications to the information contained in the Summary, as discussed above, as well as certain other minor discussions and information contained in the Comment.

Accordingly, after giving full consideration to the entire record, including the Comment, the Department has decided to grant the exemption subject as modified herein. The Comment has been included as part of the public record of the exemption application.

Interested persons are invited to review the complete exemption file, which is available for public inspection in the Public Disclosure Room of the Pension and Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

## General Motors Hourly Rate Employees Pension Plan, General Motors Retirement Program for Salaried Employees, Saturn Individual Retirement Plan for Represented Team Members, Saturn Personal Choices Retirement Plan for Non-Represented Team Members, Employees' Retirement Plan for GMAC Mortgage Corporation, Delphi Automotive Systems Hourly Rate Employees Pension Plan, Delphi Automotive Systems Retirement Program for Salaried Employees (collectively, the Plans) Located in New York, New York

[Prohibited Transaction Exemption 99–33; Exemption Application Nos. D–10473 through D–10476]

*Exemption*

Part I—Covered Transactions

The restrictions of section 406(a)(1)(A) through (D) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply effective December 11, 1998, to a transaction between AEW Industrial, L.L.C. (the LLC), an entity which currently holds ''plan assets'' of the Plans, or any subsidiary of the LLC (as defined in Part IV(d) below) which may hold ''plan assets'' of the Plans in the future, as a result of investments made by the Plans in the LLC or any subsidiary through the First Plaza Group Trust (the Trust), and a party in interest with respect to any of the Plans, provided that the Specific Conditions set forth below in Part II and the General Conditions set forth in Part III are met:

Part II—Specific Conditions

(a) In the case of a transaction by the LLC or any subsidiary that involves the acquisition, financing, or disposition of any real property asset, the terms of the transaction are negotiated on behalf of the Plan by AEW Capital Management, L.P. or a successor thereto (AEW), under the authority and general direction of General Motors Investment Management Corporation (GMIMCo), a wholly-owned subsidiary of General Motors Corporation (GM), and GMIMCo makes the decision on behalf of the Plan to enter into the transaction.

Notwithstanding the foregoing, a transaction involving an amount of $5 million or more, which has been negotiated on behalf of the Plans by AEW and approved by GMIMCo in the manner described above, will not fail to meet the requirements of this Part II(a) solely because GM or its designee retains the right to veto or approve such transaction;

(b) In the case of any transaction by the LLC or any subsidiary that does not involve acquisitions, financings or dispositions of real property assets, the terms of the transaction are negotiated on behalf of the Plans by AEW, under the authority and general direction of GMIMCo, and either AEW or a property manager acting in accordance with written guidelines or business plans (including budgets), adopted with the approval of GMIMCo, makes the decision on behalf of the Plans to enter into the transaction. Notwithstanding the foregoing, a transaction involving an amount of $5 million or more, which has been negotiated on behalf of the Plans in accordance with the foregoing, will not fail to meet the requirements of this Part II(b) solely because GM or its designee retains the right to veto or approve such transaction;

(c) The transaction is not described in—

(1) Prohibited Transaction Exemption 81–6 (46 FR 7527, January 23, 1981), relating to securities lending arrangements,

(2) Prohibited Transaction Exemption 83–1 (48 FR 895, January 7, 1983), relating to acquisitions by plans of interests in mortgage pools, or

(3) Prohibited Transaction Exemption 88–59 (53 FR 24811; June 30, 1988), relating to certain mortgage financing arrangements;

(d) The transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest with respect to any of the Plans;

(e) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of GMIMCo, GM, or AEW the terms of the transaction are at least as favorable to the Plans as the terms generally available in arm's-length transactions between unrelated parties;

(f) The party in interest dealing with the LLC: (1) is a party in interest with respect to a Plan (including a fiduciary) solely by reason of providing services to the Plan, or solely by reason of a relationship to a service provider described in section 3(14)(F),(G),(H) or (I) of the Act; and (2) does not have discretionary authority or control with respect to the investment of the Plan's assets in the Trust or the LLC, and does not render investment advice, within the meaning of 29 CFR 2510.3–21(c), with respect to the investment of those assets in the Trust or the LLC;

(g) The party in interest dealing with the LLC is neither GMIMCo or AEW nor a person ''related'' to GMIMCo or AEW within the meaning of Part IV(c) below;

(h) GMIMCo adopts written policies and procedures that are designed to assure compliance with the conditions of this exemption; and

(i) An independent auditor, who has appropriate technical training or experience and proficiency with the fiduciary responsibility provisions of the Act, and who so represents in writing, conducts an exemption audit, as defined in Part IV(f) below, on an annual basis. Following completion of the exemption audit, the auditor issues a written report to each Plan representing its specific findings regarding the level of compliance with the policies and procedure adopted by GMIMCo in accordance with Part II(h) above.

Part III—General Conditions

(a) At all times during the term of this exemption (if granted), GMIMCo shall be—

(1) A direct or indirect wholly owned subsidiary of GM, and

(2) An investment adviser registered under the Investment Advisers Act of 1940 that, as of the last day of its most recent fiscal year, has under its management and control total assets attributable to Plans maintained by GM or its affiliates (as defined in Part IV(a) of this exemption) in excess of $50 million. In addition, Plans maintained by affiliates of GMIMCo must have, as of the last day of each plan's reporting year, aggregate assets of at least $250 million;

(b) AEW or any successor, as investment manager for assets held by the LLC, meets the conditions for a ''qualified professional asset manager'' (QPAM) as set forth in section V(a) of Prohibited Transaction Class Exemption 84–14 (49 FR 9494, March 13, 1984);

(c) AEW and GMIMCo, or their affiliates, shall maintain, for a period of six years from the date of each transaction described above, the records necessary to enable the persons described below in Part III(d)(1) to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of AEW or GMIMCo, or their affiliates, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest, other than AEW or GMIMCo, shall be subject to the civil penalty which may be assessed under section 502(i) of the Act or to the taxes imposed by sections 4975 (a) and (b) of the Code, if the records are not available for examination as required by section (d) below; and

(d)(1) Except as provided in subsection (2) of this section (d), and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in section (c) of this Part III shall be made unconditionally available by GMIMCo or AEW, at the customary location for the maintenance and/or retention of such records, for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service;

(B) The persons described in Part II(i) of this exemption (relating to an independent audit of covered transactions as discussed therein); and

(C) Any fiduciary of the Plans or the Trust;

(2) None of the persons described in subsections (1)(B) and (C) of this section (d) shall be authorized to examine trade secrets of AEW or GMIMCo, or commercial or financial information which is privileged or confidential in nature.

Part IV—Definitions

For purposes of this exemption:

(a) ''Affiliate'' of GM means a member of either (1) a controlled group of corporations (as defined in section 414(b) of the Code) of which GM is a member, or (2) a group of trades or businesses under common control (as defined in section 414(c) of the Code) of which GM is a member; provided that ''50 percent'' shall be substituted for ''80 percent'' wherever ''80 percent'' appears in Code section 414(b) or 414(c) or the regulations thereunder.

(b) ''Party in interest'' means a person described in section 3(14) of the Act and includes a ''disqualified person'' as defined in section 4975(e)(2) of the Code.

(c) GMIMCo or AEW are ''related'' to a party in interest with respect to a Plan for purposes of this exemption if the party in interest (or a person controlling or controlled by the party in interest) owns a five percent (5%) or more interest in GMIMCo or AEW, or if GMIMCo or AEW (or a person controlling or controlled by GMIMCo or AEW) owns a five percent (5%) or more interest in the party in interest. For purposes of this definition:

(1) ''Interest'' means with respect to ownership of an entity:

(A) The combined voting power of all classes of stock entitled to vote, or the total value of the shares of all classes of stock of the entity, if the entity is a corporation;

(B) The capital interest, or the profits interest of the entity, if the entity is a partnership; or

(C) The beneficial interest of the entity, if the entity is a trust or unincorporated enterprise;

(2) A person is considered to own an interest held in any capacity if the person has or shares the authority—

(A) To exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest, or

(B) To dispose or to direct the disposition of such interest; and

(3) ''Control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) ''Subsidiary'' means any limited liability company or other entity organized by the LLC, through which it acquires and holds title to its real property investments.

(e) An ''exemption audit'' of each Plan's interest in the LLC must consist of the following:

(1) A review of the written policies and procedures adopted by GMIMCo pursuant to Part II(h) for consistency with each of the objective requirements of this exemption (as described herein);

(2) A test of a representative sample of the Plan's transactions through investments made by the LLC, as described in Part I, in order to make findings regarding whether GMIMCo is in compliance with both: (i) the written policies and procedures adopted by GMIMCo pursuant to Part II(i) of this exemption; and (ii) the objective requirements of this exemption; and

(3) Issuance of a written report describing the steps performed by the independent auditor during the course of its review and the independent auditor's findings regarding the Plan's interest in the LLC.

(f) For purposes of Part IV(e), the written policies and procedures must describe the following objective requirements of Part II of the exemption and the steps adopted by GMIMCo to assure compliance with each of these requirements:

(1) The requirements of Part III;

(2) The requirements of sections (a) and (b) of Part II regarding the discretionary authority or control of GMIMCo with respect to the Plan assets involved in each transaction, in negotiating the terms of the transaction, and with regard to the decision made on behalf of the Plan, as an investor in the LLC, to enter into the transaction;

(3) The requirements of sections (a) and (b) of Part II with respect to any procedure for approval or veto of the transaction;

(4) That:

(A) The transaction is not entered into with any person who is excluded from relief under sections (f) or (g) of Part II; and

(B) The transaction is not described in any of the class exemptions listed in section (c) of Part II.

(g) ''Plan'' means an employee benefit plan established and maintained by GM or an Affiliate, as well as the Delphi Automotive Systems Hourly Rate Employees Pension Plan, and the Delphi Automotive Systems Retirement Program for Salaried Employees.

**EFFECTIVE DATE:** This exemption is effective as of December 11, 1998.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published on June 3, 1999 at 64 FR 29914.

*Written Comments*

The Department received one written comment (the Comment) with respect to the Notice and no requests for a public hearing. The Comment was filed by AEW and suggests that certain clarifications and modifications be made to the Notice. Set forth below in section I is AEW's discussion concerning the language of the final exemption (the Exemption). Section II discusses those aspects of the Comment which relate to the Summary of Facts and Representations (the Summary) contained in the Notice.

I. Discussion of the Comment Regarding the Exemption

1. AEW states that Delphi Automotive Systems Corporation (Delphi) was spun-off by General Motors on May 28, 1999. Delphi maintained two plans, the Delphi Automotive Systems Hourly Rate Employees Pension Plan and the Delphi Automotive Systems Retirement Program for Salaried Employees. The assets of both of these plans are still held in the First Plaza Group Trust and still managed by GMIMCo. Therefore, AEW requests that the Delphi Automotive Systems Hourly Rate Employees Pension Plan and the Delphi Automotive Systems Retirement Program for Salaried Employees be added to the caption of the Exemption, so that the revised caption reads as follows:

''General Motors Hourly Rate Employees Pension Plan, General Motors Retirement Program for Salaried Employees, Saturn Individual Retirement Plan for Represented Team Members, Saturn Personal Choices Retirement Plan for Non-Represented Team Members, Employees' Retirement Plan for GMAC Mortgage Corporation, *Delphi Automotive Systems Hourly Rate Employees Pension Plan, Delphi Automotive Systems Retirement Program for Salaried Employees* (collectively, the Plans).'' [Emphasis added].

The Department acknowledges AEW's request and has modified the caption of the Exemption accordingly. In addition, the Department has modified the definition of the term ''Plan'' in Part IV(g) of the Exemption to include the Delphi Automotive Systems Hourly Rate Employees Pension Plan, and the Delphi Automotive Systems Retirement Program for Salaried Employees.

2. AEW also notes that Part I of the Notice states, in relevant part, that the restrictions of section 406(a)(1)(A) through (D) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, shall not apply to ''* * * a transaction between AEW Industrial, L.L.C. (the LLC), an entity which currently holds ''plan assets'' of the Plans, or any subsidiary of the LLC (as defined in Part IV(d) below) * * *'' Since Part I refers to transactions by the LLC or any subsidiary, AEW requests that the phrase ''* * * or any subsidiary * * *'' also be added immediately after the reference to the LLC in the first sentence of Part II(a) of the Exemption and the first sentence of Part II(b) of the Exemption in order to be consistent with Part I.

Thus, Part II(a) should read, in relevant part, ''In the case of transaction by the LLC *or any subsidiary* * * *.'' [Emphasis added]. Furthermore, Part II(b) should read, in relevant part, ''In the case of transaction by the LLC *or any subsidiary* * * *.'' [Emphasis added].

The Department acknowledges AEW's request and has modified the language of Part II(a) and Part II(b) of the Exemption accordingly.

II. Discussion of the Comment Regarding the Summary

1. For the same reasons discussed in the Comment at Section I(1) above, AEW states that the following sentence should be added after the first sentence in paragraph 2 of the Summary, so that the paragraph reads, in relevant part:

''For a portion of their assets, the Plans make investments through an entity known as the First Plaza Group Trust (i.e., the Trust), which is a group trust established pursuant to IRS Revenue Ruling 81–100. *In addition, the Delphi Automotive Systems Hourly Rate Employees Pension Plan and the Delphi Automotive Systems Retirement Program for Salaried Employees (hereinafter these two plans are included in all references to the Plans), which are plans sponsored by a former GM affiliate, make investments through the Trust.*'' [Emphasis added].

2. AEW requests that the word ''billion'' replace the word ''million'' in the last sentence of paragraph 1 of the Summary so that the sentence reads, in

relevant part, ''* * * the Plans had total assets of approximately $73.2 billion, of which approximately $4.39 *billion* were invested in private real estate assets.'' [Emphasis added].

3. AEW also requests that the word ''billion'' replace the word ''million'' in the third sentence of paragraph 5 of the Summary so that the sentence reads, in relevant part, ''* * * [New England Investment Companies] NEIC is a publicly-traded holding company with approximately $90 *billion* in assets under management * * *.'' [Emphasis added].

The Department acknowledges all of AEW's clarifications to the information contained in the Summary.

Accordingly, after giving full consideration to the entire record, including the Comment, the Department has decided to grant the exemption subject as modified herein.

**FOR FURTHER INFORMATION CONTACT:** Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

*General Information*

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, D.C., this 2nd day of August, 1999.

**Ivan Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.*

[FR Doc. 99–20191 Filed 8–4–99; 8:45 am]

**BILLING CODE 4510–29–P**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Nixon Presidential Historical Materials; Opening of Materials

**AGENCY:** National Archives and Records Administration.

**ACTION:** Notice of opening of materials.

**SUMMARY:** This notice announces the opening of additional Nixon presidential historical materials. Notice is hereby given that, in accordance with section 104 of Title I of the Presidential Recordings and Materials Preservation Act (''PRMPA'', 44 U.S.C. 2111 note) and 1275.42(b) of the PRMPA Regulations implementing the Act (36 CFR Part 1275), the agency has identified, inventoried, and prepared for public access approximately 445 hours of Nixon White House tape recordings among the Nixon Presidential historical materials.

**DATES:** The National Archives and Records Administration (NARA) intends to make the materials described in this notice available to the public beginning October 5, 1999. In accordance with 36 CFR 1275.44, any person who believes it necessary to file a claim of legal right or privilege concerning access to these materials should notify the Archivist of the United States in writing of the claimed right, privilege, or defense on or before September 7, 1999.

**ADDRESSES:** The materials will be made available to the public at the National Archives at College Park research room, located at 8601 Adelphi Road, College Park, Maryland, beginning at 8:45 a.m.

Petitions asserting a legal or constitutional right or privilege which would prevent or limit access must be sent to the Archivist of the United States, National Archives at College Park, 8601 Adelphi Road, College Park, Maryland 20740–6001.

**FOR FURTHER INFORMATION CONTACT:** Karl Weissenbach, Director, Nixon Presidential Materials Staff, 301–713–6950.

**SUPPLEMENTARY INFORMATION:** NARA is proposing to open approximately 3650 conversations which were recorded at the Nixon White House from February 1971 to July 1971. These tape segments total approximately 445 hours of listening time.

This is the seventh opening of Nixon White House tapes since 1980. Previous releases included conversations constituting ''abuses of governmental power'' and conversations recorded in the Cabinet Room of the Nixon White House. The tapes now being proposed for opening consist of the first of five segments comprising the remaining hours of conversations, processed for release in chronological order starting with February 1971.

There are no transcripts for these tapes. Tape logs, prepared by NARA, are offered for public access as a finding aid to the tape segments and a guide for the listener. There is a separate tape log entry for each segment of conversation released. Each tape log entry includes the names of participants; date, time, and location of the conversation; and an outline of the content of the conversation.

The tape recordings will be made available to the general public in the research room at 8601 Adelphi Road, College Park, Maryland, Monday through Friday between 8:45 a.m. and 4:30 p.m. Researchers must have a NARA researcher card, which they may obtain when they arrive at the facility, Listening stations will be available for public use on a first come, first served basis. NARA reserves the right to limit listening time in response to heavy demand. No copies of the tape recordings will be sold or otherwise provided at this time. No sound recording devices will be allowed in the listening area. Researchers may take notes. Copies of the tape log will be available for a fee in accordance with 36 CFR 1258.12.

Dated: July 30, 1999.

**John W. Carlin,**

*Archivist of the United States.*

[FR Doc. 99–20154 Filed 8–4–99; 8:45 am]

**BILLING CODE 7515–01–P**

## NATIONAL SCIENCE FOUNDATION

### Notice of Intent To Seek Approval To Extend and Revise a Current Information Collection

**AGENCY:** National Science Foundation.

**ACTION:** Submission for OMB review; Comment request.

**SUMMARY:** The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. This is the second notice for pubic comment; the first was published in the **Federal Register** at 64 FR 29920 (June 3, 1999), and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street, NW, Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send email to splimpto@nsf.gov.

**DATES:** Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–306–1125 X2017.

**FOR FURTHER INFORMATION CONTACT:** Suzanne H. Plimpton, NSF Reports Clearance Officer at (703) 306–1125 X2017 or send email to splimpto@nsf.gov. 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.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Survey of Graduate Students and Postdoctorates in Science and Engineering.

*OMB Approval Number:* 3145–0062.

### Proposed Project

Graduate students in science, engineering, and health fields in U.S. colleges and universities, by source and mechanism of support and by demographic characteristics. An electronic/mail survey, the Survey of Graduate Students and Postdoctorates in Science and Engineering originated in 1966 and has been conducted annually since 1972. The survey is the academic graduate enrollment component of the NSF statistical program that seeks to ''provide a central clearinghouse for the collection, interpretation, and analysis of data on the availability of, and the current and projected need for, scientific and technical resources in the United States, and to provide a source of information for policy formulation by other agencies of the Federal government'' as mandated in the National Science Foundation Act of 1950.

The proposed project will continue the current survey cycle for three to five years. The annual Fall surveys for 1999 through 2003 will survey the universe of approximately 725 reporting units at approximately 600 institutions offering accredited graduate programs in science, engineering, or health. The survey has provided continuity of statistics on graduate school enrollment and support for graduate students in all science & engineering (S&E) and health fields, with separate data requested on demographic characteristics (race/ethnicity and gender by full-time and part-time enrollment status). Statistics from the survey are published in NSF's annual publication series *Graduate Students and Postdoctorates in Science and Engineering,* in NSF publications *Science and Engineering Indicators, Women, Minorities, and Persons with Disabilities in Science and Engineering,* and are available electronically on the World Wide Web.

NSF proposes to revise the questionnaire in 1999 to include the Department of energy as a source of funding of graduate students and to ask for the number of first-time full-time graduate students by race/ethnicity. These changes are being proposed for purposes of planning, policy formulation, and program evaluation and to provide consistency with other NSF surveys (e.g., on R&D expenditures). Two redundant items will be deleted from the questionnaire: the number of part-time students and the number of women part-time students. In addition, the names of the race/ethnicity categories will be changed to comply with the new OMB guidelines. The new categories will be: Black or African American; American Indian or Alaska Native; Asian; Native Hawaiian or Other Pacific Islander; Hispanic or Latino; and White. These changes are expected to result in minimal change in burden. Overall burden is expected to be reduced from 1999 to 2003 due to expansion of the Web-based data collection.

The survey will be sent primarily to the administrators at the Institutional Research Offices. To minimize burden, NSF instituted a Web-based survey in 1998 through which institutions can enter data directly or upload preformatted files. The Web-based survey includes a complete program for editing and trend checking and allows institutions to receive their previous year's data for comparison. Respondents will be encouraged to participate in this Web-based survey should they so wish. Traditional paper questionnaires will also be available, with editing and trend checking performed as part of the survey processing.

In Fall 1997, the survey achieved a total response rate of 98.5% for institutions and 98.3% for departments.

### Estimate of Burden

Burden estimates are as follows:

| | Total number of institutions | Departments | Burden hours |
|---|---|---|---|
| FY 1995 | 722 | 11,598 | 1.87 |

| | Total number of institutions | Departments | Burden hours |
|---|---|---|---|
| FY 1996 | 722 | 11,592 | 1.95 |
| FY 1997 | 723 | 11,597 | 2.23 |

*Description of Respondents:* Individuals.

*Estimated Number of Responses:* 11,597 (from the 1997 collection).

*Estimated Total Annual Burden on Respondents:* 23,690 hours (from the 1997 collection).

*Frequency of Responses:* Annually.

Dated: August 2, 1999.

**Suzanne H. Plimpton,**

*Reports Clearance Officer.*

[FR Doc. 99–20147 Filed 8–4–99; 8:45 am]

**BILLING CODE 7555–01–M**

## NUCLEAR REGULATORY COMMISSION

**[Docket Number 40–9048]**

### International Uranium (USA) Corporation

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of withdrawal of license application, Reno Creek In Situ Leach (ISL) Uranium Extraction Project, Campbell County, Wyoming; notice of withdrawal.

**SUMMARY:** Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated July 22, 1999, a request from International Uranium (USA) Corporation that the NRC terminate all review activities for the Reno Creek In Situ Leach (ISL) Uranium Extraction Project in Campbell County, Wyoming.

**FOR FURTHER INFORMATION CONTACT:** Harold Lefevre, Uranium Recovery and Low Level Waste Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–6678. E-mail *HEL@NRC.GOV*.

**SUPPLEMENTARY INFORMATION:** The NRC noticed the receipt of an Application for Licensing for the Reno Creek In Situ Leach (ISL) Uranium Extraction Project in Campbell County, Wyoming, in the **Federal Register** (59 FR 16246, April 6, 1994). A Notice for Opportunity for Hearing was also issued in that **Federal Register** Notice. The application was submitted by Energy Fuels Nuclear, Incorporated, a predecessor of International Uranium (USA) Corporation.

The NRC received a letter dated July 22, 1999, from International Uranium (USA) Corporation requesting that NRC, ''immediately terminate all review work on the Reno Creek ISL Project Source Materials License Application.'' The NRC considers this request a withdrawal of the License Application in accordance with 10 CFR 2.107. As stated in 10 CFR 2.107(b), the withdrawal of an application does not authorize the removal of any document from the files of the Commission. If it desires to do so, International Uranium (USA) Corporation may again apply for a specific license for the Reno Creek ISL Project at some time in the future by submitting a license application in accordance with 10 CFR 40.31.

Dated at Rockville, Maryland, this 29th Day of July 1999.

For the Nuclear Regulatory Commission.

**John J. Surmeier,**

*Chief, Uranium Recovery and Low Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 99–20123 Filed 8–4–99; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–277 and 50–278]**

### PECO Energy Company, Public Service Electric and Gas Company, and Peach Bottom Atomic Power Station, Units Nos. 2 and 3; Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Issuance of Conforming Amendments, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating Licenses Nos. DPR–70 and DPR–75 for the Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, to the extent currently held by Public Service Electric and Gas Company (PSE&G), as a non-operating co-owner of Peach Bottom Units 2 and 3. The transfer would be to PSEG Nuclear, LLC. PSE&G currently owns 42.5 percent of each Peach Bottom unit. The proposed transfers do not involve any change with respect to the ownership interests held by PECO Energy Company, Delmarva Power and Light Company, and Atlantic City Electric Company. The Commission is also considering amending the licenses to reflect the proposed transfer.

According to the application for approval, PSE&G's interest in both units of the facility would be transferred to PSEG Nuclear, LLC, following approval of the proposed transfer of the licenses. PSEG Nuclear, LLC, will be a wholly owned subsidiary of the current parent of PSE&G, Public Service Enterprise Group Incorporated. The transfers of the licenses will not affect PECO Energy Company's current responsibility and authority to operate the units. No physical changes to the Peach Bottom facility or operational changes are being proposed in the application.

The proposed amendments would replace references to PSE&G in the licenses with references to PSEG Nuclear, LLC, to reflect the proposed transfer.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards

considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By August 25, 1999, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, ''Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications,'' of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon Jeffrie J. Keenan, Esquire, Public Service Electric and Gas Company, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038 (tel: 609–339–5429, fax: 609–339–1234, and e-mail: JKeenan@PSEG.com); the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held, and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by September 7, 1999, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the applications dated July 1 and 23, 1999, and a related application dated June 4, 1999, pertaining to the Hope Creek and Salem facilities, incorporated by reference in the July 23, 1999, submittal, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Dated at Rockville, Maryland this 30th day of July 1999.

For the Nuclear Regulatory Commission.

**Bartholomew C. Buckley,**

*Sr. Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 99–20122 Filed 8–4–99; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket 70–7001]**

## Notice of Amendment to Certificate of Compliance GDP–1 for the U.S. Enrichment Corporation, Paducah Gaseous Diffusion Plant, Paducah, KY

The Director, Office of Nuclear Material Safety and Safeguards, has made a determination that the following amendment request is not significant in accordance with 10 CFR 76.45. In making that determination, the staff concluded that: (1) there is no change in the types or significant increase in the amounts of any effluents that may be released offsite; (2) there is no significant increase in individual or cumulative occupational radiation exposure; (3) there is no significant construction impact; (4) there is no significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents; (5) the proposed changes do not result in the possibility of a new or different kind of accident; (6) there is no significant reduction in any margin of safety; and (7) the proposed changes will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs. The basis for this determination for the amendment request is shown below.

The NRC staff has reviewed the certificate amendment application and concluded that it provides reasonable assurance of adequate safety, safeguards, and security, and compliance with NRC requirements. Therefore, the Director, Office of Nuclear Material Safety and Safeguards, is prepared to issue an amendment to the Certificate of Compliance for the Paducah Gaseous Diffusion Plant. The staff has prepared a Compliance Evaluation Report which provides details of the staff's evaluation.

The NRC staff has determined that this amendment satisfies the criteria for a categorical exclusion in accordance with 10 CFR 51.22(c)(19). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need to be prepared for this amendment.

USEC or any person whose interest may be affected may file a petition, not exceeding 30 pages, requesting review of the Director's Decision. The petition must be filed with the Commission not later than 15 days after publication of this **Federal Register** Notice. A petition for review of the Director's Decision shall set forth with particularity the interest of the petitioner and how that interest may be affected by the results of the decision. The petition should specifically explain the reasons why review of the Decision should be permitted with particular reference to the following factors: (1) the interest of the petitioner; (2) how that interest may be affected by the Decision, including the reasons why the petitioner should be permitted a review of the Decision; and (3) the petitioner's areas of concern about the activity that is the subject matter of the Decision. Any person described in this paragraph (USEC or any person who filed a petition) may file a response to any petition for review, not to exceed 30 pages, within 10 days after filing of the petition. If no petition is received within the designated 15-day period, the Director will issue the final amendment to the Certificate of Compliance without further delay. If a petition for review is received, the decision on the amendment application will become final in 60 days, unless the Commission grants the petition for review or otherwise acts within 60 days after

publication of this **Federal Register** Notice.

A petition for review must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, by the above date.

For further details with respect to the action see (1) the application for amendment and (2) the Commission's Compliance Evaluation Report. These items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the Local Public Document Room.

*Date of amendment request:* March 1, 1999.

Brief description of amendment: The amendment proposes to revise the Technical Safety Requirements (TSRs) related to the audibility requirements for the criticality accident alarm system (CAAS) at PGDP. It is related to the CAAS audibility upgrade modifications. The revision is necessary to ensure adequate TSR coverage during the modification and system changeover. This amendment also revises related sections in the Safety Analysis Report (SAR).

Basis for finding of no significance:

1. The proposed amendment will not result in a change in the types or significant increase in the amounts of any effluents that may be released offsite.

The proposed change to the TSRs improves the performance and reliability of the CAAS at PGDP, and it does not involve any process which would change or increase the amounts of any effluents that may be released offsite. Therefore, the proposed change will not result in an increase in the amounts of effluents that may be released offsite or result in any impact to the environment.

2. The proposed amendment will not result in a significant increase in individual or cumulative occupational radiation exposure.

The CAAS system does not prevent criticality, thus the possibility of a criticality occurring is not increased. The proposed change to the TSRs improves the performance and reliability of the CAAS which minimizes the consequences of a criticality accident. Therefore, the proposed change does not increase individual or cumulative occupational radiation exposure.

3. The proposed amendment will not result in a significant construction impact.

The proposed change to the TSRs reflects modifications associated with the CAAS upgrade, which has been planned as a part of Compliance Plan Issues 46 and 50. The proposed change does not change the scope or expand the planned construction. Therefore, it does not result in a significant construction impact.

4. The proposed amendment will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

The proposed change to the TSRs improves the performance and reliability of the CAAS which minimizes the consequences of a criticality accident. The CAAS does not change any previously analyzed accidents and does not affect the possibility of occurrence of a criticality accident. Therefore, the proposed change does not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

5. The proposed amendment will not result in the possibility of a new or different kind of accident.

The CAAS is an alarm system to warn people of criticality events. It does not initiate or contribute to an accident, and it is intended to mitigate the consequences of a criticality accident. The proposed change to the TSRs improves the performance and reliability of the CAAS. Therefore, this change will not result in the possibility of a new or different type of accident.

6. The proposed amendment will not result in a significant reduction in any margin of safety.

The proposed change to the TSRs improves the performance and reliability of the CAAS which minimizes the consequences of a criticality accident. Therefore, the proposed change does not represent a reduction in any margin of safety.

7. The proposed amendment will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs.

The proposed change to the TSRs improves the performance and reliability of the CAAS which minimizes the consequences of a criticality accident. Therefore, the overall effectiveness of the safety, safeguards, and security programs is not decreased.

*Effective date:* The amendment to Certificate of Compliance GDP–1 will become effective no later than 30 days after being signed by the Director, Office of Nuclear Material Safety and Safeguards.

Certificate of Compliance No. GDP–1: This amendment will revise the TSRs related to the audibility requirements for the criticality accident alarm system at PGDP and related sections in the SAR.

*Local Public Document Room location:* Paducah Public Library, 555 Washington Street, Paducah, Kentucky 42003.

Dated at Rockville, Maryland, this 28th day of July 1999.

For the Nuclear Regulatory Commission.

**Carl J. Paperiello,**

*Director, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 99–20125 Filed 8–4–99; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–89 and 50–163]**

## General Atomics TRIGA Mark I and Mark F Research Reactors; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a license amendment to Amended Facility License No. R–38 and Facility License No. R–67, issued to General Atomics (GA or the licensee), for decommissioning of the GA TRIGA Mark I and TRIGA Mark F Research Reactors, located at General Atomics in San Diego, San Diego county, California.

### Environmental Assessment

*Identification of Proposed Action*

The proposed action would approve the licensee's decommissioning plan. GA submitted their decommissioning plan in accordance with 10 CFR 50.82(b) for the GA TRIGA Mark I and TRIGA Mark F Research Reactors which occupy parts of the TRIGA Reactor Facility within GA's Torrey Mesa site. The TRIGA Mark I license was amended on October 29, 1997, and the TRIGA Mark F license was amended on March 22, 1995, to remove authority to operate the reactors. Fuel from both reactors have been placed in the TRIGA Mark F fuel storage canal which is in the same pool as the TRIGA Mark F reactor. The proposed decommissioning plan would authorize immediate dismantlement of the TRIGA Mark I Research Reactor. To protect the stored fuel from potential damage due to decommissioning activities, only limited dismantlement of the TRIGA Mark F Research Reactor

will occur with fuel in the TRIGA Mark F fuel storage canal. This would be followed by a period of fuel storage. After fuel is removed from the TRIGA Mark F fuel storage canal, dismantling will be completed on the TRIGA Mark F Research Reactor. The soonest that the Department of Energy can accept fuel from GA is 2003. Domestic spent nuclear fuel receipts at the Idaho National Engineering and Environmental Laboratory have been severely constrained because of a settlement agreement of a lawsuit concerning spent nuclear fuel and nuclear waste. The site will be decontaminated to meet unrestricted release criteria. After the Commission verifies that the release criteria have been met, the reactor license will be terminated.

The licensee will continue with their health physics program, and approved emergency and security plan during the decommissioning and their operator requalification plan until fuel is removed from the facility.

A ''Notice of Application for Decommissioning Amendment'' was published in the **Federal Register** on December 11, 1997 (62 FR 65288), in accordance with the requirements of 10 CFR 50.82(b)(5).

The proposed action is in accordance with the licensee's application for amendment dated April 18, 1997, as supplemented on November 20, 1998, and January 28 and 29, February 3, April 22, May 3 and 12, and June 15, 16, and 22, 1999.

*The Need for the Proposed Action*

The proposed action is needed because of GA's decision to cease reactor operations permanently at the Torrey Mesa site. As specified in 10 CFR 50.82, any licensee may apply to the NRC for authority to surrender a license voluntarily and to decommission the affected facility. Once the licensee permanently ceases operation, 10 CFR 50.82(b)(1) requires the licensee to make application for license termination within two years following permanent cessation of operations, and in no case later than one year prior to expiration of the operating license. GA is planning to use the area that would be released for unrestricted use for other purposes.

*Environmental Impact of the Proposed Action*

The Commission has completed its evaluation of the proposed action and concludes that the radiological effects of decommissioning the TRIGA Mark I and Mark F Research Reactors will be minimal. The licensee will continue with their health physics program, and approved emergency and security plans. Until fuel is removed from the site, the licensee will also continue to meet the requirements of their operator requalification plan.

All proposed operations in connection with decommissioning and decontaminating of the GA reactors will be carefully planned and controlled, all contaminated components will be removed, packaged, and shipped offsite in accordance with the regulations, and radiological control procedures will be in place and implemented to ensure that releases of radioactive wastes from the facility are within the limits of 10 CFR Part 20 and are as low as reasonably achievable (ALARA).

All decontamination will be performed by trained personnel in accordance with previously reviewed procedures and will be overseen by experienced health physics staff. No new postulated accidents have been identified during decommissioning activities or storage of the reactor fuel that would have greater radiological impact than previously evaluated accidents. The GA staff has calculated that the total dose to workers for the decommissioning project will be about 20 person-rem over the period 1999 to 2004 (assuming fuel is removed from the facility in 2003). The GA staff estimates that the dose to members of the public from decommissioning activities will be negligible. These doses are consistent with those given in NUREG–0586, ''Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities,'' for the reference research reactor.

While on site, fuel will be stored in approved storage locations under the restrictions of the facility license. The license will continue to maintain systems necessary for safe storage of the fuel.

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 action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. Hazardous materials such as lead and asbestos will be handled and disposed of in accordance with all applicable regulations and, therefore, will not result in any significant release of non-radiological plant effluents and has no other 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*

The alternatives to the proposed action for the GA TRIGA research reactors are SAFSTOR, ENTOMB and no action. ENTOMB is the alternative in which radioactive contaminates are encased in a structurally long-lived material, such as concrete, the entombed structure is appropriately maintained and continued surveillance is carried out until the radioactivity decays to a level permitting release of the property for unrestricted use. SAFSTOR is the alternative in which the facility is placed and maintained in a condition that allows the facility to be safely stored and subsequently decontaminated to levels that permit release for unrestricted use.

The ENTOMB alterative could not be put into place until the fuel was removed from the facility and would require the facility to remain on site for an extended period of time. Likewise, the SAFSTOR alternative would require continued surveillance for an extended period of time. However, GA wants to use the space that will become available for other purposes and wants to enter into the decommissioning activities as soon as possible. The alternative of not decommissioning reactors was rejected in NUREG–0586. The no action alternative would leave the facility in its present configuration. Denial of the application would result in no significant change in current environmental impacts.

The environmental impacts of the proposed action and the alternative actions are similar.

*Alternative Use of Resources*

The action does not involve the use of resources different from previously committed for construction and operation of the GA TRIGA reactors.

*Agencies and Persons Consulted*

In accordance with its stated policy, on July 20, 1999, the staff consulted with the State of California official, R. Lupo of the Radiologic Health Branch of the California Department of Health Services 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 this proposed action, see the licensee's letter dated April 18, 1997, as supplemented by letter dated November 20, 1998, and January 28 and 29, February 3, April 22, May 3 and 12, and June 15, 16, and 22, 1999. These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, D.C. 20003–1527.

Dated at Rockville, Maryland, this 29th day of July 1999.

For the Nuclear Regulatory Commission.

**Ledyard B. Marsh,**

*Chief, Events Assessment, Generic Communications and Non-Power Reactors Branch, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.*

[FR Doc. 99–20124 Filed 8–4–99; 8:45 am]

**BILLING CODE 7590–01–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Proposed Collection; Comment Request for Review of a Revised Information Collection: SF 2803 and SF 3108

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of a revised information collection. SF 2803, Application to Make Deposit or Redeposit (CSRS), and SF 3108, Application to Make Service Credit Payment for Civilian Service (FERS), are applications to make payment used by persons who are eligible to pay for Federal service which was not subject to retirement deductions and/or for Federal service which was subject to retirement deductions which were subsequently refunded to the applicant.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

In addition to the current Federal employees who will use these forms, we expect to receive approximately 75 filings of each form from former Federal employees per year. Each form takes approximately 30 minutes to complete. The annual burden is 75 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov.

**DATES:** Comments on this proposal should be received on or before October 4, 1999.

**ADDRESSES:** Send or deliver comments to—Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415.

**FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT:** Phyllis R. Pinkney, Management Analyst, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

**Janice R. Lachance,**

*Director.*

[FR Doc. 99–19981 Filed 8–4–99; 8:45 am]

**BILLING CODE 6325–01–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Proposed Collection; Comment Request for Reclearance of Information Collection: RI 38–107

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for reclearance of the following information collection. RI 38–107, Verification of Who is Getting Payments, is used to verify that the entitled person is indeed receiving the monies payable. Failure to collect this information would cause OPM to pay monies absent the assurance of a correct payee.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

We estimate 25,400 RI 38–107 forms are completed annually. Each form takes approximately 10 minutes to complete. The annual estimated burden is 4,234 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov.

**DATES:** Comments on this proposal should be received on or before October 4, 1999.

**ADDRESSES:** Send or deliver comments to—Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415.

**FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT:** Phyllis R. Pinkney, Management Analyst, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

**Janice R. Lachance,**

*Director.*

[FR Doc. 99–19982 Filed 8–4–99; 8:45 am]

**BILLING CODE 6325–01–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Proposed Collection; Comment Request for Review of a Revised Information Collection: RI 30–9

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of a revised information collection. RI 30–9, Reinstatement of Disability Annuity Previously Terminated Because of Restoration to Earning Capacity, informs former disability annuitants of their right to request restoration under title 5, U.S.C., Section 8337. It also specifies the conditions to be met and the documentation required for a person to request reinstatement.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 200 forms are completed annually. The form takes approximately 60 minutes to respond, including a medical examination. The annual estimated burden is 200 hours. Burden may vary depending on the time required for a medical examination.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov

**DATES:** Comments on this proposal should be received on or before October 4, 1999.

**ADDRESSES:** Send or deliver comments to—Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415.

**FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT:** Phyllis R. Pinkney, Management Analyst Budget & Administrative Services Division (202) 606–0623.

Office of Personnel Management.

**Janice R. Lachance,**

*Director.*

[FR Doc. 99–19983 Filed 8–4–99; 8:45 am]

**BILLING CODE 6325–01–P**

## POSTAL SERVICE

### Privacy Act of 1974; Computer Matching Program

**AGENCY:** Postal Service.

**ACTION:** Notice of computer matching program.

**SUMMARY:** Subsection (e)(12) of the Privacy Act of 1974, as amended (5 U.S.C. 552a), requires agencies to publish advance notice of any proposed or revised computer matching program for comment. The United States Postal Service (USPS) is issuing notice of its intent to conduct a computer matching program with the state of Texas Department of Human Services (TDHS). The matching program will identify Postal Service employees receiving benefits to which they are not entitled under the Temporary Assistance to Needy Families (TANF), the Food Stamp program, and Medicaid program administered by the state of Texas.

**DATES:** Comments must be received no later than September 7, 1999. Unless comments are received that result in a contrary determination, the matching program covered by this notice will begin as stated in the paragraph ''Dates of the Matching Program'' in the ''Supplementary Information'' section of this notice.

**ADDRESSES:** Comments may be mailed to the FOIA/PA Officer, United States Postal Service, 475 L'Enfant Plaza SW, Room 8141, Washington, DC 20260–5202, or delivered to Room 8141 at the above address between 8 a.m. and 4:30 p.m., Monday through Friday. Comments received may also be inspected during the above hours in Room 8141.

**FOR FURTHER INFORMATION CONTACT:** Alberta McKay, (202) 268–4048.

**SUPPLEMENTARY INFORMATION:** Pursuant to subsection (o) of the Privacy Act of 1974, as amended (5 U.S.C. 552a), the USPS and TDHS will enter into an agreement to conduct a computer matching program, as described below, in accordance with paragraph 4d of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (61 FR 6427).

a. *Participating Agencies:* USPS (recipient agency) and TDHS.

b. *Purpose of the Matching Program:* To identify Postal Service employees who are receiving benefits to which they are not entitled under public assistance programs (TANF, Food Stamp, and Medicaid) administered by the state of Texas; to recoup monies for improperly received benefits; to adjust or terminate benefits as appropriate; and to take appropriate action against those persons fraudulently receiving benefits.

c. *Legal Authorities Authorizing Operation of the Match:* 39 U.S.C. 404 (Postal Reorganization Act).

d. *Categories of Individuals Matched and Identification of Records Used:* Postal Service employee data records within Privacy Act system USPS 050.020 identified as Finance Records-Payroll System (57 FR 57515) and state of Texas' file of recipients of benefits under TANF, Food Stamp, and Medicaid programs administered by the TDHS.

e. *Dates of the Matching Program:* This matching program is expected to begin in September 1999 and to continue in effect for 18 months unless terminated earlier by either party. Matching activity under this program will begin no sooner than 40 days after the last of the following to occur: (1) Publication of this notice; (2) transmittal of this matching agreement to Congress; or (3) report of the matching program to OMB and to Congress.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 99–20187 Filed 8–4–99; 8:45 am]

**BILLING CODE 7710–12–P**

## RAILROAD RETIREMENT BOARD

### Proposed Data Collection Available for Public Comment and Recommendations

**SUMMARY:** In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

**Comments are Invited on**

(a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

**Title and Purpose of Information Collection**

Evidence of Marital Relationship, Living with Requirements; OMB 3220–0021.

To support an application for a spouse or widow(er)'s annuity under Sections 2(c) or 2(d) of the Railroad Retirement Act, an applicant must submit proof of a valid marriage to a railroad employee. In some cases, the existence of a marital relationship is not formalized by a civil or religious ceremony. In other cases, questions may arise about the legal termination of a prior marriage of an employee, spouse, or widow(er). In these instances, the RRB must secure additional information to resolve questionable marital relationships. The circumstances requiring an applicant to submit documentary evidence of marriage are prescribed in 20 CFR 219.30.

In the absence of documentary evidence to support the existence of a valid marriage between a spouse or widow(er) annuity applicant and a railroad employee, the RRB needs to obtain information to determine if a valid marriage existed. The RRB utilizes Forms G–124, Statement of Marital Relationship; G–124a, Statement Regarding Marriage; G–237, Statement Regarding Marital Status; G–238, Statement of Residence; and G–238a, Statement Regarding Divorce or Annulment to secure the needed information. One response is requested of each respondent. Completion is required to obtain benefits. The RRB proposes minor non-burden impacting cosmetic, editorial and formatting changes to all of the forms in the collection.

**Estimate of Annual Respondent Burden**

The estimated annual respondent burden is as follows:

| Form Nos. | Annual re-sponses | Time (min) | Burden (hrs) |
|---|---|---|---|
| G–124 (In per-son) | 125 | 15 | 31 |
| G–124 (By mail) | 75 | 20 | 25 |
| G–124a | 300 | 10 | 50 |
| G–237 (In per-son) | 75 | 15 | 19 |
| G–237 (By mail) | 75 | 20 | 25 |
| G–238 (In per-son) | 150 | 3 | 8 |
| G–238 (By mail) | 150 | 5 | 13 |
| G–238a | 150 | 10 | 25 |
| Total | 1,100 | | 196 |

**FOR FURTHER INFORMATION CONTACT:** To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

**Chuck Mierzwa,**

*Clearance Officer.*

[FR Doc. 99–20097 Filed 8–4–99; 8:45 am]

**BILLING CODE 7905–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–41668; File No. 4–208]**

## Intermarket Trading System; Order Approving Fourteenth Amendment to the Restated ITS Plan Linking the Pacific Exchange's Application of the OptiMark System to the Intermarket Trading System

July 29, 1999.

### I. Introduction and Summary

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'')[1] and Rule aaAa3–2 thereunder,[2] on March 29, 1999, the Intermarket Trading System (''ITS'') submitted to the Securities and Exchange Commission (''Commission'') an amendment (''Fourteenth Amendment'') to the Restated ITS Plan (''Plan'')[3] ITS is a communications and order routing network linking eight national securities exchanges and the electronic over-the-counter market operated by the NASD. ITS was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets. The purpose of the Fourteenth Amendment is to link the PCX Application of the OptiMark system (''PCX Application'') to ITS.

On April 12, 1999, the proposed plan amendment was published for comment and made summarily effective on a temporary basis.[4] No comments were received on the proposal. For the reasons discussed below, the Commission is approving the proposal on a permanent basis.

### II. Background to the Amendment

On January 26, 1999, the Commission granted the ITS participants a temporary exemption from the ITS Plan provision requiring a Plan amendment to reflect the PCX Application's interface with ITS.[5] The Commission granted this exemption to the participants, in part, because the PCX Application was scheduled to begin operating on January 29, and there was insufficient time to obtain authorization from each of the authorizing bodied of the participants before the date.[6] The PCX Application began operating pursuant to the temporary exemption on January 29, 1999. The exemption expired on April 2, 1999, but was extended until publication of the notice.[7] The Commission made the proposed amendment summarily effective on a temporary basis not to extend beyond August 10, 1999.[8]

### III. Description

The purpose of the Fourteenth Amendment is to link the PCX Application to ITS.[9] The PCX Application is a facility of the PCX that receives orders generated by the OptiMark System—an electronic matching system that, on a periodic ''call'' basis, processes certain qualifying expressions of trading interest (called ''profiles''). Profiles may include those created from the published quotations disseminated by the other participants in ITS at the commencement of the

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[1] 15 U.S.C. 78k–1.

[2] 17 CFR 240.11Aa3–2.

[3] The ITS Plan is a National Market System plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder. *See* Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938 (February 3, 1999).

Participants to the Plan include the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the Chicago Stock Exchange, Inc., the Cincinnati Stock Exchange, Inc., the National Association of Securities Dealers, Inc. (''NASD''), the New York Stock Exchange, Inc., the Pacific Exchange, Inc. (''PCX''), and the Philadelphia Stock Exchange, Inc.

[4] *See* Exchange Act Release No. 41246 (April 2, 1999), 64 FR 17700 (April 12, 1999).

[5] The Commission has authority under Exchange Act Rule 11Aa3–2(f) to exempt participants in a national market system plan from the requirements of that plan. Exchange Act Rule 11Aa3–2(f) provides:

The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system.

The Division of Market Regulation has delegated authority to grant an exemption in this instance pursuant to 17 CFR 200.30–3(a)(29). *See* Letter from Richard R. Lindsey, Director, Division of Market Regulation, Commission, to Allan A. Bretzer, Committee Chairman, ITS Operating Committee (''ITSOC''), dated January 27, 1999.

[6] In general, to amend the ITS Plan, the ITS participants vote on a particular amendment and, assuming unanimous approval, each participant goes back to its respective authorizing body, such as its Board of Directors or executive Committee. Following ratification by each of the participants' authorizing bodies, the ITSOC submits a proposed amendment to the Commission, which publishes it for comment. An amendment to the ITS Plan is generally not effective until approved by the Commission. On January 21, 1999, the ITSOC unanimously voted to recommend to the participants' authorizing bodies an amendment to the Plan that would allow the PCX Application to link with ITS.

[7] *See* Letter from Belinda Blaine, Associate Director, Division of Market Regulation, Commission, to Allan A. Bretzer, Chairman, ITSOC, dated April 1, 1999.

[8] Pursuant to Exchange Act Rule 11Aa3–2(c)(4), the Commission may summarily put into effect on a temporary basis a Plan amendment.

[9] The Fourteenth Amendment is identical to the amendment approved by the ITSOC on January 21, 1999.

OptiMark System call reflecting the best bid and offer prices and associated sizes (''CQS profiles'').[10] The orders received by the PCX Application are processed by the PCX to permit: (a) in the case of those orders reflecting a match between non-CQS profiles, appropriate execution on the PCX and reporting thereafter in accordance with the applicable PCX rules; and (b) in the case of those orders reflecting a match between an non-CQS profile and a CQS profile: (i) processing pursuant to Section 6(a)(ii)(A), or (ii) transmission to ITS pursuant to Section 6(a)(ii)(B) of the ITS Plan,[11] whichever is applicable.

The Fourteenth Amendment adds subsections (33(A)) and (33(B)) to Section 1 of the ITS Plan to define and include the terms ''PCX Application'' and ''PCX application Module.'' The proposal also amends existing definitions set forth in subsections (11), (23), (34(A)) and (34(B)) to recognize the use of the PCX Application and the PCX Application Module.

The proposed amendment adds to Section 6(a)(ii) a description of the operation of the PCX Application and how PCX accesses other participants' markets through ITS. The amendment also authorizes PCX to computer-generate ITS commitments.

In addition, the proposed amendment adds Section 8(h), which sets forth the parameters of the PCX Application's automated linkage to ITS. This section establishes the ''PCX Application Formula'' (''Formula''), which sets a ceiling on the volume of trade-at commitments[12] generated by the PCX Application, relative to the total volume of transactions resulting from the PCX Application. Specifically, the Formula has as it numerator the number of shares computer-generated by the PCX Application as ITS trade-at commitments that are executed in other ITS participant markets, and as its denominator the same shares as in the numerator plus all shares executed on the PCX received from the PCX Application and reported to the Consolidated Tape Association. The Formula results in the PCX Application Percentage. Section (h) provides that PCX may computer-generate trade-at commitments if the PCX Application Percentage does not exceed the agreed upon ceiling as calculated over rolling calendar quarters, as defined in the Plan.[13] The ceiling starts at 15% and will be reduced to 10% when the NYSE and PCX jointly request that the percentage be reduced. Section (h) provides that if the PCX Application Percentage exceeds the ceiling, then PCX must cease computer-generating trade-at commitments for a three-month period. During the first 24 calendar months following implementation of the PCX Application, however, the PCX retains the right to notify the ITSOC in writing, as specified in the new Section (h)(iv), that it will implement system adjustments to the PCX Application in an effort to ensure furture compliance with the PCX Application ceiling. In the event of such notification, the PCX has, at a minimum, nine calendar months from the date of such notice (or such longer period as may be approved by all members of the ITSOC upon a showing of reasonable cause), to implement its proposed system adjustments. During this nine month period, the restrictions do not apply. Notwithstanding other provisions, if, for any rolling calendar quarter, the PCX Application Percentage exceeds 30%, the PCX must cease computer-generating trade-at commitments for three calendar months beginning the first business day of the second month following the end of such rolling calendar quarter.

Finally, Section 8(h)(vi) provides that the PCX will furnish the ITSOC with a report each month showing the number of shares for each component of the PCX Application Formula, as well as the number of executed shares resulting from ''trade-through'' commitments.[14]

## IV. Discussion

The Commission finds that the proposed Fourteenth Amendment is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national market system plan, and, in particular, with the requirements of Section 11A.[15] The Commission believes the proposal is consistent with the requirements of Sections 11A(a)(1)(C)(i), (ii) and (iv), and (D),[16] which provide for the economically efficient execution of securities transactions and fair competition among the ITS participants and their markets. These sections also promote means to ensure that brokers execute investors' orders in the best market, and all markets for qualified securities are linked through communications and data processing facilities that foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, and contribute to the best execution of such orders. The Commission also finds that the amendment is consistent with Rule 11Aa3–2(c)(2),[17] which requires the Commission to determine that the amendment is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

The Commission notes that the PCX Application has been linked to ITS since January 29, 1999, under the same terms now being approved.[18] The Commission further notes that the amendment now being approved was agreed to by the ITS participants after extensive discussions.[19] Furthermore, no comments were received on the proposed amendment.

Overall, the Commission believes that linking the PCX Application to ITS has provided, and potentially will continue to provide, a new and more efficient way to match and execute trading interest. Absent this linkage, the PCX would not be able to operate the PCX Application without major changes that would cripple the PCX Application, thereby reducing market innovation and competition.

The ITS Plan states that ITS is not meant to be used to route routinely all or a substantial portion of a market's orders to another market. The Commission agrees that automated order routing of a substantial share of a

[10] For further discussion of the PCX Application, *see* Exchange Act Release No. 39086 (September 17, 1997), 62 FR 50036 (September 24, 1997) (order approving the PCX Application).

[11] Section 6 of the ITS Plan describes various interfaces between ITS and the participants.

[12] ''Trade-at'' commitments are those commitments sent from the PCX Application when there is no match of non-CQS profiles, or a partial execution of a non-CQS profile, with the balance filled by another participant market.

[13] ''Rolling Calendar Quarter'' means any three consecutive calendar months, with the first Rolling Calendar Quarter ending on the last business day of the first three full calendar months following the month in which the PCX Application commences operation, *i.e.*, April 30, 1999.

[14] A trade-through occurs when a transaction is effected at a price below the best prevailing bid, or above the best prevailing offer. The ITS Plan requires price continuity among the various markets by ensuring that the best national bids and offers are provided opportunities to trade with other markets effecting trades outside the best national quote.

[15] 15 U.S.C. 78k–1.

[16] 15 U.S.C. 78k–1(a)(1)(C)(i), (ii) and (iv) and (D).

[17] 17 CFR 240.11Aa3–2(c)(2).

[18] The Commission notes that the PCX and NYSE reached an agreement whereby, on or about June 1, 1999, the PCX Application began sending its trade-at volume to the NYSE through SuperDot, rather than through ITS. *See* Letter from John C. Katovich, Senior Vice President and General Counsel, OptiMark Technologies, Inc., to Allan A. Bretzer, Chairman, ITSOC, dated May 28, 1999.

[19] The participants agreed upon these amendments after the Commission published a proposal to amend the ITS Plan. *See* Exchange Act Release No. 40204 (July 15, 1998), 63 FR 39306 (July 22, 1998). The Commission received 30 comment letters on the Proposing Release, generally favoring linking the PCX Application to ITS.

market's orders to ITS would violate the Plan and would be inconsistent with the Plan's intention.

The adoption of a formula is reasonable in this instance to address the participants' concerns. The Fourteenth Amendment should prevent the PCX Application from being used as an automated order delivery device to obtain cost-free, non-member access to other market centers, while at the same time giving OptiMark an opportunity to offer an innovative new service to investors.

## V. Conclusion

*It Is Therefore Ordered*, pursuant to Section 11A(a)(3)(B) of the Act,[20] that the amendment be approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99–20176 Filed 8–4–99; 8:45 am]

**BILLING CODE 8010–01–M**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–41658; File No. SR–CBOE–97–67]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 to Proposed Rule Change Revising the Exchange's Margin Rules

July 27, 1999.

## I. Introduction

On December 29, 1997, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to revise and restructure the Exchange's margin requirements for stock options, stock index options, and other securities, as currently set forth in CBOE Rule 12.3, ''Margin Requirements.'' The proposed rule change was published for comment in the **Federal Register** on May 4, 1998.[3] The Commission received 4 comment letters with respect to the proposal.[4]

The Exchange submitted Amendment No. 1 to the proposal on January 7, 1999,[5] and Amendment No. 2 on May 26, 1999.[6] This order approves the proposed rule change and accelerates approval of Amendment Nos. 1 and 2.

## II. Description of the Proposal

### *A. Background*

Until several years ago, the margin requirements governing listed options were set forth in Regulation T, ''Credit by Brokers and Dealers.'' [7] However, Federal Reserve Board amendments to Regulation T that became effective June 1, 1997, modified or deleted certain margin requirements regarding options transactions in favor of rules to be adopted by the options exchanges, subject to approval by the Commission.[8] In a CBOE rule filing approved by the Commission in 1997, the Exchange adopted certain options-related margin requirements that were dropped from Regulation T by the Federal Reserve Board.[9]

At the present time, the Exchange seeks to further revise its margin rules to implement enhancements long desired by Exchange members and member firms, public investors, and the Exchange staff. The Exchange believes that certain multiple options position strategies and other strategies that combine stock with option positions warrant more equitable margin requirements. The Exchange further believes that the offset in risk that results if the stock and options position are viewed collectively is not reflected in the current maintenance margin requirements. In addition, the Exchange believes it is appropriate for member firms to extend credit on certain types of long term options.

In sum, the proposed revisions to the Exchange's margin rules would: (i) Permit the extension of credit on certain long term options and certain long box spread; (ii) recognize butterfly and box spreads as strategies for purposes of margin treatment and establish appropriate margin requirements; (iii) recognize various strategies involving stocks (or other underlying instruments) paired with long options, and provide for lower maintenance margin requirements on such hedged stock positions; (iv) expand the types of short positions that would be considered ''covered'' in a cash account, specifically, certain short positions that are components of limited-risk spread strategies (*e.g.*, butterfly and box spreads); (v) allow a bank-issued escrow agreement to serve as cover in lieu of cash for certain spread positions held in a cash account; (vi) consolidate in one chapter, the various margin requirements that presently are dispersed throughout the Exchange's rules; and (vii) revise and update, as necessary, other Exchange rules impacted by the proposal.

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[20] 15 U.S.C. 78k–1(a)(3)(B).

[21] 17 CFR 200.30–3(a)(29).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 39925 (April 27, 1998), 63 FR 24580.

[4] *See* Letter from Robert C. Sheehan, President, Robert C. Sheehan and Associates, to Jonathan Katz, Secretary, Commission, dated March 26, 1999 (''Sheehan Letter''); Letter from Alvin Wilkinson to Jonathan Katz, Secretary, Commission, dated March 25, 1999 (''Wilkinson Letter''); Letter from William C. Floersch, President and CEO, O'Connor & Company, to Jonathan G. Katz, Secretary, Commission, dated April 5, 1999 (''O'Connor Letter''); and Letter from Lon Gorman, Executive Vice President, Charles Schwab & Co., to Jonathan G. Katz, Secretary, Commission, dated April 13, 1999 (''Schwab Letter'').

[5] With respect to options that are not proposed to be marginable, Amendment No. 1 specifies that margin must be deposited and maintained equal to at least 100% of the current market value, rather than 100% of the purchase price. Amendment No. 1 also incorporates into the proposed rule text a definition of ''OTC margin bond,'' which has been eliminated from Regulation T by the Board of Governors of the Federal Reserve System as of April 1, 1998. Finally, Amendment No. 1 deletes from the proposal the provision that would have allowed the use of unit investment trusts (''UITs'') or open-end mutual funds (''mutual funds'') as offsets, or cover, for short index option positions held in customer margin or cash accounts, provided that the UIT or mutual fund replicated the index underlying the option, and the Exchange had specifically approved such UIT or mutual fund. As a replacement, the Exchange proposes to allow customers to use underlying open-end index mutual funds of sufficient aggregate market value as cover for short S&P 500 call options held in customer margin or cash accounts, provided the mutual funds have been specifically designated by the Exchange. *See* Letter from Mary L. Bender, Senior Vice President, Division of Regulatory Services, Exchange, to Michael A. Walinskas, Associate Director, Division of Market Regulation (''Division''), Commission, dated December 23, 1998 (''Amendment No. 1'').

[6] Amendment No. 2 revises the proposal by limiting loan value to long term stock options, stock index options, and stock index warrants. The Exchange had originally proposed to allow loan value on any long term option, regardless of the underlying instrument (*e.g.*, foreign currency options and options on interest rate composites would be marginable). Amendment No. 2 also corrects an error in the Exchange's purpose statement regarding the net credit received for selling a box spread. *See* Letter from Mary L. Bender, Senior Vice President, Division of Regulatory Services, Exchange, to Michael A. Walinskas, Associate Director, Division, Commission, dated May 14, 1999 (''Amendment No. 2'').

[7] 12 CFR 220 *et seq.* The Board of Governors of the Federal Reserve System (''Federal Reserve Board'') issued Regulation T pursuant to the Act.

[8] *See* Board of Governors of the Federal Reserve System Docket No. R–0772 (Apr. 24, 1996), 61 FR 20386 (May 6, 1996) (permitting the adoption of margin requirements ''deemed appropriate by the exchange that trades the option, subject to the approval of the Securities and Exchange Commission'').

[9] *See* Securities Exchange Act Release No. 38709 (June 2, 1997), 62 FR 31643 (June 10, 1997).

*B. Definitions*

Presently, the Exchange's definition of ''current market value'' is equivalent to the definition found in Regulation T.[10] Instead of repeating the Regulation T definition, the proposal would revise the definition found in the Exchange's rules to note that the meaning of the term ''current market value'' is as defined in Regulation T.

The Exchange also seeks to establish definitions for ''butterfly spread'' [11] and ''box spread'' [12] options strategies. The definitions are important elements of the Exchange's proposal to recognize and specify cash and margin account requirements for butterfly and box spread. The definitions will specify what multiple option positions, if held together, qualify for classification as butterfly or box spreads, and consequently are eligible for the proposed cash and margin treatment.

The proposal also would define the term ''OTC martin bond.'' [13] The definition is necessary because the Exchange's margin rules currently cross-reference the Regulation T definition of ''OTC margin bond,'' which was eliminated by the Federal Reserve Board as of April 1, 1998.[14]

Finally, the proposal would define the term ''listed,'' [15] Because ''listed'' is frequently used in the Exchange's margin rules, the Exchange believes it would be more efficient to define the term once rather than specifying the meaning each time the term is utilized.

*C. Extensions of Credit on Long Term Options and Warrants*

The proposal would allow extensions of credit on certain listed, long options (*i.e.,* listed put or call options on a stock or stock index) and warrant products (*i.e.,* listed stock index warrants, but not traditional stock warrants issued by a corporation on its own stock.[16] Only those options or warrants that are more than 9 months from expiration (''long term'') would be eligible for credit extension.[17] The proposal requires initial and maintenance margin of not less than 75% of the current market value of a long term listed option or warrant. Therefore, an Exchange member firm would be able to loan up to 25% of the current market value of a long term listed option or warrant.[18]

The proposal also would permit the extension of credit on certain long term options and warrants not listed or traded on a registered national securities exchange or a registered securities association (''OTC options and warrants''). Specifically, a member firm could extend credit on an OTC put or call option on a stock or stock index, and an OTC stock index warrant. In addition to being more than 9 months from expiration, a marginable OTC option or warrant must: (i) Be in-the-money; [19] (ii) be guaranteed by the carrying broker-dealer; and (iii) have an American-style exercise provision.[20] The proposal requires initial and maintenance margin of not less than 75% of the long term OTC option's or warrant's in-the-money amount (*i.e.,* intrinsic value), plus 100% of the amount, if any, by which the current market value of the OTC option or warrant exceeds the in-the-money amount.

When the time remaining until expiration for an option or warrant (listed and OTC) on which credit has been extended reaches nine months, the maintenance margin requirement would become 100% of the current market value. Thus, options or warrants expiring in less than 9 months would have no loan value under the proposal.

*D. Extensions of Credit on Long Box Spread in European-Style Options*

The proposal would allow the extension of credit on a long box spread comprised entirely of European-style options [21] that are listed or guaranteed by the carrying broker-dealer. A long box spread is a strategy composed of four option positions that is designed to lock in the ability to buy and sell the

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[10] Regulation T defines ''current market value'' of a security to be:

(i) Throughout the day of the purchase or sale of a security, the security's total cost of purchase or the net proceeds of its sale including any commissions charged; or (ii) At any other time, the closing sale price of the security on the preceding business day, as shown by any regularly published reporting or quotation service. If there is no closing sale price, the creditor may use any reasonable estimate of the market value of the security as of the close of business on the preceding business day.

*See* 12 CFR 220.2.

[11] The proposal defines ''butterfly spread'' as:

[A]n aggregation of positions in three series of either put or call options all having the same underlying component or index and time of expiration, and based on the same aggregate current underlying value, where the interval between the exercise price of each series is equal, which positions are structured as either (A) a ''long butterfly spread'' in which two short options in the same series are offset by one long option with a higher exercise price and one long option with a lower exercise price, or (B) a ''short butterfly spread'' in which two long options in the same series offset one short option with a higher exercise price and one short option with a lower exercise price.

[12] The proposal defines ''box spread'' as:

[A]n aggregation of positions in a long call option and short put option with the same exercise price (''buy side'') coupled with a long put option and short call option with the same exercise price (''sell side'') all of which have the same underlying component or index and time of expiration, and are based on the same aggregate current underlying value, and are structured as either: (A) A ''long box spread'' in which the sell side exercise price exceeds the buy side exercise price, or (B) a ''short box spread'' in which the buy side exercise price exceeds the sell side exercise price.

[13] The proposal defines ''OTC margin bond'' as:

(1) Any debt securities not traded on a national securities exchange that meet all of the following requirements (a) at the time of the original issued, a principal amount of not less than $25,000,000 of the issue was outstanding; (b) the issue was registered under Section 5 of the Securities Act of 1933 and the issuer either files periodic reports pursuant to the Act or is an insurance company under Section 12(g)(2)(G) of the Act; or (c) at the time of the extension of credit the creditor has a reasonable basis for believing that the issuer is not in default on interest or principal payments; or (2) any private pass-through securities (not guaranteed by a U.S. Government agency) that meet all of the following requirements: (a) An aggregate principal amount of not less than $25,000,000 was issued pursuant to a registration statement filed with the Commission; and (b) current reports relating to the issue have been filed with the Commission; and (c) at the time of the credit extension, the creditor has a reasonable basis for believing that mortgage interest, principal payments and other distributions are being passed through as required and that the servicing agent is meeting its material obligations under the terms of the offering.

[14] *See* Board of Governors of the Federal Reserve System Docket Nos. R–0905, R–0923, and R–0944 (Jan. 8, 1998), 63 FR 2806 (Jan. 16, 1998).

Under the proposal, the term ''listed'' means ''a security traded on a registered national securities exchange or automated facility of a registered national securities association.

[16] Throughout the remainder of this approval order, the term ''warrant'' means this type of warrant.

[17] In the case of any stock option, stock index option, or stock index warrant, which expires in 9 months or less, initial margin must be deposited and maintained equal to at least 100% of the current market value of the option or warrant.

[18] For example, if an investor purchased an Exchange-listed call option on stock XYZ that expired in January 2001 for approximately $100 (excluding commissions), the investor would be required to deposit and maintain at least $75. The investor could borrow the remaining $25 from its broker. Under the Exchange's current margin rules, the investor would be required to pay the entire $100.

[19] The Exchange stated that it proposes to restrict loan value to long term OTC options and warrants that are in-the-money because ''a liquid secondary market for an over-the-counter option or warrant does not generally exist. Therefore, a current bid or offer price, or last sale price, is not readily available.'' In addition, the Exchange noted that because OTC options are not obligations of the AAA-rated Options Clearing Corporation, their value may vary depending upon the creditworthiness of the issuer. The Exchange concluded that ''loaning on over-the-counter options without intrinsic value posed too much uncertainty to the creditor as to the value of the collateral'' As a result, the only OTC options that would be deemed eligible for credit are in-the-money options, because ''their value can reasonably be expected to be at least equal to their intrinsic value.'' *See* Letter to Michael Walinskas, Associate Director, Division, Commission, from Mary L. Bender, Senior Vice President, Division of Regulatory Services, Exchange, dated May 21, 1998.

[20] Exchange Rule 1.1(vv), ''American-style Option,'' states that an American-style option is an option contract that ''can be exercised on any business day prior to its expiration date and on its expiration date.''

[21] Exchange Rule 1.1(uu), ''European-style Option,'' states that a European-style option is an option contract that ''can be exercised only on its expiration date.''

underlying component or index for a profit, even after netting the cost of establishing the long box spread. The two exercise prices embedded in the strategy determine the buy and the sell price.[22]

For long box spreads made up of European-style options, the proposed margin requirement would equal 50% of the aggregate difference in the two exercise prices (buy and sell), which results in a requirement slightly higher than 50% of the debit typically incurred.[23] The 50% margin requirement is both an initial and maintenance margin requirement. The proposal would afford a long box spread a market value for margin equity purposes of not more than 100% of the aggregate difference in exercise prices.

*E. Cash Account Treatment of Butterfly and Box Spreads, Other Spreads, and Short Options*

The proposal would make butterfly spreads and box spreads in cash-settled, European-style options eligible for the cash account. A butterfly spread is a pairing of two standard spreads, one bullish and one bearish. To qualify for carrying in the cash account, the butterfly spreads and box spreads must meet the specifications contained in the proposed definition section,[24] and must be comprised of options that are listed or guaranteed by the carrying broker-dealer. In addition, the long options must be held in, or purchased for, the account on the same day.

For long butterfly spreads and long box spreads, the proposal would require full payment of the net debit that is incurred when the spread strategy is established.[25]

Short butterfly spreads generate a credit balance when established (*i.e.*, the proceeds from the sale of short option components exceed the cost of purchasing long option components). However, in the worst case scenario where all options are exercised, a debit (loss) greater than the initial credit balance received would accrue to the account. To eliminate the risk to the broker-dealer carrying the short butterfly spread, the proposal would require that an amount equal to the maximum risk be held or deposited in the account in the form of cash or cash equivalents.[26] The maximum risk potential in a short butterfly spread comprised of call options is the aggregate difference between the two lowest exercise prices.[27] With respect to short butterfly spreads comprised of put options, the maximum risk potential is the aggregate difference between the two highest exercise prices. The net credit received from the sale of the short option components could be applied towards the requirement.

Short box spreads also generate a credit balance when established. This credit is nearly equal to the total debit (loss) that, in the case of a short box spread, will accrue to the account if held to expiration. The proposal would require that cash or cash equivalents covering the maximum risk, which is equal to the aggregate difference in the two exercise prices involved, be held or deposited.[28] The net credit received from the sale of the short option components may be applied towards the requirement; if applied, only a small fraction of the total requirement need be held or deposited.[29]

In addition to butterfly spreads and box spreads, the proposal would permit investors to hold in their cash accounts other spreads made up of European-style, cash-settled index options, stock index warrants, or currency index warrants. A short position would be considered covered, and thus eligible for the cash account, if a long position in the same European-style, cash-settled index option, stock index warrant, or currency index warrant was held in, or purchased for, the account on the same day.[30] The long and short positions making up the spread must expire concurrently, and the long position must be paid in full. Lastly, the cash account must contain cash, cash equivalents, or an escrow agreement equal to at least the aggregate exercise price differential.

The proposal also would establish requirements for the following types of options and warrants carried short in the cash account: equity options, index options, capped-style index options, packaged vertical spread options, packaged butterfly spread options, stock index warrants, and currency index warrants. For each of these securities, the proposal specifies certain criteria that must be satisfied for the short position to be deemed a covered position, and thus considered eligible for the cash account. For example, a short put warrant on a market index would be deemed covered if, at the time the put warrant is sold or promptly thereafter, the cash account holds cash, cash equivalents, or an escrow agreement equal to the aggregate exercise price.

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[22] For example, an investor might be long 1 XYZ Jan 50 Call @ 7 and short 1 XYZ Jan 50 Put @ 1 (''buy side''), and short 1 XYZ Jan 60 Call @ 2 and long 1 XYZ Jan 60 Put @ 5½ (''sell side''). As required by the Exchange's proposed definition of ''long box spread'' (*supra* note 12), the sell side exercise price exceeds the buy side exercise price. In this example, the long box spread is a riskless position because the net debit ((2+1)−(7+5½)= net debit of 9½) is less than the exercise price differential (60−50=10). Thus, the investor has locked in a profit of $50 (½× 100).

[23] In the example appearing in the preceding footnote, the margin required (50% × (60 − 50) = 5) would be slightly higher than 50% of the net debit (50% × 9½ = 4¾).

[24] *See supra* notes 11 and 12.

[25] To create a long butterfly spread, which is comprised of call options, an investor may be long 1 XYZ Jan 45 Call @ 6, short 2 XYZ Jan 50 Calls @ 3 each, and long 1 XYZ Jan 55 Call @ 1. The maximum risk for this long butterfly spread is the net debit incurred to establish the strategy ((3+3)−(6+1)= net debit of 1). Under the proposal, therefore, the investor would be required to pay the net debit, or $100 (1 × 100).

[26] An escrow agreement could be used as a substitute for cash or cash equivalents if the agreement satisfies certain criteria. For short butterfly spreads, the escrow agreement must certify that the bank holds for the account of the customer as security for the agreement (1) cash, (2) cash equivalents, or (3) a combination thereof having an aggregate market value at the time the positions are established of not less than the amount of the aggregate difference between the two lowest exercise prices with respect to short butterfly spreads comprised of call options or the aggregate difference between the two highest exercise prices with respect to short butterfly spreads comprised of put options and that the bank will promptly pay the member organization such amount in the event the account is assigned an exercise notice on the call (put) with the lowest (highest) exercise price.

[27] For example, an investor may be short 1 XYZ Jan 45 Call @ 6, long 2 XYZ Jan 50 Calls @ 3 each, and short 1 XYZ Jan 55 Call @ 1. Under the proposal, the maximum risk for this short butterfly spread, which is comprised of call options, is equal to the difference between the two lowest exercise prices (50 − 45=5). If the net credit received from the sale of short option components ((6+1)−(3+3)= net credit of 1) is applied, the investor is required to deposit an additional $400 (4 × 100). Otherwise, the investor would be required to deposit $500 (5 × 100).

[28] As a substitute for cash or cash equivalents, an escrow agreement could be used if it satisfies certain criteria. For short box spreads, the escrow agreement must certify that the bank holds for the account of the customer as security for the agreement (1) cash, (2) cash equivalents, or (3) a combination thereof having an aggregate market value at the time the positions are established of not less than the amount of the aggregate difference between the exercise prices and that the bank will promptly pay the member organization such amount in the event the account is assigned an exercise notice on either short option.

[29] To create a short box spread, an investor may be short 1 XYZ Jan 60 Put @ 5½ and long 1 XYZ Jan 60 Call @ 2 (''buy side''), and short 1 XYZ Jan 50 Call @ 7 and long 1 XYZ Jan 50 Put @ 1 (''sell side''). As required by the Exchange's proposed definition of ''short box spread'' (*supra* note 12), the buy side exercise price exceeds the sell side exercise price. In this example, the maximum risk for the short box spread is equal to the difference between the two exercise prices (60 − 50=10). If the net credit received from the sale of short option components ((5½+7)−(2+1)=net credit of 9½) is applied, the investor is required to deposit an additional $50 (½ × 100). Otherwise, the investor would be required to deposit $1,000 (10 × 100).

[30] Under the proposal, a long warrant may offset a short option contract and a long option contract may offset a short warrant provided they have the same underlying component or index and equivalent aggregate current underlying value.

*F. Margin Account Treatment of Butterfly Spreads and Box Spreads*

The Exchange's margin rules presently do not recognize butterfly spreads for margin purposes. Under the Exchange's current margin rules, the two spreads (bullish and bearish) that make up a butterfly spread each must be margined separately. The Exchange believes that the two spreads should be viewed in combination, and that commensurate with the lower combined risk, investors should receive the benefit of lower margin requirements.

The Exchange's proposal would recognize as a distinct strategy butterfly spreads held in margin accounts, and specify requirements that are the same as the cash account requirements for butterfly spreads.[31] Specifically, in the case of a long butterfly spread, the net debit must be paid in full. For short butterfly spreads comprised of call options, the initial and maintenance margin must equal at least the aggregate difference between the two lowest exercise prices. For short butterfly spreads comprised of put options, the initial and maintenance margin must equal at least the aggregate difference between the two highest exercise prices. The net credit received from the sale of the short option components may be applied towards the margin requirement for short butterfly spreads.

The proposed requirements for box spreads held in a margin account, where all option positions making up the box spread are listed or guaranteed by the carrying broker-dealer, also are the same as those applied to the cash account. With respect to long box spreads, where the component options are not European-style, the proposal would require full payment of the net debit that is incurred when the spread strategy is established.[32] For short box spreads held in the margin account, the proposal would require that cash or cash equivalents covering the maximum risk, which is equal to the aggregate difference in the two exercise prices involved, be deposited and maintained. The net credit received from the sale of the short option components may be applied towards the requirement. Generally, long and short box spreads would not be recognized for margin equity purposes; however, the proposal would allow loan value for one type of long box spread where all component options have a European-style exercise provision and are listed or guaranteed by the carrying broker-dealer.

*G. Maintenance Margin Requirements for Stock Positions Held With Options Positions*

The Exchange proposes to recognize, and establish reduced maintenance margin requirements for, five options strategies designed to limit the risk of a position in the underlying component. The strategies are: (1) Long Put/Long Stock: (2) Long Call/Short Stock; (3) Conversion; (4) Reverse Conversion; and (5) Collar. Although the five strategies are summarized below in terms of a stock position held in conjunction with an overlying option (or options), the proposal is structured to also apply to components that underlie index options and warrants. For example, these same maintenance margin requirements will apply when these strategies are utilized with a stock basket underlying index options or warrants. Proposed Exchange Rule 12.3(c)(5)(C)(3), ''Exceptions,'' would define the five strategies and set forth the respective maintenance margin requirements for the stock component for each strategy.[33]

1. Long Put/Long Stock

The Long Put/Long Stock strategy requires an investor to carry in an account a long position in the component underlying the put option, and a long put option specifying equivalent units of the underlying component. The maintenance margin requirement for the Long Put/Long Stock combination would be the lesser of: (i) 10% of the put option exercise price, plus 100% of any amount by which the put option is out-of-the-money; or (ii) 25% of the current market value of the long stock position.[34]

2. Long Call/Short Stock

The Long Call/Short Stock strategy requires an investor to carry in an account a short position in the component underlying the call option, and a long call option specifying equivalent units of the underlying components. For a Long Call/Short Stock combination, the maintenance margin requirement would be the lesser of: (i) 10% of the call option exercise price, plus 100% of any amount by which the call option is out-of-the-money; or (ii) the maintenance margin requirement on the short stock position as specified in CBOE rule 12.3(b).[35]

3. Conversion

A ''Conversion'' is a long stock position held in conjunction with a long put and a short call. The long put and short call must have the same expiration date and exercise price. The short call is covered by the long stock and the long put is a right to sell the stock at a predetermined price—the exercise price of the long put. Regardless of any decline in market value, the stock, in effect, is worth no less than the long put exercise price.

The Exchange's current margin regulations specify that no maintenance margin would be required on the short call option because it is covered, but the underlying long stock position would be margined according to the present maintenance margin requirement (*i.e.*, 25% of current market value).[36] Under the proposal, the maintenance for a

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[31] *See supra,* Section II(E), ''Cash Account Treatment of Butterfly and Box Spreads, Other Spreads, and Short Options.'' The margin requirements would apply to butterfly spreads where all option positions are listed or guaranteed by the carrying broker-dealer.

[32] As discussed above in Section II(D), ''Extension of Credit on Long Box Spread in European-style Options,'' the margin requirement for a long box spread made up of European-style options is 50% of the aggregate difference in the two exercise prices.

[33] The Exchange's proposal provides maintenance margin relief for the stock component (or other underlying instrument) of the five identified strategies. The Exchange believes that a reduction in the initial margin for the stock component of these strategies is not currently possible because the 50% initial margin requirement under Regulation T continues to apply, and the Exchange does not possess the independent authority to lower the initial margin requirement for stock. However, the Exchange noted that the Federal Reserve Board is considering recognizing the reduced risk afforded stock by these option strategies for the purpose of lowering initial stock margin requirements and is also considering other changes that would facilitate risk-based margins.

[34] Suppose an investor is long 100 shares of XYZ @ 52 and long 1 XYZ Jan 50 Put @ 2. The margin would be the lesser of ((10% × 50) + (100% × 2) = 7) or (25% × 52 = 13). Therefore, the investor would be required to maintain margin equal to at least $700 (7 × 100).

[35] For each stock carried short that has a current market value of less than $5 per share, the maintenance margin is $2.50 per share or 100% of the current market value, whichever is greater. For each stock carried short that has a current market value of $5 per share or more, the maintenance margin is $5 per share or 30% of the current market value, whichever is greater. *See* Exchange Rule 12.3(b)(2), ''Short Positions.''

Suppose an investor is short 100 shares of XYZ @ 48 and long 1 XYZ Jan 50 Call @ 1. The margin would be the lesser of ((10% of 50) =7) or 30% × 48 = 14.4). Therefore, the investor would be required to maintain margin equal to at least $700 (7 × 100).

[36] Suppose an investor is long 100 shares of XYZ @ 48, long 1 XYZ Jan 50 Put at 2, and short 1 XYZ Jan 50 Call @ 1. The present maintenance margin on the long stock position would be $1,200 ((25% × 48) × 100). However, if the price of the stock increased to 60, current Exchange Rule 12.3(c)(5)(B)(2) specifies that the stock may not be valued at more than the short call exercise price. Thus, the maintenance margin on the long stock position would be $1,250 ((25% × 50) × 100). The writer of the call option cannot receive the benefit (*i.e.*, greater loan value) of a market value that is above the call exercise price because, if assigned an exercise, the underlying component would be sold at the exercise price, not the market price of the long position.

Conversion would be 10% of the exercise price.[37]

4. Reverse Conversion

A ''Reverse Conversion'' is a short stock position held in conjunction with a short put and a long call. As with the Conversion, the short put and long call must have the same expiration date and exercise price. The short put is covered by the short stock and the long call is a right to buy the right stock at a predetermined price—the call exercise price. Regardless of any rise in market value, the stock can be acquired for the call exercise price, in effect, the short position is valued at no more than the call exercise price. The maintenance margin requirement for a Reverse Conversion would be 10% of the exercise price, plus any in-the-money amount (*i.e.*, the amount by which the exercise price of the short put exceeds the current market value of the underlying stock position).[38]

5. Collar

A ''Collar'' is a long stock position held in conjunction with a long put and a short call. A Collar differs from a Conversion in that the exercise price of the long put is lower than the exercise price of the short call. Therefore, the options positions in a Collar do not constitute a pure synthetic short stock position. The maintenance margin for a Collar would be the lesser of: (i) 10% of the long put exercise price, plus 100% of any amount by which the long put is out-of-the-money; or (ii) 25% of the short call exercise price.[39] Under the Exchange's current margin regulations, the stock may not be valued at more than the call exercise price.

*H. Restructuring*

The proposal would replace the present margin requirement for uncovered short listed options, which appears as CBOE Rule 12.3(c)(5)(A), ''Short Listed Equity Options: General Rule,'' with current Interpretation and Policy .01 to Exchange Rule 12.3 (''Interpretation''). The Interpretation contains a table that includes: (i) Different types of listed option and warrant products; (ii) the underlying component value; (iii) the percentage used in the basic formula for calculating the margin requirement for positions carried short; and (iv) the percentage used in the alternative formula for calculating the minimum margin requirement, which becomes operative whenever the basic formula results in a lower requirement.[40] The Interpretation has been modified slightly to incorporate the margin requirements for narrow-based stock index warrants, which are currently located in Chapter 30 of the Exchange's rules.

Under the proposal, the margin requirements for uncovered short positions in OTC options would be relocated from Exchange Rule 12.3(c)(5)(B)(5) to Exchange Rule 12.3(c)(5)(B). The current text of the Exchange rule that sets forth the margin requirements for short OTC options differs from the proposed text of the rule that contains the margin requirements for short listed options (*i.e.*, the Interpretation). To establish greater consistency, the proposal would revise the rule text of the margin requirements for both listed and OTC short options to make them more similar. The methodology of calculating margin requirements for short listed and OTC options is essentially the same, only different percentages are applies.[41]

The proposal also would combine the margin requirements pertaining to long position offsets for short OTC options with those pertaining to long position offsets for short listed options. The combined margin requirements would appear in proposed Exchange Rule 12.3(c)(5)(C), ''Related Securities Position'' and would apply to listed and OTC option positions where: (i) a short call is covered by a convertible security; (ii) a short call is covered by a warrant; and (iii) a short call or short put is covered.[42] As a result, two sets of relatively identical requirements that now exist separately would be consolidated into one section.

The proposed restructuring would ensure that the margin requirements for short options and warrants are organized in one section. The restructuring also would allow the deletion of the margin requirements applicable to short options and warrants that are now dispersed among several other chapters: Chapter 23 (interest rate options), Chapter 24 (index options), and Chapter 30 (warrants). In addition, the proposal would restructure Exchange Rule 12.3 to generically cover the margin requirements for spread positions in options/warrants of the types currently addressed in other chapters.[43] Margin requirements located elsewhere that are not amenable to such generic treatment, have been incorporated into Exchange Rule 12.3 as necessary.

*I. Time Margin Must Be Obtained*

The proposal would clarify the time in which initial margin is due. Exchange Rule 12.2, ''Time Margin Must Be Obtained,'' was adopted at a time when the Exchange had authority only to set maintenance margin levels, and currently requires that margin be obtained as promptly as possible. Because the Exchange now has additional rulemaking responsibility for the initial margin requirements for options, the proposal specifies that

[37] For example in the preceding footnote, where the investor was long 100 shares of XYZ @ 48, long 1 XYZ Jan 50 Put @ 2, and short 1 XYZ Jan 50 Call @ 1, the proposed maintenance margin requirement for the Conversion strategy would be $500 ((10% × 50) × 100).

[38] The seller of a put option has an obligation to buy the underlying component at the put exercise price. If assigned an exercise, the underlying component would be purchased (the short position in the Reverse Conversion effectively closed) at the exercise price, even if the current market price is lower. To recognize the lower market value of a component, the short put in-the-money amount is added to the requirement. For example, an investor holding a Reverse Conversion may be short 100 shares of XYZ @ 52, long 1 XYZ Jan 50 Call @ 2½, and short 1 XYZ Jan 50 Put @ 1½. If the current market value of XYZ stock drops to 30, the maintenance margin would be $2,500 ((10% × 50) + (50–30)) × 100.

[39] To create a Collar, an investor may be long 100 shares of XYZ @ 48, long 1 XYZ Jan 45 Put @ 4, and short 1 XYZ Jan 50 Call @ 3. The maintenance margin requirement would be the lesser of ((10% × 45) + 3 = 7½) or (25% × 50 = 12½). Therefore, the investor would need to maintain at least $750 (7½ × 100) in margin.

[40] For example, if an investor writes an uncovered equity option, such as 1 XYZ Jan 25 Put @ 1, the investor's position would be subject to the Exchange's short option margin requirements. If the current market value of XYZ stock is $30, under the basic formula the investor would be required to deposit and maintain margin equal to at least $200 (*i.e.*, $100 (100% of the current market value of the option) + $600 (20% × $3,000 ◗ the current market value of the XYZ stock underlying the short option) − $500 (the out-of-the-money amount)). However, the alternative formula becomes operative because it requires a minimum margin that exceeds the amount required under the basic formula. Under the alternative formula, the investor would be required to deposit and maintain margin equal to at least $350 (*i.e.*, $100 (100% of the current market value of the option) + $250 (10% × $2,500 ◗ the aggregate exercise price amount of the short put option)). Therefore, the investor would be required to comply with the higher margin requirement of $350.

[41] For example, the percentage used in the basic formula for calculating the margin requirement for short listed stock options is 20%. In contrast, the percentage used with respect to short OTC stock options is 30%.

[42] In the case of short call, the position must be covered by a long position in equivalent units of the underlying security, and in the case of a short put, the position must be covered by a short position in equivalent units of the underlying security. With respect to short calls options on the S&P 500 stock index, the Exchange proposes to allow the use of long positions in underlying open-end index mutual funds as cover for short S&P 500 call options held in customer margin or cash accounts, provided the mutual funds have sufficient aggregate market value and have been specifically designated by the Exchange.

[43] For example, the margin requirements for capped-style (CAPS and Q–CAPS) index option spreads, packaged vertical spreads, and packaged butterfly spreads were moved from Chapter 24 and updated to reflect the proposed margin requirements for spreads.

initial margin requirements would be due in one ''payment period'' as defined in Regulation T.[44] The proposal also would revise Exchange Rule 12.2 to specify that maintenance margin must be obtained as promptly as possible, but in any event within 15 days. The current standard is ''within a reasonable time.''

*J. Effect of Mergers and Acquisitions on the Margin Required for Short Options*

The proposal would implement, as Interpretation and Policy .13 of Exchange Rule 12.3, an exception to the margin requirement for short options if trading in the underlying security ceases due to a merger or acquisition. The exception currently exists as part of an Exchange Regulatory Bulletin.[45] Under the proposed exception, if an underlying security ceases to trade due to a merger or acquisition, and a cash settlement price has been announced by the issuer of the option, margin would be required only for in-the-money options and would be set at 100% of the in-the-money amount.

*K. Determination of Value for Margin Purposes*

The proposal would revise Exchange rules 12.5, ''Determination of Value for Margin Purposes,'' to make it consistent with that portion of the Exchange's proposal that allows the extension of credit on certain long-term options and warrants (*i.e,* stock options, stock index options, and stock index warrants that are more than 9 months from expiration). Currently, Exchange Rule 12.5 does not allow the market value of long term options to be considered for margin equity purposes. The revision would allow options and warrants eligible for loan value under proposed Rule 12.3 to be valued at current market prices for margin purposes. This change is designed to ensure that the value of the marginable option or warrant (the collateral) is sufficient to cover the debit carried in conjunction with the purchase.

*L. Exempted Securities*

Currently, the Exchange's maintenance margin requirement for non-convertible debt securities is found in Exchange Rule 12.3(c)(1), ''Exempted Securities.'' However, the term ''non-convertible debt security'' refers to corporate bonds, which are not considered exempt securities under the Act. The Exchange seeks to rectify this misnomer by removing the margin requirement for non-convertible debt securities from the ''Exempted Securities'' section and redesignating it as a separate provision, Exchange Rule 12.3(c)(2).

## III. Summary of Comments

The Commission received 4 comment letters regarding the proposed rule change, all of which supported the proposal.[46] One commenter, a registered broker-dealer, stated that its clients complained that the margin requirements on certain index options positions are ''much higher than the overall risk of the position[s] would indicate.'' [47] Another commenter, who acts as a market maker in S&P 500 index options at the CBOE and also serves as a member of the CBOE's Board of Directors, reported that some market participants believe that the margin requirements for offsetting spread positions are onerous, and that present margin requirements are a ''major barrier to more customer business.'' [48] This commenter stated that in some instances customers have shifted their options trades to the OTC and futures markets because the margin requirements at the CBOE are higher.[49]

One commenter believed that the proposed margin requirements will benefit investors by recognizing the limited risk of many hedged positions.[50] Another commenter believed that the current margin requirements for listed options positions, particularly hedged strategies using multiple positions, do not ''adequately recognize the defined risk of these positions.'' [51] This commenter believed that reducing the margin requirements for options strategies with defined risk will benefit customers by providing increased flexibility and lowering costs, and will better align the level of margin with the risk of the positions. This commenter also believed that the proposal would serve to ''increase the viability of listed options and the competitiveness of the options markets generally.'' [52]

In addition, all four commenters advocated the adoption of a risk-based methodology for margining options positions. One commenter believed that in terms of margin treatment, listed options are often at a disadvantage compared to similar derivative products traded on the futures exchanges (*i.e.*, the futures exchanges employ risk-based margin).[53] Another commenter believed that the availability of risk-based margin for listed options could help the options exchanges to serve more customers.[54]

## IV. Discussion

For the reasons discussed below, the Commission finds that the proposed rule changes is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with the Section 6(b)(5) [55] requirements that the rules of an exchange be designed to promote just the equitable principles of trade, prevent fraudulent and manipulative acts and practices, and protect investors and the public interest. The Commission also finds that the proposal may serve to remove impediments to and perfect the mechanism of a free and open market by revising the Exchange's margin requirements to better reflect the risk of certain hedged options strategies.

The Commission believes that it is appropriate for the Exchange to allow member firms to extend credit on certain long term options and warrants, and that such practice is consistent with Regulation T. In 1996, the Federal Reserve Board amended Regulation T to enable the self-regulatory organizations (''SROs'') to adopt rules permitting the margining of options.[56] The CBOE rules approved in this order are the first SRO rules that will permit the margining of options under the grant of authority from the Federal Reserve Board.

The Commission believes that it is reasonable for the Exchange to restrict the extension of credit to long term options and warrants. The Commission believes that by limiting loan value to long term options and warrants, the proposal will help to ensure that the extension of credit is backed by

[44] Regulation T defines payment period as ''the number of business days in the standard securities settlement cycle in the United States, as defined in paragraph (a) of SEC Rule 15c6–1, plus two business days.'' *See* 12 CFR 220.2.

[45] Exchange Regulatory Bulletin No. 91–29, ''Customer Margin Requirements,'' specifies the margin requirements for uncovered, short equity options that have been delisted by the Exchange due to a merger or acquisition. For out-of-the-money options, no margin is required. For in-the-money options, margin must equal the difference between the underlying stock value set by the registered clearing corporation and the strike price of the option. *See* Exchange Regulatory Bulletin Number 91–29 (April 10, 1991).

[46] *See* Sheehan Letter, Wilkinson Letter, O'Connor Letter, and Schwab Letter *supra* note 4.

[47] *See* Sheehan Letter *supra* note 4.

[48] *See* Wilkinson Letter *supra* note 4.

[49] The commenter alleged that margin requirements for certain S&P 500 index options traded on the CBOE can be as much as 2 to 16 times greater than options on S&P 500 index futures traded on the Chicago Mercantile Exchange. *Id.*

[50] *See* O'Conner Letter *supra* note 4.

[51] *See* Schwab Letter *supra* note 4.

[52] *Id.*

[53] *Id.*

[54] *See* Wilkinson Letter *supra* note 4.

[55] 15 U.S.C. 78f(b)(5).

[56] *See* Board of Governors of the Federal Reserve System Docket No. R–0772 (Apr. 24, 1996), 61 FR 20386 (May 6, 1996), and 12 CFR 220.12(f).

collateral (*i.e.*, the long term option or warrant) that has sufficient value.[57] Because the expiration dates attached to options and warrants make such securities wasting assets by nature, it is important that the Exchange restrict the extension of credit to only those options and warrants that have adequate value at the time of the purchase, and during the term of the margin loan.[58]

The Commission believes that the proposed margin requirements for eligible long term options and warrants are reasonable. For long term listed options and warrants, the proposal requires that an investor deposit and maintain margin of not less than 75% of the current market value of the option or warrant. For long term OTC options and warrants, an investor must deposit and maintain margin of not less than 75% of the long term OTC option's or warrant's-in-the-money amount (*i.e.*, intrinsic value), plus 100% of the amount, if any, by which the current market value of the OTC option or warrant exceeds the in-the-money amount. The Commission observes that the proposed margin requirements are more stringent than the current Regulation T margin requirements for equity securities (*i.e.*, 50% initial margin and 25% maintenance margin).

The Commission recognizes that because current Exchange rules prohibit loan value for options, increases in the value of long term options cannot contribute to margin equity (*i.e.*, appreciated long term options cannot be used to offset losses in other positions held in a margin account). Consequently, some customers may face a margin call or liquidation for a particular position even though they concurrently hold a long term option that has appreciated sufficiently in value to obviate the need for additional margin equity. The Exchange's proposal would address this situation by allowing loan value for long term options and warrants.

The Commission believes that it is reasonable for the Exchange to afford long term options and warrants loan value because mathematical models for pricing options and evaluating their worth as loan collateral are widely recognized and understood.[59] Moreover, some creditors, such as the Options Clearing Corporation, extend credit on options as part of their current business.[60] The Commission believes that because options market participants possess significant experience in assessing the value of options, including the use of sophisticated models, it is appropriate for them to extend credit on long term options and warrants.

Furthermore, since 1998, lenders other than broker-dealers have been permitted to extend 50% loan value against long, listed options under Regulation U.[61] The Commission understands that the current bar preventing broker-dealers from extending credit on options may place some CBOE member firms at a competitive disadvantage relative to other financial service firms. By permitting Exchange members to extend credit on long term options and warrants, the proposal should enable Exchange members to better serve customers and offer additional financing alternatives.

The Commission believes that it is appropriate for the Exchange to recognize the hedged nature of certain combined options strategies and prescribe margin and cash account requirements that better reflect the true risk of the strategy. Under current Exchange rules, the multiple positions comprising an option strategy such as a butterfly spread must be margined separately. In the case of a butterfly spread, the two component spreads (bull spread and bear spread) are margined without regard to the risk profile of the entire strategy. The net debit incurred on the bullish spread must be paid in full, and margin equal to the exercise price differential must be deposited for the bearish spread.

The Commission believes that the revised margin and cash account requirements for butterfly spread and box spread strategies are reasonable measures that will better reflect the risk of the combined positions. Rather than view the butterfly and box spread strategies in terms of their individual option components, the Exchange's proposal would take a broader approach and require margin that is commensurate with the risk of the entire, hedged position. For long butterfly spreads and long box spreads, the proposal would require full payment of the net debit that is incurred when the spread strategy is established.[62] For short butterfly spreads and short box spreads, the initial and maintenance margin required would be equal to the maximum risk potential. Thus, for short butterfly spreads comprised of call options, the margin must equal the aggregate difference between the two lowest exercise prices. For short butterfly spreads comprised of put options, the margin must equal the aggregate difference between the two highest exercise prices. For short box spreads, the margin must equal the aggregate difference in the two exercise prices involved. In each of these instances, the net credit received from the sale of the short option components may be applied towards the requirement.

The Commission believes that the proposed margin and cash account requirements for butterfly spreads and box spreads are appropriate because the component option positions serve to offset each other with respect to risk.

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[57] The value of an option contract is made up of two components: Intrinsic value and time value. Intrinsic value, or the in-the-money-accounts, is an option contract's arithmetically determinable value based on the strike price of the option contract and the market value of the underlying security. Time value is the portion of the option contract's value that is attributable to the amount of time remaining until the expiration of the option contract. The more time remaining until the expiration of the option contract, the greater the time value component.

[58] For similar reasons, the Commission believes that it is appropriate for the Exchange to permit the extension of credit on long box spread comprised entirely of European-style options that are listed or guaranteed by the carrying broker-dealer. Because the European-style long box spread locks in the ability to buy and sell the underlying component or index for a profit, and all of the component options must be exercised on the same expiration day, the Commission believes that the combined positions have adequate value to support an extension of credit.

[59] For example, the Black-Scholes model and the Cox Ross Rubinstein model are often used to price options. *See* F. Black and M. Scholes, *The Pricing of Options and Corporate Liabilities*, 81 Journal of Political Economy 637 (1973), and J.C. Cox, S. A. Ross, and M. Rubinstein, *Option Pricing: A Simplified Approach*, 7 Journal of Financial Economics 229 (1979).

[60] The Exchange stated, ''[t]he fact that market-maker clearing firms and the Options Clearing Corporation extend credit on long options demonstrates that long options are acceptable collateral to lenders. In addition, banks have for some time loaned funds to market-maker clearing firms through the Options Clearing Corporation's Market Maker Pledge Program.'' *See* Letter to Michael Walinskas, Associate Director, Division, Commission, from Mary L. Bender, Senior Vice President, Division of Regulatory Services, Exchange, dated May 21, 1998.

[61] *See* Board of Governors of the Federal Reserve System Docket Nos. R–0905, R–0923, and R–0944 (Jan. 8, 1998), 63 FR 2806 (Jan. 16, 1998). In adopting the final rules that permitted non-broker-dealer lenders to extend credit on listed options, the Federal Reserve Board states that it was:

> [A]mending the Supplement to Regulation U to allow lenders other than broker-dealers to extend 50 percent loan value against listed options. Unlisted options continue to have no loan value when used as part of a mixed-collateral loan. However, banks and other lenders can extend credit against unlisted options if the loan is not subject to Regulation U [12 CFR 221 *et seq.*].

The Board first proposed margining listed options in 1995. *See* Board of Governors of the Federal Reserve System Docket No. R–0772 (June 21, 1995), 60 FR 33763 (June 29, 1995) (''[T]he Board is proposing to treat long positions in exchange-traded options the same as other registered equity securities for margin purposes.'').

[62] However, the long box spreads made up of European-style options, the margin requirements is 50% of the aggregate difference in the two exercise prices.

The proposal takes into account the defined risk of these strategies and sets margin requirements that better reflect the economic reality of each strategy. As a result, the margin requirements are tailored to the overall risk of the combined positions.

For similar reasons, the Commission approves of the proposed cash account requirements for spreads made up of European-style cash-Settled index options, stock index warrants, or currency index warrants. Under the proposal, a short position would be considered covered, and thus eligible for the cash account, if a long position in the same European-style cash-settled index option, stock index warrant, or currency index warrant was held in, or purchased for, the account on the same day. In addition, the long and short positions must expire concurrently, and the cash account must contain cash, cash equivalents, or an escrow agreement equal to at least the aggregate exercise price differential.

The Commission believes that it is reasonable for the Exchange to specify cash account requirements for certain options and warrants carried short. The proposed requirements clearly identify the criteria that must be satisfied before a short position will be deemed covered. By codifying the criteria in its margin rules, the Exchange will assist CBOE members in determining whether a short position is eligible for the cash account.

The Commission believes that is appropriate for the Exchange to revise the maintenance margin requirements for several hedging strategies that combine stock positions with options positions. The Commission recognizes that hedging strategies such as the Long Put/Long Stock, Long Call/Short Stock, Conversion, Reverse Conversion and Reverse Conversion, and Collar are designed to limit the exposure of the investor holding the combined stock and option positions. The proposal would modify the maintenance margin required for the stock component of a hedging strategy. For example, the stock component of a Long Put/Long Stock combination currently is margined without regard to the hedge provided by the long put position (*i.e.*, the 25% maintenance margin requirement for the stock component is applied in full). Under the proposal, the maintenance margin requirement for the stock component of a Long Put/Long Stock strategy would be the lesser of: (i) 10% of the put option exercise price, plus 100% of any amount by which the put option is out-of-the-money; or (ii) 25% of the current market value of the long stock position. Although for some market values the proposed margin requirement would be the same as the current requirement, in many other cases it would be lower.[63] The Commission believes that reduced maintenance margin requirements for the stock components of hedging strategies are reasonable given the limited risk profile of the strategies.

The Commission believes that the Exchange's proposal is a carefully crafted measure that draws on the Exchange's experience in monitoring the credit exposures of options strategies. In particular, the Exchange regularly examines the coverage of options margin as it relates to price movements in the underlying securities and index components. Furthermore, many of the proposed margin requirements were thoroughly reviewed by the New York Stock Exchange (''NYSE'') Rule 431 Review Committee,[64] which is made up of industry participants who have extensive experience in margin and credit matters. Therefore, the Commission is confident that the proposed margin requirements are consistent with investor protection and properly reflect the risks of the underlying options positions.

The Commission notes that the margin requirements approved in this order are mandatory minimums. Therefore, an Exchange member may freely implement margin requirements that exceed the margin requirements adopted by the Exchange.[65] The Commission recognizes that the Exchange's margin requirements serve as non-binding benchmarks, and that Exchange members often establish different margin requirements for their customers based on a number of factors, including market volatility. The Commission encourages Exchange numbers to continue to perform independent and rigorous analyses when determining prudent levels of margin for customers.

The Commission believes that it is appropriate for the Exchange to revise Exchange Rule 12.5, ''Determination of Value for Margin Purposes.'' to allow the market value of certain long term stock options, stock index options, and stock index warrants to be considered for margin equity purposes. Under the current terms of Exchange Rule 12.5, options contracts are not deemed to have market value. Because the Exchange's proposal will allow extensions of credit on certain long term options and warrants, Exchange Rule 12.5 must be revised to permit such marginable options and warrants to be valued at current market prices for margin purposes. The Commission notes that unless Rule 12.5 is revised to recognize the market value of the marginable options and warrants, the Exchange's loan value proposal will be ineffective (*i.e.*, the market value of an appreciated marginable security would not be recognized or allowed to offset any loss in value of other securities held in the margin account).

The Commission believes that is reasonable for the Exchange to codify as part of its rules the current margin requirements for short options on securities that have been delisted due to a merger or acquisition. Under the provision, if any underlying security ceases to trade due to a merger or acquisition. Under the provision, if an underlying security ceases to trade due to a merger or acquisition, and a cash settlement price has been announced by the issuer of the option, margin would be required only for in-the-money options and would be set at 100% of the in-the-money amount. The Commission believes that it is appropriate for the Exchange to not require margin for out-of-the-money short options. Given that a fixed settlement price will have been announced by the issuer of the option (*e.g.*, Options Clearing Corporation) and trading in the delisted security will have stopped, the Commission believes that margin for the out-of-the-money short option contract is unnecessary because the intrinsic value of the option contract will not appreciate or vary such that the seller risks assignment (*i.e.*, the intrinsic value will remain nil). The Commission believes that because the intrinsic value of short-in-the-money options will similarly remain fixed, it is reasonable to require margin that corresponds to 100% of the aggregate in-the-money amount.

The Commission believes that is appropriate for the Exchange to clarify the time in which initial and maintenance margin requirements are due. This revision should help avoid confusion as to when margin payments must be made. By specifying that initial margin requirements are due in one payment period—five business days as currently defined in Regulation T—the

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[63] Suppose an investor is long 100 shares of XYZ @ 52 and long 1 XYZ Jan 50 Put @ 2. Under the proposal, the required margin would be $700—the lesser of ((10% × 50) + (100% × 2) = 7) or (25% × 52 = 13). In contrast, the current margin requirement would be $1,300, a difference of $600.

[64] NYSE Rule 431 contains the margin requirements that NYSE members must observe. *See* NYSE Rule 431, ''Margin Requirements.''

[65] Exchange Rule 12.3(c), ''Customer Margin Account—Exception,'' states that nothing in the provision addressing customer margin accounts ''shall prevent a broker-dealer from requiring margin from any account in excess of the amounts specified in these provisions.

Exchange will help to facilitate the prompt collection of initial margin. In addition, the proposal revises the time-frame for the collection of maintenance margin by replacing the phrase ''within a reasonable time'' with ''as promptly as possible,'' and establishing an objective cut-off date of 15 days. The Commission believes that these changes will provide clear and definite guidelines concerning the collection of margin.

The Commission believes that it is appropriate for the Exchange to revise the definition of ''current market value'' by making it correspond to the same definition found in Regulation T. A linkage to the Regulation T definition should keep the Exchange's definition equivalent without requiring a rule filing if there are future changes to the Regulation T definition. The Commission also believes that it is reasonable for the Exchange to define ''butterfly spread'' and ''box spread.'' These definitions will specify which multiple option positions, if held together, qualify for classification as buttlerfly or box spreads, and consequently are eligible for the proposed cash and margin treatment. The Commission believes that it is important for the Exchange to clearly define which options strategies are eligible for the proposed margin treatment.

The Commission believes that it is reasonable for the Exchange to reorganize its margin provisions and consolidate them into a single section—Chapter 12 of the Exchange's Rules. As currently structured, the Exchange's margin rules are widely dispersed, appearing in Chapters 12, 23, 24, and 30. The Commission believes that Exchange members and other market participants will find the consolidated margin provisions easier to locate and use.

The Commission also believes that it is reasonable for the Exchange to rephrase and update some of the margin provisions that have been relocated and consolidated. The revisions are designed to ensure consistency among the Exchange's margin provisions. In some instances, changes proposed to one particular margin requirement impacted the requirements for other positions and products. In other instances, the Exchange simply revised language to clarify the meaning of the provision.[66] In addition, the Commission believes that it is appropriate for the Exchange to correct the misnomer in Exchange Rule 12.3(c)(1) that erroneously characterizes nonconvertible debt securities as exempted securities.

The revisions to the Exchange's margin rules will significantly impact the way Exchange members calculate margin for options customers. The Commission believes that it is important for the Exchange to be adequately prepared to implement and monitor the revised margin requirements. To best accommodate the transition, the Commission believes that a phase-in period is appropriate. Therefore, the approved margin requirements shall not become effective until the earlier of November 3, 1999 or such date the Exchange represents in writing to the Commission that the Exchange is prepared to fully implement and monitor the approved margin requirements.

The Commission expects the Exchange to issue a regulatory circular to members that discusses the revised margin provisions and provides guidance to members regarding their regulatory responsibilities. The Commission also believes that it would be helpful for the Exchange to publicly disseminate (*i.e.*, via web site posting) a summary of the most significant aspects of the new margin rules and provide clear examples of how various options positions will be margined under the new provisions.

The Commission finds good cause for approving proposed Amendment Nos. 1 and 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 clarified that the margin requirement for non-marginable options and warrants is 100% of current market value, rather than 100% of purchase price. Unless this revision was made, the margin required for some long term options that had wound down to 9 months would have been inappropriate.[67] By linking the margin requirement to current market value, rather than purchase price, Amendment No. 1 ensures that appropriate margin will be required.

Amendment No. 1 also revised the provision concerning the use of UITs and open-end mutual funds as cover for short index options. The revision conformed the Exchange's proposal to the narrower change that was recommended by the NYSE Rule 431 Committee. As a result, the Exchange's proposal limits the use of mutual funds as cover to short S&P 500 call options held in a margin or cash account.[68] Amendment No. 1 also incorporated into the proposal the definition of ''OTC margin bond,'' which had been eliminated from Regulation T by the Federal Reserve Board as of April 1, 1998. These changes will strengthen the proposal by making it consistent with the margin requirements supported by the NYSE Rule 431 Committee, and by defining an important term that was dropped from Regulation T.

Amendment No. 2 revised the proposal by limiting loan value to long term stock options, stock index options, and stock index warrants. The Exchange had originally proposed to allow loan value on any long term option, regardless of the underlying instrument (*e.g.*, foreign currency options and options on interest rate composites would be marginable): This change conforms the Exchange's proposal to the measures supported by the NYSE Rule 431 Committee and the companion margin filing submitted by the NYSE.[69] Amendment No. 2 will ensure consistency among the national securities exchanges regarding the types of securities on which credit may be extended.

Based on the above, the Commission finds that good cause exists, consistent with Section 19(b) of the Act,[70] to accelerate approval of Amendment Nos. 1 and 2 to the proposed rule change.

## V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1 and 2 to the proposed rule change, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed

[66] For example, the Exchange revised the rule language regarding straddles comprised of OTC options, but left intact the specific margin requirements. *See* Proposed Exchange Rule 12.3(c)(5)(C)(5)(B).

[67] For example, suppose that a long term option, which had significantly appreciated in value, reached nine months until expiration. A margin requirement of 100% of the purchase price would be insufficient given the increase in value. A requirement of 100% of the current market value, in contrast, is more appropriate.

[68] In accordance with an interpretation that the Federal Reserve Board provided to the American Stock Exchange, the Exchange will continue to permit members to use certain UITs as cover for short index option positions in a margin account. For example, the Exchange allows members to use S&P 500 Depository Receipts (''SPDRs'') as cover for short S&P 500 index options. The Federal Reserve Board deemed such practice consistent with Regulation T in 1993. *See* Letter from Michael J. Shoenfeld, Federal Reserve Board, to James McNeil, American Stock Exchange, dated February 1, 1993.

[69] *See* Securities and Exchange Act Release (No. 41168 Mar. 12, 1999), 64 FR 13620 (Mar. 19, 1999) (notice of filing of SR–NYSE–99–03).

[70] 15 U.S.C. 78s(b).

rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, 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 Section, 450 Fifth Street, N.W., Washington, D.C. 25049. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–97–67 and should be submitted by August 26, 1999.

**VI. Conclusion**

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[71] that the proposed rule change (SR–CBOE–97–67), as amended, is approved. The approved margin requirements shall become effective the earlier of November 3, 1999 or such date the Exchange represents in writing to the Commission that the Exchange is prepared to fully implement and monitor the approved margin requirements.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[72]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99–20174 Filed 8–4–99; 8:45 am]

**BILLING CODE 8010–01–M**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–41671: File No. SR–EMCC–99–8]**

## Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Extension of Interim Margin and Loss Allocation Procedures

July 29, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 21, 1999, the Emerging Markets Clearing Corporation (''EMCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared primarily by EMCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change will extend EMCC's interim margin and loss allocation procedures until the earlier of (i) September 30, 1999, or (ii) the date on which Daiwa Securities America Inc. ceases to perform clearing functions for interdealer brokers.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, EMCC 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. EMCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

On July 31, 1998, the Commission temporarily approved EMCC's interim margin and loss allocation procedures (''Addendum G'') for a period of one year. Addendum G applies to interdealer brokers and U.S. Firms whose only business with EMCC consists of clearing for interdealer brokers.[3] The only EMCC clearing member affected by Addendum G is Daiwa Securities America Inc. (''Daiwa'').

EMCC has been advised that Daiwa intends to cease performing clearing functions for interdealer brokers by the end of September 1999. Because Addendum G expires on July 31, 1999, EMCC is requesting that the Commission extend the temporary approval of addendum G until the earlier of (i) September 30, 1999, (ii) the date on which Daiwa ceases to perform clearing functions for interdealer brokers.

EMCC believes that the proposed rule change is consistent with the requirements Section 17A of the Act[4] and the rules and regulations thereunder because extension of the temporary approval will avoid any potential disruption of EMCC's clearing services during this limited time period.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

EMCC 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 relating to the proposed rule change have been solicited or received. EMCC will notify the Commission of any written comments received by EMCC.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Section 17A(b)(3)(F) of the Act[5] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. In light of the fact that the Commission has previously found that Addendum G should provide EMCC with margin that is adequate to protect EMCC from financial exposure if an interdealer broker experiences financial difficulty, the Commission finds that the brief extension of the effectiveness of Addendum G is consistent with EMCC's safeguarding obligations under the Act.

EMCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of notice because such approval will allow the protections of Addendum G to remain in effect without interruption until Daiwa ceases its interdealer clearing operations at EMCC.

**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

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[71] 15 U.S.C. 78s(b)(2).

[72] 17 CFR 200.30–3(a)(12)

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by EMCC.

[3] For a complete description of Addendum G, refer to Securities Exchange Act Release No. 40288 (July 31, 1998), 63 FR 42087.

[4] 15 U.S.C. 78q-1.

[5] 15 U.S.C. 78q–1(b)(3)(F)

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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of EMCC. All submissions should refer to File No. SR–EMCC–99–8 and should be submitted by August 26, 1999.

**V. Conclusion**

*It is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–EMCC–99–8) be and hereby is approved until September 30, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99–20177 Filed 8–4–99; 8:45 am]

**BILLING CODE 8010–01–M**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–41670; File No. SR–SCCP–99–02]**

## Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees

July 29, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 25, 1999, Stock Clearing Corporation of Philadelphia (''SCCP'') 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 primarily by SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Under the proposed rule change, SCCP will adopt fees for trade recording of transactions conducted through the Volume Weighted Average Price (''VWAP''®)[2] Trading System (''VTS''™).[3] SCCP is not proposing to adopt a transaction value charge on VTS transactions.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, SCCP 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. SCCP has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of these statements.[4]

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The Commission approved VTS on March 24, 1999.[5] VTS will provide a daily preopening matching session for the execution of large-sized stock orders at the VWAP. Philadelphia Stock Exchange (''Phlx'') Rule 237 governs the operation of VTS. During the session, VTS will electronically match orders for execution at the VWAP according to the algorithm developed by UTTC. The matched and executed orders will be assigned a final VWAP after the close of regular trading. VTS will operate as a facility of the Phlx under Section 3(a)(2) of the Act.[6] Specifically, the System will involve some Phlx equipment and personnel, allow floor trader participation, and rely upon SCCP to process system trades. Matches performed during the session will be regulated and reported as Phlx trades.[7] SCCP will process VTS trades just like any other Phlx equity trade.

SCCP proposes to charge $0.30 per side for trade confirmation services performed by SCCP. VTS trades are processed for clearing through SCCP just like a Phlx equity floor trade and will be recorded and confirmed like any other trade pursuant to SCCP Rule 6. Therefore, SCCP believes that it is reasonable to charge recording fee of $.30 per side for the confirmation and recording of trades conducted through VTS. This is the current trade recording fee applicable to Phlx Automated Communication and Execution System (''PACE'') trades.[8]

Second, SCCP proposes that it will not charge a transaction value charge (value fee) for trades conducted through VTS in order to encourage the use of VTS for large value transactions. This is also similar to SCCP's fees for PACE trades where no value fee is charged.

For these reasons, SCCP believes that the proposal constitutes a equitable allocation of reasonable dues, fees and other charges, pursuant to Section 17A(b)(3)(D) of the Act.[9]

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

SCCP does not believe that the proposed rule change will impose any inappropriate burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)[10] of the Act and Rule 19b–4(f)(2)[11] promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by SCCP. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary to appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and

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[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] VWAP is a registered trademark of the Universal Trading Technologies Corporation (''UTTC'').

[3] The VTS trademark is the property of UTTC.

[4] The Commission has modified the text of the summaries prepared by SCCP.

[5] Securities Exchange Act Release No. 41210 (March 24, 1999), 64 FR 15857 [SR–Phlx–96–14].

[6] 15 U.S.C. 78c(a)(2).

[7] Matches performed by VTS will be subject to fees established in Phlx's fee schedule. Securities Exchange Act Release No. 41646 (July 23, 1999( [SR–Phlx–99–21].

[8] *See* Phlx Rule 229.

[9] 15 U.S.C. 78q–1(b)(3)(D).

[10] 15 U.S.c. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. 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 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 Commissions' Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of SCCP. All submissions should refer to File No. SR–SCCP–99–02 and should be submitted by August 26, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99–20175 Filed 8–4–99; 8:45 am]

BILLING CODE 8010–01–M

## SMALL BUSINESS ADMINISTRATION

### Zero Stage Capital VI, L.P.; (License No. 01/71–0372); Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Zero Stage Capital VI, L.P., 101 Main Street Cambridge, MA 02142, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the proposed financing of a small concern is seeking an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730 (1998)). An exemption may not be granted by SBA until Notices of this transaction have been published. Zero Stage Capital VI, L.P., proposes to provide a convertible bank guarantee financing to Newcomb Communications, Inc., 1050 Perimeter Road, Manchester, NH 03103. The financing is contemplated for funding growth.

[12] 17 CFR 200.30–3(a)(12).

The financing is brought within the purview of section 107.730 (a) (1) of the Regulations because Zero Stage Capital V, L.P., an Associate of Zero Stage Capital VI, L.P., owns greater than 10 percent of Newcomb Communications, Inc. and therefore Newcomb Communications, Inc. is considered an Associate of Zero Stage Capital VI, L.P. as defined in section 107.50 of the Regulations.

Notice is hereby given that any interested person may, not later than fifteen (15) days from the date of publication of this Notice, submit written comments on the proposed transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

A copy of this Notice shall be published, in accordance with section 107.730 (g), in the Boston Herald by Zero Stage Capital VI, L.P.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: July 27, 1999.

**Don A. Christensen,**

*Associate Administrator for Investment.*

[FR Doc. 99–20170 Filed 8–4–99; 8:45 am]

BILLING CODE 8025–01–P

## SOCIAL SECURITY ADMINISTRATION

### Agency Information Collection Activities: Proposed Request and Comment Request

In compliance with Pub. L. 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, comments and recommendations regarding the information collections would be most useful if received by the Agency within 60 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer at the address listed at the end of this publication. You can obtain a copy of the collection instruments by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed at the end of this publication.

1. Workers' Compensation/Public Disability Benefit Questionnaire—0960–0247. Form SSA–546 is used by the Social Security Administration (SSA) whenever an applicant for Title II (Disability Insurance Benefits (DIB)) indicates he or she has filed for, or intends to file for Workmen's Compensation/Public Disability Benefits (WC/PDB). The form consolidates all the information necessary to identify the WC/PDB applied for and/or received, determines whether offset is applicable under the statute and, when applicable, computes the offset. The respondents are applicants for Title II benefits (DIB).

*Number of Respondents:* 100,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 15 minutes.

*Estimated Annual Burden:* 25,000 hours.

2. Statement of Marital Relationship (by One of the Parties)—0960–0038. SSA uses the information collected on Form SSA–754 to determine whether the conditions for establishing a common-law marriage under state law are met. The respondents are applicants for spouse's benefits.

*Number of Respondents:* 30,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 30 minutes.

*Estimated Annual Burden:* 15,000 hours.

3. Student Reporting Form—0960–0088. Form SSA–1383 is used by Social Security student beneficiaries to report events or changes that may affect continuing entitlement to these benefits. The respondents are Social Security Student Beneficiaries.

*Number of Respondents:* 75,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 6 minutes.

*Estimated Annual Burden:* 7,500 hours.

4. Reporting Changes that Affect Your Social Security Payment-0960–0073. SSA uses the information collected on form SSA–1425 to determine continuing entitlement to Social Security Benefits and to determine the proper benefit amount. The respondents are Social Security beneficiaries who need to report an event which could affect payments.

*Number of Respondents:* 70,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 5 minutes.

*Estimated Annual Burden:* 5,833 hours.

5. Black Lung Student's Statement Regarding Resumption of School Attendance and Report of Black Lung Student Beneficiary at End of School Year (two forms)—0960–0314. The information collected on forms SSA–2602 and SSA–2613 is used by SSA to determine whether or not an entitled student beneficiary will resume (or has resumed) full-time school attendance at an approved educational institution. If so, the student will be continuously entitled to benefits. The respondents are children of disabled or deceased coal miners and officials of schools they attend.

| | SSA–2602 | SSA–2613 |
|---|---|---|
| Number of Respondents | 50 | 100 |
| Frequency of Response | 1 | 1 |
| Average Burden Per Response (minutes) | 5 | 7½ |
| Estimated Annual Burden (hours) | 4 | 12 |

II. The information collection listed below has been submitted to OMB for clearance. Written comments and recommendations on the information collection would be most useful if received within 30 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer and the OMB Desk Officer at the addresses listed at the end of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

1. Report on Individual with Mental Impairment—0960–0058. Form SSA–824 is used by the Social Security Administration to determine the claimant's medical status prior to making a disability determination. The respondents are physicians, medical directors, medical record librarians and other health professionals.

*Number of Respondents:* 50,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 36 minutes.

*Estimated Annual Burden:* 30,000 hours.

2. Report of Student Beneficiary at End of School Year—0960–0089. The information collected on Form SSA–1388 is used by SSA to verify a student's full-time attendance at an approved educational institution. The respondents are secondary school student beneficiaries or claimants who are enrolled full time.

*Number of Respondents:* 200,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 10 minutes.

*Estimated Annual Burden:* 33,333 hours.

3. Request for Claimant Conference—0960–NEW. As part of SSA's disability redesign effort, SSA is testing modifications to the disability determination procedures. One aspect of the tests includes notifying claimants when the initial determination of disability by the State agency will be less than fully favorable. The State agency making the determination must send a written notice to the claimant offering him or her the opportunity to have a conference with the Disability Adjudicator and to provide an opportunity to submit additional evidence. The claimant can respond by either completing and returning the form (SSA–378) enclosed with the notice or by telephoning the Disability Adjudicator. Based on the reply, the Disability Adjudicator can schedule a conference, request additional medical evidence, and/or await the receipt of additional evidence or complete the processing of the claim. The respondents are claimants for title II and title XVI disability benefits whose claims will receive a less than fully favorable determination.

*Number of Respondents:* 163,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 1.5 minutes.

*Estimated Annual Burden:* 4,075 hours.

(SSA Address)

Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235

(OMB Address)

Office of Management and Budget, OIRA, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, DC 20503

Dated: July 30, 1999.

**Nicholas E. Tagliareni,**

*Reports Clearance Officer, Social Security Administration.*

[FR Doc. 99–20153 Filed 8–4–99; 8:45 am]

BILLING CODE 4190–29–P

## DEPARTMENT OF STATE

**[Public Notice No.: 3082]**

### Advisory Committee on Historical Diplomatic Documentation; Notice of Meeting

The Advisory Committee on Historical Diplomatic Documentation will meet in the Department of State, 2201 ''C'' Street NW, Washington, D.C., September 13–14, 1999, in Conference Room 1107. Prior notification and a valid photo are mandatory for entrance into the building. One week before the meeting the public must notify Gloria Walker, Office of Historian (202–663–1124) providing their date of birth, social security number and telephone number.

The Committee will meet in open session from 1:30 p.m. through 4:30 p.m. on the afternoon of Monday, September 13, 1999. The remainder of the Committee's sessions from 9:00 a.m. until 5:00 p.m. on Tuesday, September 14, 1999 will be closed in accordance with Section 10(d) of the Federal Advisory Committee Act (P.L. 92–463). The agenda calls for discussions involving consideration of matters not subject to public disclosure under 5 U.S.C. 552b(c)(1), and that the public interest requires that such activities be withheld from disclosure.

Questions concerning the meeting should be directed to William Z. Slany, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC, 20520, telephone (202) 663–1123, (e-mail *pahistoff@panet.us-state.gov*).

Dated: July 29, 1999.

**William Z. Slany,**

*Executive Secretary.*

[FR Doc. 99–20188 Filed 8–4–99; 8:45 am]

BILLING CODE 4710–01–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Opportunity To Participate, Criteria Requirements and Change of Application Procedure for Participation in the Military Airport Program (MAP)

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

**ACTION:** Notice of criteria and application procedure for designation or re-designation, for the Fiscal year 1999 and 2000 Military Airport Program (MAP), based on current and proposed legislation.

**SUMMARY:** This notice announces the criteria, application procedures and schedule to be applied by the Secretary of Transportation in designating, re-designating, and funding capital development for currently up to 12 and potentially more airports in the MAP. Pending re-authorizing legislation may permit more airports to be designated and funded in future fiscal years. Once an authorization is enacted, the FAA may, if necessary, issue a new notice clarifying any change in the program including criteria and eligibility.

The MAP allows the Secretary to designate current or former military airports for which grants may be made under the Airport Improvement Program (AIP) and which airports, when at least partly converted to civilian commercial or reliever airports as part of the national air transportation system, will enhance airport and air traffic control system capacity in major metropolitan areas or reduce current and projected flight delays. The Secretary is authorized to designate an airport only if:

(1) the airport is a former military installation closed or realigned under—

(A) Title 10 U.S.C. 2687.

(B) Section 201 of the Defense Authorization Amendments and Base Closure and Realignment Act (10 U.S.C. 2687 note); or

(C) Section 2905 of the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note); or

(2) the Secretary determines that AIP grants at such airport would—

(A) reduce delays at an airport with more than 20,000 hours of annual delays in a commercial passenger aircraft takeoffs and landings; or

(B) enhance airport and air traffic control system capacity in a metropolitan area or reduce current and projected flight delays.

49 U.S.C. 47118

**DATES:** Airport sponsors should address written applications for new designation and re-designation in the Military Airport Program to the Federal Aviation Administration Regional Airports Division or Airports District Office that serves the airport. That office of the FAA must receive applications on or before September 7, 1999.

**ADDRESSES:** Send an original and two copies of Standard Form (SF) 424, ''Application for Federal Assistance,'', http://www.whitehouse.OMB/grants/index.html, and supporting and justifying documentation specifically requesting to be considered for designation or re-designation to participate in the Military Airport Program, to the Regional FAA Airports Division or Airports District Office that serves the airport. Applicants may find the proper office on the FAA website http://www.faa.gov/arp/arphome.htm or contact the office below.

**FOR FURTHER INFORMATION CONTACT:** Mr. James V. Mottley (jim.mottley@faa.gov) or Leonard C. Sandelli (len.sandelli@faa.gov), Military Airport Program Branch (APP–420), Office of Airport Planning and Programming, Federal Aviation Administration (FAA), 800 Independence Avenue, SW, Washington, DC 20591, (202) 267–8780, or (202) 267–8785, respectively.

**SUPPLEMENTARY INFORMATION:**

## General Description of the Program

The Military Airport Program provides capital development assistance to civil airport sponsors at designated current (joint-use) military airfields or former military airports in converting to civil use. Airports designated under the program may obtain funds from a set-aside (currently four percent) of AIP discretionary funds to undertake eligible airport development, including certain types of projects not otherwise eligible for AIP assistance.

Once an authorization is enacted by Congress, the FAA may, if necessary, issue a new notice clarifying any change in the program including criteria and eligibility and solicit applicants.

## Number of Airports

Currently, a maximum of 12 airports can participate in the MAP. There are eleven airports currently designated and the Secretary can designate one more under the current FAA authorization. Future FAA authorization legislation may permit additional designations from applications submitted pursuant to this notice. If increased, the Secretary may designate additional airports based on applications submitted pursuant to this notice, or subsequent notices.

## Amount of MAP Funds

Currently all of the 1999 MAP funds have been allocated to the participating airports. Any airport designated to MAP during FY 1999 will not be funded until FY 2000, pending FAA authorizing legislation. Funding after FY 1999 will be based on FY 2000 authorization and obligation authority levels.

## Term of Designation

Five years is the maximum period of eligibility, unless modified by legislation, for any airport to participate in the MAP unless an airport sponsor reapplies and is re-designated. Periods of redesignation for periods of less than five years are being considered in authorizing legislation.

## Reapplication

49 U.S.C. 47118(d) permits previously designated airports to apply for re-designation. The airport must have MAP eligible projects and must continue to satisfy the designation criteria for the MAP.

## Eligible Projects

In addition to other eligible AIP projects, terminals, fuel farms, utility systems, surface parking lots and hangars are eligible to be funded from the MAP. Cargo facilities up to 50,000 square feet are being considered in proposed FAA authorizing legislation. Airports requiring these facilities should consider including any cargo building requirements in project justifications and airport capital development plan (ACIP) portions of the application.

## New Designation and Re-designation Considerations

In making designations of new candidate airports, the Secretary of Transportation will consider the following general requirements:

1. The airport is a Department of Defense (DOD) Base Realignment and Closure (BRAC) closing military airfield or 10 USC 2687 closure or realignment, classified as a commercial service or reliever airport in the National Plan of Integrated Airport Systems (NPIAS). Pending FAA authorizing legislation may allow DOD BRAC or 10 USC 2687 closing and realignment airports classified as general aviation (GA) in the NPIAS to participate in the MAP, so airports meeting other eligibility requirements and categorized as GA, should apply; or

2. The airport and grants issued for projects at the airport would reduce delays at an airport with more than 20,000 hours of annual delays in commercial passenger aircraft takeoffs and landings. Airports with 20,000 or more hours of delay and their associated metropolitan areas are identified in the FAA's Aviation Capacity Enhancement Plan DOT/FAA, Office of System Capacity, 1998 Aviation Capacity Enhancement Plan; or

3. The airport would enhance airport and air traffic control, system capacity in a metropolitan area or reduce current or projected flight delays.

The application will be evaluated on how the proposed airport and associated projects would make these contributions to congestion relief and/or how the airport would enhance air traffic or airport system capacity, and provide adequate user services.

**Project Evaluation**

Recently approved BRAC or Title 10 U.S.C. 2678 closing or realigned bases or active bases with new joint use agreements will be the locations with the greatest conversion needs, necessary to achieve a successful civil airport operation. New joint use locations and newly converting airports frequently have minimum capital development resources and will receive priority consideration for designation and MAP funding. The FAA will evaluate the need for the eligible projects in the candidate airport's five year ACIP, and whether these projects are related to development of that airport and/or air traffic system. It is the intent of the Secretary of Transportation to fund those airports where the benefits to the capacity of the air traffic control or airport system can be maximized, and/or the contribution to reducing congestion can be maximized.

1. The FAA will evaluate the candidate airports and/or the airports such candidates would relieve based on the following factors:

- Compatibility of airport roles, and the ability of the airport to provide an adequate airport facility;
- The capability of the candidate airport and its airside and landside complex to serve aircraft that otherwise must use the relieved airport;
- Landside surface access;
- Airport operational capability, including peak hour and annual throughput capacities of the candidate airport;
- Potential of other metropolitan area airports to relieve the congested airport;
- Ability to satisfy, relieve or meet air cargo demand within the metropolitan area;
- Forecasted aircraft and passenger levels, type of air carrier service anticipated, i.e., scheduled and/or charter air carrier service;
- Type and capacity of aircraft projected to serve the airport and level of operation at the relieved airport and the candidate airport;
- The potential for the candidate airport to be served by aircraft or users, including the airlines, serving the congested airport;
- Ability to replace an existing commercial service or reliever airport serving the area; and
- Any other documentation to support the FAA designation of the candidate airport.

2. The FAA will evaluate the development needs, which, if funded, would make the airport a viable civil airport that will enhance system capacity or reduce delays. Newly closing installations or airport sponsors with new joint use agreements with existing military aviation facilities will be strongly considered for designation since they tend to have the greatest conversion needs.

**Application Procedures and Required Documentation**

Airport sponsors applying for consideration for designation or Redesignation must complete a Standard Form 424, ''Application for Federal Assistance,'' and submit documentation to the appropriate FAA office as outlined below. They must submit an Application for Federal Assistance, SF 424, to the Airports District Office or FAA Regional Airports Division which serves that airport. The SF 424 must indicate that this is an initial application or reapplication for the MAP, and must be accompanied by the documentation and justification indicated below to request designation by the Secretary of Transportation to participate in the Military Airport Program.

**New Candidate Airports and Airports Applying for Redesignation**

This information must identify the airport as either a current or former military airport and identify whether it was:

1. Closed or realigned under Section 201 of the Defense Authorization Amendments and Base Closure and Realignment Act, and/or Section 2905 of the Defense Base Closure and Realignment Act of 1990 (Installations Approved for Closure by the Defense Base Realignment and Closure Commissions),

2. 10 U.S.C. 2687 (bases closed by DOD and reported to the General Services Administration) or

3. A joint use of an active military airfield.

*A. Qualifications*

For (1) through (6) below the applicant does not need to resubmit any unchanged documentation that has been previously submitted to the regional Airports division or Airports district office.

(1) Documentation that the airport meets the definition of a ''public airport'' as defined in 49 U.S.C. § 47102(16).

(2) Documentation that the required environmental review process for civil reuse or joint-use of the military airfield has been completed. This is not the environmental review for the projects under this program, but the environmental review necessary, usually done by the military department, for conveyance of airport property, a long-term lease, or a joint use agreement. The environmental reviews and approvals must indicate that the airport would be able to have sufficient property rights to meet AIP requirements.

(3) In the case of a former military airport, documentation that the local or State airport sponsor holds or will hold satisfactory title, a long term lease in furtherance of conveyance of property for airport purposes, or a long term interim lease for 25 years or more, to the property on which the civil airport is being located. An application for airport property accepted by the Government is sufficient, unless there is reason to believe that a long term lease or conveyance would be delayed for a long time. The capital development project needs to be in place for 20 years. In the case of a current military airport, documentation that the airport sponsor has an existing joint-use agreement with the military department having jurisdiction over the airport. This is necessary so the FAA can legally issue grants to the sponsor.

(4) Documentation that the service level at the airport is expected to provide is a ''commercial service airport'' or a ''reliever airport'' as defined in 49 U.S.C. 47102(7) and 47102(18), respectively, and is included in the current NPIAS. Pending FAA authorization legislation may permit designation of some general aviation airports in the NPIAS.

(5) Documentation that the airport has an eligible airport ''sponsor'' as defined in 49 U.S.C. 47102(19).

(6) Documentation that the airport has an approved airport layout plan (ALP) and a five-year ACIP indicating all eligible grant projects either seeking to be funded from the MAP or other portions of the AIP. The five-year plan must also specifically identify the safety, capacity and conversion related projects, associated costs and projected five-year schedule of project construction, including those requested for consideration for MAP funding.

(7) Information identifying the existing and potential levels of visual or instrument operations and aeronautical activity at the current or former military airport and, if applicable, the relieved airport. Also, if applicable, information on how the airport contributes to air traffic system or airport system capacity. If served by commercial air carriers, the revenue passenger and cargo levels should be provided.

(8) A description of the projected civil role and development needs for transitioning from use as a military airfield to a civil airport and how

development projects would serve to convert the airport to civil use and/or reduce delays at an airport with more than 20,000 hours of annual delay in commercial passenger aircraft takeoffs and landings and/or how the projects would contribute to the airport and air traffic control system capacity in a metropolitan area or reduce current or projected flight delays.

(9) A description of the existing airspace capacity. Describe how anticipated new operations would affect the surrounding airspace and air traffic flow patterns in the metropolitan area in or near which a current or former military airport is located. Include a discussion of the level to which operations at this airport create airspace conflicts that may cause congestion or whether air traffic works into the flow of other air traffic in the area.

(10) A description of the five-year ACIP, including a discussion of major projects, their priorities, projected schedule for project accomplishment, and estimated costs. Eligible MAP safety, capacity related and/or conversion related projects should be specifically identified, that are proposes for funding under the MAP.

(11) A description of projects, that are consistent with the role of the airport and effectively contribute to joint use or convert the airfield to a civil airport. Projects can be related to various improvement categories depending on the need to convert from military to civil airport use, to meet required civil airport standards, and/or required to provide capacity to the airport and/or airport system. The projects selected, i.e., safety related, conversion-related, and capacity-related, must be identified and fully explained based on the airport's planned use. The sponsor needs to submit the airport layout plan (ALP) and other maps or charts that clearly identify and help clarify the eligible projects and designate them as safety-related, conversion-related, or capacity-related. It should be cross-referenced with the project costs and project descriptions. Projects that could be eligible under MAP, if needed for conversion-related or capacity-related purposes, must be clearly indicated, and include:

Airside

- Modification of airport or military airfield for safety purposes or airport pavements (including widths), marking, lighting or strengthening, and of structures or other features in the airport environs to meet civil standards for airport imaginary surfaces.
- Facilities or support facilities such as passenger terminal gates, aprons for passenger terminals, taxiways to new terminal facilities, aircraft parking, and cargo facilities to accommodate civil use.
- Modification of airport or military utilities (electrical distribution systems, communications lines, water, sewer, storm drainage) to meet civil standards. Also, modifications that allow utilities on the civil airport to operate independently, if other portions of the base are conveyed to entities other than the airport sponsor or retained by the Government.
- Purchase, rehabilitation, or modification of airport and support facilities, including aircraft rescue and fire fighting buildings and equipment, airport security requirements, lighting vaults, and reconfiguration or relocation of buildings for more efficient civil airport operations, and snow removal equipment.
- Modification of airport or military airfield fuel systems and fuel farms to accommodate civil aviation use.
- Acquisition of additional land for runway protection zones, other approach protection, or airport development.
- Cargo facility requirements.

Landside

- Construction of surface parking areas and access roads to accommodate automobiles in the airport terminal area and provide an adequate level of access to the airport.
- Construction or relocation of access roads to provide efficient and convenient movement of vehicular traffic to, on and from the airport, including access to passenger, air cargo, fixed base operations, and aircraft maintenance areas.
- Modification or construction of facilities such as passenger terminals, surface automobile parking, hangars, and access to cargo facilities to accommodate civil use.

(12) An evaluation of the ability of surface transportation facilities (road, rail, high speed rail, maritime) to provide intermodal connections.

(13) A description of the type and level of aviation and community interest in the civil use of a current or former military airport.

(14) One copy of the FAA-approved ALP for each copy of the application. The ALP or supporting information should clearly show capacity and conversion related projects. Also, other information such as project costs, schedule, project justification, other maps and drawings showing the project locations, and any other supporting documentation that would make the application easier to understand should be included.

**Redesignation of Airports Previously Designated and Applying for up to an Additional Five Years in the Program**

Airports applying for redesignation to the Military Airport Program need to submit the information required by new candidate airports applying for a new designation. On the SF (SF) 424 those airports need to indicate that this is an application for redesignation to the MAP. In addition to the above information, they need to explain:

(1) Why a redesignation and additional MAP eligible project funding is needed to accomplish the conversion to meet the civil role of the airport.

(2) Why an additional designation is necessary and funding of eligible work under other categories of AIP or other sources of funding would not accomplish the development needs of the airport,

(3) Based on the previously funded MAP projects, state why these projects and funding level were insufficient to accomplish the airport conversion needs and development goals.

Pending legislation may provide that the airport may be designated for a term less than five years.

This notice is issued pursuant to Title 49 U.S.C. 47118.

Issued at Washington, DC, on July 30, 1999.

**Catherine M. Lang,**

*Acting Director, Office of Airport Planning and Programming.*

[FR Doc. 99–20142 Filed 8–4–99; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Quad City International Airport, Moline, IL

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

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from PFC at Quad City International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

**DATES:** Comments must be received on or before September 7, 1999.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: FAA Great Lakes Region, Chicago, Airports District Office, 2300 East Devon Avenue, Room 201, Des Plaines, Illinois 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bruce E. Carter, Director of Aviation, of the Metropolitan Airport Authority of Rock Island County at the following address: Metropolitan Airport Authority of Rock Island County, Quad City International Airport, P.O. Box 9009, Moline, Illinois 61265.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Metropolitan Airport Authority of Rock Island County under section 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard A. Pur, Airports Engineer, FAA Great Lakes Region, Chicago Airports District Office, 2300 East Devon Avenue, Room 201, Des Plaines, Illinois 60018, 847/294–7527. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Quad City International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On July 15, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Metropolitan Airport Authority of Rock Island County was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 13, 1999.

The following is a brief overview of the application.

*PFC Application Number:* 99–03–C–00–MLI.

*Level of the proposed PFC:* $3.00.

*Proposed charge effective date:* July 1, 2009.

*Proposed charge expiration date:* July 1, 2023.

*Total estimated PFC revenue:* $12,879,837.00.

*Brief description of proposed projects:* Expansion of Terminal/Concourse; Runway 9–27 Rejuvenation.

*Class or classes of air carriers which the public agency has requested not be required to collect PFC's:* Part 135 air taxi/commercial operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Metropolitan Airport Authority of Rock Island County.

Issued in Des Plaines, Illinois on July 28, 1999.

**Benito De Leon,**

*Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.*

[FR Doc. 99–20084 Filed 8–4–99; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at San Jose International Airport, San Jose, CA

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

**ACTION:** Notice of intent to rule on Application.

**SUMMARY:** The FAA proposes to rule and invites public comments on the application to impose and use a FPC at San Jose International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

**DATES:** Comment's must be received on or before September 7, 1999.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Ralph G. Tonseth, Director of Aviation, city of San Jose, Airport Department, at the following address: 1732 N. First Street, San Jose, CA 95112. Air carriers and foreign air carriers may submit copies of written comments previously provided to the city of Jan Jose under section 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Marlys Vandervelde, Airports Program Analyst, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (650) 876–2806. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comments on the application to impose and use the revenue from a PFC at San Jose International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of Federal Aviation Regulations (14 CFR Part 158).

On July 15, 1999 the FAA determined that the application to impose and use a PFC submitted by the city of San Jose was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 28, 1999.

The following is a brief overview of the impose and use application No. 99–07–C–00–SJC:

*Level of proposed PFC:* $3.00.

*Proposed charge effective date:* October 1, 2001.

*Proposed charge expiration date:* July 1, 2002.

*Total estimated PFC revenue:* $12,976,000.

*Brief description of the proposed projects:* Aircraft Noise and Operations Management System, Emergency Command Post Relocation/Equipment, Airfield Lighting Control System, Police Building Improvement/Canine Unit, Ewert Road Improvements, Skyport Access to Airport Boulevard, Taxiway Y Pavement Reconstruction, Transportation Access Plan/Terminal Concept/Terminal C Upgrade Studies, Terminal C Ramp Lighting Improvements and Acoustical Treatment of Four Eligible Schools.

*Class or classes of air carriers which the public agency has requested not be required to collect PFCs:* Air Taxi/Commercial Operators (ATCO) filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the city of San Jose.

Issued in Hawthorne, California, on July 15, 1999.

**Herman C. Bliss,**

*Manager, Airports Division, Western-Pacific Region.*

[FR Doc. 99–20085 Filed 8–4–99; 8:45 am]

**BILLING CODE 4310–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement: Rail Corridor-Washington, DC to Charlotte, NC

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that a Tiered Environmental Impact Statement will be prepared for the Southeast High Speed Rail Corridor from Washington, DC to Charlotte, North Carolina, by way of Richmond, Virginia and Raleigh, North Carolina.

**FOR FURTHER INFORMATION CONTACT:** Ms. Catherine Batey, Planning & Program Development Engineer, Federal Highway Administration, 310 New Bern Ave., Suite 410, Raleigh, NC 27601, Telephone # (919) 856–4330 x 115: and Mr. David Valenstein, Transportation & Environmental Specialist, Federal Railroad Administration (FRA), 400 Seventh Street, SW, MS 20, Washington, DC 20590, Telephone # (202) 493–6368.

**SUPPLEMENTARY INFORMATION:** The FHWA and the FRA, in cooperation with the North Carolina Department of Transportation (NCDOT), will prepare a Tiered Environmental Impact Statement to examine the concept of a high speed rail system from Washington, DC through Richmond, Virginia and Raleigh, North Carolina, on to Charlotte, North Carolina. This concept represents a 477 mile long extension of the Northeast Rail Corridor, and encompasses over 1000 miles of existing rail rights-of-way that are potentially useable.

This action has four basic goals: (1) Establish the purpose and need of the project concept; (2) examine the regional implications of the project concept; (3) assess the modal and technology alternatives within the broad corridor and determine a preferred modal alternative; and (4) determine the feasible study area(s) to be carried forward for the appropriate second tier of environmental documentation.

It is anticipated that a joint scoping meeting will be held in South Hill, Virginia during late September or early October of this year. Letters describing the proposed action and soliciting comments are being sent appropriate Federal, State, and local agencies (in North Carolina, Virginia, and the District of Columbia). An iterative public involvement/information program will support the process. The program will involve public workshops, newsletters, fact sheets, a public opinion survey, and a project hotline along with other methods to solicit and incorporate public input throughout the planning process.

To ensure that the full range of issues relating to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA or the FRA at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulation implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: July 29, 1999.

**Nicholas L. Graf,**

*Division Administrator, Raleigh, North Carolina.*

[FR Doc. 99–20167 Filed 8–4–99; 8:45 am]

**BILLING CODE 4910–22–M**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

### Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 11, 1999 [64 FR 25391].

**DATES:** Comments must be submitted on or before September 7, 1999.

**FOR FURTHER INFORMATION CONTACT:** William W. Dean, Office of Ports and Domestic Shipping, Maritime Administration, MAR–831, Room 7201, 400 Seventh Street, SW., Washington, D.C. 20590. Telephone 202–366–5477 or FAX 202–366–6988. Copies of this collection can also be obtained from that office.

**SUPPLEMENTARY INFORMATION:** Maritime Administration (MARAD)

*Title:* Port Facilities Inventory.

*OMB Control Number:* 2133–0023.

*Type of Request:* Extension of currently approved collection.

*Affected Public:* Port terminal owners.

*Form (S):* MA–400.

*Abstract:* The collection of port facility data from terminal owners allows MARAD to maintain information, at the proper level of accuracy and currency, on those essential port facilities that are required for emergency use. The surveys would be used only in the event the data contained on these facilities fell below a level of currency deemed adequate for emergency planning purposes.

*Annual Estimated Burden Hours:* 40 hours.

**ADDRESSES:** Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, D.C. 20503, Attention MARAD Desk Officer.

**COMMENTS ARE INVITED ON:** 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, D.C. on August 2, 1999.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 99–20186 Filed 8–4–99; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

## Discretionary Cooperative Agreements To Support Seat Belt Enforcement With State Associations of Chiefs of Police

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Announcement of Cooperative Agreements in conjunction with the *Buckle Up America Campaign* to increase seat belt enforcement with the State Associations of Chiefs of Police.

**SUMMARY:** The National Highway Traffic Safety Administration (NHTSA) announces a cooperative agreement program to solicit support for the Buckle Up America (BUA) campaign. NHTSA solicits applications from the State Associations of Chiefs of Police to participate in the *BUA* campaign, by mobilizing law enforcement agencies to increase the use of seat belts and child safety seats, the most effective safety devices for reducing injuries and fatalities in traffic crashes. Only applications submitted by the State Association of Chiefs of Police will be considered. The State Associations of Chiefs of Police will take a leadership role in involving their State law enforcement agencies in increasing enforcement of seat belt and child safety seat laws by participating in the mobilization periods, high visibility enforcement, training officers and public information and education.

**DATES:** Applications must be received no later than September 7, 1999.

**ADDRESSES:** Applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), ATTN: Rose Watson, 400 7th Street, SW, Room 5301, Washington, DC 20590. All applications submitted must include a reference to NHTSA Cooperative Agreement Program No. NTS–01–9–05154.

**FOR FURTHER INFORMATION CONTACT:** General administrative questions may be directed to Rose Watson, Office of Contracts and Procurement at (202) 366–9557. Programmatic questions should be directed to Sandy Richardson, Traffic Law Enforcement Division, NTS–13, NHTSA, 400 7th Street, SW, Washington DC 20590 by e-mail *srichardson@nhtsa.dot.gov* or by phone (202) 366–4294. Interested applicants are advised that no separate application package exists beyond the contents of this announcement.

**SUPPLEMENTARY INFORMATION:**

### Background

It's a fact: On America's roads, someone is killed every 13 minutes and someone is injured every nine seconds in traffic crashes. It takes only a few seconds to fasten a seat belt. Yet this simple action, repeated every time you get into a motor vehicle, may be the most significant driving-related behavior change you can make to extend your life. Wearing a seat belt dramatically increases your chance of surviving a crash.

Each year, approximately 42,000 Americans die in traffic crashes and another three million are injured. Sadly, many of these deaths and injuries could have been prevented if the victims had been wearing seat belts or were properly restrained in child safety seats.

Seat belts, when properly used, are 45 percent effective in preventing deaths in potentially fatal crashes and 50 percent effective in preventing serious injuries. No other safety device has as much potential for immediately preventing deaths and injuries in motor vehicle crashes. The current level of seat belt use across the nation prevents more than 9,500 deaths and well over 200,000 injuries annually. Through 1997, more than 100,000 deaths and an estimated 2.5 million serious injuries have been prevented by seat belt use.

But, seat belt use rates and the resulting savings could be much higher. As of 1998, the average use rate among States in the U.S. was still well below the goal of 85 percent announced by the President for the year 2000 and at least a dozen States have use rates below 60 percent. On the other hand, use rates of 85–95 percent are a reality in most developed nations with seat belt use laws, and at least six States and the District of Columbia achieved use rates greater than 80 percent in 1998. A national use rate of 90 percent, among front seat occupants of all passenger vehicles, would result in prevention of an additional 5,500 deaths and 13,000 serious injuries annually. This would translate into a $9 billion reduction in societal costs, including 356 million for Medicare and Medicaid.

In April 1997, the *Buckle Up America* (*BUA*) campaign established ambitious national goals: (a) To increase seat belt use to 85 percent and reduce child fatalities (0–4 years) by 15 percent by the year 2000; and (b) to increase seat belt use to 90 percent and reduce child fatalities by 25 percent by the year 2005. This campaign advocates a four part strategy: (1) Building public-private partnerships; (2) enacting strong legislation; (3) maintaining high visibility law enforcement; (4) and conducting effective public education. Central to this Campaign's successes is the implementation of two major enforcement mobilizations each year (Memorial Day and Thanksgiving holidays).

*Objectives*

To help achieve the new national seat belt goals, NHTSA seeks to establish cooperative efforts between NHTSA and State Associations of Chiefs of Police to increase the use of seat belts and child safety seats. Specific objectives for this cooperative agreement program will be to support the Buckle Up America campaign by increasing periodic waves of high visibility enforcement and by promoting participation in Operation ABC's national mobilizations (May and November).

1. Periodic ''Waves'' of High Visibility Enforcement

The history of efforts to increase seat belt use in the U.S. and Canada suggests that highly visible enforcement of seat belt laws must be the core of any successful program to increase seat belt use. No State has ever achieved a high seat belt use rate without such a component.

Canada currently has a national seat belt use rate well above 90 percent. Nearly every province first attempted to increase seat belt use through voluntary approaches involving public information and education. These efforts were effective in achieving only very modest usage rates (no higher than 30 percent). By 1985, it became obvious to Canadian and provincial officials that additional efforts would be needed to achieve levels of 80 percent or greater. These efforts, mounted from 1985 to 1995, centered around highly publicized ''waves'' of enforcement, a technique that had already been shown to increase seat belt use in Elmira, New York. When these procedures were implemented in the Canadian provinces, seat belt use generally increased from about 60 percent to well over 80 percent, within a period of 3–5 years.

The Canadian successes using periodic, highly visible ''waves'' of enforcement, as well as successes of such efforts implemented in local jurisdictions in the U.S., prompted NHTSA to implement Operation Buckle Down (also called the ''70 by ''92'' Program) in 1991. This two-year program focused on Special Traffic Enforcement Programs (sTEPs) to increase seat belt use. It was followed by a national usage rate increase from about 53 percent in 1990 to 62 percent by the end of 1992 (as measured by a weighted aggregate of State surveys).

Neither the level of enforcement nor its public visibility was uniform in every State. Had these ''waves'' of enforcement been implemented in a more uniform fashion in every state, the impact would likely have been much greater.

In order to demonstrate the potential of periodic, highly visible enforcement in a more controlled environment, the State of North Carolina implemented its Click-It or Ticket program in 1993. In this program, waves of coordinated and highly publicized enforcement efforts (i.e., checkpoints) were implemented in every county. As a result, seat belt use increased statewide, from 65 percent to over 80 percent, in just a few months. This program provided the clearest possible evidence to demonstrate the potential of highly visible enforcement to increase seat belt use in a large jurisdiction.

2. National Mobilizations

National law enforcement mobilizations have also proven effective in increasing seat belt use. The BUA campaign supports two national mobilizations each year (Memorial Day and Thanksgiving holidays). During the 1998 mobilizations conducted throughout the week surrounding Memorial Day and the week surrounding Thanksgiving, between 4,000 and 5,000 law enforcement agencies participated in Operation ABC. Their efforts were covered by several hundred national and local television organizations in all major media markets. More than 1,500 print articles were written in response to each mobilization. As a result of the May mobilization, seat belt use increased significantly nationwide as more than 6,000,000 motorists were convinced to buckle up. Since that time, seat belt use has continued to increase significantly.

**Period of Support**

Cooperative agreements may be awarded for a period of support for (1) year. The application for the funding period (12 months) should address what is proposed and can be accomplished during that period. Subject to the availability of funds, the agency anticipates awarding up to 5 cooperative agreements in the amount of $50,000 each, totaling $250,000. Federal funds should be viewed as seed money to assist the Associations in working with local law enforcement agencies in the development of traffic safety initiatives. NHTSA may choose to extend the period of performance under this agreement for an additional 12 months, subject to the availability of funds. If NHTSA elects to do so, it will notify the recipients within 60 days prior to the expiration of this agreement and the recipients will submit a proposal for an aditional 12 months of performance.

**Eligibility Requirements**

In order to be eligible to participate in this cooperative agreement program, an applicant must be a State Association of Chiefs of Police, and must meet the following requirements:

—Have ability to provide funding to law enforcement agencies in the state.
—Have written support and approval from the applicant's chief executive officer to conduct seat belt enforcement programs to participate in and encourage local law enforcement participation in the Operation ABC Campaign and in other seat belt enforcement programs. (Include copy with proposal.)
—Obtain written support from the Governor's Representative or his/her designee in the State Highway Safety Office (SHSO) demonstrating that the applicant's proposal is consistent with the State's overall plan. (Include copy with proposal.)

**Application Procedure**

Each applicant must submit one original and two copies of their application package to: NHTSA, Office of Contracts and Procurement (NAD–30), ATTN: Rose Watson, 400 7th Street, S.W., Room 5301, Washington, D.C. 20590. Applications are due no later than September 7, 1999. Only complete application packages received by the due date will be considered. Submission of four additional copies will expedite processing, but is not required. Applications must be typed on one side of the page only. Applications must include a reference to NHTSA Cooperative Agreement Program No. NTS–01–9–05154. The applicant shall specifically identify any information in the application for which confidential treatment is requested, in accordance with the procedures of 49 CFR part 512, Confidential Business Information.

**Application Contents**

The application package must be submitted with OMB Standard Form 424 (Rev. 4–88, including 424A and 424B), Application for Federal Assistance, with the required information filled in and the certified assurances included. While the Form 424–A deals with budget information, and section B identifies Budget Categories, the available space does not permit a level of detail which is sufficient to provide for a meaningful evaluation of the proposed costs. A supplemental sheet should be provided which presents a detailed breakdown of the proposed costs, as well as any costs which the applicant proposes to contribute in support of this effort. The budget should be a 1-year plan. Also included shall be a program narrative statement which addresses the following:

1. A description of the project to be pursued which provides:

a. A detailed explanation of the proposed strategy to support the enforcement efforts, including methods for gaining support (both within the community and law enforcement leadership) for ''waves'' of highly publicized seat belt enforcement and for mobilization efforts. In addition, an explanation of the strategies to fund local law enforcement agencies to participate in the national mobilizations, and to conduct ''waves'' of highly publicized seat belt enforcement. A description of efforts to address training needs (e.g., differential enforcement or diversity sensitivity) of law enforcement jurisdictions and how training will be marketed to these jurisdictions.

b. The goals, objectives, and the anticipated results and benefits of the project (supporting documentation from concerned interests other than the applicant can be used.)

c. Written evidence of approval by the applicant's Chief Executive Officer.

d. An explanation demonstrating the need for assistance.

e. Description of any extraordinary social/community involvement.

f. A discussion of the criteria to be used to evaluate the results (e.g. number of citations, number of officers trained, seat belt use surveys, level of earned media coverage, etc.).

2. A list of the proposed activities in chronological order to show the schedule or accomplishments and their target dates.

3. Identification of the proposed program coordinator for participation in the proposed project effort.

4. A description of the applicant's previous experience related to this proposed program effort (i.e. past participation in highly publicized enforcement or participation in the Operation ABC national seat belt mobilizations).

5. A statement of any technical assistance which the applicant may require of NHTSA in order to successfully complete the proposed project.

**Application Review Process and Evaluation Factors**

Initially, each application will be reviewed to confirm that the applicant

meets the eligibility requirements and that the application contains all of the information required by the Applications Contents section of this notice. Each complete application from an eligible recipient will then be evaluated by a Technical Evaluation Committee. The applications will be evaluated using the following criteria:

1. The potential of the proposed project effort to increase seat belt use. (40%)

The likeliness and feasibility of the applicant's projects to increase enforcement efforts by law enforcement jurisdictions of proper seat belt and child safety set use. The degree to which the applicant has identified jurisdictions that might benefit from training opportunities concerning proper seat belt and child safety seat use, and effectiveness of the applicant's plan for providing that training. The overall soundness and feasibility of the applicant's approach to participating and successfully seeking law enforcement participation in mobilization efforts, public information campaigns concerning seat belt and child safety seat use, and child safety seat clinics.

2. The applicant's proposed strategy for participating and seeking the participation of local law enforcement agencies in the Buckle Up America national seat belt mobilizations. 40%

The likeliness and feasibility of the Association's proposal, as described in its innovative project plan, to assist smaller law enforcement agencies in participating in the Buckle Up America national seat belt mobilizations. The degree to which the applicant has demonstrated a complete understanding of the requirements for successful participation in the Operation ABC national seat belt mobilizations. The overall soundness and feasibility of the applicant's proposed strategy and demonstrated ability to involve and coordinate this project with smaller law enforcement agencies.

3. The applicant's ability to demonstrate support and coordination with local government and the State Highway Safety Office. 15%

The degree to which the proposal describes efforts and commitment to obtain the support from local government officials throughout the State. The likeliness and feasibility of the applicant's proposal for reaching local and state government executives throughout the state, including suggested methods for generating interest, making initial contacts and reasons for taking this approach as opposed to others.

4. The adequacy of the organizational plan for accomplishing the proposed project effort through the experience and technical expertise of the proposed personnel. 5%

Program management and technical expertise will be estimated by reviewing the qualifications and experience of the proposed personnel, and the relative level of effort of the staff. Consideration will be given to the adequacy of the organizational plan for accomplishing the proposed project effort. Consideration will also be given to the Association's resources and how it will provide the program management capability and personnel expertise to successfully perform the activities in its plan.

**NHTSA Involvement**

The NHTSA will be involved in all activities undertaken as part of the cooperative agreement program and will:

1. Provide a Contracting Officer's Technical Representative (COTR) to participate in the planning and management of the cooperative agreement and to coordinate activities between the selected State Associations of Chiefs of Police and NHTSA;

2. Provide information and technical assistance from government sources, within available resources and as determined appropriate by the COTR;

3. Provide liaison between the selected State Associations of Chiefs of Police and other government and private agencies as appropriate; and

4. Stimulate the exchange of ideas and information among cooperative agreement recipients through periodic meetings.

**Terms and Conditions of Award**

1. Prior to award, the recipient must comply with the certification requirements of 49 CFR part 29—Department of Transportation Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug-Free Workplace (Grants)

2. During the effective period of the cooperative agreement(s) awarded as a result of this notice, the agreement(s) shall be subject to NHTSA's General Provisions for Assistance Agreements (7–95).

**Reporting Requirements**

1. The recipient shall submit brief quarterly reports documenting project effort to date which will include information on accomplishments, obstacles and problems encountered, noteworthy activities. The report shall be due 15 days after the end of each quarter, and a final report summarizing the project effort within 30 days after the completion of the project. An original and three copies of each of these reports shall be submitted to the COTR.

2. The recipient may be requested to conduct an oral presentation of project activities for the COTR and other interested NHTSA personnel. For planning purposes, assume that these presentations will be conducted at the NHTSA Office of Traffic and Injury Control Programs, Washington, D.C. An original and three copies of briefing materials shall be submitted to the COTR.

Issued on: July 28, 1999.

**Rose A. McMurray,**

*Associate Administrator for Traffic Safety Programs.*

[FR Doc. 99–20148 Filed 8–4–99; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

**[Docket No. NHTSA–99–6039]**

## Notice of Receipt of Petition for Decision That Nonconforming 1998–1999 Audi A6 Passenger Cars Are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice of receipt of petition for decision that nonconforming 1998–1999 Audi A6 passenger cars are eligible for importation.

**SUMMARY:** This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1998–1999 Audi A6 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

**DATES:** The closing date for comments on the petition is September 7, 1999.

**ADDRESSES:** Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC

20590. [Docket hours are from 9 am to 5 pm].

**FOR FURTHER INFORMATION CONTACT:** George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

**SUPPLEMENTARY INFORMATION:**

## Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Motors of Kingsville, Maryland (''J.K.'') (Registered Importer 90–006) has petitioned NHTSA to decide whether 1998–1999 Audi A6 passenger cars are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 1998–1999 Audi A6 passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1998–1999 Audi A6 passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 1998–1999 Audi A6 passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1998–1999 Audi A6 passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * *,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that non-U.S. certified 1998–1999 Audi A6 passenger cars comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked ''Brake'' for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) replacement of the speedometer with one calibrated in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamps and front sidemarker lamps; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarker lights; (c) installation of a U.S.-model high mounted stop lamp if the vehicle is not already so equipped.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer and a warning buzzer microswitch in the steering lock assembly.

Standard No. 118 *Power Window Systems:* installation of a relay in the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a safety belt warning buzzer, wired to the driver's seat belt latch; (b) replacement of the driver's and passenger's side air bags, control units, sensors, seat belts and knee bolsters with U.S.-model components on vehicles that are not already so equipped. The petitioner states that the vehicles are equipped at the front and rear outboard seating positions with combination lap and shoulder belts that are self tensioning and capable of being released by means of a single red push-button, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* installation of U.S.-model doorbars in vehicles that are not already so equipped.

Additionally, the petitioner states that all vehicles will be inspected prior to importation to ensure that they are equipped with anti-theft devices in compliance with the Theft Prevention Standard found in 49 CFR Part 541.

The petitioner also states that a vehicle identification plate must be affixed to the vehicle near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

**Authority:** 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 2, 1999.

**Marilynne Jacobs,**

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. 99–20179 Filed 8–4–99; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–99–6039]**

### Notice of Receipt of Petition for Decision That Nonconforming 1994–1999 Mercedes-Benz C Class Passenger Cars Are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice of receipt of petition for decision that nonconforming 1994–1999 Mercedes-Benz C Class passenger cars are eligible for importation.

**SUMMARY:** This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1994–1999 Mercedes-Benz C Class passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

**DATES:** The closing date for comments on the petition is September 7, 1999.

**ADDRESSES:** Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

**FOR FURTHER INFORMATION CONTACT:** George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

**SUPPLEMENTARY INFORMATION:**

#### Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Motors of Kingsville, Maryland (''J.K.'') (Registered Importer 90–006) has petitioned NHTSA to decide whether 1994–1999 Mercedes-Benz C Class passenger cars are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 1994–1999 Mercedes-Benz C Class passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1994–1999 Mercedes-Benz C Class passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 1994–1999 Mercedes-Benz C Class passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1994–1999 Mercedes-Benz C Class passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * *,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that non-U.S. certified 1994–1999 Mercedes-Benz C Class passenger cars comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked ''Brake'' for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) replacement of the speedometer with one calibrated in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamps and front sidemarker lamps; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarker lights; (c) installation of a U.S.-model high mounted stop lamp on vehicles that are not already so equipped.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer and a warning buzzer microswitch in the steering lock assembly.

Standard No. 118 *Power Window Systems:* installation of a relay in the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a safety belt warning buzzer, wired to the driver's seat belt latch; (b) replacement of the driver's and passenger's side air bags, control units, sensors, seat belts and knee bolsters with U.S.-model components on vehicles that are not already so equipped. The petitioner states that the vehicles are equipped at the front and rear outboard seating positions with combination lap and shoulder belts that are self tensioning and capable of being released by means of a single red push-button, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* installation of U.S.-model doorbars in vehicles that are not already so equipped.

The petitioner also states that a vehicle identification plate must be

affixed to the vehicle near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

**Authority:** 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 2, 1999.

**Marilynne Jacobs,**

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. 99–20180 Filed 8–4–99; 8:45 am]

BILLING CODE 4910–59–P

## UNITED STATES INFORMATION AGENCY

### Congress-Bundestag Youth Exchange Program; Request for Proposals

**SUMMARY:** The Office of Citizen Exchanges, Youth Programs Division (E/PY), of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for the Congress-Bundestag Youth Exchange Program (CBYX). For applicants' information, on October 1, 1999, the Bureau will become part of the U.S. Department of State. The integration will not affect the content of this announcement or nature of the program described. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501c may submit proposals to facilitate academic exchanges between American and German high school students and young professionals.

**Program Information**

*Overview*

The CBYX program supports the exchange of American and German young people in order to sustain and strengthen German-American friendship based on common values of democracy and to convey lasting personal and institutional relationships to the successor generation. The primary objective of the program is to encourage American and German youth to learn about each other's society and culture through educational exchange. Additional goals for this competition include a renewed effort to promote the participants' roles as young ambassadors and the impact they can have on US-German relations, and to enhance Congressional involvement in the program and strengthen the linkages between US Representatives and their Bundestag counterparts. The program provides a full scholarship for an academic year experience of living and studying in the host country. CBYX is administered by the U.S. Information Agency and the German Bundestag Administrative Office, PB4. Known in Germany as the Parlamentarisches Patenschafts-Programm (PPP), the CBYX program was inaugurated in 1983 through a bilateral agreement between the U.S. Congress and the German Bundestag. Each government provides funding to exchange organizations through assistance awards for the costs of participant recruitment and selection, international airfare, orientation and debriefing, and hosting support for the respective exchange participants. The U.S.-German agreement calls for an open grants competition every four years, and PB4 is holding a simultaneous open competition to select the German counterpart organizations that will manage the program in Germany. High school organizations that are successful in this competition will be awarded start-up grants in FY2000 to administer the recruitment and selection of participants for academic year 2001–02. Organizations for each component will be eligible for renewal grants in FY2001, 2002, 2003 and 2004.

The actual number of participants exchanged each year is dependent on the amount of funding made available by the U.S. Congress and the German Bundestag. Though Congress has not yet determined the budget level for FY2000, the competition for program year 2001–02 will be based on approximately 400 American and approximately 400 German participants. Throughout the four-year grant cycle, representatives of both governments will hold annual discussions to determine the final participant numbers for each academic year. Participants are chosen according to procedures and criteria established by each government. In the U.S. the CBYX program has four components.

1. High School Component

This component provides 300 scholarships for a one-year educational and cultural homestay experience to American high school students ages 15–18. (A reciprocal exchange of approximately 300 American and 300 German high school students will take place annually.) In lieu of the traditional nationwide high-school participant competition, organizations are invited to bid on conducting merit-based competitions in one or more of five designated regions of the United States, as follows:

*Northeast:* Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Ohio, Pennsylvania, Washington, DC, Delaware, Maryland.

*Southeast:* Arkansas, Louisiana, Mississippi, Alabama, Kentucky, Tennessee, Virginia, West Virginia, North Carolina, South Carolina, Georgia, Florida, Puerto Rico.

*Central States:* Indiana, Illinois, Michigan, Minnesota, Wisconsin, Iowa, Missouri, Nebraska.

*Southwest:* Kansas, Texas, Oklahoma, Colorado, New Mexico, Utah, Arizona, Southern California * (* the northern border of this region includes the counties of Monterey, San Benito, Fresno, and Inyo).

*Pacific/Northwest:* Alaska, Hawaii, Washington, Oregon, Idaho, Montana, Wyoming, Nevada, North Dakota, South Dakota, Northern California * (* the southern border of this region includes the counties of Santa Cruz, Santa Clara, Merced, Madera, and Mono).

Organizations may bid on more than one region, indicating the most preferred area(s) in priority order. A maximum of five organizations will be selected to conduct all aspects of the competition in one of each of the five regions for 60 American participants. Organizations that are awarded a grant will conduct advertising, recruitment, processing of applications, screening, selection, pre-departure orientations and debriefings, and management of all administrative and logistical matters including domestic and international travel.

In the host country, American and German partner organizations will coordinate arrival and re-entry orientation for the respective exchange students, placement of the students in host families and schools (nationwide), arrange program enrichment activities, conduct the recruitment, screening, selection and orientation of host families, provide program monitoring,

supervision and counseling to students and host families, and manage all administrative and logistical matters including in-country travel and health and accident insurance. Organizations should secure all host family and school placements at least two weeks prior to the German students' arrival in the U.S. Grantees will be required to submit to USIA a list of these placements one week prior to the students' arrival.

2. Vocational Component

This component provides approximately 20 scholarships to graduating American high-school seniors with a vocational specialization for a one-year professional study and training experience in their fields of interest. One organization will be selected to conduct all aspects of the nationwide competition and programming, including advertising, recruitment, processing of applications, screening, selection, pre-departure orientations and debriefings, and management of all administrative and logistical matters including domestic and international travel. (During the selection process the grantee is encouraged to work with vocational educational offices at the state level, as well as administrators of secondary schools with vocational education in their curriculum.)

The German partner organization chosen for a grant will coordinate arrival and re-entry orientation for the students and their placement in host families and schools, arrange a practicum in the participants' field of study, arrange program enrichment activities, and conduct the recruitment, screening, selection and orientation of host families, provide program monitoring, supervision and counseling to students and host families, and manage all administrative and logistical matters including in-country travel and health and accident insurance.

3. Young Professional Component

This component provides approximately 80 scholarships for a one-year professional study and training experience in business, technical, vocational and agricultural fields to young Americans, ages 18–24. (A reciprocal exchange of approximately 80 Americans and 100 Germans will take place annually.) One organization will be selected to conduct all aspects of the nationwide competition and programming, including advertising, recruitment, processing of applications, screening, selection, pre-departure orientations and debriefings, and management of all administrative and logistical matters including domestic and international travel.

In the host country, the American and German partner organizations will coordinate arrival and re-entry orientation for the students, the placement of the students in host families (or other suitable living quarters) and schools (colleges/universities), arrange a practicum in the participants' field of study, arrange program enrichment activities, and conduct the recruitment, screening, selection and orientation of host families, provide program monitoring, supervision and counseling to students and host families, and management all administrative and logistical matters including in-country travel and health and accident insurance.

In the U.S. each German participant will be placed in a two or four-year college for one semester of full-time study or a minimum of 12 credit hours (which may include an English class) throughout the academic year. The organization is encouraged to seek tuition waivers and cost sharing with cooperating colleges. The organization will coordinate with each participant to assure that his/her practicum is based on a prospectus of the specific skills and functions that will be mastered and that there is a structured learning component that enables the participant to gain a perspective on the overall operation of the business. The organization will also coordinate a six-week Congressional internship on Capitol Hill for three to five young professionals. A stipend for some meals, incidentals and reasonable local transportation expenses may be included in the budget, but it is anticipated that the stipend would be substantially reduced or eliminated during the second half of the program when the participants receive allowances for living expenses from the firms or agencies hosting their practicums. The current stipend range is $250 to $300 per the regional cost of living. Where possible, hosting arrangements should be found that do not require subsidization.

4. Administrative Component

One organization will be awarded an administrative grant to produce materials for program advertisement, recruitment and orientation for the high school component, to set up and maintain an alumni database for all CBYX participants, and procure and administer a special health and accident insurance plan required by the German Government for all German CBYX participants.

The organization will produce program specific informational materials for the high school component. Each organization selected for the high school component will distribute the materials to a wide audience within its appointed region, including public and private secondary schools, the media, and key networks such as the American Association of Teachers of German. (Innovative methods of publicizing the program are welcome, within funding limitations. Organizations are encouraged to utilize their volunteer networks and alumni to promote the program.) The organization will coordinate information and input from the high school organizations for the production of general briefing and orientation materials for American high school participants. The organization will set up and maintain a master database listing of all CBYX participants with a corresponding list of the Congressional Representatives from whose districts the students are selected and a similar list of German participants and the Congressional districts in which they are hosted. The organization will also be responsible for securing and distributing to all CBYX organizations the special health and accident insurance for the German students.

Please see the POGI (Project Objectives, Goals, and Implementation) for further details and guidance regarding each of the four program components.

*Guidelines*

Prior German language skills are not required. The German partner organizations will provide up to two months of intensive language training, which is covered by German Government funds, to American participants upon their arrival in Germany. German participants are expected to be sufficiently proficient in English and therefore will not require (but may elect) an English language course as part of their regular studies. (No USIA grant funding will be provided for English training under this program.) The pre-departure orientation for American students and the debriefing for German students should take place in Washington, DC and include CBYX students only. The Washington programs, which are designed to introduce the participants to the federal government and issues in the U.S.-German relationship, may be subcontracted out by the grantee organizations.

Organizations may include other program elements such as mid-year enrichment and follow-on activities in their proposals, but should bear in mind that funding is limited. Mid-year enrichment activities may include

informal local or regional gatherings, volunteer community projects, and volunteer internships in local congressional offices. For follow-on activities organizations are encouraged to involve former participants in the organization's alumni activities as well as CBYX-specific activities by volunteering in various capacities such as promoting the program in their communities and/or serving on the selection committees or as local or regional representatives. Organizations should also utilize their individual web sites and newsletters to track and/or keep in touch with alumni. To be eligible for consideration in this competition an organization must:

1. Be legally incorporated and identify a legally incorporated affiliate in Germany and/or indicate its willingness to be partnered with a German organization approved by PB4 and USIA.

2. Have a not-for-profit status, as determined by the Internal Revenue Service; the German affiliate must also be not-for-profit (gemeinneutzige).

3. Be financially solvent, have a demonstrated track record of responsible fiscal management and be able to meet the accounting and reporting requirements for Agency grants.

4. Have a minimum of four years of experience in conducting long-term exchange programs (of at least nine months duration) between the United States and Germany.

5. Have well-established volunteer and host family networks to carry out various aspects of the program; regional representatives must be situated in such a way to handle expeditiously any problems that arise regarding host family accommodations, schooling and language problems, or difficulties concerning internships.

Programs must comply with J–1 visa regulations. Please refer to 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 must submit a comprehensive budget for the entire program. 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. Costs for U.S. and German students are to be listed separately. Organizations should be familiar with grant regulations described in OMB circulars A110, A122, and A133.

Cost sharing is encouraged. Cost sharing may be in the form of allowable direct or indirect costs. The grant recipient must maintain written records to support all allowable costs which are claimed as being in contribution to cost participation, as well as cost to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A100, Attachment E. Cost Sharing and Matching should be described in the proposal. In the event the recipient does not provide the minimum amount of cost sharing as stipulated in the recipient's budget, the Agency's contribution will be reduced in proportion to the recipient's contribution. The recipient's proposal shall include the cost of an audit that: (1) Complies with the requirements of OMB Circular No. A–133, Audits of Institutions of Higher Education and Other Nonprofit Institutions; (2) complies with the requirements of American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) No. 92–9; and (3) complies with AICPA Codification of Statements on Auditing Standards AU Section 551, ''Reporting on Information Accompanying the Basic Financial Statements in Auditor-Submitted Documents,'' where applicable. When USIA is the largest direct source of Federal financial assistance—i.e. the cognizant Federal Agency—and indirect costs are charged to Federal grants, a supplemental schedule of indirect cost computation is required. The audit costs shall be identified separately for: (1) Audit of the basic financial statements, and (2) supplemental reports and schedules required by A–133.

USIA's Office of Inspector General has provided supplemental guidance for conducting A–133 audits and recovery of related audit costs in a separate ''Dear Colleague'' letter dated January 24, 1995.

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/P–00–03.*

*For Further Information Contact:* The Office of Citizen Exchanges, Youth Programs Division, E/PY, Room 568, U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547, (202) 619–6299, fax: 619–5311 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 Shalita Jones 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://e.usia.gov/education/rfps. Please read all information before downloading.

**Deadline for Proposals**

All proposal copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on *Friday, September 17, 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/P–00–3,* Office of Grants Management, E/XE, Room 336, 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 POGI for specific suggestions on incorporating diversity into the total proposal.

**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 area office and the USIA post 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 Education 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 their conformance with the objectives and guidelines stated above and the review criteria stated in the POGI.

**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 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 legislation.

**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**

All applicants will be notified on the results of the review process on or before December 31, 1999. Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: July 30, 1999.

**William Kiehl,**

*Acting Deputy Associate Director for Educational and Cultural Affairs.*

[FR Doc. 99–20144 Filed 8–4–99; 8:45 am]

**BILLING CODE 8230–01–M**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0353]**

## Proposed Information Collection Activity: Proposed Collection; Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine if a student is eligible for work-study benefits.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before October 4, 1999.

**ADDRESSES:** Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0353'' in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Certification of Lessons Completed, VA Forms 22–6553b and 22–6553b-1.

*OMB Control Number:* 2900–0353.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* VA Forms 22–6553b and 22–6553b-1 are used to determine the number of lessons completed by the student and serviced by the correspondence school, and if necessary to determine the date of completion or

termination of correspondence training. Without this information, the VA would be unable to determine the proper payment or the student?s training status. These forms are considered to be one and the same.

*Affected Public:* Individuals or households, Business or other for-profit.

*Estimated Annual Burden:* 2,031 hours.

*Estimated Average Burden Per Respondent:* 10 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 4,036.

Dated: July 20, 1999.

By direction of the Secretary.

**Donald L. Neilson,**

*Director, Information Management Service.*

[FR Doc. 99–20073 Filed 8–4–99; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0379]**

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before September 7, 1999.

**FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT:** James Good, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8001 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0379.''

**SUPPLEMENTARY INFORMATION:**

*Title:* Time Record (Work-Study Program), VA Form 22–8690.

*OMB Control Number:* 2900–0379.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* The information collected is used to ensure that the amount of benefits payable to a student who is pursuing work-study is correct. Without the information, VA would not have a basis upon which to make payment.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 18, 1999 at pages 13470–13471.

*Affected Public:* Individuals or households, Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local or Tribal Governments.

*Estimated Annual Burden:* 10,000 hours.

*Estimated Average Burden Per Respondent:* 5 minutes.

*Frequency of Response:* Four times per year.

*Estimated Number of Respondents:* 30,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0379'' in any correspondence.

Dated: July 20, 1999.

By direction of the Secretary.

**Donald L. Neilson,**

*Director, Information Management Service.*

[FR Doc. 99–20074 Filed 8–4–99; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0405]**

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before September 7, 1999.

**FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT:** James Good, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8001 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0405.''

**SUPPLEMENTARY INFORMATION:**

*Title:* REPS Annual Eligibility Report, VA Form 21–8941.

*OMB Control Number:* 2900–0405.

*Type of Review:* Reinstatement, without change, of a previously approved collection for which approval has expired.

*Abstract:* The form is used to confirm the continued entitlement of a beneficiary under the REPS program.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 29, 1999 at page 4747.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 550 hours.

*Estimated Average Burden Per Respondent:* 15 minutes.

*Frequency of Response:* Generally one time.

*Estimated Number of Respondents:* 2,200.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0405'' in any correspondence.

Dated: July 20, 1999.

By direction of the Secretary.

**Donald L. Neilson,**

*Director, Information Management Service.*

[FR Doc. 99–20075 Filed 8–4–99; 8:45 am]

**BILLING CODE 8320–01–P**

# Corrections

**Federal Register**

Vol. 64, No. 150

Thursday, August 5, 1999

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

### Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

*Correction*

In notice document 99–19391, beginning on page 41108, in the issue of Thursday, July 29, 1999, make the following correction:

On page 41108, in the third column, paragraph b., The *Project No.* is corrected to read ''11786-000''.

[FR Doc. C9–19391 Filed 8–4–99; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Order Granting Rehearing for Purpose of Further Consideration, Granting Late Motions To Intervene and Establishing Procedures for Additional Late Motions To Intervene and Answers

*Correction*

In notice document 99–19527, appearing on page 41407, in the issue of Friday, July 30, 1999, make the following correction:

On page 41407, in the first column, in the 17th line, ''ER98-1005-006'' should read ''ER98-1055-006''.

[FR Doc. C9–19527 Filed 8–4–99; 8:45 am]

BILLING CODE 1505–01–D

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

**[FRL-6366-8]**

### Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; State of Arizona; Pima County Department of Environmental Quality

*Correction*

In rule document 99–16231 beginning on page 34560 in the issue of Monday, June 28, 1999, make the following correction(s):

**§ 63.99 [Corrected]**

On page 34563, in § 63.99(a)(3), in the table, in the entries for subparts U and DD, remove the ''X'' symbol in the corresponding column of ''PDEQ$^3$''.

[FR Doc. C9–16231 Filed 8–4–99; 8:45 am]

BILLING CODE 1505–01–D

## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. IC-23858; File No. 812-11518]**

### First Defined Portfolio Fund LLC

*Correction*

In notice document 99–14757, beginning on page 31326, in the issue of Thursday, June 10, 1999, make the following correction:

On page 31326, in the second column, the docket number is corrected to read as set forth above.

[FR Doc. C9–14757 Filed 8–4–99; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday
August 5, 1999

Part II

# Department of Health and Human Services

## Health Care Financing Administration

**Medicare Program; Schedules of Per-Visit and Per-Beneficiary Limitations on Home Health Agency Costs for Cost Reporting Periods Beginning On or After October 1, 1999 and Portions of Cost Reporting Periods Beginning Before October 1, 2000; Notice**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[HCFA–1060–NC]**

**RIN 0938–AJ57**

## Medicare Program; Schedules of Per-Visit and Per-Beneficiary Limitations on Home Health Agency Costs for Cost Reporting Periods Beginning on or After October 1, 1999 and Portions of Cost Reporting Periods Beginning Before October 1, 2000

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Notice with comment period.

**SUMMARY:** This notice with comment period sets forth revised schedules of limitations on home health agency costs that may be paid under the Medicare program for cost reporting periods beginning on or after October 1, 1999 and portions of cost reporting periods beginning before October 1, 2000. These limitations replace the limitations that were set forth in our August 11, 1998 notice with comment period (63 FR 42912).

**DATES:** *Effective Date:* These schedules of limitations are effective for cost reporting periods beginning on or after October 1, 1999 and portions of cost reporting periods beginning before October 1, 2000.

*Comment Date:* Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p. m. on October 4, 1999.

**ADDRESSES:** Mail written comments (one original and three copies) to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1060–NC, P.O. Box 31850, Baltimore, Maryland 21207–8850

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201, or

Room C5–16–03, Central Building, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Comments may also be submitted electronically to the following E-mail address: HCFA1060NC@hcfa.gov. E-mail comments must include the full name and address of the sender and must be submitted to the referenced address in order to be considered. All comments must be incorporated in the E-mail message because we may not be able to access attachments.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1060–NC. 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 443/G of the Department's offices at 200 Independence Avenue, SW, Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (Phone: (202) 690–7890).

**FOR FURTHER INFORMATION CONTACT:** Michael Bussacca, (410) 786–4602.

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### I. Background

Section 1861(v)(1)(A) of the Social Security Act (the Act) authorizes the Secretary to establish limitations on allowable costs incurred by a provider of services that may be paid under the Medicare program, based on estimates of the costs necessary for the efficient delivery of needed health services. Under this authority, we have maintained limitations on home health agency (HHA) costs since 1979. Additional statutory provisions specifically governing the limitations applicable to HHAs are contained at section 1861(v)(1)(L) of the Act.

On October 21, 1998, the Omnibus Consolidated and Emergency Supplemental Appropriations Act (OCESAA), 1999 (Public Law 105–277) was signed into law. Section 5101 of OCESAA amended section 1861(v)(1)(L) of the Act by providing for adjustments to the per-beneficiary and per-visit limitations for cost reporting periods beginning on or after October 1, 1998. Program Memoranda (Transmittal) Nos. A–98–38 and A–99–1 were issued in November 1998 and January 1999, respectively, outlining the specific provisions affecting the Interim Payment System (IPS). We had published a notice with comment period establishing the cost limitations for cost reporting periods beginning on or after October 1, 1998 in the **Federal Register** that was entitled ''Medicare Program; Schedules of Per-Visit and Per-Beneficiary Limitations on Home Health Agency Costs for Cost Reporting Periods Beginning On or After October 1, 1998'' (HCFA–1035–NC) on August 11, 1998 (63 FR 42912). OCESAA made the following adjustments to these limitations:

Providers with a 12-month cost reporting period ending during Fiscal Year (FY) 1994, whose per-beneficiary limitations were less than the national median, which is to be set at 100 percent for comparison purposes, will get their current per-beneficiary limitation plus ⅓ of the difference between their rate and the adjusted national median per-beneficiary limitation. New providers or providers without a 12-month cost reporting period ending in Federal Fiscal Year (Federal FY) 1994 whose first cost reporting period begins before October 1, 1998 will receive 100 percent of the national median per-beneficiary limitation.

New providers whose first cost reporting periods begin during Federal FY 1999 will receive 75 percent of the national median per-beneficiary limitation as published in the August 11, 1998 notice. In the case of a new provider or a provider that did not have a 12-month cost reporting period ending during Federal FY 1994 that filed an application for HHA provider status before September 15, 1998 or that was approved as a branch of its parent agency before that date and becomes a

subunit of the parent agency or a separate freestanding agency on or after that date, the per-beneficiary limitation will be set at 100 percent of the national median. The per-visit limitation effective for costreporting periods beginning on or after October 1, 1998 is set at 106 percent of the median instead of 105 percent of the median, as previously required in the Balanced Budget Act of 1997 (BBA) (Public Law 105–33), enacted on August 5, 1997.

There is contingency language for the home health prospective payment system (PPS) provided in the BBA that was also amended by section 5101 of OCESAA. If the Secretary for any reason does not establish and implement the PPS for home health services, the Secretary will provide for a reduction by 15 percent to the per-visit cost limits and per-beneficiary limits, as those limits would otherwise be in effect on September 30, 2000.

Section 1861(v)(1)(L)(i)(V) of the Act specifies that the per-visit limits shall not exceed 106 percent of the median of the labor-related and nonlabor per-visit costs for freestanding HHAs. The reasonable costs used in the per-visit calculations will be updated by the home health market basket reduced by 1.1 percentage points as required by section 1861(v)(1)(L)(ix) of the Act and excluding any change in the home health market basket with respect to cost reporting periods that began on or after July 1, 1994 and before July 1, 1996 as required by section 1861(v)(1)(L)(iv) of the Act.

Section 1861(v)(1)(L)(v)(I) of the Act requires the per-beneficiary annual limitation be a blend of (1) an agency-specific per-beneficiary limitation based on 75 percent of 98 percent of the reasonable costs (including nonroutine medical supplies) for the agency's 12-month cost reporting period ending during Federal FY 1994, and (2) a census region division per-beneficiary limitation based on 25 percent of 98 percent of the regional average of these costs for the agency's census division for cost reporting periods ending during FY 1994, standardized by the hospital wage index. However, section 1861(v)(1)(L)(viii)(I) of the Act provides that if the per-beneficiary limitation imposed under this section of the Act is less than the median described under section 1861(v)(1)(L)(vi)(I) of the Act (but determined as if any reference under section 1861(v)(1)(L)(v) of the Act to ''98 percent'' were a reference to ''100 percent''), the per-beneficiary limitation imposed under section 1861(v)(1)(L)(v) will be increased by ⅓ of this difference. The reasonable costs used in the per-beneficiary limitation calculations in (1) and (2) above will be updated by the home health market basket reduced by 1.1 percentage points and excluding any changes in the home health market basket with respect to cost reporting periods that began on or after July 1, 1994 and before July 1, 1996 as required by sections 1861(v)(1)(L)(ix) and (iv) of the Act respectively. This per-beneficiary limitation based on the blend of the agency-specific and census region division per-beneficiary limitations will then be multiplied by the agency's unduplicated census count of beneficiaries (entitled to benefits under Medicare) to calculate the HHA's aggregate per-beneficiary limitation for the cost reporting period or portion of cost reporting period subject to the limitation.

Section 1861(v)(1)(L)(viii)(II) provides that for new providers and providers without a 12-month cost reporting period ending in Federal FY 1994 but for which the first cost reporting period begins before Federal FY 1999, the per-beneficiary limitation will be a national per-beneficiary limitation that will be determined as if any reference to 98 percent were a reference to 100 percent. The national per-beneficiary limitation is defined in section 1861(v)(1)(L)(vi) of the Act.

For new providers for which the first cost reporting period begins during or after Federal FY 1999 as defined in section 1861(v)(1)(L)(viii)(III) of the Act, the per-beneficiary limitation will be equal to 75 percent of the national per-beneficiary limitation.

In the case of a new provider or a provider without a 12-month cost reporting period ending in FY 1994, section 1861(v)(1)(L)(viii)(II) shall apply to an HHA that filed an application for HHA provider status under Medicare before September 15, 1998 or that was approved as a branch of its parent agency before that date and becomes a subunit of the parent agency or a separate agency on or after that date.

Payments by Medicare under this system of payment limitations must be the lower of an HHA's actual reasonable allowable costs, per-visit limitations in the aggregate, or a per-beneficiary limitation in the aggregate.

Section 1895(a) of the Act, as amended by OCESAA, requires the Secretary to provide for payments for home health services in accordance with a PPS for cost reporting periods and portions of cost reporting periods beginning on or after October 1, 2000. This, in effect, will result in a dual payment system for agencies with cost reporting periods spanning both Federal FY 2000 and Federal FY 2001. Section 5101(e) of OCESAA also amended the contingency clause in section 4603(e) of the BBA, whereby, if the Secretary does not establish and implement the home health PPS, the per-visit and per-beneficiary limitations in effect on September 30, 2000 will be reduced by 15 percent and applied to portions of cost reporting periods beginning on or after October 1, 2000.

Whether there is a home health PPS or a continuation of the IPS on or after October 1, 2000, agencies will need to separately aggregate visits and the unduplicated census count for services furnished before and after October 1, 2000. These statistics will be needed in order to recalculate the appropriate Medicare liability on the Medicare cost report. The visits and unduplicated census counts for home health services furnished on or after October 1, 1999 and before October 1, 2000 will have the per-visit and per-beneficiary limitations updated to the end of the agency's cost reporting period applied. For services furnished after October 1, 2000, the agency will be paid either under the home health PPS or the per-visit and per-beneficiary limitations set forth in this notice less 15 percent. We will be modifying our Provider Statistical and Reimbursement Report (PS & R), which is used by our contractors for verifying statistical data used for the payment of Medicare services, to accommodate the change from IPS to PPS or IPS to a reduced IPS effective October 1, 2000.

This notice with comment period sets forth cost limitations for cost reporting periods beginning on or after October 1, 1999 and portions of cost reporting periods beginning before October 1, 2000. As required by section 1861(v)(1)(L)(iii) of the Act, we are using the area wage index applicable under section 1886(d)(3)(E) of the Act determined using the survey of the most recent available wages and wage-related costs of hospitals located in the geographic area in which the home health service is furnished. For purposes of this notice, the HHA wage index is based on the most recent available final hospital wage index, that is, the preclassified hospital wage index effective for hospital discharges on or after March 1, 1999, which uses data from Medicare cost reports for cost reporting periods beginning in FY 1995. As the statute also specifies, in applying the hospital wage index to HHAs, no adjustments are to be made to account for hospital reclassifications under section 1886(d)(8)(B) of the Act, decisions of the Medicare Geographic Classification Board (MGCRB) under section 1886(d)(10) of the Act, or decisions by the Secretary.

**II. Analysis of and Responses to Public Comments to the August 11, 1998 Per-Visit and Per-Beneficiary Limitations Notice**

We received nine items of timely correspondence on the August 11, 1998 notice. The comments pertaining to the per-visit and per-beneficiary limitations and our responses are discussed below.

*Comment:* Commenters recommended that we explain specifically and provide an example of how we envision prorating the unduplicated census count between agencies for a beneficiary that receives services from multiple agencies with different fiscal year ends.

*Response:* In the final rule with comment period entitled ''Schedule of Per-Beneficiary Limitations on Home Health Agency Costs for Cost Reporting Periods Beginning on or After October 1, 1997'' published in the **Federal Register** on March 31, 1998 (63 FR 15718), we specifically stated, ''The per-beneficiary limitation will be prorated based on a ratio of the number of visits furnished to the individual beneficiary by the HHA during its cost reporting period to the total number of visits furnished by all HHAs to that individual beneficiary during the same period.'' (63 FR 15727) The number of agencies providing visits to the beneficiary is irrelevant. It is the total number of visits the beneficiary receives by all agencies during the specified agency's cost reporting period that triggers whether proration is required. What point the other agencies are in their cost reporting period does not enter into the computation. However, the total number of visits could be different for each agency because of their individual cost reporting periods.

*Comment:* Commenters encouraged us to explain how the data needed for proration will be gathered and made available to intermediaries and providers.

*Response:* The requirement to prorate the per-beneficiary limitation when a beneficiary receives home health services from multiple agencies is statutory. Due to other systems priorities for compliance with Y2K, we are unable to make the necessary changes in our systems to accommodate the data needed to do proration at a national level. That does not, however, preclude contractors from making the necessary adjustments for proration within their current operating systems.

*Comment:* Commenters stated that it is unclear in the **Federal Register** when and under what circumstances the intermediaries are to apply the Offset Adjustment for the Implementation of the Home Health Outcome Assessment Information (OASIS) adjustment factor. Commenters questioned whether the intermediaries should apply the adjustment factor immediately and across the board to all agencies that request the adjustment factor, or upon instructions from HCFA.

*Response:* In the August 11, 1998 **Federal Register** (63 FR 42916), we specifically state that the OASIS adjustment will only apply to the labor component of the specified per-visit limitations in the first year of implementation of a new assessment tool. See section III.F of this notice with comment period regarding our overall application of the OASIS adjustment.

*Comment:* Commenters recommended that we clarify whether the option for being classified as an ''old'' or ''new'' provider applies to merged providers whose per-beneficiary limitation is based on a weight-average. Commenters also recommend that we clarify whether the option will be extended to HHAs that undergo similar mergers or consolidations, including changes in status and ownership, after the October 1, 1998 notification deadline.

*Response:* Agencies that experienced certain changes in status were given the option to apply the provisions in the March 31, 1998 **Federal Register** or the provisions in the August 11, 1998 **Federal Register** up to the October 1, 1998 notification deadline. The option mainly impacted those agencies that may have been classified as new providers subject to the national per-beneficiary limitation. However, old providers that merged after the cost reporting period ending during Federal FY 1994 will be treated the same under this August 11, 1998 provision. That is, the surviving provider number will dictate the per-beneficiary limitation that will be applied to the merged agencies for all mergers after October 1, 1998.

*Comment:* Commenters stated that some intermediaries for hospital-based agencies have yet to notify providers of their per-beneficiary amounts or unduplicated census counts. The per-beneficiary amount and unduplicated census count are important factors that enable providers to make informed decisions regarding the providers' requests to change their provider status. Therefore, commenters recommended that we consider extending the deadline for HCFA notifying providers of their decision to its end of the comment period (October 13, 1998).

*Response:* We do not believe it is necessary to extend the notification deadline. Considering the importance of the per-beneficiary limitations on an agency's financial needs, the notification deadline of October 1, 1998 provided agencies adequate time to assess the impact of the earlier provisions relating to new provider status and make the election if warranted.

*Comment:* Commenters disagreed with our position that providers may not request exceptions to their per-beneficiary amounts. Commenters believed that we acknowledge that there will be valid circumstances not anticipated by the per-visit limitation methodology that will cause an agency to incur cost in excess of that allowed by the per-visit limitation. Commenters stated that we provide ''atypical'' home health service exceptions for those unique situations through 42 CFR 413.30(f)(1). Therefore, it appears that, since the statute is silent on the matter of exceptions, we have the discretion to extend authorization for exceptions of the per-beneficiary limitations.

*Response:* We do not agree. Section 1861(v)(1)(L)(ii) of the Act specifically provides for exemptions and exceptions to the per-visit limitations so deemed by the Secretary. As we stated in the March 31, 1998 **Federal Register**, we do not believe that the Congress intended the general rules at § 413.30 to apply to the establishment of the per-beneficiary limitations. The statute does not provide any such exceptions or exemptions to the per-beneficiary limitations.

*Comment:* A commenter stated that the limits as published used the wrong wage indices. Section 1861(v)(1)(L)(iii) of the Act requires the use of the most recently published hospital wage index, which would be the hospital wage indices published in the final rule entitled ''Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1999 Rates'' **Federal Register** on July 31, 1998 (63 FR 40954).

*Response:* The statute requires us to use the most recent available area wage indices applicable under section 1886(d)(3)(E) of the Act to establish the limitations, which will be those indices that have been published and in effect for hospitals. The wage indices published in the **Federal Register** on July 31, 1998 were not effective under section 1886(d)(3)(E) of the Act until October 1, 1998. Therefore, when the home health limitations were published, the wage indices in effect for hospitals were those published in August, 1997 and effective October 1, 1997. Therefore, we believe the wage indices published for HHAs are in accordance with the statute.

*Comment:* Commenters recommended that the Medicare cost report and the Payment Statistical and Reimbursement report should be changed to

accommodate the requirement to use the wage index that corresponds to the location where the home health service is furnished.

*Response:* Both the Medicare cost report and the Payment Statistical and Reimbursement report have been modified to accommodate the site-of-service requirement for applying the wage index.

*Comment:* Commenters believed it is our intent to allow retroactive application of the August 11, 1998 new and old agency provisions to both Federal FY 1998 and 1999 cost reports.

*Response:* Before October 1, 1998, providers will have the option of being paid as either an ''old'' or ''new'' agency when the surviving provider number had a 12-month cost reporting period ending in Federal FY 1994. After October 1, 1998, providers will be paid on the basis of being an ''old'' provider only if the surviving provider number had a 12-month cost reporting period ending in Federal FY 1994. Providers will no longer have the option of being ''old'' or ''new'' after October 1, 1998.

*Comment:* Commenters stated that the failure to consider the effects of proration on the calculation on the per-beneficiary limitations is questionable. If proration of the per-beneficiary limitation is to be applied to cost reporting periods covered by the interim payment system, proration must be considered in the calculation of the per-beneficiary limitation.

*Response:* During the period used for establishing the per-beneficiary limitations, proration of the unduplicated census count was not required. As we stated in the August 11, 1998 **Federal Register**, the proration as specified in the statute applies to the application of the per-beneficiary limitation and not the calculation of the per-beneficiary limitation. The methodology for establishing the per-beneficiary limitations in the statute could have specifically incorporated a proration provision in the methodology, but it did not.

*Comment:* Commenters stated that an HHA that was required to file two partial year cost reports during Federal FY 1994 solely due to the fact that it was located in a State where it was forced to change fiscal intermediaries should be considered an ''old clause v'' provider. For example, an HHA operating for several years as a hospital-based HHA has the hospital cease operations during Federal FY 1994. The HHA continues operations under the same ownership as a freestanding entity and later experiences a change in ownership. Due to the State where the HHA is located, the HHA was required to change to a new fiscal intermediary and the partial year cost reports were required to be filed. If the HHA were located in a different State, a change in fiscal intermediary would not have occurred.

*Response:* Section 1861(v)(1)(L)(vi)(I) of the Act requires that for new providers and those providers without a 12-month cost reporting period ending in FY 1994, the per-beneficiary shall equal the median of those limitations applied to old providers. The situation described in the comment is a provider with less than a 12-month cost reporting period. The provider does not meet the statutory requirements for treatment as an ''old clause v'' provider.

*Comment:* Commenters believed that the OASIS adjustment should not be phased out after 1 year. They recommended that we should clarify the start and end dates for the OASIS adjustment and consider extending the adjustment until cost limits can adequately account for the costs associated with complying with OASIS requirements.

*Response:* We recognize there are various costs associated with complying with OASIS reporting requirements. There are one-time costs as described in the August 11, 1998 **Federal Register** that include training of data entry staff, telephone installation, and other costs associated with setting up OASIS. There are also ongoing OASIS costs that include audits to ensure data accuracy, data entry, editing and auditing, supplies, and telephone costs. We have broken these costs down to the various elements and have grouped the costs into various categories. See section III. F of this notice on how these costs are broken down and the various time frames associated with adjusting the per-visit limitations for these costs.

*Comment:* The commenters believed that the OASIS adjustment should encompass the full range of costs associated with OASIS implementation.

*Response:* We agree that any adjustment derived for OASIS should encompass the full range of reasonable costs associated with each necessary expenditure. Section III. F of this notice, fully explains the adjustments to the per-visit limitations for the costs associated with the OASIS requirement.

*Comment:* The commenters believed that the OASIS adjustment should apply to both the per-visit and per-beneficiary limitations. This adjustment could possibly be included in the market basket index used to update the per-beneficiary limitations for new and old providers.

*Response:* As we stated in the **Federal Register** dated August 11, 1998 (63 FR 42920), the statute requires the per-beneficiary limitations to be based upon the costs incurred during a particular base year, the Federal FY 1994, and does not contemplate adjustments due to costs incurred subsequent to the base year.

## III. Update of Per-Visit Limitations

The methodology used to develop the schedule of per-visit limitations in this notice is the same as that used in setting the limitations effective October 1, 1998. We are using the latest settled cost report data from freestanding HHAs to develop the per-visit cost limitations. We have updated the per-visit cost limitations to reflect the expected cost increases between the cost reporting periods in the database and September 30, 2000 by the home health market basket reduced by 1.1 percentage points as required by section 1861(v)(1)(L)(ix) of the Act, and excluding any changes in the home health market basket with respect to cost reporting periods that began on or after July 1, 1994 and before July 1, 1996 as required by section 1861(v)(1)(L)(iv) of the Act.

### *A. Data Used*

To develop the schedule of per-visit limitations effective for cost reporting periods beginning on or after October 1, 1999, we extracted actual cost per-visit data from the most recent settled Medicare cost reports for periods beginning on or after October 1, 1994 and settled by March 1999. The majority of the cost reports were from Federal FY 1996. We then adjusted the data using the latest available market basket indices to reflect expected cost increases occurring between the cost reporting periods contained in our database and September 30, 2000, reduced by 1.1 percentage points as required by section 1861(v)(1)(L)(ix) of the Act and excluding any changes in the home health market basket with respect to cost reporting periods that began on or after July 1, 1994 and before July 1, 1996 as required by section 1861(v)(1)(L)(iv) of the Act.

### *B. Wage Index*

A wage index is used to adjust the labor-related portion of the per-visit limitation to reflect differing wage levels among areas. In establishing the per-visit limitation, we used the FY 1999 hospital wage index effective for hospital discharges on or after March 1, 1999, which is based on 1995 hospital wage data.

Each HHA's labor market area is determined based on the definitions of

Metropolitan Statistical Areas (MSAs) issued by the Office of Management and Budget (OMB). Section 1861(v)(1)(L)(iii) of the Act requires us to use the most recently published hospital wage index (that is, the FY 1999 hospital wage index, which was published in the **Federal Register** on February 25, 1999 (63 FR 9378)) without regard to whether those hospitals have been reclassified to a new geographic area, to establish the HHA cost limitations. Therefore, the schedule of per-visit limitations reflects the MSA definitions that are currently in effect under the hospital PPS.

We are continuing to incorporate exceptions to the MSA classification system for certain New England counties that were identified in the July 1, 1992 notice entitled ''Schedule of Limits on Home Health Agency Costs Per Visit'' (57 FR 29410). These exceptions have been recognized in setting hospital cost limitations for cost reporting periods beginning on and after July 1, 1979 (45 FR 41218) and were authorized under section 601(g) of the Social Security Amendments of 1983 (Public Law 98–21). Section 601(g) of Public Law 98–21 requires that any hospital in New England that was classified as being in an urban area under the classification system in effect in 1979 will be considered urban for purposes of the hospital PPS. This provision is intended to ensure equitable treatment under the hospital PPS. Under this authority, the following counties have been deemed to be urban areas for purposes of payment under the inpatient hospital prospective system:

- Litchfield County, CT in the Hartford, CT MSA.
- York County, ME and Sagadahoc County, ME in the Portland, ME MSA.
- Merrimack County, NH in the Boston-Brockton-Nashua, MA–NH MSA.
- Newport County, RI in the Providence Fall-Warwick, RI MSA

We are continuing to grant these urban exceptions for the purpose of applying the Medicare hospital wage index to the HHA per-visit limitations. These exceptions result in the same New England County Metropolitan Area (NECMA) definitions for hospitals, skilled nursing facilities, and HHAs. In New England, MSAs are defined on town boundaries rather than on county lines but exclude parts of the four counties cited above that would be considered urban under the MSA definition. Under this notice, these four counties are urban under either definition, NECMA or MSA.

Section 1861(v)(1)(L)(iii) requires the use of the area wage index applicable under section 1886(d)(3)(E) of the Act and determined using the survey of the most recent available wages and wage-related costs of hospitals located in the geographic area in which the home health service is furnished without regard to whether these hospitals have been reclassified to a new geographic area under section 1886(d)(8)(B) of the Act. The wage-index, as applied to the labor portion of the per-visit limitation, must be based on the geographic location in which the home health service is actually furnished rather than the physical location of the HHA itself.

*C. Standardization for Wage Levels*

After adjustment by the market basket index reduced by 1.1 percentage points, as required by section 1861(v)(1)(L)(ix) of the Act, and excluding any changes in the home health market basket with respect to cost reporting periods that began on or after July 1, 1994 and before July 1, 1996, as required by section 1861(v)(1)(L)(iv) of the Act, we divided each HHA's per-visit costs into labor and nonlabor portions. The labor portion of cost (77.668 percent as determined by the market basket) represents the employee wage and benefit factor plus the contract services factor from the market basket. We then divided the labor portion of per-visit cost by the wage index applicable to the HHA's location to arrive at an adjusted labor cost.

*D. Adjustment for ''Outliers''*

We transformed all per-visit cost data into their natural logarithms and grouped them by type of service and MSA, NECMA, or non-MSA location, in order to determine the median cost and standard deviation for each group. We then eliminated all ''outlier'' costs, which were all per-visit costs less than $10 and per-visit costs more than $800, retaining only those per-visit costs within two standard deviations of the median in each service.

*E. Basic Service Limitation*

We calculate a basic service limitation to 106 percent of the median labor and nonlabor portions of the per-visit costs of freestanding HHAs for each type of service. (See Table 6a in section VIII.)

*F. Offset Adjustment for the Implementation of the Home Health Outcome Assessment Information*

In the August 11, 1998 per-visit and per-beneficiary limitations notice (63 FR 42912), we discussed a proposed adjustment for HHAs for the agency collection of OASIS data. Collecting and reporting OASIS is a condition of participation for HHAs who bill Medicare. As we stated in the August 11, 1998 notice, we believe there will be no permanent ongoing incremental costs associated with OASIS collection. We do, however, believe both one-time and ongoing costs are associated with reporting OASIS data. Our proposed OASIS adjustment is based on information from the Medicare Quality and Improvement Demonstration as well as OASIS demonstration data. We assume, for purposes of deriving the OASIS proposed adjustment, that the typical HHA has 486 admissions and 30,000 visits per year and an 18-person staff. OASIS reporting adjustments are unlike the one-time OASIS collection adjustments published in the August 11, 1998 **Federal Register**, which were based only on the number of skilled visits. These reporting adjustments are based on total Medicare visits. This adjustment factor was calculated by including the estimated OASIS costs in the baseline costs used to determine the median of the per-visit costs. The per-beneficiary limitation cannot be adjusted for OASIS.

The three tables below reflect our estimates of the costs to an HHA for OASIS reporting for a typical agency and form the basis for the per-visit OASIS reporting adjustment. Those agencies that exceed the per-visit limit may use the tables in this notice and in our August 11, 1998 notice to calculate an additional adjustment, over the limit, to account for their recurring and nonrecurring costs for OASIS collection and reporting. No adjustment is available for the per-beneficiary limit, which is set explicitly in the statute. Once the OASIS reporting system is fully implemented and we have gathered sufficient data, we plan to review the ongoing cost and time components that constitute the tables below.

TABLE 1.—CONTINUOUS OASIS ADJUSTMENT: BASE

[For data reporting]

| Type of adjustment | Source | Formula | Cost per visit |
|---|---|---|---|
| Audits to ensure data accuracy | University of Colorado (CHPR), BLS Occupational Employment Survey (1996), 1994 & 1995 HCFA Cost Report Data. | (((((10 records per month * 12 months)) * .25 hrs) * $25.42)/30,000 avg visits)...professional staff. | $.02542 |
| Data entry, editing, & auditing | University of Colorado(CHPR), Estimated average salary for clerical staff 1994 & 1995 HCFA Cost Report Data. | ((((8.5 hrs per month * 12) + (5 hrs per month * 12) + (1 hr per month * 12) + (5 hrs per year)) * $10 per hour) / 30,000 avg visits). | .06 |
| Supplies | HCFA–3006–IFC OASIS Reporting (64 FR 3748), 1994 & 1995 HCFA Cost Report Data. | $250 avg cost/30,000 avg visits | .008333 |
| Ongoing telephone costs | Bell Atlantic 1994 & 1995 HCFA Cost Report Data (for average size HHA). | ((((($13.14 per month, per line) + ($ 6.38 per month subscriber fee)) * 12 months)/30,000 avg visits). | .007808 |
| Total | | | $.101561 |

TABLE 2.—CONTINUOUS OASIS ADJUSTMENT: 5-YEAR DEPRECIATION AVERAGING

[For data reporting]

| Type of adjustment | Source | Formula | Cost per visit |
|---|---|---|---|
| Computer Hardware | American Hospital Association's Health Data & Coding Standards Group's ''Estimated Useful Lives of Depreciable Hospital Assets {revised 1998} | | |
| —Computer | Average cost for PC with minimal acceptable standards 1994 & 1995 HCFA Cost Report Data | $2050 computer depreciated over 3 years (($2050/3)/30,000 avg visits | $.022777 |
| —Printer | Average cost for printer with minimal acceptable standards 1994 & 1995 HCFA Cost Report Data | $600 printer cost depreciated over 5 years (($600/5)/30,000 avg visits | .004 |
| | First 3 Year's Adjustment | * Note: computer & printer depreciation | .026777 |
| | Next 2 Year's Adjustment | * Note: printer ONLY depreciation | .004 |
| | 5-Year Average Adjustment | (((.026777 * 3) + (.004 * 2))/5) | .01766 |

PERSONAL COMPUTER MINIMAL SPECIFICATIONS

| Description | Minimal specifications |
|---|---|
| Warranty | Minimum 3 year. |
| Processor | Pentium II Processor running at 400Mhz w/512 Cache. |
| Operating System | 32-bit operating system with Graphical User Interface. |
| Hard Drive | 3 Gb Hard drive minimum. |
| Memory | 32Mb minimum. |
| CD ROM | 14–32X, IDE, integrated sound. |
| Floppy Drive | 3.5″ 1.44Mb diskette drive. |
| Fax Modem | 56K v.90 Data/Fax. |
| Monitor | 17″ Color Monitor. |
| Graphics | 8Mb AGP. |
| Mouse | Wheel mouse. |
| Keyboard | 104 key ergonomic keyboard. |
| Anti Virus | Anti Virus Software. |
| Management Software | System management client software/license. |
| Printer | 600 dpi Laser printer with cable. |

TABLE 3.—OASIS ADJUSTMENT: ''ONE-TIME''

[For data reporting]

| Type of adjustment | Source | Formula | Cost per visit |
|---|---|---|---|
| Training of Data Entry Staff | BLS Employer Provided Training (Hrs of Training [1995] & an estimated average salary for clerical personnel 1994 & 1995 HCFA Cost Report Data. | (24 hrs * $10)/30,000 avg visits | $.008 |

TABLE 3.—OASIS ADJUSTMENT: ''ONE-TIME''—Continued

[For data reporting]

| Type of adjustment | Source | Formula | Cost per visit |
|---|---|---|---|
| Telephone installation | 1994 & 1995 HCFA Cost Report Data | ($28 processing fee) + ($40 per line connect fee)/30,000 avg visits. | .002266 |
| Total One Time Adjustment | | | $.010266 |

Discussion of OASIS Adjustment Tables

These tables reflect our estimates of the costs to an HHA for complying with the requirement to report data using the OASIS data set. We are using three tables based on time parameters. Table 1 shows the continuous OASIS costs for an HHA that include labor costs for the audits that are conducted to ensure data accuracy, labor costs for data entry and the editing and auditing costs associated with it, costs of supplies, and telephone costs. We estimate these continuous OASIS costs to total $.101561 per visit. Table 2 shows the OASIS personal computer costs for those HHAs that are unable to run OASIS because they lack the requisite hardware needed to support automation of it. We estimate this percentage to be 50 percent as explained in the OASIS reporting regulation (HCFA–3006–IFC 64 FR 3748). These costs consist of a personal computer and printer as described in Table 2. For years 1 through 3, HHAs are able to depreciate both their personal computer and printer. We estimate this OASIS cost to be $.0267 per visit. For years 4 and 5, HHAs can only depreciate their printer. We estimate this OASIS cost to be $.004 per visit.

In order for HHAs to keep pace with ever evolving computing standards, to include enhancements to computer hardware and software, as well as future versions of HAVEN's OASIS software, this process of the depreciation of computer hardware is one that would repeat itself every 5 years. In that vein, a yearly average computer hardware depreciation adjustment was computed so as to yield a continuous OASIS adjustment for each year. This was accomplished by multiplying the first 3 years' computer hardware depreciation adjustment of $.026777 by 3, multiplying the following 2 years' computer hardware depreciation adjustment of $.004 by 2, summing those two factors, and dividing that sum by the total number of depreciable years (5) to get a yearly average for the computer hardware depreciation adjustment of $.01766. This yearly average computer hardware depreciation adjustments ($.01766), when added to the base continuous OASIS adjustment ($.10156), results in a total continuous OASIS adjustment of $.11916.

Table 3 shows one-time OASIS costs (year 1) for an HHA that include training of data entry staff and telephone installation. We estimate these one-time OASIS costs to total $.0103 per visit. Any OASIS costs recognized under the revised per-visit limits established by this notice will be reflected in the budget neutral baseline for computing HHA prospective rates when we convert to that payment system.

## IV. Updating the Wage Index on a Budget-Neutral Basis

Section 4207(d)(2) of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90) (Public Law 101–508) requires that, in updating the wage index, aggregate payments to HHAs will remain the same as they would have been if the wage index had not been updated. Therefore, overall payments to HHAs are not affected by changes in the wage index values.

To comply with the requirements of section 4207(d)(2) of OBRA '90 that updating the wage indices be budget neutral, we determined that it is necessary to apply a budget neutrality adjustment factor of 1.039 to the labor-related portions of the per-visit and per-beneficiary limitations for cost reporting periods beginning on or after October 1, 1999. This is the first year for which the per-beneficiary limitations have been in place long enough to be affected by an update in the wage indices. Because aggregate payments to HHAs encompass both the per-visit and the per-beneficiary limitations, the budget neutrality adjustment factor had to be determined using both per-visit and per-beneficiary limitations in order to comply with the OBRA '90 budget neutrality requirement. Therefore, overall payments to HHAs are not affected by changes in the wage index values as applied to the labor-related portions of both limitations.

To determine the budget neutrality adjustment factor, we used the data obtained from the 574 providers in the audited cost report data set developed for home health prospective payment. This sample was extrapolated to reflect a national total of HHAs. We believe this is the most current and accurate data we can obtain to reflect the effects of both the per-visit limits and the per-beneficiary limits. This data set includes a count of the number of beneficiaries served by each agency. This information is not available on the data set used to calculate the per-visit limitations. For each agency in the per-visit limitation database, we replaced its current wage index with the one corresponding to the 1982 hospital wage index. For each agency in the per-beneficiary limitation database, we replaced their current wage index with one corresponding to the 1994 hospital wage index. Some MSAs that currently exist did not exist at the time this index was created and therefore have no matching 1982 or 1994 wage index. Since the unmatchable MSAs represented a small percentage of the total visits in the databases, we deleted these agencies from the analysis. We then determined what Medicare program payments would be using the 1982 and 1994 wage indices. We determined payments using the new wage index and adjusted the labor portion of the payment by the factor necessary to match program payments if the 1982 and 1994 wage indices were used with respect to both limitations. (See the examples in section VIII. of this notice regarding the adjustment of the per-visit and per-beneficiary limitations by the wage index and the budget neutrality adjustment factor.)

## V. Update of the Per-Beneficiary Limitations

The methodologies and data used to develop the schedule of per-beneficiary limitations set forth in this notice are the same as those used in setting the per-beneficiary limitations that were effective for cost reporting periods beginning on or after October 1, 1998. We have updated the per-beneficiary limitations to reflect the expected cost increases occurring between the cost reporting periods ended during FY 1994 and September 30, 2000, reduced by 1.1 percentage points and excluding any changes in the home health market

basket with respect to cost reporting periods that began on or after July 1, 1994 and before July 1, 1996.

*A. Data Used*

The cost report data used to develop the schedule of per-beneficiary limitations set forth in this notice are for cost reporting periods ending in Federal FY 1994, as required by section 1861(v)(1)(L) of the Act. We have updated the per-beneficiary limitations to reflect the expected cost increases occurring between the cost reporting periods for the data contained in the database and September 30, 2000 reduced by 1.1 percentage points and excluding any changes in the home health market basket for cost reporting periods beginning on or after July 1, 1994 and before July 1, 1996.

The interim payment system sets limitations according to two different methodologies. For agencies with cost reporting periods ending during FY 1994, the limitation is based on 75 percent of 98 percent of the agencies' own reasonable costs and 25 percent of 98 percent of the average census region division costs. At the end of the agency's cost reporting period subject to the per-beneficiary limitations, the labor component of the census region division per-beneficiary limitation is adjusted by a wage index based on where the home health services are furnished.

For new providers and providers without a cost reporting period ending during FY 1994, the per-beneficiary limitation is based on the standardized national median of the blended agency-specific and census region division per-beneficiary limitations described above. See section C. below, which further defines how these limitations are effectuated for new providers and providers without a 12-month cost reporting period ending during FY 1994. This is done by arraying the agencies' per-beneficiary limitations and selecting the median case. The national per-beneficiary limitation is then standardized for the effect of the wage index. The wage index is applied to the labor component of the national per-beneficiary limitation at the end of the cost reporting period beginning on or after October 1, 1999 and is based on where the home health services are furnished.

*B. Wage Index*

A wage index is used to adjust the labor-related portion of the standardized regional average per-beneficiary limitation and the national per-beneficiary limitation to reflect differing wage levels among areas. In establishing the regional average per-beneficiary limitation and national per-beneficiary limitation, we used the FY 1999 hospital wage index effective with discharges on or after March 1, 1999, which is based on 1995 hospital wage data.

Each HHA's labor market area is determined based on the definitions of MSAs issued by OMB. Section 1861(v)(1)(L)(iii) of the Act requires us to use the current hospital wage index (that is, the FY 1999 hospital wage index, which was published in the **Federal Register** on February 25, 1999 (63 FR 9378)), without regard to whether these hospitals have been reclassified to a new geographic area, to establish the HHA cost limitations. Therefore, the schedules of standardized regional average per-beneficiary limitations and the national per-beneficiary limitation reflect the MSA definitions that are currently in effect under the hospital PPS.

As we did for the per-visit limitations, we are continuing to incorporate exceptions to the MSA classification system for certain New England counties that were identified in the July 1, 1992 notice (57 FR 29410). These exceptions have been recognized in setting hospital cost limitations for cost reporting periods beginning on and after July 1, 1979 (45 FR 41218), and were authorized under section 601(g) of the Social Security Amendments of 1983 (Public Law 98–21). Section 601(g) of Public Law 98–21 requires that any hospital in New England that was classified as being in an urban area under the classification system in effect in 1979 will be considered urban for purposes of the hospital PPS. This provision is intended to ensure equitable treatment under the hospital PPS. Under this authority, the following counties have been deemed to be urban areas for purposes of payment under the inpatient hospital prospective system:

- Litchfield County, CT in the Hartford, CT MSA.
- York County, ME and Sagadahoc County, ME in the Portland, ME MSA.
- Merrimack County, NH in the Boston-Brockton-Nashua, MA–NH MSA.
- Newport County, RI in the Providence Fall-Warwick, RI MSA.

We are continuing to grant these urban exceptions for the purpose of applying the Medicare hospital wage index to the HHA standardized regional average per-beneficiary limitations and the national per-beneficiary limitation. These exceptions result in the same NECMA definitions for hospitals, skilled nursing facilities, and HHAs. In New England, MSAs are defined on town boundaries rather than on county lines but exclude parts of the four counties cited above that would be considered urban under the MSA definition. Under this notice, these four counties are urban under either definition, NECMA or MSA.

Section 1861(v)(1)(L)(iii) of the Act requires the use of the area wage index applicable under section 1886(d)(3)(E) of the Act and determined using the survey of the most recent available wages and wage-related costs of hospitals located in the geographic area in which the home health service is furnished without regard to whether these hospitals have been reclassified to a new geographic area under section 1886(d)(8)(B) of the Act. The wage index, as applied to the labor portion of the regional per-beneficiary limitation and the labor portion of the national per-beneficiary limitation, must be based on the geographic location in which the home health service is actually furnished.

*C. New Providers and Providers Without a 12-Month Cost Reporting Period Ending During Federal Fiscal Year 1994*

For a new provider or a provider without a 12-month cost reporting period ending in FY 1994 but for which the first cost reporting period began before October 1, 1998, the per-beneficiary limitation will be a national per-beneficiary limitation, that will be equal to the median of these limitations applied to other HHAs without the 2 percent reduction.

For a new provider whose first cost reporting period begins on or after October 1, 1998, the per-beneficiary limitation will be 75 percent of the national per-beneficiary limitation including the 2 percent reduction.

A new provider or a provider without a 12-month cost reporting period ending in FY 1994, which filed an application for HHA provider status before September 15, 1998, or which was approved as a branch of its parent agency before that date and becomes a subunit of the parent agency or a separate agency on or after that date, will be subject to the national per-beneficiary limitation (without the 2 percent reduction).

**VI. Market Basket**

The 1993-based cost categories and weights are listed in Table 4 below.

TABLE 4.—1993-BASED COST CATEGORIES, BASKET WEIGHTS, AND PRICE PROXIES

| | | |
|---|---|---|
| Compensation including allocated Contract Services' Labor | 77.668 | |
| Wages and Salaries including allocated Contract Services' Labor. | 64.226 | HHA Occupational Wage Index. |
| Employee benefits, including allocated Contract Services' Labor. | 13.442 | HHA Occupational Benefits Index. |
| Operations & Maintenance | 0.832 | CPI-U Fuel & Other Utilities. |
| Administrative & General, including allocated Contract Services' Non-labor. | 9.569 | |
| Telephone | 0.725 | CPI–U Telephone. |
| Paper & Printing | 0.529 | CPI–U Household Paper, Paper Products & Stationery Supplies. |
| Postage | 0.724 | CPI–U Postage. |
| Other Administrative & General, including allocated Contract Services Non-Labor. | 7.591 | CPI-Services. |
| Transportation | 3.405 | CPI–U Private Transportation. |
| Capital-Related | 3.204 | |
| Insurance | 0.560 | CPI–U Household Insurance. |
| Fixed Capital | 1.764 | CPI–U Owner's Equivalent. |
| Movable Capital | 0.880 | PPI Machinery & Equipment. |
| Other Expenses, including allocated Contract Services[1] Non-Labor. | 5.322 | CPI–U All Items Less Food & Energy. |
| Total | 100.000 | |

## VII. Update of Database

The data used to develop the cost per-visit limitations, the census region per-beneficiary limitations, and the national per-beneficiary limitation were adjusted using the latest available market basket factors to reflect expected cost increases occurring between the cost reporting periods contained in our database and September 30, 2000, reduced by 1.1 percentage points as required by section 1861(v)(1)(L)(ix) of the Act and excluding any changes in the home health market basket with respect to cost reporting periods that began on or after July 1, 1994 and before July 1, 1996 as required by section 1861(v)(1)(L)(iv) of the Act. The following inflation factors were used in calculating the per-visit limitations, the census region per-beneficiary limitations, and national per-beneficiary limitations:

TABLE 5.—FACTORS FOR INFLATING DATABASE DOLLARS TO SEPTEMBER 30, 1999

[Inflation adjustment factors [1]]

| FY end | 1993 | 1994 | 1995 | 1996 | 1997 | 1998 |
|---|---|---|---|---|---|---|
| October 31 | 1.13775 | 1.10901 | 1.10487 | 1.10291 | 1.07843 | 1.04734 |
| November 30 | 1.13492 | 1.10771 | 1.10487 | 1.10193 | 1.07571 | 1.04500 |
| December 31 | 1.13210 | 1.10652 | 1.10487 | 1.10076 | 1.07305 | 1.04272 |
| January 31 | ..... | 1.12929 | 1.10568 | 1.10487 | 1.09935 | 1.07042 |
| February 28 | ..... | 1.12650 | 1.10519 | 1.10487 | 1.09771 | 1.06782 |
| March 31 | ..... | 1.12374 | 1.10503 | 1.10487 | 1.09585 | 1.06524 |
| April 30 | ..... | 1.12107 | 1.10492 | 1.10487 | 1.09381 | 1.06263 |
| May 31 | ..... | 1.11850 | 1.10487 | 1.10487 | 1.09162 | 1.05999 |
| June 30 | ..... | 1.11604 | 1.10487 | 1.10487 | 1.08926 | 1.05732 |
| July 31 | ..... | 1.11388 | 1.10487 | 1.10468 | 1.08674 | 1.05472 |
| August 31 | ..... | 1.11202 | 1.10487 | 1.10428 | 1.08405 | 1.05219 |
| September 30 | ..... | 1.11045 | 1.10487 | 1.10369 | 1.08121 | 1.04974 |

[1] Source: The HHA Price Index, produced by HCFA. The forecasts are from Standard and Poor's DRI HCC 1st QTR 1999;@USSIM/TREND25YR0299@CISSIM/Control 1991 forecast exercise which has historical data through 1999:1.

Multiplying nominal dollars for a given FY end by their respective inflation adjustment factor will express those dollars in the dollar levels for the FY ending September 30, 1999.

The procedure followed to develop these tables, based on requirements from BBA, was to hold the June 1994 level for input price index constant through June 1996. From July 1996 forward, we trended the revised index forward using the percentage gain each month from the HCFA Home Health Agency Input Price Index reduced by 1.1 percentage points for cost reporting periods beginning in Federal FY 2000.

### *A. Short Period Adjustment Factors for Cost Reporting Periods Consisting of Less Than 12 Months*

HHAs with cost reporting periods beginning on or after October 1, 1999 may have cost reporting periods that are less than 12 months in length. This may happen, for example, when a new provider enters the Medicare program after its selected FY has already begun or when a provider experiences a change of ownership before the end of the cost reporting period. The data used in calculating the limitations were updated to September 30, 2000. Therefore, the cost limitations published in this notice are for a 12-month cost reporting period beginning October 1, 1999 and ending September 30, 2000. For 12-month cost reporting periods beginning after October 1, 1999 and before October 1, 2000, cost reporting period adjustment factors are provided in Addendum 2. However, when a cost reporting period consists of

fewer than 12 months, adjustments must be made to the data that have been developed for use with 12-month cost reporting periods. To promote the efficient dissemination of cost limitations to agencies with cost reporting periods of fewer than 12 months, we are publishing an example and tables to enable intermediaries to calculate the applicable adjustment factors.

Cost reporting periods of fewer than 12 months may not necessarily begin on the first of the month or end on the last day of the month. In order to simplify the process in calculating ''short period'' adjustment factors, if the short cost reporting period begins before the 16th of the month, we will consider the period to have begun on the 1st of that month. If the start of the cost reporting period begins on or after the 16th of the month, it will be considered to have begun at the beginning of the next month. Also, if the short period ends before the 16th of the month, we will consider the period to have ended at the end of the preceding month; if the short period ends on or after the 16th of the month, it will be considered to have ended at the end of that month.

*Example:* 1. After approval by its intermediary, an HHA that had a 1994 base year changed its FY end from June 30 to December 31. Due to this change, the HHA had a short cost reporting period beginning on July 1, 2000 and ending on December 31, 2000. The cost reporting period ending during FY 1994 was the cost reporting period ending on June 30, 1994. The limitations that apply to this short period must be adjusted as follows:

Step 1—From Addendum 3, sum the index levels for the months of July 2000 through December 2000: 6.89916

Step 2—Divide the results from Step 1 by the number of months in short period: 6.89916÷6=1.14986

Step 3—From Addendum 3, sum the index levels for the months in the common period of October 1999 through September 2000: 13.6905

Step 4—Divide the results in Step 3 by the number of months in the common period: 13.6905 × 12 = 1.140875

Step 5—Divide the results from Step 2 by the results from Step 4. This is the adjustment factor to be applied to the published per-visit and per-beneficiary limitations: 1.14986 × 1.140875 = 1.00788

Step 6—Apply the results from Step 5 to the published limitations. For example:

a. Urban skilled nursing per-visit labor portion

$78.07 × 1.00788 = $78.69

b. Urban skilled nursing per-visit nonlabor portion

$22.45 × 1.00788 = $22.63

c. West South Central Census region division labor portion per-beneficiary limitation

$4,667.91 × 1.00788 = $4,704.69

d. West South Central Census region division nonlabor portion per-beneficiary limitation

$1,342.17 × 1.0788 = $1,447.93

Step 7—Also apply the results from Step 5 to the calculated agency-specific per-beneficiary amount that has been updated to September 30, 2000 using Table 2.

*B. Adjustment Factor for Reporting Year Beginning After October 1, 1999 and Before October 1, 2000*

If an HHA has a 12-month cost reporting period beginning on or after November 1, 1999, the per-visit limitation and the adjusted census region division per-beneficiary limitation and the agency-specific per-beneficiary limitation or the adjusted national per-beneficiary limitations are again revised by an adjustment factor from Addendum 2 that corresponds to the month and year in which the cost reporting period begins. Each factor represents the compounded rate of monthly increase derived from the projected annual increase in the market basket index reduced by 1.1 percentage points as required by section 1861(v)(1)(L)(ix) of the Act and excluding any changes in the home health market basket with respect to cost reporting periods that began on or after July 1, 1994 and before July 1, 1996 as required by section 1861(v)(1)(L)(iv) of the Act and is used to account for inflation in costs that will occur after the date on which the per-beneficiary limitations become effective.

In adjusting the agency-specific per-beneficiary limitation for the market basket increases since the end of the cost reporting period ending during Federal FY 1994, the intermediary will increase the agency-specific per-beneficiary limitation to September 30, 2000. That way when the limitations need to be further adjusted for the cost reporting period, all elements of the limitation calculations can be adjusted by the same factor. For example, if an HHA is providing services in the Dallas MSA only and has a cost reporting period beginning January 1, 2000, its occupational therapy per-visit limitation and its per-beneficiary limitation would be further adjusted as follows:

COMPUTATION OF REVISED PER-VISIT LIMITATIONS FOR OCCUPATIONAL THERAPY

| | |
|---|---|
| Adjusted per-visit limitation ..... | $113.24 |
| Adjustment factor from Addendum 2 ..... | 1.00394 |
| Revised per-visit limitation ..... | $113.69 |

[1] Adjusted by appropriate wage index applicable to the Dallas MSA and the budget neutrality adjustment factor of 1.039.

COMPUTATION OF REVISED PER-BENEFICIARY LIMITATIONS FOR AN HHA WITH A 1994 BASE PERIOD

| | |
|---|---|
| Agency-specific component inflated through December 31, 2000: $5,560.00 × .98 × .75 | $4,086.60 |
| West south central division component: $5,886.10 [1] × .98 × .25 ..... | [1] $1,442.091 |
| Blended per-beneficiary limitation for Dallas-MSA ..... | $5,528.69 |
| Adjustment factor from Addendum 2 ..... | 1.00394 |
| Adjusted blended per-beneficiary limitation for Dallas MSA ..... | $5,550.47 |

[1] Adjusted by the appropriate wage index applicable to the Dallas MSA and the budget neutrality factor of 1.039.

COMPUTATION OF REVISED PER-BENEFICIARY LIMITATION FOR A NEW PROVIDER WHOSE FIRST COST REPORTING PERIOD BEGAN BEFORE OCTOBER 1, 1997 IN THE DALLAS MSA

| | |
|---|---|
| National per-beneficiary limitation for Dallas MSA [1] ..... | [1] $3,513.73 |
| Adjustment factor from Addendum 2 ..... | 1.00394 |
| Adjusted national per-beneficiary limitation ..... | $3,527.57 |

[1] From Table 6C Adjusted by the appropriate wage index applicable to the Dallas MSA and the budget neutrality factor of 1.039.

**VIII. Schedules of Per-Visit and Per-Beneficiary Limitations**

The schedules of limitations set forth below apply to cost reporting periods beginning on or after October 1, 1999. The intermediaries will compute the adjusted limitations using the wage indicies published in Addenda 1a and 1b for each MSA and non-MSA for which the HHA provides services to Medicare beneficiaries. The intermediary will notify each HHA it services of its applicable limitations for the area(s) where the HHA furnishes HHA services to Medicare beneficiaries. Each HHA's aggregate limitations cannot be determined prospectively but depend on each HHA's Medicare utilization (visits and unduplicated

census count) by location of the HHA services furnished for the cost reporting periods subject to this document.

Section 1861(v)(1)(L)(vi)(II) of the Act requires the per-beneficiary limitations to be prorated among HHAs for Medicare beneficiaries who use services furnished by more than one HHA. The per-beneficiary limitation will be prorated based on a ratio of the number of visits furnished to the individual beneficiary by the HHA during its cost reporting period to the total number of visits furnished by all HHAs to that individual beneficiary during the same period.

The proration of the per-beneficiary limitation will be done based on the fraction of services the beneficiary received from the HHA. For example, if an HHA furnished 100 visits to an individual beneficiary during its cost reporting period ending September 30, 2000, and that same individual received a total of 400 visits during that same period from that and other agencies, the HHA would count the beneficiary as a .25 unduplicated census count of Medicare patients for the cost reporting period ending September 30, 2000.

The HHA costs that are subject to the per-visit limitations include the cost of medical supplies routinely furnished in conjunction with patient care. Durable medical equipment, orthotic, prosthetic, and other medical supplies directly identifiable as services to an individual patient are excluded from the per-visit costs and are paid without regard to the per-visit schedule of limitations. (See Chapter IV of the Home Health Agency Manual (HCFA Pub. II).)

The HHA costs that are subject to the per-beneficiary limitations include the costs of medical supplies routinely furnished and nonroutine medical supplies furnished in conjunction with patient care. Durable medical equipment directly identifiable as services to an individual patient is excluded from the per-beneficiary limitations and is paid without regard to this schedule of per-beneficiary limitations.

The intermediary will determine the aggregate limitations for each HHA according to the location where the services are furnished by the HHA. Medicare payment is based on the lower of the HHA's total allowable Medicare costs plus the allowable Medicare costs of nonroutine medical supplies, the aggregate per-visit limitation plus the allowable Medicare costs of nonroutine medical supplies, or the aggregate per-beneficiary limitation. An example of how the aggregate limitations are computed for an HHA providing HHA service to Medicare beneficiaries in both Dallas, Texas, and rural Texas is as follows:

*Example:* HHA X, an HHA located in Dallas, TX, has 11,550 skilled nursing visits, 4,300 physical therapy visits, 8,900 home health aide visits and an unduplicated census count of 400 Medicare beneficiaries in the Dallas MSA and 5,000 skilled nursing visits, 2,300 physical therapy visits, 4,300 home health aide visits, and an unduplicated census count of 200 Medicare beneficiaries in rural Texas during its 12-month cost reporting period ending September 30, 2000. The unadjusted agency-specific per-beneficiary amount for the base period (cost reporting period ending September 30, 1994) is $4,825.00. The aggregate limitations are calculated as follows:

DETERMINING THE AGGREGATE PER-BENEFICIARY LIMITATION

| MSA/Non-MSA area | Per-beneficiary limitation | Unduplicated census count of Medicare beneficiaries | Total per-beneficiary limitation |
|---|---|---|---|
| Dallas, TX | ($4,825.00 × 1.11045 × .98 ×.75) plus (($4,667.91 × .9369 × 1.039) plus $1,342.17)) × .98 × .25. | 400 | $2,152,064 |
| Rural, TX | ($4,825.00 × 1.11045 .98 × .75) plus (($4,667.91 × .7565 × 1.039) plus 1,342.17)) × .98 × .25. | 200 | 1,033,162 |
| Aggregate Limitation | | | 3,185,226 |

DETERMINING THE AGGREGATE PER-VISIT LIMITATION

| Area/Type of visit | Number of visits | Per-visit limit [1] | Total limit |
|---|---|---|---|
| Dallas-MSA: | | | |
| Skilled nursing | 11,550 | $ 98.45 | $1,137,098 |
| Physical therapy | 4,300 | 112.84 | 485,212 |
| Home health aide | 8,900 | 45.36 | 403,704 |
| Rural Texas: | | | |
| Skilled nursing | 5,000 | 92.33 | 461,650 |
| Physical therapy | 2,300 | 105.71 | 243,133 |
| Home health aide | 4,300 | 38.80 | 166,840 |
| Aggregate limitation | | | $2,897,637 |

[1] The per-visit has been adjusted by the appropriate wage index and the budget neutrality adjustment factor of 1.039.

For the cost reporting period ending September 30, 2000, the HHA incurred $2,935,500 in Medicare costs for the discipline services and $335,000 for the costs of Medicare nonroutine medical supplies. Medicare reimbursement for this HHA would be $3,185,226, which is the lesser of the actual costs of $2,935,500 plus the costs of nonroutine medical supplies of $335,000 or the aggregate per-visit limitation of $2,897,637 plus the costs of nonroutine medical supplies of $335,000 or the aggregate per-beneficiary limitation of $3,185,226.

Before the limitations are applied during settlement of the cost report, the HHA's actual costs are reduced by the amount of individual items of costs (for example, administrative compensation and contract services) that are found to be excessive under the Medicare principles of provider payment. That is,

the intermediary reviews the various reported costs, taking into account all the Medicare payment principles, for example, the cost guidelines for physical therapy furnished under arrangements (see § 413.106) and the limitation on costs that are substantially out of line with those of comparable HHAs (see § 413.9).

TABLE 6A.—PER-VISIT LIMITATIONS

| Type of visit | Per-Visit limitation | Labor portion | Nonlabor Portion [1] |
|---|---|---|---|
| MSA (NECMA) location: | | | |
| Skilled nursing care | $100.52 | $78.07 | $22.45 |
| Physical therapy | 115.22 | 89.49 | 25.73 |
| Speech therapy | 116.71 | 90.65 | 26.06 |
| Occupational therapy | 115.63 | 89.81 | 25.82 |
| Medical social services | 140.99 | 109.51 | 31.49 |
| Home health aide | 46.32 | 35.98 | 10.34 |
| NonMSA location: | | | |
| Skilled nursing care | 110.74 | 86.01 | 24.73 |
| Physical therapy | 126.78 | 98.47 | 28.31 |
| Speech therapy | 132.64 | 103.02 | 29.62 |
| Occupational therapy | 132.12 | 102.61 | 29.50 |
| Medical social services | 173.67 | 134.89 | 38.78 |
| Home health aides | 46.53 | 36.14 | 10.39 |

[1] Nonlabor portion of per-visit limitations for HHAs located in Alaska, Hawaii, Puerto Rico, and the Virgin Islands is increased by multiplying it by the following cost-of-living adjustment factors.

| Location | Adjustment factor |
|---|---|
| Alaska | 1.250 |
| Hawaii: | |
| County of Honolulu | 1.250 |
| County of Hawaii | 1.150 |
| County of Kauai | 1.225 |
| County of Maui | 1.225 |
| County of Kalawao | 1.225 |
| Puerto Rico | 1.100 |
| Virgin Islands | 1.200 |

TABLE 6B.—STANDARDIZED PER-BENEFICIARY LIMITATION BY CENSUS REGION DIVISION, LABOR/NONLABOR

| Census region division | Labor component | Nonlabor component |
|---|---|---|
| New England (CT, ME, MA, NH, RI, VT) | $2,797.47 | $804.37 |
| Middle Atlantic (NJ, NY, PA) | 2,073.06 | 596.06 |
| South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV) | 3,127.39 | 899.23 |
| East North Central (IL, IN, MI, OH, WI) | 2,535.84 | 729.14 |
| East South Central (AL, KY, MS, TN) | 4,808.31 | 1,382.55 |
| West North Central (IA, KS, MN, MO, NE, ND, SD) | 2,435.65 | 700.32 |
| West South Central (AR, LA, OK, TX) | 4,667.91 | 1,342.17 |
| Mountain (AZ, CO, ID, MT, NV, NM, UT, WY) | 3,076.15 | 884.49 |
| Pacific (AK, CA, HI, OR, WA) | 2,383.02 | 685.20 |

TABLE 6C.[1]—STANDARDIZED PER-BENEFICIARY LIMITATION FOR NEW AGENCIES AND AGENCIES WITHOUT A 12-MONTH COST REPORT ENDING DURING FY 1994 FOR WHICH THE FIRST COST REPORTING BEGAN BEFORE OCTOBER 1, 1998

| | Labor component | Nonlabor component |
|---|---|---|
| National | $2,786.53 | $801.21 |

[1] This is the national rate set at 100 percent.

TABLE 6D.[2]—STANDARDIZED PER-BENEFICIARY LIMITATIONS FOR NEW PROVIDERS FOR WHICH THE FIRST COST REPORTING PERIOD BEGINS ON OR AFTER OCTOBER 1, 1998

| | Labor component | Nonlabor component |
|---|---|---|
| National | $2,048.10 | $588.89 |

[2] This is the national rate set at 75 percent of 98 percent of Table 6c.

TABLE 6E.—STANDARDIZED PER-BENEFICIARY LIMITATIONS FOR PUERTO RICO AND GUAM

| | Labor component | Nonlabor component |
|---|---|---|
| Puerto Rico | $2,030.66 | $583.88 |
| Guam | 1,962.40 | 564.25 |

## IX. Regulatory Impact Statement

*A. Introduction*

We have examined the impacts of this notice with comment as required by Executive Order 12866, the Regulatory Flexibility Act (RFA) (Pub. L. 96–354), and the Unfunded Mandates Reform Act

of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity).

For purposes of the RFA, small entities include small business as defined under the Small Business Administration, nonprofit organizations, and small governmental jurisdictions. Most HHAs are considered small entities either by nonprofit status or by meeting the Small Business Administration's standard for a small business (annual revenues of $5 million or less) .

Table 7 illustrates the Distribution of HHAs by type participating in Medicare as of April 13, 1999.

TABLE 7.—NUMBER OF HHAS BY PROVIDER TYPE

| HHA provider type | Number |
|---|---|
| Visiting Nurse Association | 484 |
| Combination Gov't and Voluntary | 34 |
| Official Health Agency | 1067 |
| Rehab Facility-Based | 2 |
| Hospital-Based | 2486 |
| Skilled Nursing Facility-Based | 174 |
| Other | 4612 |
| Total | 8859 |

Source: HCFA—On Line Survey Certification and Reporting System Standard Report 10—4/13/99

The following RFA analysis, together with the rest of this preamble, explains the rationale for and purposes of this notice, analyzes alternatives, and presents the measures we propose to minimize the burden on small entities.

We anticipate this notice, in total, will not have a significant impact on a substantial number of small entities. The policies set forth in this notice are consistent with those set forth in the ''Schedules of Per-Visit and Per-Beneficiary Limitations on Home Health Agency Costs for Cost Reporting Periods Beginning On or After October 1, 1998'' (63 FR 42912) as subsequently amended by section 5101 of OCESAA '99, and the financial effect os this notice on HHAs is confined to our rebasing of the per-visit limitations. We estimate that the financial effect of this notice will be a cost to the Medicare program of approximately $40 million in Federal FY 2000, which amount does not meet the $100 million RFA threshold for an economically significant rule.

In addition, we have examined the options for lessening the burden on small entities; however, the statute does not allow for any exceptions to these limitations based on size of entity. Therefore, there are no options to lessen the regulatory burden that are consistent with the statute. Although this notice does not meet the $100 million threshold for an RFA analysis, we are preparing a voluntary one because this notice with comment is an integral part of the HHA IPS.

Section 202 of the Unfunded Mandates Reform Act requires agencies to prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by State, local, or tribal governments, in the aggregate, or by private sector, of $100 million (adjusted annually for inflation). We believe that there are no costs associated with this notice with comment that apply to these governmental and private sectors. Therefore, the law does not apply.

This notice with comment is not a major rule as defined in title 5, United States Code, section 804(2) and is not an economically significant rule under Executive Order 12866. However, we are preparing a regulatory impact statement because this notice with comment is an integral part of the HHA IPS.

*1. Background*

This notice with comment period sets forth revised schedules of limitations on HHA costs that may be paid under the Medicare program for cost reporting periods beginning on or after October 1, 1999 and portions of cost reporting periods beginning before October 1, 2000. These limitations replace the limitations that were set forth in our August 11, 1998 notice with comment period (63 FR 42912).

The methodology used to develop the schedule of per-visit limitations in this notice is the same as that used in setting the limitations effective October 1, 1998. We are using the latest settled cost report data from freestanding HHAs to develop the per-visit cost limitations. We have updated the per-visit cost limitations to reflect the expected cost increases between the cost reporting periods in the database and September 30, 2000 reduced by 1.1 percentage points as required by section 1861(v)(1)(L)(ix) of the Act and excluding any changes in the home health market basket with respect to cost reporting periods that began on or after July 1, 1994 and before July 1, 1996 as required by section 1861(v)(1)(l)(iv) of the Act.

To develop the schedule of per-visit limitations effective for cost reporting periods beginning on or after October 1, 1999, we extracted actual cost per-visit data from the most recent settled Medicare cost reports for periods beginning on or after October 1, 1994 and settled by March 1999. The majority of the cost reports were from Federal FY 1996. We then adjusted the data using the latest available market basket indices to reflect expected cost increases occurring between the cost reporting periods contained in our database and September 30, 2000, reduced by 1.1 percentage points as required by section 1861(v)(1)(L)(ix) of the Act and excluding any changes in the home health market basket with respect to cost reporting periods that began on or after July 1, 1994 and before July 1, 1996 as required by section 1861(v)(1)(L)(iv) of the Act.

A wage index is used to adjust the labor-related portion of the per-visit limitation to reflect differing wage levels among areas. In establishing the per-visit limitation, we used the FY 1999 hospital wage index, which is based on 1995 hospital wage data.

The methodologies and data used to develop the schedule of per-beneficiary limitations set forth in this notice are the same as those used in setting the per-beneficiary limitations that were effective for cost reporting periods beginning on or after October 1, 1998. We have updated the per-beneficiary limitations to reflect the expected cost increases occurring between the cost reporting periods ended during Federal FY 1994 and September 30, 2000, excluding any changes in the home health market basket with respect to cost reporting periods that began on or after July 1, 1994 and before July 1, 1996 as required by law.

The cost report data used to develop the schedule of per-beneficiary limitations set forth in this notice are for cost reporting periods ending in Federal FY 1994, as required by section 1861(v)(1)(L) of the Act. We have updated the per-beneficiary limitations to reflect the expected cost increases occurring between the cost reporting periods for the data contained in the database and September 30, 2000 (excluding, as required by statute, any changes in the home health market basket for cost reporting periods beginning on or after July 1, 1994 and before July 1, 1996).

A wage index is used to adjust the labor-related portion of the standardized regional average per-beneficiary limitation and the national per-

beneficiary limitation to reflect differing wage levels among areas. In establishing the regional average per-beneficiary limitation and national per-beneficiary limitation, we used the FY 1999 hospital wage index effective with discharges on or after March 1, 1999, which is based on 1995 hospital wage data.

For new providers and providers without a 12-month cost reporting period ending in Federal FY 1994 but for which the first cost reporting period began before October 1, 1998, the per-beneficiary limitation will be a national per-beneficiary limitation that will be equal to the median of these limitations applied to other HHAs without the two percent reduction required in the original BBA legislation.

For new providers for which the first cost reporting period begins on or after October 1, 1998, the per-beneficiary limitation will be the 75 percent of the national per-beneficiary limitations with the 2 percent reduction.

A new provider or a provider without a 12-month cost reporting period in Federal FY 1994 that filed an application for home HHA provider status before September 15, 1998, or that was approved as a branch of its parent agency before that date and becomes a subunit of the parent agency or a separate agency on or after that date will be subject to the national per-beneficiary limitation without the 2 percent reduction.

The requirements for the per-visit and per-beneficiary limitations are set forth in Section 1861(v)(1)(L) of the Act. (See Section I of this notice for an expanded discussion.) These requirements are numerically explicit and allow us no administrative latitude. Thus, it is not possible to consider other alternatives for these limitations.

*2. Effects of This Notice With Comment on HHAs*

This notice updates the HHA IPS for Federal FY 2000. As we mentioned earlier in this regulatory impact analysis, we estimate that there will be a cost to the Medicare program of approximately $40 million in Federal FY 2000. Payments by Medicare under this system of payment limitations must be the lower of an HHA's actual reasonable allowable costs, per-visit limitations in the aggregate, or a per-beneficiary limitation in the aggregate. The settled cost report data that we are using have been adjusted by the most recent market basket factors, reduced by 1.1 percentage points as required by section 1861(v)(1)((l)(ix) of the Act, and excluding market basket increases for cost reporting periods beginning on or after July 1, 1994 and before July 1, 1996, as required by section 1861(v)(1)(L)(iv) of the Act to reflect the expected cost increases occurring between the cost reporting periods for the data contained in the database and September 30, 2000.

The following quantitative analysis presents the projected effects of the statutory changes effective for Federal FY 2000. We are unable to identify the effects of the changes to the cost limits on individual HHAs. However, Table 8 below illustrates the proportion of HHAs that are likely to be affected by the limits. This table is a model of our estimate of the revision in the schedule of the per-visit and per-beneficiary limitations.

Table 8 represents the projected effects of the HHA IPS and is based on the 574 providers in the audited cost report sample developed for HHA PPS extrapolated into a national weighted total of 7,161 HHAs. This sample has been adjusted by the most recent market basket factors to reflect the expected cost increases occurring between the cost reporting periods for the data contained in the database and September 30, 2001. Table 8 reflects cost reporting periods beginning Federal FY 2000 and those portions of cost reporting periods after October 1, 2000 that have a cost reporting period beginning in Federal FY 2000. These portions will be subject to the limits in this notice minus 15 percent.

Column one of this table divides HHAs by a number of characteristics including provider type, region, and urban versus rural location. For purposes of this impact table four regions have been defined: Northeast, South, Midwest, and West. The Northeast Region consists of Connecticut, Massachusetts, Maine, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, and the Virgin Islands. The South Region consists of Alabama, Arkansas, the District of Columbia, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia. The Midwest Region consists of Iowa, Illinois, Indiana, Kansas, Michigan, Minnesota, Missouri, North Dakota, Nebraska, Ohio, South Dakota, and Wisconsin. The West Region consists of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington, and Wyoming.

This table takes into account the behaviors that we believe HHAs will engage in to reduce the adverse effects of section 4602 of the BBA on their allowable costs. We believe these behavioral offsets might include an increase in the number of low-cost beneficiaries served, a general decrease in the number of visits provided, and earlier discharge of patients who are not eligible for Medicare home health benefits because they no longer need skilled services but have only chronic, custodial care needs. We believe that, on average, these behavioral offsets will result in a 65 percent reduction in the effects these limits might otherwise have on an individual HHA for the per-beneficiary limitations and a 50 percent reduction for the per-visit limitations.

Column one of this table divides HHAs by a number of characteristics including their ownership, whether they are old or new agencies, whether they are located in an urban or rural area, and the region in which they are located. Column two shows the number of agencies that fall within each characteristic or group of characteristics. For example, there are 2,549 rural freestanding HHAs in our database. Column three shows the percent of HHAs within a group that are projected to exceed the per-visit limitation (and therefore will not be affected by the per-beneficiary limitation) before the behavioral offsets are taken into account. Column four shows the average percent of costs over the per-visit limitation for an agency in that cell, including behavioral offsets. Column five shows the percent of HHAs within a group that are projected to exceed the per-beneficiary limitation (and therefore will not be affected by the per-visit limitation) before the behavioral offsets are taken into account. Column six shows the average percent of costs over the per-beneficiary limitation for an agency in that category, including behavioral offsets. It is important to note that in determining the expected percentage of an agency's costs exceeding the cost limitations, column four (percent of costs exceeding visit limits) and column six (percent of costs exceeding beneficiary limits) are not to be added together. Either the per-visit limitation or the per-beneficiary limitation is exceeded, but not both.

IMPACT OF TABLE 8.—THE IPS HHA LIMITS, EFFECTIVE 10/1/99

| | Number of agencies | Percent of agencies exceeding visit limits | Percent of costs exceeding visit limits | Percent of agencies exceeding beneficiary limits | Percent of costs exceeding beneficiary limits |
|---|---|---|---|---|---|
| GEOGRAPHIC AREA | | | | | |
| ALL AGENCIES | 7161 | 14.9 | 1.3 | 78.6 | 12.1 |
| FREESTANDING | 4703 | 6.8 | 0.3 | 86.0 | 14.1 |
| HOSPITAL-BASED | 2458 | 30.4 | 2.8 | 64.3 | 9.1 |
| OLD AGENCIES | 4467 | 17.2 | 1.6 | 78.2 | 10.3 |
| FREESTANDING | 2467 | 7.9 | 0.4 | 87.6 | 11.5 |
| HOSPITAL-BASED | 2000 | 28.8 | 2.7 | 66.7 | 9.1 |
| NEW AGENCIES* | 2693 | 10.9 | 0.7 | 79.2 | 17.2 |
| FREESTANDING | 2235 | 5.5 | 0.3 | 84.3 | 18.4 |
| HOSPITAL-BASED | 458 | 37.2 | 4.1 | 54.3 | 9.4 |
| ALL URBAN | 4612 | 15.2 | 1.5 | 79.1 | 12.0 |
| FREESTANDING | 3397 | 7.1 | 0.4 | 85.7 | 14.0 |
| HOSPITAL BASED | 1215 | 38.0 | 3.0 | 60.4 | 9.1 |
| OLD AGENCIES | 2574 | 16.0 | 1.7 | 82.0 | 10.2 |
| FREESTANDING | 1611 | 8.9 | 0.5 | 88.3 | 11.4 |
| HOSPITAL-BASED | 963 | 37.6 | 2.9 | 62.4 | 9.1 |
| NEW AGENCIES | 2038 | 12.2 | 0.9 | 74.8 | 16.9 |
| FREESTANDING | 1786 | 5.5 | 0.3 | 83.4 | 18.0 |
| HOSPITAL-BASED | 252 | 39.3 | 4.0 | 52.9 | 8.8 |
| ALL RURAL | 2549 | 14.2 | 0.8 | 77.7 | 12.4 |
| FREESTANDING | 1306 | 5.9 | 0.1 | 86.7 | 14.3 |
| HOSPITAL-BASED | 1243 | 23.0 | 2.1 | 68.2 | 9.3 |
| OLD AGENCIES | 1894 | 10.1 | 1.0 | 80.2 | 10.5 |
| FREESTANDING | 857 | 6.0 | 0.1 | 86.1 | 11.6 |
| HOSPITAL-BASED | 1037 | 20.6 | 2.1 | 70.6 | 9.1 |
| NEW AGENCIES | 655 | 10.9 | 0.2 | 80.4 | 18.9 |
| FREESTANDING | 449 | 5.7 | 0.0 | 88.0 | 20.3 |
| HOSPITAL-BASED | 206 | 34.7 | 1.4 | 55.9 | 11.6 |
| BY: REGION | | | | | |
| OLD AGENCIES | 4467 | 17.2 | 1.6 | 78.2 | 10.3 |
| MIDWEST | 1298 | 16.9 | 2.6 | 78.6 | 6.8 |
| NORTHEAST | 649 | 7.4 | 0.3 | 89.2 | 10.3 |
| SOUTH | 1857 | 17.0 | 1.2 | 80.1 | 12.0 |
| WEST | 662 | 28.4 | 4.1 | 61.4 | 8.4 |
| NEW AGENCIES | 2693 | 10.9 | 0.7 | 79.2 | 17.2 |
| MIDWEST | 607 | 15.2 | 1.0 | 73.1 | 10.9 |
| NORTHEAST | 247 | 19.6 | 2.4 | 60.2 | 9.9 |
| SOUTH | 1316 | 7.2 | 0.4 | 83.5 | 21.4 |
| WEST | 524 | 11.3 | 0.3 | 84.4 | 16.2 |

*New Agencies Are Those Without a 12-Month Cost Reporting Period Beginning in Federal FY 1994.

*B. Percent of Costs Exceeding Per-Visit Limitations (Column Four)*

Results from this column indicate that, for an HHA that reaches the per-visit limitation first, the average percent of the agency's costs exceeding the per-visit limitation for an HHA in the ''all agencies'' category is 1.3 percent after the behavioral offset. This relatively low number should not be surprising since the intent of section 4602 of the BBA is to control the soaring expenditures of the Medicare home health benefit that have been driven largely by increased utilization rather than the price per visit. For the all agencies category sorted by provider type, the average percent of freestanding HHAs exceeding the per-visit limitation is 0.3 percent; for hospital-based HHAs, it is 2.8 percent. This also should not be surprising as hospital-based HHAs have historically had higher overhead costs. All discussion of the analysis of the per-visit limitation is based on the fact that HHAs in these categories reached the per-visit limitation and therefore are not affected by the per-beneficiary limitation. For the overall old agencies category (HHAs that filed a 12-month cost report that ended during Federal FY 1994), the average percent of the agency's costs exceeding the per-visit limitation is 1.6 percent; for freestanding HHAs, it is 0.4 percent; and for hospital-based HHAs, it is 2.7 percent. For the overall new agencies category (such as HHAs that did not have a 12-month cost reporting period ended in Federal FY 1994 or that entered the Medicare program after Federal FY 1994), the average percent of the agency's costs exceeding the per-visit limitation is 0.7 percent, for freestanding HHAs, it is 0.3 percent; and for hospital-based HHAs, it is 4.1 percent.

For the urban areas HHA category, the average percent of the agency's costs exceeding the per-visit limitation is 1.5 percent. For freestanding HHAs, it is 0.4 percent; and for hospital-based HHAs, it is 3.0 percent. For the rural areas HHA category, the average percent of such agency's cost exceeding the per-visit limitation is 0.8 percent; for freestanding HHAs, it is 0.1 percent; and for hospital-based HHAs, it is 2.1 percent.

For the old agencies urban provider type category, the average percent of the agency's costs exceeding the per-visit limitation for freestanding HHAs is 0.5 percent; and for hospital-based HHAs, it is 2.9 percent. For the old agencies rural provider type, the average percent of the agency's costs exceeding the per-visit limitation for freestanding HHAs is 0.1

percent; and for hospital-based HHAs, is 2.1 percent. For the old agencies region category, the average percent of the agency's costs exceeding the per-visit limitation ranges from a low of 0.3 percent in the Northeast region to a high of 4.1 percent in the West region. The other regions range between 1.2 and 2.6 percent.

For the new agencies urban provider type category, the average percent of the agency's costs exceeding the per-visit limitation for freestanding HHAs is 0.3 percent while for hospital-based HHAs it is 4.0 percent. For the new agencies rural provider type category the average percent; of the agency's costs exceeding the per-visit limitation for freestanding HHAs is 0.0 percent and for hospital based HHAs is 1.4 percent. For the new agencies region category, the average percent of the agency's costs exceeding the per-visit limitation ranges from a low of 0.3 percent in the West region to a high of 2.4 percent in the Northeast region. The other regions range between 0.4 percent and 1.0 percent.

*C. Percent of Costs Exceeding Per-Beneficiary Limitation (Column Six)*

Results from this column indicate that, for an HHA that reaches the per-beneficiary limitation first, the average percent of the agency's costs exceeding the per-beneficiary limitation for an HHA in the ''all agencies'' category is 12.1 percent after the behavioral offset; for freestanding HHAs, it is 14.1 percent; and for hospital-based HHAs, it is 9.1 percent. All discussion of the analysis of the per-beneficiary limitation is based on the fact that HHAs in these categories reached the per-beneficiary limitation and therefore are not affected by the per-visit limitation.

For the overall old agencies category (HHAs that filed a 12-month cost report that ended during Federal FY 1994), the average percent of the agency's costs exceeding the per-beneficiary limitation is 10.3 percent; for freestanding HHAs, it is 11.5 percent; and for hospital-based HHAs it is 9.1 percent. For the overall new agencies category (including HHAs that did not have a 12-month cost reporting period ended in Federal FY 1994 or that entered the Medicare program after Federal FY 1994), the average percent of the agency's costs exceeding the per-beneficiary limitation is 17.2 percent; for freestanding HHAs, it is 18.4 percent; and for hospital-based HHAs, it is 9.4 percent. Old agencies will not be affected as much by the per-beneficiary limitations as the new agencies, on average, because the new agencies have, in general, reported higher costs per patient related to higher levels of utilization. Moreover, the statutory provision for old providers that bases 75 percent of the limitation on their own cost experience would implicitly result in less of an impact than experienced by the new providers whose limitations are based on a national median that may be higher or lower than their previous costs. Also, we believe the differing impacts of these limits is an inherent result of beginning to draw unexplained variation among providers utilization and cost closer to national norms that existed before the rapid increase in home health expenditures of the post '93 to '94 period.

For the urban areas HHA category, the average percent of the agency's costs exceeding the per-beneficiary limitation is 12.0 percent; for freestanding HHAs, it is 14.0 percent; and for hospital-based HHAs, it is 9.1 percent. For the rural areas HHA category, the average percent of the agency's costs exceeding the per-beneficiary limitation is 12.4 percent; for freestanding HHAs, it is 14.3 percent; and for hospital-based HHAs, it is 9.3 percent. For the old agencies urban provider type category, the average percent of the agency's costs exceeding the per-beneficiary limitation for freestanding HHAs is 11.4 percent; and for hospital-based HHAs is 9.1 percent. For the old agencies rural provider type category, the average percent of the agency's costs exceeding the per-beneficiary limitation for freestanding HHAs is 11.6 percent; and for hospital-based HHAs is 9.1 percent. For the old agencies region category, the average percent of the agency's costs exceeding the per-beneficiary limitation ranges from a low of 6.8 percent in the Midwest region to a high of 12.0 percent in the South region. The other regions range between 8.4 percent and 10.3 percent. The differences between regions reflect the pattern of highly disparate costs that have been reported historically between geographic areas that cannot be explained by differences in patient characteristics but appear more related to patterns of HHA business practices. The impact tracks the pre-HH IPS pattern of regions with highest costs.

For the new agencies urban provider type category, the average percent of the agency's costs exceeding the per-beneficiary limitation for freestanding HHAs is 18.0 percent; and for hospital based HHAs, it is 8.8 percent. For the new agencies rural provider type category the average percent of the agency's costs exceeding the per-beneficiary limitation for freestanding HHAs is 20.3 percent; and for hospital-based HHAs is 11.6 percent. For the new agencies region category, the average percent of the agency's costs exceeding the per-beneficiary limitation ranges from a low of 9.9 percent in the Northeast region to a high of 21.4 percent in the South region. The other regions range from 10.9 percent to 16.2 percent. In general, newer agencies in regions that have exceptionally high cost histories experience a bigger impact due to their being limited to the national median.

Although there is considerable variation in these limitations, we believe this is a reflection of the wide variation in payments that have been recognized under the present cost reimbursement system. Moreover, we believe the differing impacts of these limitations is an inherent result of beginning to draw unexplained variation among providers closer to which existed before the rapid increase in home health expenditures of the post '93 to '94 period. Because this rule limits payments to HHAs to the lesser of actual cost, the per-visit limitations, or the per-beneficiary limitation, we have estimated the combined impact of these limitations in terms of the number of agencies affected to a greater or lesser extent by both limits.

We estimate that in Federal FY 2000, 15 percent of the HHAs will be limited by the per-visit limitation while 79 percent will be limited to the per-beneficiary limitation. It is important to note again that an HHA is affected either by the per-visit limitation or the per-beneficiary. They will not be affected by both.

Medicare payments to managed care plans are based on fee-for-service Medicare benefits. Although we do not know what home health services are supplied for these payments, we know how much we pay the plans as a result of fee-for-service home health payments. Thus, managed care payments are figured in as part of our cost/savings estimates. Managed care plans are not expected to reduce home health services as a result of this notice. For Federal FY 2000, we estimate that 20 percent of the Medicare cost will be for payments to managed care plans, our estimate for Federal FY 2003 is 26 percent.

We believe that the effect of this notice on State Medicaid programs overall will be small. However, because of the flexibility and variation in State Medicaid policies and service delivery systems as well as differences in provider behavior in reaction to these limits, it is impossible to predict which States will be affected or the magnitude of the impact.

We have reviewed this notice under the threshold criteria of Executive Order 12612. We have determined that it does

not significantly affect the rights, roles, and responsibilities of States.

**X. Collection of Information Requirements**

Under the Paperwork Reduction Act of 1995, agencies are required to provide a 60-day notice in the **Federal Register** and solicit public comments before a collection of information requirement is submitted to the Office of Management and Budget for review and approval. This document does not impose information collection and record keeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

**XI. Other Required Information**

*A. Waiver of Proposed Notice*

In adopting notices such as this, we ordinarily publish a proposed notice in the **Federal Register** to provide a period for public comment before the provisions of the notice take effect. However, we may waive this procedure if for good cause we find that prior notice and comment are impracticable, unnecessary, or contrary to public interest. (5 USC section 553(b)(B)).

Section 1861(v)(1)(L) of the Act requires that the Secretary establish revised HHA cost limits for cost reporting periods beginning on or after July 1, 1991 and annually thereafter (except for cost reporting periods beginning on or after July 1, 1994 and before July 1, 1996). In accordance with the statute, we have used the same methodology to develop the schedules of limits that were used in setting the limits effective for cost reporting periods beginning on or after October 1, 1997. These cost limits have been updated by the appropriate market basket adjustment factor to reflect the cost increases occurring between the cost reporting periods for the data contained in the database and September 30, 2000 as required by section 1861(v)(1)(L)(ix) of the Act excluding market basket increases, reduced by 1.1 percentage points with respect to cost reporting periods that began on or after July 1, 1994 and before July 1, 1996 as required by section 1861(v)(1)(L)(iv) of the Act. In addition, as required under section 1861(v)(1)(L) of the Act, we have used the most recently published hospital wage index.

Therefore, for good cause we find that it was unnecessary to undertake notice and comment procedures. Generally, the methodology used to develop these schedules of limits is dictated by statute and does not require the exercise of discretion. These methodologies have also been previously published for public comment. It was also necessary to inform HHAs of their new cost limitations in a timely manner so that HHAs could benefit from the most recently published wage index and updated market basket adjustment factor.

Accordingly, for good cause, we waive prior notice and comment procedures. However, we are providing a 60-day comment period for public comment, as indicated at the beginning of this notice.

*B. Public Comments*

Because of the large number of items of correspondence we normally receive on a notice with comment period, we are not able to acknowledge or respond to them individually. However, we will consider all comments concerning the provisions of this notice that we receive by the date and time specified in the ''**DATES**'' section of this notice, and we will respond to those comments in a subsequent document.

**Authority:** Section 1861(v)(1)(L) of the Social Security Act (42 U.S.C. 1395x(v)(1)(L)); section 4207(d) of Pub. L. 101–508 (42 U.S.C. 1395x (note)).
(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance)

Dated: June 16, 1999.

**Nancy-Ann Min DeParle,**

*Administrator, Health Care Financing Administration.*

Dated: June 29, 1999.

**Donna E. Shalala,**

*Secretary.*

ADDENDUM 1A.—WAGE INDEX FOR URBAN AREAS

| Urban area (Constituent counties) | Wage index |
|---|---|
| 0040 Abilene, TX | 0.7981 |
| Taylor, TX | |
| 0060 Aguadilla, PR | 0.4727 |
| Aguada, PR | |
| Aguadilla, PR | |
| Moca, PR | |
| 0080 Akron, OH | 0.9900 |
| Portage, OH | |
| Summit, OH | |
| 0120 Albany, GA | 0.7975 |
| Dougherty, GA | |
| Lee, GA | |
| 0160 Albany-Schenectady-Troy, NY | 0.8610 |
| Albany, NY | |
| Montgomery, NY | |
| Rensselaer, NY | |
| Saratoga, NY | |
| Schenectady, NY | |
| Schoharie, NY | |
| 0200 Albuquerque, NM | 0.8613 |
| Bernalillo, NM | |
| Sandoval, NM | |
| Valencia, NM | |
| 0220 Alexandria, LA | 0.8526 |
| Rapides, LA | |
| 0240 Allentown-Bethlehem-Easton, PA | 1.0204 |
| Carbon, PA | |
| Lehigh, PA | |
| Northampton, PA | |
| 0280 Altoona, PA | 0.9335 |
| Blair, PA | |
| 0320 Amarillo, TX. | |
| Potter, TX | 0.8474 |
| Randall, TX | |
| 0380 Anchorage, AK | 1.2818 |
| Anchorage, AK | |
| 0440 Ann Arbor, MI | 1.1033 |
| Lenawee, MI | |
| Livingston, MI | |
| Washtenaw, MI | |
| 0450 Anniston, AL | 0.8658 |
| Calhoun, AL | |
| 0460 Appleton-Oshkosh-Neenah, WI | 0.8825 |
| Calumet, WI | |
| Outagamie, WI | |
| Winnebago, WI | |
| 0470 Arecibo, PR | 0.4867 |
| Arecibo, PR | |
| Camuy, PR | |
| Hatillo, PR | |
| 0480 Asheville, NC | 0.8940 |
| Buncombe, NC | |
| Madison, NC | |
| 0500Athens, GA | 0.8673 |
| Clarke, GA | |
| Madison, GA | |
| Oconee, GA | |
| 0520 Atlanta, GA | 0.9915 |
| Barrow, GA | |
| Bartow, GA | |
| Carroll, GA | |
| Cherokee, GA | |
| Clayton, GA | |
| Cobb, GA | |
| Coweta, GA | |
| DeKalb, GA | |
| Douglas, GA | |
| Fayette, GA | |
| Forsyth, GA | |
| Fulton, GA | |
| Gwinnett, GA | |
| Henry, GA | |
| Newton, GA | |
| Paulding, GA | |
| Pickens, GA | |
| Rockdale, GA | |
| Spalding, GA | |
| Walton, GA | |
| 0560 Atlantic-Cape May, NJ | 1.1536 |
| Atlantic, NJ | |
| Cape May, NJ | |
| 0600 Augusta-Aiken, GA–SC | 0.9233 |
| Columbia, GA | |
| McDuffie, GA | |
| Richmond, GA | |
| Aiken, SC | |
| Edgefield, SC | |
| 0640 Austin-San Marcos, TX | 0.8782 |
| Bastrop, TX | |

ADDENDUM 1A.—WAGE INDEX FOR URBAN AREAS—Continued

| Urban area (Constituent counties) | Wage index |
|---|---|
| Caldwell, TX | |
| Hays, TX | |
| Travis, TX | |
| Williamson, TX | |
| 0680 Bakersfield, CA | 0.9531 |
| Kern, CA | |
| 0720 Baltimore, MD | 0.9642 |
| Anne Arundel, MD | |
| Baltimore, MD | |
| Baltimore City, MD | |
| Carroll, MD | |
| Harford, MD | |
| Howard, MD | |
| Queen Anne's, MD | |
| 0733 Bangor, ME | 0.9474 |
| Penobscot, ME | |
| 0743Barnstable-Yarmouth, MA | 1.5382 |
| Barnstable, MA | |
| 0760 Baton Rouge, LA | 0.8872 |
| Ascension, LA | |
| East Baton Rouge, LA | |
| Livingston, LA | |
| West Baton Rouge, LA | |
| 0840 Beaumont-Port Arthur, TX | 0.8659 |
| Hardin, TX | |
| Jefferson, TX | |
| Orange, TX | |
| 0860 Bellingham, WA | 1.1434 |
| Whatcom, WA | |
| 0870 Benton Harbor, MI | 0.8531 |
| Berrien, MI | |
| 0875 Bergen-Passaic, NJ | 1.2186 |
| Bergen, NJ | |
| Passaic, NJ | |
| 0880 Billings, MT | 0.9143 |
| Yellowstone, MT | |
| 0920 Biloxi-Gulfport-Pascagoula, MS | 0.8276 |
| Hancock, MS | |
| Harrison, MS | |
| Jackson, MS | |
| 0960 Binghamton, NY | 0.9059 |
| Broome, NY | |
| Tioga, NY | |
| 1000 Birmingham, AL | 0.9073 |
| Blount, AL | |
| Jefferson, AL | |
| St. Clair, AL | |
| Shelby, AL | |
| 1010 Bismarck, ND | 0.8025 |
| Burleigh, ND | |
| Morton, ND | |
| 1020 Bloomington, IN | 0.8965 |
| Monroe, IN | |
| 1040 Bloomington-Normal, IL | 0.8851 |
| McLean, IL | |
| 1080 Boise City, ID | 0.9160 |
| Ada, ID | |
| Canyon, ID | |
| 1123 Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH | 1.1269 |
| Bristol, MA | |
| Essex, MA | |
| Middlesex, MA | |
| Norfolk, MA | |
| Plymouth, MA | |
| Suffolk, MA | |
| Worcester, MA | |
| Hillsborough, NH | |
| Merrimack, NH | |
| Rockingham, NH | |
| Strafford, NH | |
| 1125 Boulder-Longmont, CO | 1.0038 |
| Boulder, CO | |
| 1145 Brazoria, TX | 0.8906 |
| Brazoria, TX | |
| 1150 Bremerton, WA | 1.1055 |
| Kitsap, WA | |
| 1240 Brownsville-Harlingen-San Benito, TX | 0.8237 |
| Cameron, TX | |
| 1260 Bryan-College Station, TX | 0.7820 |
| Brazos, TX | |
| 1280 Buffalo-Niagara Falls, NY | 0.9587 |
| Erie, NY | |
| Niagara, NY | |
| 1303 Burlington, VT | 0.9577 |
| Chittenden, VT | |
| Franklin, VT | |
| Grand Isle, VT | |
| 1310 Caguas, PR | 0.4400 |
| Caguas, PR | |
| Cayey, PR | |
| Cidra, PR | |
| Gurabo, PR | |
| San Lorenzo, PR | |
| 1320 Canton-Massillon, OH | 0.8813 |
| Carroll, OH | |
| Stark, OH | |
| 1350 Casper, WY | 0.8701 |
| Natrona, WY | |
| 1360 Cedar Rapids, IA | 0.8814 |
| Linn, IA | |
| 1400 Champaign-Urbana, IL | 0.8723 |
| Champaign, IL | |
| 1440 Charleston-North Charleston, SC | 0.9114 |
| Berkeley, SC | |
| Charleston, SC | |
| Dorchester, SC | |
| 1480 Charleston, WV | 0.8990 |
| Kanawha, WV | |
| Putnam, WV | |
| 1520 Charlotte-Gastonia-Rock Hill, NC–SC | 0.9686 |
| Cabarrus, NC | |
| Gaston, NC | |
| Lincoln, NC | |
| Mecklenburg, NC | |
| Rowan, NC | |
| Stanly, NC | |
| Union, NC | |
| York, SC | |
| 1540 Charlottesville, VA | 1.0272 |
| Albemarle, VA | |
| Charlottesville City, VA | |
| Fluvanna, VA | |
| Greene, VA | |
| 1560 Chattanooga, TN–GA | 0.9074 |
| Catoosa, GA | |
| Dade, GA | |
| Walker, GA | |
| Hamilton, TN | |
| Marion, TN | |
| 1580 Cheyenne, WY | 0.8149 |
| Laramie, WY | |
| 1600 Chicago, IL | 1.0461 |
| Cook, IL | |
| DeKalb, IL | |
| DuPage, IL | |
| Grundy, IL | |
| Kane, IL | |
| Kendall, IL | |
| Lake, IL | |
| McHenry, IL | |
| Will, IL | |
| 1620 Chico-Paradise, CA | 1.0145 |
| Butte, CA | |
| 1640 Cincinnati, OH–KY–IN | 0.9595 |
| Dearborn, IN | |
| Ohio, IN | |
| Boone, KY | |
| Campbell, KY | |
| Gallatin, KY | |
| Grant, KY | |
| Kenton, KY | |
| Pendleton, KY | |
| Brown, OH | |
| Clermont, OH | |
| Hamilton, OH | |
| Warren, OH | |
| 1660 Clarksville-Hopkinsville, TN–KY | 0.8040 |
| Christian, KY | |
| Montgomery, TN | |
| 1680 Cleveland-Lorain-Elyria, OH | 0.9886 |
| Ashtabula, OH | |
| Cuyahoga, OH | |
| Geauga, OH | |
| Lake, OH | |
| Lorain, OH | |
| Medina, OH | |
| 1720 Colorado Springs, CO | 0.9390 |
| El Paso, CO | |
| 1740 Columbia, MO | 0.8942 |
| Boone, MO | |
| 1760 Columbia, SC | 0.9290 |
| Lexington, SC | |
| Richland, SC | |
| 1800 Columbus, GA–AL. Russell, AL | 0.8511 |
| Chattahoochee, GA | |
| Harris, GA | |
| Muscogee, GA | |
| 1840 Columbus, OH | 0.9781 |
| Delaware, OH | |
| Fairfield, OH | |
| Franklin, OH | |
| Licking, OH | |
| Madison, OH | |
| Pickaway, OH | |
| 1880 Corpus Christi, TX | 0.8513 |
| Nueces, TX | |
| San Patricio, TX | |
| 1900 Cumberland, MD–WV | 0.8242 |
| Allegany, MD | |
| Mineral, WV | |
| 1920 Dallas, TX | 0.9369 |
| Collin, TX | |
| Dallas, TX | |
| Denton, TX | |
| Ellis, TX | |
| Henderson, TX | |
| Hunt, TX | |
| Kaufman, TX | |
| Rockwall, TX | |
| 1950 Danville, VA | 0.9045 |
| Danville City, VA | |
| Pittsylvania, VA | |

ADDENDUM 1A.—WAGE INDEX FOR URBAN AREAS—Continued

| Urban area (Constituent counties) | Wage index |
|---|---|
| 1960 Davenport-Moline-Rock. Island, IA–IL | 0.8413 |
| Scott, IA | |
| Henry, IL | |
| Rock Island, IL | |
| 2000 Dayton-Springfield, OH | 0.9605 |
| Clark, OH | |
| Greene, OH | |
| Miami, OH | |
| Montgomery, OH | |
| 2020 Daytona Beach, FL | 0.9134 |
| Flagler, FL | |
| Volusia, FL | |
| 2030 Decatur, AL | 0.8233 |
| Lawrence, AL | |
| Morgan, AL | |
| 2040 Decatur, IL | 0.8035 |
| Macon, IL | |
| 2080 Denver, CO | 1.0331 |
| Adams, CO | |
| Arapahoe, CO | |
| Denver, CO | |
| Douglas, CO | |
| Jefferson, CO | |
| 2120 Des Moines, IA | 0.8448 |
| Dallas, IA | |
| Polk, IA | |
| Warren, IA | |
| 2160 Detroit, MI | 1.0544 |
| Lapeer, MI | |
| Macomb, MI | |
| Monroe, MI | |
| Oakland, MI | |
| St. Clair, MI | |
| Wayne, MI | |
| 2180 Dothan, AL | 0.7892 |
| Dale, AL | |
| Houston, AL | |
| 2190 Dover, DE | 0.9363 |
| Kent, DE | |
| 2200 Dubuque, IA | 0.8222 |
| Dubuque, IA | |
| 2240 Duluth-Superior, MN–WI | 0.9962 |
| St. Louis, MN | |
| Douglas, WI | |
| 2281 Dutchess County, NY | 1.0530 |
| Dutchess, NY | |
| 2290 Eau Claire, WI | 0.8573 |
| Chippewa, WI | |
| Eau Claire, WI | |
| 2320 El Paso, TX | 0.9215 |
| El Paso, TX | |
| 2330 Elkhart-Goshen, IN | 0.9305 |
| Elkhart, IN | |
| 2335 Elmira, NY | 0.8440 |
| Chemung, NY | |
| 2340Enid, OK | 0.7983 |
| Garfield, OK | |
| 2360 Erie, PA | 0.9271 |
| Erie, PA | |
| 2400 Eugene-Springfield, OR | 1.1193 |
| Lane, OR | |
| 2440 Evansville-Henderson, IN–KY | 0.8528 |
| Posey, IN | |
| Vanderburgh, IN | |
| Warrick, IN | |
| Henderson, KY | |
| 2520 Fargo-Moorhead, ND–MN | 0.9520 |
| Clay, MN | |
| Cass, ND | |
| 2560 Fayetteville, NC | 0.8389 |
| Cumberland, NC | |
| 2580 Fayetteville-Springdale-Rogers, AR | 0.8614 |
| Benton, AR | |
| Washington, AR | |
| 2620 Flagstaff, AZ–UT | 0.9483 |
| Coconino, AZ | |
| Kane, UT | |
| 2640 Flint, MI | 1.1031 |
| Genesee, MI | |
| 2650 Florence, AL | 0.7676 |
| Colbert, AL | |
| Lauderdale, AL | |
| 2655 Florence, SC | 0.8501 |
| Florence, SC | |
| 2670 Fort Collins-Loveland, CO | 1.0770 |
| Larimer, CO | |
| 2680 Ft. Lauderdale, FL | 0.9807 |
| Broward, FL | |
| 2700 Fort Myers-Cape Coral, FL | 0.8942 |
| Lee, FL | |
| 2710 Fort Pierce-Port St. Lucie, FL | 1.0241 |
| Martin, FL | |
| St. Lucie, FL | |
| 2720 Fort Smith, AR–OK | 0.7623 |
| Crawford, AR | |
| Sebastian, AR | |
| Sequoyah, OK | |
| 2750 Fort Walton Beach, FL | 0.8615 |
| Okaloosa, FL | |
| 2760 Fort Wayne, IN | 0.9047 |
| Adams, IN | |
| Allen, IN | |
| De Kalb, IN | |
| Huntington, IN | |
| Wells, IN | |
| Whitley, IN | |
| 2800 Forth Worth-Arlington, TX | 0.9719 |
| Hood, TX | |
| Johnson, TX | |
| Parker, TX | |
| Tarrant, TX | |
| 2840 Fresno, CA | 1.0700 |
| Fresno, CA | |
| Madera, CA | |
| 2880 Gadsden, AL | 0.8779 |
| Etowah, AL | |
| 2900 Gainesville, FL | 0.9453 |
| Alachua, FL | |
| 2920 Galveston-Texas City, TX | 1.0894 |
| Galveston, TX | |
| 2960 Gary, IN | 0.9435 |
| Lake, IN | |
| Porter, IN | |
| 2975 Glens Falls, NY | 0.8490 |
| Warren, NY | |
| Washington, NY | |
| 2980 Goldsboro, NC | 0.8530 |
| Wayne, NC | |
| 2985 Grand Forks, ND–MN | 0.8836 |
| Polk, MN | |
| Grand Forks, ND | |
| 2995 Grand Junction, CO | 0.8279 |
| Mesa, CO | |
| 3000 Grand Rapids-Muskegon-Holland, MI | 0.9971 |
| Allegan, MI | |
| Kent, MI | |
| Muskegon, MI | |
| Ottawa, MI | |
| 3040 Great Falls, MT | 0.8872 |
| Cascade, MT | |
| 3060 Greeley, CO | 0.9457 |
| Weld, CO | |
| 3080 Green Bay, WI | 0.9156 |
| Brown, WI | |
| 3120 Greensboro-Winston-Salem-High Point, NC | 0.9547 |
| Alamance, NC | |
| Davidson, NC | |
| Davie, NC | |
| Forsyth, NCGuilford, NC | |
| Randolph, NC | |
| Stokes, NC | |
| Yadkin, NC | |
| 3150 Greenville, NC | 0.9434 |
| Pitt, NC | |
| 3160 Greenville-Spartanburg-Anderson, SC | 0.9222 |
| Anderson, SC | |
| Cherokee, SC | |
| Greenville, SC | |
| Pickens, SC | |
| Spartanburg, SC | |
| 3180 Hagerstown, MD | 1.0183 |
| Washington, MD | |
| 3200 Hamilton-Middletown, OH | 0.9233 |
| Butler, OH | |
| 3240 Harrisburg-Lebanon-Carlisle, PA | 1.0060 |
| Cumberland, PA | |
| Dauphin, PA | |
| Lebanon, PA | |
| Perry, PA | |
| 3283 Hartford, CT [1 2] | 1.1831 |
| Hartford, CT | |
| Litchfield, CT | |
| Middlesex, CT | |
| Tolland, CT | |
| 3285 Hattiesburg, MS | 0.7261 |
| Forrest, MS | |
| Lamar, MS | |
| 3290 Hickory-Morganton-Lenoir, NC | 0.8904 |
| Alexander, NC | |
| Burke, NC | |
| Caldwell, NC | |
| Catawba, NC | |
| 3320 Honolulu, HI | 1.1510 |
| Honolulu, HI | |
| 3350 Houma, LA | 0.8197 |
| Lafourche, LA | |
| Terrebonne, LA | |
| 3360 Houston, TX | 0.9889 |
| Chambers, TX | |
| Fort Bend, TX | |
| Harris, TX | |
| Liberty, TX | |
| Montgomery, TX | |
| Waller, TX | |
| 3400 Huntington-Ashland, WV–KY–OH | 0.9647 |
| Boyd, KY | |
| Carter, KY | |
| Greenup, KY | |
| Lawrence, OH | |
| Cabell, WV | |

ADDENDUM 1A.—WAGE INDEX FOR URBAN AREAS—Continued

| Urban area (Constituent counties) | Wage index |
|---|---|
| Wayne, WV | |
| 3440 Huntsville, AL | 0.8385 |
| Limestone, AL | |
| Madison, AL | |
| 3480 Indianapolis, IN | 0.9831 |
| Boone, IN | |
| Hamilton, IN | |
| Hancock, IN | |
| Hendricks, IN | |
| Johnson, IN | |
| Madison, IN | |
| Marion, IN | |
| Morgan, IN | |
| Shelby, IN | |
| 3500 Iowa City, IA | 0.9481 |
| Johnson, IA | |
| 3520 Jackson, MI | 0.9224 |
| Jackson, MI | |
| 3560 Jackson, MS | 0.8292 |
| Hinds, MS | |
| Madison, MS | |
| Rankin, MS | |
| 3580 Jackson, TN | 0.8560 |
| Madison, TN | |
| Chester, TN | |
| 3600 Jacksonville, FL | 0.8900 |
| Clay, FL | |
| Duval, FL | |
| Nassau, FL | |
| St. Johns, FL | |
| 3605 Jacksonville, NC | 0.7556 |
| Onslow, NC | |
| 3610 Jamestown, NY | 0.7660 |
| Chautauqua, NY | |
| 3620 Janesville-Beloit, WI | 0.9051 |
| Rock, WI | |
| 3640 Jersey City, NJ | 1.1598 |
| Hudson, NJ | |
| 3660 Johnson City-Kingsport-Bristol, TN–VA | 0.8773 |
| Carter, TN | |
| Hawkins, TN | |
| Sullivan, TN | |
| Unicoi, TN | |
| Washington, TN | |
| Bristol City, VA | |
| Scott, VA | |
| Washington, VA | |
| 3680 Johnstown, PA | 0.8619 |
| Cambria, PA | |
| Somerset, PA | |
| 3700 Jonesboro, AR | 0.7407 |
| Craighead, AR | |
| 3710 Joplin, MO | 0.7873 |
| Jasper, MO | |
| Newton, MO | |
| 3720 Kalamazoo-Battlecreek, MI | 1.1331 |
| Calhoun, MI | |
| Kalamazoo, MI | |
| Van Buren, MI | |
| 3740 Kankakee, IL | 0.9418 |
| Kankakee, IL | |
| 3760 Kansas City, KS–MO | 0.9645 |
| Johnson, KS | |
| Leavenworth, KS | |
| Miami, KS | |
| Wyandotte, KS | |
| Cass, MO | |
| Clay, MO | |
| Clinton, MO | |
| Jackson, MO | |
| Lafayette, MO | |
| Platte, MO | |
| Ray, MO | |
| 3800 Kenosha, WI | 0.9129 |
| Kenosha, WI | |
| 3810 Killeen-Temple, TX | 1.0109 |
| Bell, TX | |
| Coryell, TX | |
| 3840 Knoxville, TN | 0.8918 |
| Anderson, TN | |
| Blount, TN | |
| Knox, TN | |
| Loudon, TN | |
| Sevier, TN | |
| Union, TN | |
| 3850 Kokomo, IN | 0.9275 |
| Howard, IN | |
| Tipton, IN | |
| 3870 La Crosse, WI–MN | 0.8913 |
| Houston, MN | |
| La Crosse, WI | |
| 3880 Lafayette, LA | 0.8255 |
| Acadia, LA | |
| Lafayette, LA | |
| St. Landry, LA | |
| St. Martin, LA | |
| 3920 Lafayette, IN | 0.8841 |
| Clinton, IN | |
| Tippecanoe, IN | |
| 3960 Lake Charles, LA | 0.7674 |
| Calcasieu, LA | |
| 3980 Lakeland-Winter Haven, FL | 0.8939 |
| Polk, FL | |
| 4000 Lancaster, PA | 0.9561 |
| Lancaster, PA | |
| 4040 Lansing-East Lansing, MI | 1.0090 |
| Clinton, MI | |
| Eaton, MI | |
| Ingham, MI | |
| 4080 Laredo, TX | 0.7343 |
| Webb, TX | |
| 4100 Las Cruces, NM | 0.8870 |
| Dona Ana, NM | |
| 4120 Las Vegas, NV–AZ | 1.1413 |
| Mohave, AZ | |
| Clark, NV | |
| Nye, NV | |
| 4150 Lawrence, KS | 0.8655 |
| Douglas, KS | |
| 4200 Lawton, OK | 0.8697 |
| Comanche, OK | |
| 4243 Lewiston-Auburn, ME | 0.9149 |
| Androscoggin, ME | |
| 4280 Lexington, KY | 0.8506 |
| Bourbon, KY | |
| Clark, KY | |
| Fayette, KY | |
| Jessamine, KY | |
| Madison, KY | |
| Scott, KY | |
| Woodford, KY | |
| 4320 Lima, OH | 0.8949 |
| Allen, OH | |
| Auglaize, OH | |
| 4360 Lincoln, NE | 0.9303 |
| Lancaster, NE | |
| 4400 Little Rock-North Little Rock, AR | 0.8503 |
| Faulkner, AR | |
| Lonoke, AR | |
| Pulaski, AR | |
| Saline, AR | |
| 4420 Longview-Marshall, TX | 0.8698 |
| Gregg, TX | |
| Harrison, TX | |
| Upshur, TX | |
| 4480 Los Angeles-Long Beach, CA | 1.2085 |
| Los Angeles, CA | |
| 4520 Louisville, KY–IN | 0.9093 |
| Clark, IN | |
| Floyd, IN | |
| Harrison, IN | |
| Scott, IN | |
| Bullitt, KY | |
| Jefferson, KY | |
| Oldham, KY | |
| 4600 Lubbock, TX | 0.8496 |
| Lubbock, TX | |
| 4640 Lynchburg, VA | 0.8900 |
| Amherst, VA | |
| Bedford, VA | |
| Bedford City, VA | |
| Campbell, VA | |
| Lynchburg City, VA | |
| 4680 Macon, GA | 0.8980 |
| Bibb, GA | |
| Houston, GA | |
| Jones, GA | |
| Peach, GA | |
| Twiggs, GA | |
| 4720 Madison, WI | 1.0018 |
| Dane, WI | |
| 4800 Mansfield, OH | 0.8534 |
| Crawford, OH | |
| Richland, OH | |
| 4840 Mayaguez, PR | 0.4401 |
| Anasco, PR | |
| Cabo Rojo, PR | |
| Hormigueros, PR | |
| Mayaguez, PR | |
| Sabana Grande, PR | |
| San German, PR | |
| 4880 McAllen-Edinburg-Mission, TX | 0.8893 |
| Hidalgo, TX | |
| 4890 Medford-Ashland, OR | 1.0020 |
| Jackson, OR | |
| 4900 Melbourne-Titusville-Palm Bay, FL | 0.9216 |
| Brevard, FL | |
| 4920 Memphis, TN–AR–MS | 0.8361 |
| Crittenden, AR | |
| DeSoto, MS | |
| Fayette, TN | |
| Shelby, TN | |
| Tipton, TN | |
| 4940 Merced, CA | 1.0033 |
| Merced, CA | |
| 5000 Miami, FL | 1.0017 |
| Dade, FL | |
| 5015 Middlesex-Somerset-Hunterdon, NJ | 1.1152 |
| Hunterdon, NJ | |
| Middlesex, NJ | |
| Somerset, NJ | |
| 5080 Milwaukee-Waukesha, WI | 0.9356 |
| Milwaukee, WI | |
| Ozaukee, WI | |

ADDENDUM 1A.—WAGE INDEX FOR URBAN AREAS—Continued

| Urban area (Constituent counties) | Wage index |
|---|---|
| Washington, WI | |
| Waukesha, WI | |
| 5120 Minneapolis-St. Paul, MN–WI | 1.0854 |
| Anoka, MN | |
| Carver, MN | |
| Chisago, MN | |
| Dakota, MN | |
| Hennepin, MN | |
| Isanti, MN | |
| Ramsey, MN | |
| Scott, MN | |
| Sherburne, MN | |
| Washington, MN | |
| Wright, MN | |
| Pierce, WI | |
| St. Croix, WI | |
| 5140 Missoula, MT | 0.9189 |
| Missoula, MT | |
| 5160 Mobile, AL | 0.8377 |
| Baldwin, AL | |
| Mobile, AL | |
| 5170 Modesto, CA | 1.0346 |
| Stanislaus, CA | |
| 5190 Monmouth-Ocean, NJ | 1.1317 |
| Monmouth, NJ | |
| Ocean, NJ | |
| 5200 Monroe, LA | 0.8219 |
| Ouachita, LA | |
| 5240 Montgomery, AL | 0.7821 |
| Autauga, AL | |
| Elmore, AL | |
| Montgomery, AL | |
| 5280 Muncie, IN | 0.9414 |
| Delaware, IN | |
| 5330 Myrtle Beach, SC | 0.8179 |
| Horry, SC | |
| 5345 Naples, FL | 1.0177 |
| Collier, FL | |
| 5360 Nashville, TN | 0.9480 |
| Cheatham, TN | |
| Davidson, TN | |
| Dickson, TN | |
| Robertson, TN | |
| Rutherford, TN | |
| Sumner, TN | |
| Williamson, TN | |
| Wilson, TN | |
| 5380 Nassau-Suffolk, NY | 1.3593 |
| Nassau, NY | |
| Suffolk, NY | |
| 5483 New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT | 1.2328 |
| Fairfield, CT | |
| New Haven, CT | |
| 5523 New London-Norwich, CT | 1.1616 |
| New London, CT | |
| 5560 New Orleans, LA | 0.9310 |
| Jefferson, LA | |
| Orleans, LA | |
| Plaquemines, LA | |
| St. Bernard, LA | |
| St. Charles, LA | |
| St. James, LA | |
| St. John The Baptist, LA | |
| St. Tammany, LA | |
| 5600 New York, NY | 1.4461 |
| Bronx, NY | |
| Kings, NY | |
| New York, NY | |
| Putnam, NY | |
| Queens, NY | |
| Richmond, NY | |
| Rockland, NY | |
| Westchester, NY | |
| 5640 Newark, NJ | 1.1866 |
| Essex, NJ | |
| Morris, NJ | |
| Sussex, NJ | |
| Union, NJ | |
| Warren, NJ | |
| 5660 Newburgh, NY–PA | 1.1155 |
| Orange, NY | |
| Pike, PA | |
| 5720 Norfolk-Virginia Beach-Newport News, VA–NC | 0.8275 |
| Currituck, NC | |
| Chesapeake City, VA | |
| Gloucester, VA | |
| Hampton City, VA | |
| Isle of Wight, VA | |
| James City, VA | |
| Mathews, VA | |
| Newport News City, VA | |
| Norfolk City, VA | |
| Poquoson City, VA | |
| Portsmouth City, VA | |
| Suffolk City, VA | |
| Virginia Beach City, VA | |
| Williamsburg City, VA | |
| York, VA | |
| 5775 Oakland, CA | 1.4993 |
| Alameda, CA | |
| Contra Costa, CA | |
| 5790 Ocala, FL | 0.9152 |
| Marion, FL | |
| 5800 Odessa-Midland, TX | 0.8656 |
| Ector, TX | |
| Midland, TX | |
| 5880 Oklahoma City, OK | 0.8708 |
| Canadian, OK | |
| Cleveland, OK | |
| Logan, OK | |
| McClain, OK | |
| Oklahoma, OK | |
| Pottawatomie, OK | |
| 5910 Olympia, WA | 1.1522 |
| Thurston, WA | |
| 5920 Omaha, NE–IA | 0.9972 |
| Pottawattamie, IA | |
| Cass, NE | |
| Douglas, NE | |
| Sarpy, NE | |
| Washington, NE | |
| 5945 Orange County, CA | 1.1522 |
| Orange, CA | |
| 5960 Orlando, FL | 0.9813 |
| Lake, FL | |
| Orange, FL | |
| Osceola, FL | |
| Seminole, FL | |
| 5990 Owensboro, KY | 0.7771 |
| Daviess, KY | |
| 6015 Panama City, FL | 0.8507 |
| Bay, FL | |
| 6020 Parkersburg-Marietta, WV–OH | 0.8016 |
| Washington, OH | |
| Wood, WV | |
| 6080 Pensacola, FL | 0.8246 |
| Escambia, FL | |
| Santa Rosa, FL | |
| 6120 Peoria-Pekin, IL | 0.8058 |
| Peoria, IL | |
| Tazewell, IL | |
| Woodford, IL | |
| 6160 Philadelphia, PA–NJ | 1.1370 |
| Burlington, NJ | |
| Camden, NJ | |
| Gloucester, NJ | |
| Salem, NJ | |
| Bucks, PA | |
| Chester, PA | |
| Delaware, PA | |
| Montgomery, PA | |
| Philadelphia, PA | |
| 6200 Phoenix-Mesa, AZ | 0.9591 |
| Maricopa, AZ | |
| Pinal, AZ | |
| 6240 Pine Bluff, AR | 0.7912 |
| Jefferson, AR | |
| 6280 Pittsburgh, PA | 0.9789 |
| Allegheny, PA | |
| Beaver, PA | |
| Butler, PA | |
| Fayette, PA | |
| Washington, PA | |
| Westmoreland, PA | |
| 6323 Pittsfield, MA | 1.0819 |
| Berkshire, MA | |
| 6340 Pocatello, ID | 0.8792 |
| Bannock, ID | |
| 6360 Ponce, PR | 0.4788 |
| Guayanilla, PR | |
| Juana Diaz, PR | |
| Penuelas, PR | |
| Ponce, PR | |
| Villalba, PR | |
| Yauco, PR | |
| 6403 Portland, ME | 0.9561 |
| Cumberland, ME | |
| Sagadahoc, ME | |
| York, ME | |
| 6440 Portland-Vancouver, OR–WA | 1.1178 |
| Clackamas, OR | |
| Columbia, OR | |
| Multnomah, OR | |
| Washington, OR | |
| Yamhill, OR | |
| Clark, WA | |
| 6483 Providence-Warwick-Pawtucket, RI | 1.0801 |
| Bristol, RI | |
| Kent, RI | |
| Newport, RI | |
| Providence, RI | |
| Washington, RI | |
| 6520 Provo-Orem, UT | 0.9885 |
| Utah, UT | |
| 6560 Pueblo, CO | 0.8712 |
| Pueblo, CO | |
| 6580 Punta Gorda, FL | 0.9031 |
| Charlotte, FL | |
| 6600 Racine, WI | 0.9130 |
| Racine, WI | |
| 6640 Raleigh-Durham-Chapel Hill, NC | 0.9812 |
| Chatham, NC | |

ADDENDUM 1A.—WAGE INDEX FOR URBAN AREAS—Continued

| Urban area (Constituent counties) | Wage index |
|---|---|
| Durham, NC | |
| Franklin, NC | |
| Johnston, NC | |
| Orange, NC | |
| Wake, NC | |
| 6660 Rapid City, SD | 0.8208 |
| Pennington, SD | |
| 6680 Reading, PA | 0.9234 |
| Berks, PA | |
| 6690 Redding, CA | 1.1858 |
| Shasta, CA | |
| 6720 Reno, NV | 1.1095 |
| Washoe, NV | |
| 6740 Richland-Kennewick-Pasco, WA | 1.0287 |
| Benton, WA | |
| Franklin, WA | |
| 6760 Richmond-Petersburg, VA | 0.9211 |
| Charles City County, VA | |
| Chesterfield, VA | |
| Colonial Heights City, VA | |
| Dinwiddie, VA | |
| Goochland, VA | |
| Hanover, VA | |
| Henrico, VA | |
| Hopewell City, VA | |
| New Kent, VA | |
| Petersburg City, VA | |
| Powhatan, VA | |
| Prince George, VA | |
| Richmond City, VA | |
| 6780 Riverside-San Bernardino, CA | 1.0757 |
| Riverside, CA | |
| San Bernardino, CA | |
| 6800 Roanoke, VA | 0.8509 |
| Botetourt, VA | |
| Roanoke, VA | |
| Roanoke City, VA | |
| Salem City, VA | |
| 6820 Rochester, MN | 1.1698 |
| Olmsted, MN | |
| 6840 Rochester, NY | 0.9657 |
| Genesee, NY | |
| Livingston, NY | |
| Monroe, NY | |
| Ontario, NY | |
| Orleans, NY | |
| Wayne, NY | |
| 6880 Rockford, IL | 0.8615 |
| Boone, IL | |
| Ogle, IL | |
| Winnebago, IL | |
| 6895 Rocky Mount, NC | 0.9012 |
| Edgecombe, NC | |
| Nash, NC | |
| 6920 Sacramento, CA | 1.1962 |
| El Dorado, CA | |
| Placer, CA | |
| Sacramento, CA | |
| 6960 Saginaw-Bay City-Midland, MI | 0.9487 |
| Bay, MI | |
| Midland, MI | |
| Saginaw, MI | |
| 6980 St. Cloud, MN | 0.9586 |
| Benton, MN | |
| Stearns, MN | |
| 7000 St. Joseph, MO | 0.9889 |
| Andrew, MO | |
| Buchanan, MO | |
| 7040 St. Louis, MO–IL | 0.9151 |
| Clinton, IL | |
| Jersey, IL | |
| Madison, IL | |
| Monroe, IL | |
| St. Clair, IL | |
| Franklin, MO | |
| Jefferson, MO | |
| Lincoln, MO | |
| St. Charles, MO | |
| St. Louis, MO | |
| St. Louis City, MO | |
| Warren, MO | |
| 7080 Salem, OR | 0.9904 |
| Marion, OR | |
| Polk, OR | |
| 7120 Salinas, CA | 1.5142 |
| Monterey, CA | |
| 7160 Salt Lake City-Ogden, UT | 0.9398 |
| Davis, UT | |
| Salt Lake, UT | |
| Weber, UT | |
| 7200 San Angelo, TX | 0.7646 |
| Tom Green, TX | |
| 7240 San Antonio, TX | 0.8100 |
| Bexar, TX | |
| Comal, TX | |
| Guadalupe, TX | |
| Wilson, TX | |
| 7320 San Diego, CA | 1.2265 |
| San Diego, CA | |
| 7360 San Francisco, CA | 1.3957 |
| Marin, CA | |
| San Francisco, CA | |
| San Mateo, CA | |
| 7400 San Jose, CA | 1.3827 |
| Santa Clara, CA | |
| 7440 San Juan-Bayamon, PR | 0.4623 |
| Aguas Buenas, PR | |
| Barceloneta, PR | |
| Bayamon, PR | |
| Canovanas, PR | |
| Carolina, PR | |
| Catano, PR | |
| Ceiba, PR | |
| Comerio, PR | |
| Corozal, PR | |
| Dorado, PR | |
| Fajardo, PR | |
| Florida, PR | |
| Guaynabo, PR | |
| Humacao, PR | |
| Juncos, PR | |
| Los Piedras, PR | |
| Loiza, PR | |
| Luguillo, PR | |
| Manati, PR | |
| Morovis, PR | |
| Naguabo, PR | |
| Naranjito, PR | |
| Rio Grande, PR | |
| San Juan, PR | |
| Toa Alta, PR | |
| Toa Baja, PR | |
| Trujillo Alto, PR | |
| Vega Alta, PR | |
| Vega Baja, PR | |
| Yabucoa, PR | |
| 7460 San Luis Obispo-Atascadero-Paso Robles, CA | 1.1264 |
| San Luis Obispo, CA | |
| 7480 Santa Barbara-Santa Maria-Lompoc, CA | 1.1194 |
| Santa Barbara, CA | |
| 7485 Santa Cruz-Watsonville, CA | 1.3981 |
| Santa Cruz, CA | |
| 7490 Santa Fe, NM | 0.9652 |
| Los Alamos, NM | |
| Santa Fe, NM | |
| 7500 Santa Rosa, CA | 1.3597 |
| Sonoma, CA | |
| 7510 Sarasota-Bradenton, FL | 0.9532 |
| Manatee, FL | |
| Sarasota, FL | |
| 7520 Savannah, GA | 1.0060 |
| Bryan, GA | |
| Chatham, GA | |
| Effingham, GA | |
| 7560 Scranton—Wilkes-Barre—Hazleton, PA | 0.8299 |
| Columbia, PA | |
| Lackawanna, PA | |
| Luzerne, PA | |
| Wyoming, PA | |
| 7600 Seattle-Bellevue-Everett, WA | 1.1526 |
| Island, WA | |
| King, WA | |
| Snohomish, WA | |
| 7610 Sharon, PA | 0.8847 |
| Mercer, PA | |
| 7620 Sheboygan, WI | 0.8225 |
| Sheboygan, WI | |
| 7640 Sherman-Denison, TX | 0.8570 |
| Grayson, TX | |
| 7680 Shreveport-Bossier City, LA | 0.9386 |
| Bossier, LA | |
| Caddo, LA | |
| Webster, LA | |
| 7720 Sioux City, IA–NE | 0.8481 |
| Woodbury, IA | |
| Dakota, NE | |
| 7760 Sioux Falls, SD | 0.8912 |
| Lincoln, SD | |
| Minnehaha, SD | |
| 7800 South Bend, IN | 0.9859 |
| St. Joseph, IN | |
| 7840 Spokane, WA | 1.0928 |
| Spokane, WA | |
| 7880 Springfield, IL | 0.8720 |
| Menard, IL | |
| Sangamon, IL | |
| 7920 Springfield, MO | 0.8071 |
| Christian, MO | |
| Greene, MO | |
| Webster, MO | |
| 8003 Springfield, MA | 1.0990 |
| Hampden, MA | |
| Hampshire, MA | |
| 8050 State College, PA | 0.9449 |
| Centre, PA | |
| 8080 Steubenville-Weirton, OH–WV | 0.8428 |
| Jefferson, OH | |
| Brooke, WV | |
| Hancock, WV | |
| 8120 Stockton-Lodi, CA | 1.1075 |
| San Joaquin, CA | |

ADDENDUM 1A.—WAGE INDEX FOR URBAN AREAS—Continued

| Urban area (Constituent counties) | Wage index |
|---|---|
| 8140 Sumter, SC | 0.8127 |
| Sumter, SC | |
| 8160 Syracuse, NY | 0.9400 |
| Cayuga, NY | |
| Madison, NY | |
| Onondaga, NY | |
| Oswego, NY | |
| 8200 Tacoma, WA | 1.0380 |
| Pierce, WA | |
| 8240 Tallahassee, FL | 0.8449 |
| Gadsden, FL | |
| Leon, FL | |
| 8280 Tampa-St. Petersburg-Clearwater, FL | 0.9113 |
| Hernando, FL | |
| Hillsborough, FL | |
| Pasco, FL | |
| Pinellas, FL | |
| 8320 Terre Haute, IN | 0.8991 |
| Clay, IN | |
| Vermillion, IN | |
| Vigo, IN | |
| 8360 Texarkana, AR-Texarkana, TX | 0.8506 |
| Miller, AR | |
| Bowie, TX | |
| 8400 Toledo, OH | 0.9991 |
| Fulton, OH | |
| Lucas, OH | |
| Wood, OH | |
| 8440 Topeka, KS | 0.9812 |
| Shawnee, KS | |
| 8480 Trenton, NJ | 1.0509 |
| Mercer, NJ | |
| 8520 Tucson, AZ | 0.9028 |
| Pima, AZ | |
| 8560 Tulsa, OK | 0.8463 |
| Creek, OK | |
| Osage, OK | |
| Rogers, OK | |
| Tulsa, OK | |
| Wagoner, OK | |
| 8600 Tuscaloosa, AL | 0.7641 |
| Tuscaloosa, AL | |
| 8640 Tyler, TX | 0.8818 |
| Smith, TX | |
| 8680 Utica-Rome, NY | 0.8418 |
| Herkimer, NY | |
| Oneida, NY | |
| 8720 Vallejo-Fairfield-Napa, CA | 1.3413 |
| Napa, CA | |
| Solano, CA | |
| 8735 Ventura, CA | 1.1014 |
| Ventura, CA | |
| 8750 Victoria, TX | 0.8381 |
| Victoria, TX | |
| 8760 Vineland-Millville-Bridgeton, NJ | 1.0440 |
| Cumberland, NJ | |
| 8780 Visalia-Tulare-Porterville, CA | 1.0083 |
| Tulare, CA | |
| 8800 Waco, TX | 0.8371 |
| McLennan, TX | |
| 8840 Washington, DC–MD–VA–WV | 1.0807 |
| District of Columbia, DC | |
| Calvert, MD | |
| Charles, MD | |
| Frederick, MD | |
| Montgomery, MD | |
| Prince Georges, MD | |
| Alexandria City, VA | |
| Arlington, VA | |
| Clarke, VA | |
| Culpeper, VA | |
| Fairfax, VA | |
| Fairfax City, VA | |
| Falls Church City, VA | |
| Fauquier, VA | |
| Fredericksburg City, VA | |
| King George, VA | |
| Loudoun, VA | |
| Manassas City, VA | |
| Manassas Park City, VA | |
| Prince William, VA | |
| Spotsylvania, VA | |
| Stafford, VA | |
| Warren, VA | |
| Berkeley, WV | |
| Jefferson, WV | |
| 8920 Waterloo-Cedar Falls, IA | 0.7958 |
| Black Hawk, IA | |
| 8940 Wausau, WI | 0.9733 |
| Marathon, WI | |
| 8960 West Palm Beach-Boca Raton, FL | 1.0219 |
| Palm Beach, FL | |
| 9000 Wheeling, WV–OH | 0.7627 |
| Belmont, OH | |
| Marshall, WV | |
| Ohio, WV | |
| 9040 Wichita, KS | 0.8898 |
| Butler, KS | |
| Harvey, KS | |
| Sedgwick, KS | |
| 9080 Wichita Falls, TX | 0.7830 |
| Archer, TX | |
| Wichita, TX | |
| 9140 Williamsport, PA | 0.8556 |
| Lycoming, PA | |
| 9160 Wilmington-Newark, DE–MD | 1.1868 |
| New Castle, DE | |
| Cecil, MD | |
| 9200 Wilmington, NC | 0.9343 |
| New Hanover, NC | |
| Brunswick, NC | |
| 9260 Yakima, WA | 1.0318 |
| Yakima, WA | |
| 9270 Yolo, CA | 1.1233 |
| Yolo, CA | |
| 9280 York, PA | 0.9410 |
| York, PA | |
| 9320 Youngstown-Warren, OH | 0.9815 |
| Columbiana, OH | |
| Mahoning, OH | |
| Trumbull, OH | |
| 9340 Yuba City, CA | 1.0865 |
| Sutter, CA | |
| Yuba, CA | |
| 9360 Yuma, AZ | 1.0058 |
| Yuma, AZ | |

ADDENDUM 1B.—WAGE INDEX FOR RURAL AREAS

| Nonurban area | Wage index |
|---|---|
| Alabama | 0.7294 |
| Alaska | 1.2430 |
| Arizona | 0.7989 |
| Arkansas | 0.7250 |
| California | 0.9979 |
| Colorado | 0.8436 |
| Connecticut | 1.2074 |
| Delaware | 0.8807 |
| Florida | 0.8877 |
| Georgia | 0.7888 |
| Guam | 0.6516 |
| Hawaii | 1.0910 |
| Idaho | 0.8477 |
| Illinois | 0.7916 |
| Indiana | 0.8380 |
| Iowa | 0.7777 |
| Kansas | 0.7319 |
| Kentucky | 0.7844 |
| Louisiana | 0.7454 |
| Maine | 0.8467 |
| Maryland | 0.8555 |
| Massachusetts | 1.0834 |
| Michigan | 0.8875 |
| Minnesota | 0.8595 |
| Mississippi | 0.7312 |
| Missouri | 0.7452 |
| Montana | 0.8398 |
| Nebraska | 0.7674 |
| Nevada | 0.9256 |
| New Hampshire | 1.0240 |
| New Jersey [1] | ..... |
| New Mexico | 0.8269 |
| New York | 0.8588 |
| North Carolina | 0.8112 |
| North Dakota | 0.7497 |
| Ohio | 0.8519 |
| Oklahoma | 0.7124 |
| Oregon | 0.9910 |
| Pennsylvania | 0.8664 |
| Puerto Rico | 0.4080 |
| Rhode Island [1] | ..... |
| South Carolina | 0.8046 |
| South Dakota | 0.7508 |
| Tennessee | 0.7492 |
| Texas | 0.7565 |
| Utah | 0.8859 |
| Vermont | 0.9416 |
| Virginia | 0.7857 |
| Virgin Islands | 0.4588 |
| Washington | 1.0489 |
| West Virginia | 0.7875 |
| Wisconsin | 0.8711 |
| Wyoming | 0.8768 |

[1] All counties within the State are classified as urban.

ADDENDUM 2.—COST REPORTING YEAR—ADJUSTMENT FACTOR [1]

| If the HHA cost reporting period begins | The adjustment factor is |
|---|---|
| November 1, 1999 | 1.00113 |
| December 1, 1999 | 1.00244 |
| January 1, 2000 | 1.00394 |
| February 1, 2000 | 1.00544 |
| March 1, 2000 | 1.00696 |
| April 1, 2000 | 1.00850 |

ADDENDUM 2.—COST REPORTING YEAR—ADJUSTMENT FACTOR [1]—Continued

| If the HHA cost reporting period begins | The adjustment factor is |
|---|---|
| May 1, 2000 | 1.01013 |
| June 1, 2000 | 1.01186 |
| July 1, 2000 | 1.01369 |
| August 1, 2000 | 1.01558 |
| September 1, 2000 | 1.01753 |

[1] Based on compounded projected market basket inflation rates.

Source: The Home Health Agency Input Price Index, produced by HCFA for the period between 1983:1 and 2008:4. The forecasts are from Standard and Poor's DRI 3rd QTR 1997: @USSIM/TREND25YR0897@CISSIM/Control973 forecast exercise which has historical data through 1997:2.

ADDENDUM 3.—MONTHLY INDEX LEVELS FOR CALCULATING INFLATION FACTORS TO BE APPLIED TO HOME HEALTH AGENCY PER-BENEFICIARY LIMITATIONS

| Month | Index level |
|---|---|
| October 1992 | .98672 |
| November 1992 | .98800 |
| December 1992 | .98928 |
| January 1993 | .99313 |
| February 1993 | .99700 |
| March 1993 | 1.00088 |
| April 1993 | 1.00244 |
| May 1993 | 1.00400 |
| June 1993 | 1.00556 |
| July 1993 | 1.00878 |
| August 1993 | 1.01200 |
| September 1993 | 1.01523 |
| October 1993 | 1.01662 |
| November 1993 | 1.01800 |
| December 1993 | 1.01939 |
| January 1994 | 1.02318 |
| February 1994 | 1.02700 |
| March 1994 | 1.03083 |
| April 1994 | 1.03141 |
| May 1994 | 1.03200 |
| June 1994 | 1.03259 |
| July 1994 | 1.03259 |

ADDENDUM 3.—MONTHLY INDEX LEVELS FOR CALCULATING INFLATION FACTORS TO BE APPLIED TO HOME HEALTH AGENCY PER-BENEFICIARY LIMITATIONS—Continued

| Month | Index level |
|---|---|
| August 1994 | 1.03259 |
| September 1994 | 1.03259 |
| October 1994 | 1.03259 |
| November 1994 | 1.03259 |
| December 1994 | 1.03259 |
| January 1995 | 1.03259 |
| February 1995 | 1.03259 |
| March 1995 | 1.03259 |
| April 1995 | 1.03259 |
| May 1995 | 1.03259 |
| June 1995 | 1.03259 |
| July 1995 | 1.03259 |
| August 1995 | 1.03259 |
| September 1995 | 1.03259 |
| October 1995 | 1.03259 |
| November 1995 | 1.03259 |
| December 1995 | 1.03259 |
| January 1996 | 1.03259 |
| February 1996 | 1.03259 |
| March 1996 | 1.03259 |
| April 1996 | 1.03259 |
| May 1996 | 1.03259 |
| June 1996 | 1.03259 |
| July 1996 | 1.03479 |
| August 1996 | 1.03700 |
| September 1996 | 1.03921 |
| October 1996 | 1.04141 |
| November 1996 | 1.04361 |
| December 1996 | 1.04582 |
| January 1997 | 1.04849 |
| February 1997 | 1.05117 |
| March 1997 | 1.05385 |
| April 1997 | 1.05581 |
| May 1997 | 1.05778 |
| June 1997 | 1.05974 |
| July 1997 | 1.06395 |
| August 1997 | 1.06817 |
| September 1997 | 1.07317 |
| October 1997 | 1.07406 |
| November 1997 | 1.07572 |
| December 1997 | 1.07738 |
| January 1998 | 1.07986 |
| February 1998 | 1.08233 |
| March 1998 | 1.08481 |
| April 1998 | 1.08735 |
| May 1998 | 1.08989 |

ADDENDUM 3.—MONTHLY INDEX LEVELS FOR CALCULATING INFLATION FACTORS TO BE APPLIED TO HOME HEALTH AGENCY PER-BENEFICIARY LIMITATIONS—Continued

| Month | Index level |
|---|---|
| June 1998 | 1.09243 |
| July 1998 | 1.09588 |
| August 1998 | 1.09933 |
| September 1998 | 1.10280 |
| October 1998 | 1.10390 |
| November 1998 | 1.10500 |
| December 1998 | 1.10610 |
| January 1999 | 1.10979 |
| February 1999 | 1.11350 |
| March 1999 | 1.11722 |
| April 1999 | 1.11960 |
| May 1999 | 1.12200 |
| June 1999 | 1.12440 |
| July 1999 | 1.12791 |
| August 1999 | 1.13144 |
| September 1999 | 1.13498 |
| October 1999 | 1.13509 |
| November 1999 | 1.13520 |
| December 1999 | 1.13531 |
| January 2000 | 1.13714 |
| February 2000 | 1.13898 |
| March 2000 | 1.14081 |
| April 2000 | 1.14179 |
| May 2000 | 1.14276 |
| June 2000 | 1.14374 |
| July 2000 | 1.14515 |
| August 2000 | 1.14656 |
| September 2000 | 1.14797 |
| October 2000 | 1.15056 |
| November 2000 | 1.15316 |
| December 2000 | 1.15576 |
| January 2001 | 1.15778 |
| February 2001 | 1.15980 |
| March 2001 | 1.16182 |
| April 2001 | 1.16414 |
| May 2001 | 1.16647 |
| June 2001 | 1.16881 |
| July 2001 | 1.17100 |
| August 2001 | 1.17319 |
| September 2001 | 1.17539 |
| October 2001 | 1.17655 |

[FR Doc. 99–20012 Filed 7–30–99; 1:30 pm]
BILLING CODE 4120–03–P

Federal Register

Thursday
August 5, 1999

# Part III

# Department of Labor

**Pension and Welfare Benefits Administration**

**29 CFR Parts 2520, 2560 and 2570**

**Removal of Superseded Regulations Relating to Plan Descriptions and Summary Plan Descriptions; Proposed Rule**

**Furnishing Documents to the Secretary of Labor on Request Under ERISA Section 104(a)(6) and Assessment of Civil Penalties Under ERISA Section 502(c)(6); Proposed Rule**

**DEPARTMENT OF LABOR**

**Pension and Welfare Benefits Administration**

**29 CFR Parts 2520 and 2560**

**RIN 1210–AA66**

## Removal of Superseded Regulations Relating to Plan Descriptions and Summary Plan Descriptions, and Other Technical Conforming Amendments

**AGENCY:** Pension and Welfare Benefits Administration, Department of Labor.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** This document sets forth a proposed rule that would remove certain provisions from the Code of Federal Regulations (CFR) that were superseded, in whole or in part, by amendments of the Employee Retirement Income Security Act of 1974 (ERISA) enacted as part of the Taxpayer Relief Act of 1997 (TRA '97). These TRA '97 amendments eliminated the requirements that plan administrators file summary plan descriptions (SPDs) and summaries of material modifications (SMMs) with the Department of Labor (Department). The amendments also eliminated all requirements pertaining to plan descriptions. In addition to removing superseded regulations from the CFR, this proposed rule would make miscellaneous technical amendments to the CFR designed to correct affected cross-references.

**DATES:** Written comments concerning the proposed regulation must be received by October 4, 1999.

**ADDRESSES:** Written comments (preferably three copies) should be sent to: Office of Regulations and Interpretations, Room N–5669, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210; Attention: Proposed SPD/Plan Description Regulations. All submissions will be open to public inspection at the Public Documents Room, Pension and Welfare Benefits Administration, Room N–5638, 200 Constitution Avenue, NW, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey J. Turner, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 219–8671 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### 1. Overview

TRA '97 amended sections 101(b), 102, and 104(a)(1) of ERISA to eliminate the requirements that plan administrators file SPDs, SMMs, and plan descriptions with the Department.[1] TRA '97 also amended section 104(b) of ERISA to eliminate the requirement that plan administrators furnish plan descriptions to participants and beneficiaries. These statutory amendments superseded, in whole or in part, the Department's regulations that implemented the SPD, SMM, and plan description filing requirements. This proposed rule would remove those superseded regulations from the CFR.[2] This proposed rule also would make several technical conforming amendments to reflect the fact that regulatory relief from certain plan description, SPD, and SMM requirements is no longer needed in light of TRA '97 and to correct affected regulatory and statutory cross-references in parts 2520 and 2560 of Chapter XXV of Title 29 of the CFR. A chart identifying each regulation that would be changed by this proposed rule is printed below.

### 2. Removal of Superseded Regulations

This proposed rule would remove, in whole or in part, the following superseded regulations from 29 CFR part 2520, which pertain to reporting and disclosure under ERISA. This proposed rule also would reserve certain removed sections of the CFR to preserve the continuity of codification in the CFR.

*A. Regulations Superseded in Whole*

This proposed rule would remove and reserve §§ 2520.102–1 and 2520.104a–2. These sections require plan administrators to file a plan description with the Department in accordance with §§ 101(b)(2) and 104(a)(1)(B) of ERISA.[3] They were superseded by paragraphs (a) and (c) of § 1503 of TRA '97, which eliminated §§ 101(b)(2) and 104(a)(1)(B) of ERISA.

This proposed rule would remove and reserve § 2520.104a–3. This section implements sections 101(b)(1) and 104(a)(1)(C) of ERISA, which require plan administrators to file with the Department a copy of any SPD that is required to be furnished to participants covered under the plan and beneficiaries receiving benefits under the plan. Section 2520.104a–3 was superseded by paragraphs (a) and (c) of section 1503 of TRA '97, which eliminated sections 101(b)(1) and 104(a)(1)(C) of ERISA.

This proposed rule would remove and reserve §§ 2520.104a–4 and 2520.104a–7. These sections implement §§ 101(b)(3), 102(a)(2), and 104(a)(1)(D) of ERISA, which require plan administrators to file with the Department a copy of summaries of material modifications in the terms of the plan and summaries of any changes in the information required to be in the SPD. Sections 2520.104a–4 and 2520.104a–7 were superseded by paragraphs (a) and (c) of § 1503 of TRA '97, which eliminated §§ 101(b)(3), 102(a)(2), and 104(a)(1)(D) of ERISA.

*B. Regulations Superseded in Part*

This proposed rule would amend § 2520.104–20 to reflect the fact that certain of the reporting relief granted by that regulation is no longer needed in light of TRA '97. Specifically, § 2520.104–20 exempts certain unfunded or insured welfare plans with fewer than 100 participants from, among others, the requirements to file plan descriptions, SPDs, and SMMs with the Department. Inasmuch as plan descriptions, SPDs, and SMMs are no longer required to be filed under ERISA as amended by TRA '97, this proposed rule would amend § 2520.104–20(a) to remove the provisions that grant relief from such filing requirements. The amendments made by this proposed rule would not otherwise change the relief available in § 2520.104–20.

This proposed rule would similarly amend § 2520.104–21 to reflect the fact that the SPD, SMM, and plan description filing relief granted by that regulation is no longer needed in light of the TRA '97 elimination of those filing requirements. Specifically, § 2520.104–21 provides a limited

[1] Prior to 1979, the administrator of an employee benefit plan subject to the provisions of Part 1 of Title I of ERISA was required to file with the Department a plan description (Form EBS–1) to satisfy the statutory filing requirements of section 104(a) and 29 CFR 2520.104a–2. *See* 41 FR 16957 (April 23, 1976). In 1979, the Department amended 29 CFR 2520.104a–2 (44 FR 31639 (June 1, 1979)), to provide that the administrator of an employee benefit plan would satisfy the plan description filing requirements of section 104(a)(1)(B) by filing with the Department a SPD and an updated SPD in accordance with section 104(a)(1)(C) and the regulations thereunder.

[2] Under a separate notice, the Department will promulgate proposed regulations to implement new sections 502(c)(6) and 104(a)(6) of ERISA. Section 502(c)(6) provides that if, within 30 days of a request by the Department to a plan administrator for documents under section 104(a)(6), the plan administrator fails to furnish the material requested to the Department, the Department may assess a civil penalty against the plan administrator of up to $100 a day from the date of such failure, but in no event in excess of $1,000 per request. Section 104(a)(6) provides that the administrator of any employee benefit plan must furnish to the Department, upon request, any documents relating to the employee benefit plan, including but not limited to, the latest SPD, and the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established or operated.

[3] *See supra* note 1.

exemption from, among others, the requirements to file SPDs, SMMs, and plan descriptions with the Department for welfare benefit plans that cover fewer than 100 participants at the beginning of the plan year, are part of a group insurance arrangement, and that otherwise satisfy the conditions of § 2520.104–21(b). This proposed rule would amend § 2520.104–21(a) by removing the provisions on SPDs, SMMs, and plan descriptions because these documents are no longer required to be filed under ERISA as amended by TRA '97. The amendments made by this proposed rule would not otherwise change the relief available in § 2520.104–21.[4]

This proposed rule would further amend §§ 2520.104–20 and 2520.104–21 to reflect the fact that the need for relief under ERISA from the requirement to disclose plan descriptions was eliminated by TRA '97. These section exempt eligible welfare plans from the requirement to: (1) Furnish upon written request of any participant or beneficiary a copy of the plan description, and (2) make copies of the plan description available in the principle office of the administrator and such other places as may be necessary for examination by any participant or beneficiary. This proposed rule would amend §§ 2520.104–20(a)(2) and (3) and 2520.104–21(a)(1) and (2) by removing the provisions on disclosing plan descriptions because plan descriptions are nolonger required to be furnished or made available under ERISA as amended by TRA '97.

This proposed rule would amend §§ 2520.104–26 and 2520.104–27 to reflect the fact that the need for relief under ERISA from the requirement to file plan descriptions, SPDs, and SMMs was eliminated by TRA '97. These regulations provide certain unfunded dues financed welfare and pension plans maintained by employee organizations with a limited exemption from, among others, the requirement to file plan descriptions and a simplified option for complying with the filing and disclosure requirements applicable to SPDs. This proposed rule would amend §§ 2520.104–26 and 2520.104–27 by removing the provisions on plan descriptions and would further amend §§ 2520.104–26 and 2520.104–27 to remove the simplified option provisions for filing SPDs because plan descriptions and SPDs are no longer required to be filed with the Department under ERISA as amended by TRA '97. The proposal is not otherwise intended to change the relief available under these sections.

### 3. Technical Conforming Amendments

This proposal also would make technical changes that are needed to conform certain cross references in the CFR to sections of ERISA as amended by TRA '97. For example, § 2520.104a–5 refers to section 104(a)(1)(A) of ERISA as the authority for the requirement to file annual reports with the Department. After TRA '97, the correct citation is to § 104(a)(1) of ERISA. Similar technical changes are also being made to conform internal CFR cross references.

### 4. Effective Date

This regulation is proposed to be effective 60 days after publication of a final rule in the **Federal Register**. If adopted, the proposed amendments implementing TRA '97 would be applicable as of the August 5, 1997, effective date of section 1503 of TRA '97.

### 5. Quick Reference Chart

The chart below lists each section of 29 CFR parts 2520 and 2560 that would be affected by this proposed rule and includes a brief description of the proposed change.

QUICK REFERENCE CHART

| CFR section(s) | Remove | Add | Reason(s) |
|---|---|---|---|
| 2520.102–1 | The whole section | ''Reserved'' | All ''plan description'' requirements eliminated from ERISA. |
| 2520.102–4 | The last sentence | Nothing | SPD filing requirement eliminated. |
| 2520.103–1(a) | ''section 104(a)(1)(A)'' | ''section 104(a)(1)'' | Cross reference correction. |
| 2520.103–5(a), (c)(1)(i), (c)(1)(iii), (c)(2)(ii), (c)(2)(iii), and (c)(3). | ''section 104(a)(1)(A)'' | ''section 104(a)(1)'' | Cross reference correction. |
| 2520.103–12(a) | ''section 104(a)(1)(A)'' | ''section 104(a)(1)'' | Cross reference correction. |
| 2520.104–4(a) | Last sentence | Nothing | SPD filing requirement eliminated. |
| 2520.104–20(a) (introductory text) | ''any of the following documents: Plan description, copy of summary plan description, description of material modification in the terms of a plan or change in the information required to be included in the plan description,''. | Nothing | All ''plan description'' requirements eliminated from ERISA, SPD filing requirement eliminated, and SMM filing requirement eliminated. |
| 2520.104–20(a)(2) | ''plan description,'' | Nothing | All ''plan description'' requirements eliminated from ERISA. |
| 2520.104–20(a)(3) | ''plan description and'' | Nothing | All ''plan description'' requirements eliminated from ERISA. |
| 2520.104–20(c) | ''(section 104(a)(1))'' | ''(section 104(a)(6))'' | Requirement to furnish documents to the Department upon request—moved to different paragraph of ERISA section 104. |

[4] *See* 63 FR 68370, 68388 (Dec. 10, 1998) (eliminating references to requirements to file plan descriptions, SPDs, and SMMs in § 2520.104–21–(d)(3) as part of proposed amendments to annual reporting regulations).

QUICK REFERENCE CHART—Continued

| CFR section(s) | Remove | Add | Reason(s) |
|---|---|---|---|
| 2520.104–21(a) (introductory text) | ''with the Secretary any of the following documents: Plan description, copy of summary plan description, description of material modification in the terms of a plan or change in the information required to be included in the plan description, and terminal report. In addition, the administrator of a plan exempted under this section:''. | After the word file, add: ''with the Secretary a terminal report or furnish upon written request of any participant or beneficiary a copy of any terminal report as required by section 104(b)(4) of the Act.''. | All ''plan description'' requirements eliminated from ERISA, SPD filing requirement eliminated, and SMM filing requirement eliminated. |
| 2520.104–21(a)(1) | All of (a)(1) | Nothing | All ''plan description'' requirements eliminated from ERISA. |
| 2520.104–21(a)(2) | All of (a)(2) | Nothing | All ''plan description'' requirements eliminated from ERISA. |
| 2520.104–21(c) (second parenthetical). | ''section 104(a)(1)(A)'' | ''section 104(a)(1)'' | Cross reference correction. |
| 2520.104–21(c) (third parenthetical). | ''section 104(a)(1)'' | ''section 104(a)(6)'' | Requirement to furnish documents to the Department upon request—moved to different paragraph of ERISA section 104. |
| 2520.104–23(b)(2) | ''104(a)(1)'' | ''104(a)(6)'' | Requirement to furnish documents to the Department upon request—moved to different paragraph of ERISA section 104. |
| 2520.104–24(b) | ''104(a)(1)'' | 104(a)(6)'' | Requirement to furnish documents to the Department upon request—moved to different paragraph of ERISA section 104. |
| 2520.104–25 | ''104(a)(1)'' | ''104(a)(6)'' | Requirement to furnish documents to the Department upon request—moved to different paragraph of ERISA section 104. |
| 2520.104–26(a) | All of paragraph (a), (a)(1), (a)(2), and (a)(3). | New paragraph (a), (a)(1), and (a)(2). | Paragraph (a) needed to be restructured to reflect the fact that all ''plan description'' requirements and the SPD filing requirement were eliminated from ERISA. |
| 2520.104–27(a) | All of paragraph (a), (a)(1), (a)(2), and (a)(3). | New paragraph (a), (a)(1), and (a)(2). | Paragraph (a) needed to be restructured to reflect the fact that all ''plan description'' requirements and the SPD filing requirement were eliminated from ERISA. |
| 2520.104–41(b) | ''section 104(a)(1)(A)'' | ''section 104(a)(1)'' | Cross reference correction. |
| 2520.104–43(a) | ''section 104(a)(1)(A)'' | ''section 104(a)(1)'' | Cross reference correction. |
| 2520.104–44(d) | ''section 104(a)(1)(A)'' | ''section 104(a)(1)'' | Cross reference correction. |
| 2520.104a–2 | Whole section | ''Reserved'' | All ''plan description'' requirements eliminated from ERISA. |
| 2520.104a–3 | Whole section | ''Reserved'' | SPD filing requirement eliminated. |
| 2520.104a–4 | Whole section | ''Reserved'' | SMM filing requirement eliminated. |
| 2520.104a–5(a) | ''section 104(a)(1)(A)'' | ''section 104(a)(1)'' | Cross reference correction. |
| 2520.104a–5(a)(1) | All text in paragraph (a)(1) | ''Reserved'' | Provision obsolete. |
| 2520.104a–7 | Whole section | ''Reserved'' | SMM filing requirement eliminated. |
| 2520.104b–1(b)(3) | ''plan description'' | Nothing | All ''plan description'' requirements eliminated from ERISA. |
| 2520.104b–3(f) | All of para. (f) | Nothing | Part of paragraph (f) was superseded by TRA '97 and the rest of the paragraph has become obsolete as a result of the removal of § 2520.104a–3 by this rule. |

QUICK REFERENCE CHART—Continued

| CFR section(s) | Remove | Add | Reason(s) |
|---|---|---|---|
| 2520.104b–3(g) | All of para. (g) | Nothing | Paragraph (g) was superseded by TRA '97 and as a result of the removal of § 2520.104a–3 by this rule. |
| 2560.502c–2(a) | ''section 101(b)(4)'' | ''section 101(b)(1)'' | Cross reference correction. |

**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 action is not significant within the meaning of the Executive Order.

**Paperwork Reduction Act**

The rule being issued here is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it does not contain an ''information collection request'' as defined in 44 U.S.C. 3502(3).

**Regulatory Flexibility Act**

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires each Federal agency to perform an initial regulatory flexibility analysis for all proposed rules unless the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Small entities include small businesses, organizations, and governmental jurisdictions. Because this proposed rule would remove certain provisions of the CFR and make a number of technical amendments to the CFR designed to correct cross-references affected by amendments to ERISA enacted as part of TRA '97, the proposed rule would have no impact, independent of the statutory change eliminating the SPD and SMM filing requirements, on small plans. As a result, the undersigned certifies that this proposed rule, if promulgated, would not have a significant impact on a substantial number of small entities. The factual basis for this certification is the same regardless of whether one uses the definition of small entity found in regulations issued by the Small Business Administration (13 CFR 121.201) or one defines small entity, on the basis of section 104(a)(2) of ERISA, as an employee benefit plan with fewer than 100 participants.

**Small Business Regulatory Enforcement Fairness Act**

The proposed rule being issued here is subject to the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and, if finalized, will be transmitted to Congress and the Comptroller General for review. The rule is not a ''major rule'' as that term is defined in 5 U.S.C. 804, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**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 proposed rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, and will not impose an annual burden of $100 million or more on the private sector.

**Statutory Authority**

This proposed rule is promulgated pursuant to the authority contained in section 505 of ERISA (Pub. L. 93–406, 88 Stat. 894, 29 U.S.C. 1135) and sections 101(b) and 104(a)(1) of ERISA, as amended, and under the Secretary of Labor's Order No. 1–87, 52 FR 13139, April 21, 1987.

**List of Subjects**

*29 CFR Part 2520*

Employee benefit plans, Employee Retirement Income Security Act, Group health plans, Pension plans, Welfare benefit plans.

*29 CFR Part 2560*

Claims, Employee benefit plans, Employee Retirement Income Security Act, Law enforcement, Pensions.

For the reasons set forth above, parts 2520 and 2560 of Chapter XXV of Title 29 of the Code of Federal Regulations are 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 1191(c)).

2. Section 2520.102–1 is removed and reserved.

3. Revise section 2520.102–4 to read as follows:

**§ 2520.102–4 Option for different summary plan descriptions.**

In some cases an employee benefit plan may provide different benefits for various classes of participants and beneficiaries. For example, a plan amendment altering benefits may apply to only those participants who are employees of an employer when the

amendment is adopted and to employees who later become participants, but not to participants who no longer are employees when the amendment is adopted. (See § 2520.104b–4). Similarly, a plan may provide for different benefits for participants employed at different plants of the employer, or for different classes of participants in the same plant. In such cases the plan administrator may fulfill the requirement to furnish a summary plan description to participants covered under the plan and beneficiaries receiving benefits under the plan by furnishing to each member of each class of participants and beneficiaries a copy of a summary plan description appropriate to that class. Each summary plan description so prepared shall follow the style and format prescribed in § 2520.102–2, and shall contain all information which is required to be contained in the summary plan description under § 2520.102–3. It may omit information which is not applicable to the class of participants or beneficiaries to which it is furnished. It should also clearly identify on the first page of the text the class of participants and beneficiaries for which it has been prepared and the plan's coverage of other classes. If the classes which the employee benefit plan covers are too numerous to be listed adequately on the first page of the text of the summary plan description, they may be listed elsewhere in the text so long as the first page of the text contains a reference to the page or pages in the text which contain this information.

4. Section 2520.103–1(a), introductory text, is amended by removing the term ''section 104(a)(1)(A)'' and adding, in its place, the term ''section 104(a)(1)''.

5. Section 2520.103–5 is amended by removing the term ''section 104(a)(1)(A)'' from paragraphs (a), introductory text, (c)(1)(i), (c)(1)(iii), (c)(2)(ii), (c)(2)(iii) and (c)(3) and adding, in their place, the term ''section 104(a)(1)''.

6. Section 2520.103–12 is amended by removing from paragraph (a) the term ''section 104(a)(1)(A)'' and adding, in its place, the term ''section 104(a)(1)''.

7. Revise paragraph (a) of § 2520.104–4 to read as follows:

**§ 2520.104–4 Alternative method of compliance for certain successor pension plans.**

(a) *General.* Under the authority of section 110 of the Act, this section sets forth an alternative method of compliance for certain successor pension plans in which some participants and beneficiaries not only have their rights set out in the plan, but also retain eligibility for certain benefits under the terms of a former plan which has been merged into the successor. This section is applicable only to plan mergers which occur after the issuance by the successor plan of the initial summary plan description under the Act. Under the alternative method, the plan administrator of the successor plan is not required to describe relevant provisions of merged plans in summary plan descriptions of the successor plan furnished after the merger to that class of participants and beneficiaries still affected by the terms of the merged plans.

* * * * *

8. Revise the introductory text in paragraph (a) and paragraphs (a)(2), (a)(3), and (c) of § 2520.104–20 to read as follows:

**§ 2520.104–20 Limited exemption for certain small welfare plans.**

(a) *Scope.* Under the authority of section 104(a)(3) of the Act, the administrator of any employee welfare benefit plan which covers fewer than 100 participants at the beginning of the plan year and which meets the requirements of paragraph (b) of this section is exempted from certain reporting and disclosure provisions of the Act. Specifically, the administrator of such plan is not required to file with the Secretary an annual or terminal report. In addition, the administrator of a plan exempted under this section—

* * * * *

(2) Is not required to furnish upon written request of any participant or beneficiary a copy of the annual report and any terminal report, as required by section 104(b)(4) of the Act;

(3) Is not required to make copies of the annual report available for examination by any participant or beneficiary in the principal office of the administrator and such other places as may be necessary, as required by section 104(b)(2) of the Act.

(b) * * *

(c) *Limitations.* This exemption does not exempt the administrator of an employee benefit plan from any other requirement of Title I of the Act, including the provisions which require that plan administrators furnish copies of the summary plan description to participants and beneficiaries (section 104(b)(1)) and furnish certain documents to the Secretary of Labor upon request (section 104(a)(6)), and which authorize the Secretary of Labor to collect information and data from employee benefit plans for research and analysis (section 513).

* * * * *

9. Amend § 2520.104–21 by revising paragraphs (a) and (c) to read as follows:

**§ 2520.104–21 Limited exemption for certain group insurance arrangements.**

(a) *Scope.* Under the authority of section 104(a)(3) of the Act, the administrator of any employee welfare benefit plan which covers fewer than 100 participants at the beginning of the plan year and which meets the requirements of paragraph (b) of this section is exempted from certain reporting and disclosure provisions of the Act. Specifically, the administrator of such plan is not required to file with the Secretary a terminal report or furnish upon written request of any participant or beneficiary a copy of any terminal report as required by section 104(b)(4) of the Act.

* * * * *

(c) *Limitations.* This exemption does not exempt the administrator of an employee benefit plan from any other requirement of title I of the Act, including the provisions which require that plan administrators furnish copies of the summary plan description to participants and beneficiaries (section 104(b)(1)), file an annual report with the Secretary of Labor (section 104(a)(1)) and furnish certain documents to the Secretary of Labor upon request (section 104(a)(6)), and authorize the Secretary of Labor to collect information and data from employee benefit plans for research and analysis (section 513).

* * * * *

10. Section 2520.104–23 is amended by removing from paragraph (b)(2) the term ''104(a)(1)'' and adding, in its place, the term ''104(a)(6)''.

11. Section 2520.104–24 is amended by removing from paragraph (b) the term ''104(a)(1)'' and adding, in its place, the term ''104(a)(6)''.

12. Section 2520.104–25 is amended by removing the term ''104(a)(1)'' and adding, in its place, the term ''104(a)(6)''.

13. In § 2520.104–26, revise paragraph (a) to read as follows:

**§ 2520.104–26 Limited exemption for certain unfunded dues financed welfare plans maintained by employee organizations.**

(a) *Scope.* Under the authority of section 104(a)(3) of the Act, a welfare benefit plan that meets the requirements of paragraph (b) of this section is exempted from the provisions of the Act that require filing with the Secretary an annual report and furnishing a summary annual report to participants and beneficiaries. Such plans may use a simplified method of reporting and disclosure to comply with the

requirement to furnish a summary plan description to participants and beneficiaries, as follows:

(1) In lieu of filing an annual report with the Secretary or distributing a summary annual report, a filing is made of Report Form LM–2 or LM–3, pursuant to the LMRDA and regulations thereunder, and

(2) In lieu of a summary plan description, the employee organization constitution or by-laws may be furnished in accordance with § 2520.104b–2 to participants and beneficiaries together with any supplement to such document necessary to meet the requirements of §§ 2520.102–2 and 2520.102–3.

* * * * *

14. In § 2520.104–27, revise paragraph (a) to read as follows:

**§ 2520.104–27 Alternative method of compliance for certain unfunded dues financed pension plans maintained by employee organizations.**

(a) *Scope.* Under the authority of section 110 of the Act, a pension benefit plan that meets the requirements of paragraph (b) of this section is exempted from the provisions of the Act that require filing with the Secretary an annual report and furnishing a summary annual report to participants and beneficiaries. Such plans may use a simplified method of reporting and disclosure to comply with the requirement to furnish a summary plan description to participants and beneficiaries, as follows:

(1) In lieu of filing an annual report with the Secretary or distributing a summary annual report, a filing is made of Report Form LM–2 or LM–3, pursuant to the LMRDA and regulations thereunder, and

(2) In lieu of a summary plan description, the employee organization constitution or by-laws may be furnished in accordance with § 2520.104b–2 to participants and beneficiaries together with any supplement to such document necessary to meet the requirements of §§ 2520.102–2 and 2520.102–3.

* * * * *

15. Section 2520.104–41 is amended by removing from paragraph (b) the term ''section 104(a)(1)(A)'' and adding, in its place, the term ''section 104(a)(1)''.

16. Section 2520.104–43 is amended by removing from paragraph (a) the term ''section 104(a)(1)(A)'' and adding, in its place, ''section 104(a)(1)''.

17. Section 2520.104–44 is amended by removing from paragraph (d) the term ''section 104(a)(1)(A)'' and adding, in its place, ''section 104(a)(1)''.

18. Section 2520.104a–2 is removed and reserved.

19. Section 2520.104a–3 is removed and reserved.

20. Section 2520.104a–4 is removed and reserved.

21. Section 2520.104a–5 is amended by removing the term ''section 104(a)(1)(A)'' and adding, in its place, the term ''section 104(a)(1)''.

22. Section 2520.104a–5 is amended by removing and reserving paragraph (a)(1).

23. Section 2520.104a–7 is removed and reserved.

24. Section 2520.104b–1 is amended by removing from the second sentence of paragraph (b)(3) the term ''plan description,''.

25. In § 2520.104b–3 paragraphs (f) and (g) are removed and reserved.

## PART 2560—RULES AND REGULATIONS FOR ADMINISTRATION AND ENFORCEMENT

26. The authority citation for part 2560 continues to read as follows:

**Authority:** Secs. 502, 505 of ERISA, 29 U.S.C. 1132, 1135, and Secretary's Order 1–87, 52 FR 13139 (April 21, 1987).

Section 2560.502–1 also issued under sec. 502(b)(2), 29 U.S.C. 1132(b)(2).

Section 2560.502i–1 also issued under sec. 502(i), 29 U.S.C. 1132(i).

Section 2560.503–1 also issued under sec. 503, 29 U.S.C. 1133.

**§ 2560.502c–21 [Amended]**

27. Section 2560.502c–2 is amended by removing from paragraph (a)(1) and (a)(2) the term ''section 101(b)(4)'' each time it appears and adding, in its place, the term ''section 101(b)(1)''.

Signed at Washington, D.C., this 28th day of July 1999.

**Richard M. McGahey,**

*Assistant Secretary, Pension and Welfare Benefits Administration, Department of Labor.*

[FR Doc. 99–19860 Filed 8–4–99; 8:45 am]

BILLING CODE 4510–29–P

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## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

### 29 CFR Parts 2520, 2560 and 2570

**RIN 1210–AA67 and RIN 1210–AA68**

## Furnishing Documents to the Secretary of Labor on Request Under ERISA Section 104(a)(6) and Assessment of Civil Penalties Under ERISA Section 502(c)(6)

**AGENCY:** Pension and Welfare Benefits Administration, Department of Labor.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains a proposed rulemaking under the Employee Retirement Income Security Act of 1974 (ERISA) that would implement certain amendments to ERISA added as part of the Taxpayer Relief Act of 1997. Specifically, the proposed rule would implement the requirement that the administrator of any employee benefit plan subject to Part 1 of Title I of ERISA furnish to the Department, on request, any documents relating to the employee benefit plan. The proposed rule also would establish procedures relating to the assessment of civil penalties for failures or refusals by administrators to furnish requested documents and procedures relating to administrative hearings in connection with the assessment of such civil penalties.

**DATES:** Written comments concerning the proposed regulation must be received by October 4, 1999.

**ADDRESSES:** Written comments (preferably three copies) should be sent to the Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Rm. N–5669, 200 Constitution Avenue, NW, Washington DC, 20210, Attention: ''ERISA 502(c)(6) Project.'' All submissions will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Ave, NW, Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey J. Turner, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, (202) 219–8671, or Paul D. Mannina, Plan Benefits Security Division, Office of the Solicitor, (202) 219–9141 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Part I—Background

The Taxpayer Relief Act of 1997 (TRA '97) eliminated the requirement under ERISA that employee benefit plan administrators file with the Department copies of the summary plan descriptions (SPDs) and summaries of material plan modifications (SMMs) that are required to be furnished to plan participants and beneficiaries. TRA '97 added paragraph (6) to section 104(a) of ERISA which provides that the administrator of any employee benefit plan subject to Part 1 of Title I of ERISA is required to furnish to the Department, on request, any documents relating to the employee benefit plan, including but not limited

to, the latest SPD (including any summaries of plan changes not contained in the SPD), and the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established or operated.[1] TRA '97 also added section 502(c)(6) of ERISA which provides that if, within 30 days of a request by the Department to a plan administrator for documents under section 104(a)(6), the plan administrator fails to furnish the material requested to the Department, the Department may assess a civil penalty against the plan administrator of up to $100 a day from the date of such failure (but in no event in excess of $1,000 per request). Section 502(c)(6) of ERISA also provides that no penalty shall be imposed under that paragraph for any failure resulting from matters reasonably beyond the control of the plan administrator.

Prior to these TRA '97 amendments, Congress provided in ERISA for the filing of SPDs and SMMs with the Department in order to ensure that participants and beneficiaries would have a means by which to obtain a copy of these documents without having to request them from the plan or plan sponsor. The elimination of the SPD/SMM filing requirement taken together with the amendments establishing ERISA section 104(a)(6) and the civil penalty provision in section 502(c)(6) clearly evidence Congress' intent that the Department would exercise its authority under ERISA section 104(a)(6) to obtain a copy of a plan's SPD in response to requests from participants or beneficiaries. Consistent with that intent, the Department will request copies of SPDs from plan administrators on behalf of a requesting participant or beneficiary. The Department generally will not request SPDs on behalf of persons other than participants and beneficiaries of the plan for which the SPD is requested. For this purpose, the Department will treat as a participant or beneficiary any individual who is: a participant or beneficiary within the meaning of ERISA sections 3(7) and 3(8), respectively; an alternate payee under a qualified domestic relations order (see ERISA section 206(d)(3)(K)) or prospective alternate payee (spouses, former spouses, children or other dependents), a qualified beneficiary under COBRA (see ERISA section 607(3)) or prospective qualified beneficiary (spouse or dependent child); an alternate recipient under a qualified medical child support order (see ERISA section 609(a)(2)(C)) or a prospective alternate recipient; or a representative of any of the foregoing.

The proposed rules described below are intended to implement the substantive requirements in section 104(a)(6) of ERISA as well as the related penalty provisions in section 502(c)(6) of ERISA. They would, if promulgated as a final rules, become effective 60 days after publication as final rules in the **Federal Register**.

**Part II—Furnishing Documents to the Department on Request Under Section 104(a)(6)**

Proposed § 2520.104a–8 implements the requirements of section 104(a)(6) of ERISA. Paragraph (a)(1) provides that the administrator (within the meaning of section 3(16)(A) of ERISA) of any employee benefit plan has an obligation to furnish to the Department, upon request, any documents relating to the plan. Paragraph (a)(2) clarifies that multiple requests under section 104(a)(6) and § 2520.104a–8(a) for the same or similar document or documents shall be considered separate requests for purposes of penalties under section 502(c)(6) and § 2560.502c–6(a). For example, if the Department were to receive a series of requests from several participants for a particular plan's SPD, the Department could make separate requests for that document on behalf of each participant to ensure that the participants each receive the latest updated version of the SPD. A failure by the plan administrator to comply with any such requests may result in the assessment of penalties with respect to each such failure. Paragraph (b) adopts the service of notice rules in proposed § 2560.502c–6(i) (which adopts the service of notice rules already in effect under § 2560.502c–2(i)) for purposes of serving the plan administrator with a request under section 104(a)(6). Paragraph (c) provides that a document is not considered furnished to the Department until the date on which such document is received by the Department of Labor at the address specified in the request.

**Part III—Authority to Assess Civil Penalties for Violations of Section 104(a)(6) of ERISA**

In general, proposed regulation § 2560.502c–6 addresses the: circumstances under which a penalty may be assessed for a failure or refusal to provide documents requested under section 104(a)(6) of ERISA (§ 2560.502c–6(a)); amount of the penalty (§ 2560.502c–6(b)); notice required to be given to the plan administrator of the Department's intent to assess a penalty (§ 2560.502c–6(c)); the Department's authority to waive the penalty (§ 2560.502c–6(d)) upon a showing that the failure or refusal was the result of matters reasonably beyond the control of the plan administrator (§ 2560.502c–6(e)); effect of a failure to file a statement under § 2560.502c–6(e) alleging matters reasonably beyond the administrator's control (§ 2560.502c–6(f)); notice required to be given to the administrator which sets forth the Department's findings as to the statement of matters reasonably beyond the control of the plan administrator (§ 2560.503c–6(g)); right to hearings before an administrative law judge (§ 2560.502c–6(h)); service of notices (§ 2560.502c–6(i)); and the liability of the administrator or administrators for assessed penalties (§ 2560.502c–6(j)).

a. *General Rule.* Proposed § 2560.502c–6(a) addresses the general application of section 502(c)(6) of ERISA. Paragraph (a)(1) provides that the administrator, as defined in ERISA section 3(16)(A), of an employee benefit plan is liable for the civil penalties assessed under section 502(c)(6) in each case in which there is a failure or refusal to furnish to the Department any document requested under section 104(a)(6) of ERISA and § 2520.104a–8. Paragraph (a)(2) defines such a failure or refusal as a failure or refusal, in whole or in part, to furnish documents at the time and in the manner prescribed in the request.

b. *Amount Assessed.* Proposed § 2560.502c–6(b) sets forth the amount of penalties that may be assessed under section 502(c)(6) of ERISA. Consistent with the terms of section 502(c)(6) of ERISA, paragraph (b)(1) provides that the Department may assess a penalty of up to $100 per day, but not in excess of $1,000 per request.

c. *Notice of Intent to Assess a Penalty.* Proposed § 2560.502c–6(c) provides that, prior to the assessment of any penalty under section 502(c)(6) of ERISA, the Department shall provide the administrator with written notice indicating the Department's intent to assess a penalty, the amount of the penalty, the period to which the penalty applies, and the reason(s) for the penalty. The notice would be served in accordance with § 2560.502c–6(i) of this proposed regulation (service of notice provision). Under § 2560.502c–6(f) of this proposed regulation, the notice would become a final order of the Department, within the meaning of proposed regulation § 2570.111(g) (also

[1] Prior to TRA '97, this authority was in section 104(a)(1) of ERISA, which stated that ''the administrator shall also furnish to the Secretary, upon request, any documents relating to the employee benefit plan, including but not limited to the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established or operated.''

published as part of this rulemaking), within 30 days of the service of the notice, unless a statement described in § 2560.502c–6(e) is filed with the Department.

d. *Waiver of Penalty.* Paragraphs (d), (e), (f), (g), and (h) of this proposal generally relate to the waiver of penalties under section 502(c)(6) of ERISA. Paragraph (d) provides that the Department may waive all or part of the penalty to be assessed under section 502(c)(6) upon a showing by the administrator, under paragraph (e), that the failure or refusal to comply with a request under section 104(a)(6) and § 2520.104a–8 was due to matters reasonably beyond the control of the plan administrator. Under paragraph (e), the administrator has 30 days from receipt of the notice required under § 2560.502c–6(c) within which to make such a showing or offer other reasons why the penalty, as calculated, should not be assessed.[2]

Paragraph (f) provides that a failure to file a timely statement under (e) will constitute a waiver of the right to appear and contest the facts alleged in the notice (§ 2560.502c–(6)(c)) for purposes of any adjudicatory proceeding involving the assessment of a penalty under section 502(c)(6) of ERISA.

Paragraph (g)(1) provides that, following a review of the facts alleged in the statement under (e), the Department shall notify the administrator of its intention to waive the penalty, in whole or in part, and/or assess a penalty. If it is the intention of the Department to assess a penalty, the notice shall indicate the amount of the penalty. Under paragraph (g)(2), this notice becomes a final order 30 days after the date of service of the notice, except as provided in paragraph (h). Paragraph (h) provides in general that the notice described in paragraph (g) shall not become a final order if, within 30 days of the date of service of that notice, the administrator initiates an adjudicatory proceeding under part 18 of Title 29, as modified by proposed regulations §§ 2570.110 through 2570.121 (also published as part of this rulemaking). Specifically, the administrator would be required to file, within 30 days of the date of service of the notice under (g), an answer, as defined in proposed § 2570.111(c), in accordance with proposed § 2570.112.

e. *Service of Notices.* Proposed § 2560.502c–6(i) describes the rules on service of the (1) Department's notice of intent to assess a penalty (§ 2560.502c–6(c)), and (2) Department's notice of determination on the statement of matters reasonably beyond the control of the plan administrator (§ 2560.502c–6(g)).[3] Paragraph (i) provides that service shall be made in one of three ways: (1) By delivering a copy at the principal office, place of business, or residence of the administrator or representative thereof, (2) by leaving a copy at the principal office, place of business, or residence of the administrator or representative thereof, or (3) by mailing a copy to the last known address of the administrator or representative thereof.

f. *Liability.* Proposed § 2560.502c–6(j) is intended to clarify the liability of the parties for penalties assessed under section 502(c)(6) of ERISA. Paragraph (1) provides that, if more than one person is responsible as administrator for the failure to furnish document(s) requested by the Department, all such persons shall be jointly and severally liable for such failure. Paragraph (2) provides that any person against whom a penalty is assessed under section 502(c)(6) of ERISA is personally liable for the payment of such penalty. Paragraph (2) is intended to make clear that liability for the payment of penalties assessed under section 502(c)(6) of ERISA is a personal liability of the person against whom the penalty is assessed and not a liability of the plan. Accordingly, the payment of penalties assessed under section 502(c)(6) of ERISA from assets of the plan would not constitute a reasonable expense of the plan for purposes of ERISA sections 403 and 404.

## Part IV—Administrative Law Procedures for the Assessment of Civil Penalties Under Section 502(c)(6) of ERISA

The proposed regulation contained in this Notice would establish procedures for hearings before an Administrative Law Judge (ALJ) with respect to an assessment by the Department of a civility penalty under section 502(c)(6) and appealing an ALJ decision to the Secretary or her delegate. In this regard, the Secretary has established the Pension and Welfare Benefits Administration (PWBA) within the Department for purposes of carrying out most of the Secretary's responsibilities under ERISA. *See* Secretary's Order 1–87, 52 FR 13139 (April 27, 1987).

As noted above, the Department has already published rules of practice and procedure for administrative hearings before the Office of Administrative Law Judges at 29 CFR part 18 (48 FR 32538 (1983)). As explained in 29 CFR 18.1, those provisions generally govern administrative hearings before ALJs assigned to the Department and are intended to provide maximum uniformity in the conduct of administrative hearings. However, in the event of an inconsistency or conflict between the provisions of 29 CFR part 18 and a rule or procedure required by statute, executive order or regulation, the latter controls.

The Department has reviewed the applicability of the provisions of 29 CFR part 18 to the assessment of civil penalties under ERISA section 502(c)(6) and has decided to adopt many, though not all, of the provisions thereunder for ERISA 502(c)(6) proceedings. Accordingly, adjudications relating to civil penalties under ERISA section 502(c)(6) will be governed by the following sections of 29 CFR part 18:

Sec.
18.4 Time Computations.
18.5 (c)–(e) Responsive Pleading; answer and request for hearing.
18.6 Motions and requests.
18.7 Pre-hearing statements.
18.8 Pre-hearing conferences.
18.11 Consolidation of hearings.
18.12 Amicus Curiae.
18.13 Discovery Methods.
18.15 Protective orders.
18.16 Supplementation of responses.
18.17 Stipulations regarding discovery.
18.18 Written interrogatories to parties.
18.19 Production of documents and other evidence.
18.20 Admissions.
18.21 Motion to compel discovery.
18.22 Depositions.
18.23 Use of depositions at hearings.
18.24 Subpoenas.
18.25 Designation of administrative law judge.
18.27 Notice of hearing.
18.28 Continuances.
18.29 Authority of administrative law judges.
18.30 Unavailability of administrative law judge.
18.31 Disqualification.
18.32 Separation of functions.
18.33 Expedition.
18.34 Representation.
18.35 Legal assistance.
18.36 Standards of conduct.
18.37 Hearing room conduct.
18.38 Ex parte communications.
18.39 Waiver of right to appear and failure to participate or to appear.
18.40 Motion for summary decision.

[2] In the event that another fiduciary of the plan has custody of a document requested under section 104(a)(6) and § 2520.104a–8, or if the administrator of a plan engages a third party to perform services for the plan and pursuant to the engagement the third party has custody of documents related to the plan, the administrator's lack of custody would not be considered by the Department to be a matter reasonably beyond the administrator's control.

[3] As noted above, under proposed § 2520.104a–8(b) these service rules would also apply to the Department's initial request for documents under section 104(a)(6) and § 2520.104a–8.

18.43 Formal hearings.
18.44 Evidence.
18.45 Official notice.
18.46 In camera and protective orders.
18.47 Exhibits.
18.48 Records in other proceedings.
18.49 Designation of parts of documents.
18.50 Authenticity.
18.51 Stipulations.
18.52 Record of hearings.
18.53 Closing of hearings.
18.54 Closing of record.
18.55 Receipt of documents after hearing.
18.56 Restricted access.
18.59 Certification of official record.

The regulations proposed herein relate specifically to procedures for assessing civil penalties under section 502(c)(6) of ERISA and are controlling to the extent they are inconsistent with any portion of 29 CFR part 18. The proposed regulations are designed to maintain the rules set forth at 29 CFR part 18 consistent with the need for an expedited procedure, while recognizing the special characteristics of proceedings under ERISA section 502(c)(6). For purposes of clarity, where a particular section of the existing procedural rules would be affected by the proposed rules the entire section (with appropriate modifications) has been set out in this document. Thus, only a portion of the provisions of the procedural regulations set forth below involve changes from, or additions to, the rules in 29 CFR part 18. The specific modifications to the rules in 29 CFR part 18, and their relationship to the conduct of these proceedings generally, are outlined below.

The general applicability of these procedural rules under section 502(c)(6) is set forth in § 2570.110. Proposed § 2560.502c–6, also being published today in this Notice, sets forth the procedures relating to the issuance by PWBA of notices of intent to assess a penalty under ERISA section 502(c)(6) as well as procedures for agency determination on statements of matters reasonably beyond the control of plan administrators filed by persons against whom a penalty would be assessed. Under the proposed procedural rules contained in this Notice, an adjudicatory proceeding before an ALJ is commenced only when a person against whom the Department intends to assess a penalty under section 502(c)(6) files an ''answer'' to a notice of the agency determination on a statement of matters reasonably beyond the control of the plan administrator. *See* § 2570.111(c) and (d) below, and proposed regulation § 2560.502c–6(h).

The definition section (§ 2570.111) incorporates the basic adjudicatory principles set forth at 29 CFR part 18, but includes terms and concepts of specific relevance to proceedings under ERISA section 502(c)(6). In this respect it differs from its more general counterpart at § 18.2 of Title 29 of the CFR. In particular, § 2570.111 states that the term ''Secretary'' means the Secretary of Labor and includes various individuals to whom the Secretary may delegate authority. The Department contemplates that the duties assigned to the Secretary under the procedural regulation will in fact be discharged by the Assistant Secretary for Pension and Welfare Benefits.

In general, the burden to initiate adjudicatory proceedings before an ALJ will be on the party (respondent) against whom the Department is seeking to assess a civil penalty under ERISA section 502(c)(6). However, a respondent must comply with the procedures relating to agency review set forth in proposed regulation § 2560.502c–6 before initiating adjudicatory proceedings. In this regard, it should be noted that both the notice of intent to assess a penalty, as described in proposed regulation § 2560.502c–6(c) and the notice of determination on a statement of reasonable cause as described in proposed regulation § 2560.502c–6(g), will be issued by PWBA, the agency responsible for administration and enforcement of section 502(c)(6) of ERISA, in accordance with the service of notice provisions described in proposed § 2560.502c–6(i). Proposed regulation § 2570.111(c) and (d), together with proposed regulation § 2560.502c–6(h), contemplate that adjudicatory proceedings will be initiated with the filing of an answer to a notice of the agency's determination on a statement of matters reasonably beyond the control of the plan administrator.

The service of documents by the parties to an adjudicatory proceeding, as well as by the ALJ, will be governed by proposed regulation § 2570.112.

A section on the consequences of default (§ 2570.114) has been included in these proposed rules to indicate that if the respondent fails to file an answer to the Department's notice of determination (§ 2560.502c–6(g)) within the 30-day period provided by proposed § 2560.502c–6(h), such failure shall be deemed to constitute a waiver of the right to appear and contest the facts alleged in the notice and an admission of the facts alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(6). Proposed regulation § 2570.114 makes clear that in the event of such failure, the assessment of penalty becomes final.

A section on consent orders or settlements (§ 2570.115) states that the ALJ's decision shall include the terms and conditions of any consent order or settlement which has been agreed to by the parties. That section also provides that the decision of the ALJ which incorporates such consent order shall become a final agency action within the meaning of 5 U.S.C. 704.

The rules in 29 CFR part 18 concerning the computation of time, pleadings, prehearing conferences and statements, and settlements are adopted in these procedures for adjudications under ERISA section 502(c)(6). The section on the designation of parties (§ 2570.113) differs from its counterpart under § 18.10 of this title in that it specifies that the respondent in these proceedings will, as indicated above, be the party against whom the Department seeks to assess a civil penalty under ERISA section 502(c)(6).

29 CFR 2570.116 states that discovery may be ordered by the ALJ only upon a showing of good cause by the party seeking discovery. This differs from the more liberal standard for discovery contained in 29 CFR 18.14. In cases in which discovery is ordered by the ALJ, the order shall expressly limit the scope and terms of discovery to that for which good cause has been shown. To the extent that the order of the ALJ does not specify rules for the conduct of the discovery permitted by such order, the rules governing the conduct of discovery from 29 CFR part 18 are to be applied in any proceeding under section 502(c)(6) of ERISA. For example, if the order of the ALJ states only that interrogatories on certain subjects may be permitted, the rules under 29 CFR part 18 concerning the service and answering of such interrogatories shall apply. The procedures under 29 CFR part 18 for the submission of facts to the ALJ during the hearing are also to be applied in proceedings under ERISA section 502(c)(6).

The section on summary decisions (§ 2570.117) provides for requisite authorization for an ALJ to issue a summary decision which may become final when there are no genuine issues of material fact in a case arising under ERISA section 502(c)(6). The section concerning the decision of the ALJ (§ 2570.118) differs from its counterpart at § 18.57 of this title in that it states that the decision of the ALJ in an ERISA section 502(c)(6) case shall become the final decision of the Secretary unless a timely appeal is filed.

The procedures for appeals of ALJ decisions under ERISA section 502(c)(6) of ERISA would be governed solely by the proposed rules set forth in

§§ 2570.119 through 2570.121, and without any reference to the appellate procedures contained in 29 CFR part 18. Proposed § 2570.119 would establish the time limit within which such appeals must be filed and the manner in which the issues for appeal are determined and the procedure for making the entire record before the ALJ available to the Secretary. Proposed § 2570.120 provides that review of the Secretary shall not be on a de novo basis, but rather on the basis of the record before the ALJ and without an opportunity for oral argument. Proposed § 2570.121 sets forth the procedure for establishing a briefing schedule for such appeals and states that the decision of the Secretary on such an appeal shall be a final agency action within the meaning of 5 U.S.C. 714. As noted above, the authority of the Secretary with respect to the appellate procedures has been delegated to the Assistant Secretary for Pension and Welfare Benefits. As required by the Administrative Procedure Act (5 U.S.C. 552(a)(2)(A)) all final decisions of the Department under section 502(c)(6) of ERISA shall be compiled in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

**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. Accordingly, the Department has determined that this regulatory action is not significant within the meaning of the Executive Order.

The costs of the proposed regulation would be borne by the plan when responding to requests from the Department for copies of the latest SPD (including any summaries of plan changes not contained in the SPD) as well as other documents relating to the plan. It is expected that most of the costs will be attendant to furnishing SPDs to the Department to enable the Department to respond to requests from participants.[4] The individual cost of each such request is estimated to be minimal because each administrator of an employee pension or welfare benefit plan covered under Title I of ERISA is required by section 101(a)(1) to furnish a SPD to each participant covered under the plan and each beneficiary who is receiving benefits under the plan, and to update the SPD on a regular basis in accordance with section 104(b)(1). Moreover, many documents other than SPDs that may be requested are required to be made available to participants and beneficiaries pursuant to section 104(b)(2). Thus, administrators are not expected to incur costs in preparing or obtaining these documents in response to a request from the Department.

The proposed regulation is expected to benefit plan participants and beneficiaries who may have been unable to obtain a current SPD or other document relating to the plan, and who might otherwise not have an alternative means of obtaining such documents in the absence of the requirement for the plan administrator to file such documents with the Department. The provisions implementing the penalty for failure to furnish such documents on request may serve to ensure timely compliance with such requests.

**Paperwork Reduction Act**

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and 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 can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed information collection request (ICR) included in the proposal with respect to Furnishing Documents To The Secretary of Labor on Request Under ERISA section 104(a)(6) And Assessment Of Civil Penalties Under ERISA section 502(c)(6). A copy of the ICR may be obtained by contacting the office listed in the addressee section of this proposed regulation. This proposed regulation would implement the provisions of ERISA section 104(a)(6), which requires plan administrators to provide certain documents to the Department on request, and section 502(c)(6) of ERISA, which implements procedures for assessment of civil penalties for failure to provide the documents requested pursuant to section 104(a)(6).

The Department has submitted a copy of the proposed information collection to OMB in accordance with 44 U.S.C. 3507(d) for review of its information collections. The Department and OMB are particularly interested in comments that:

- 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, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Pension and Welfare Benefits Administration. Although comments may be submitted through October 4, 1999, OMB requests that comments be received within 30

[4] The Department's authority to request documents under section 104(a)(6) of ERISA was, prior to TRA '97, codified in section 104(a)(1) of ERISA. TRA '97 re-codified this authority in section 104(a)(6) of ERISA and simultaneously eliminated the requirement to file SPDs/SMMs. It is anticipated that the vast majority of requests under section 104(a)(6) will stem from responding to participants' requests for SPDs/SMMs that, in the absence of TRA '97, would have been filed with Department and available to the public.

days of publication of the Notice of Proposed Rulemaking to ensure their consideration.

**ADDRESSEE (PRA 95):** Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N–5647, Washington, DC 20210. Telephone: (202) 219–4782; Fax: (202) 219–4745. These are not toll-free numbers.

The ICR included in the proposal involves the gathering and mailing of plan documents requested by the Department to an address specified in the request. These requests are expected to be made of plan administrators as needed to satisfy requests for SPDs and other documents received from plan participants and beneficiaries. These requests may be received by the Public Disclosure Room of the Pension and Welfare Benefits Administration or by the national office and field offices in the course of providing technical assistance to the public. The estimate of the number of requests by participants and beneficiaries is based on the actual rate of requests to the Public Disclosure Room during the last two years, adjusted for requests expected to be made with other offices.

It is assumed that approximately 5 minutes of time at non-professional hourly rates will be required to respond to the Department's document request within 30 days. Some administrators may be expected to respond only after receiving notice of the Department's intent to assess a penalty, and/or to provide additional information concerning matters reasonably beyond their control which would prevent or delay the satisfaction of the request. Each of these events would increase the anticipated burden of providing documents requested by the Department. The burden estimated here has been adjusted to account for a portion of plans which by choice or for reasons beyond their control will satisfy the request in a more burdensome fashion. Mailing costs are assumed to total $1.00 per request.

The penalty assessment provisions of § 2560.502c–6, and the procedures for hearings before ALJs and appeals to the Secretary or her delegate of §§ 2570.110 through 2570.121, do not contain an ''information collection request'' as defined in 44 U.S.C. 3502(3).

*Type of Review:* New.

*Agency:* Pension and Welfare Benefits Administration.

*Title:* Furnishing Documents To The Secretary of Labor on Request Under ERISA section 104(a)(6) And Assessment of Civil Penalties Under ERISA section 502(c)(6).

*OMB Number:* 1210–NEW.

*Affected Public:* Individuals or households; Business or other for-profit; Not-for-profit institutions.

*Frequency of Response:* On occasion.

*Total Respondents:* 1,000.

*Total Responses:* 1,000.

*Estimated Burden Hours:* 95.

*Estimated Annual Costs (Operating and Maintenance):* $1,000.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) 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 ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans which cover fewer 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 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 (5 U.S.C. 631 *et seq.*). PWBA therefore requests comments on the appropriateness of the size standard used in evaluating the impact of this proposed rule on small entities.

On this basis, however, PWBA has preliminarily determined that this proposed regulation 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, PWBA has considered the elements of an initial regulatory flexibility analysis in the discussion which follows.

This proposed regulation would apply to all small employee benefit plans covered by Title I of ERISA. Employee benefit plans with fewer than 100 participants include 631,000 pension plans, 2.6 million health plans, and 3.4 million non-health welfare plans (mainly life and disability insurance plans).

The Department believes that responding to a request for a SPD or other plan document primarily requires clerical skills, although a professional may read the request and direct others to respond. The documents to be mailed in response to the request are expected to be readily available.

The Department does not have information concerning whether the participants and beneficiaries who request its assistance in obtaining plan documents are participants in small plans. However, even if it is assumed that all plans which receive requests for documents pursuant to section 104(a)(6) are small plans, the number affected in any year is very small (*i.e.*, 1,000 of approximately 6.6 million plans). The mailing cost per request satisfied, or per letter exchanged in providing reasonable cause, is expected to amount to approximately $1.00, and accumulating the documents is expected to require about 5 minutes. If it is assumed that a cost is incurred for this time at a rate of $11 per hour, the

total cost per request is estimated at about $2.00. This is not expected to constitute a significant impact for any plan.

Further, the proposed regulation is intended to provide sufficient information to small entities such that they may understand the request, provide information as to a reasonable cause for failure to comply if necessary, and receive notice before assessment of a penalty is initiated.

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.

**Small Business Regulatory Enforcement Fairness Act**

The proposed rule is subject to the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and, if finalized, will be transmitted to Congress and the Comptroller General for review. The rule is not a ''major rule'' as that term is defined in 5 U.S.C. 804, because it is not likely to result in (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**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 proposed rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, nor does it include mandates which may impose an annual burden of $100 million or more on the private sector.

**Statutory Authority**

These regulations are proposed pursuant to the authority contained in sections 505, 104(a), and 502(c)(6) of ERISA (Pub. L. 93–406, 88 Stat. 894, 29 U.S.C. 1024, 1132, and 1135).

**List of Subjects**

*29 CFR Part 2520*

Accountants, Disclosure requirements, Employee benefit plans, Employee Retirement Income Security Act, Pension plans, and Reporting and recordkeeping requirements.

*29 CFR Part 2560*

Claims, Employee benefit plans, Employee Retirement Income Security Act, Law enforcement, Pensions.

*29 CFR Part 2570*

Administrative practice and procedure, Employee benefit plans, Employee Retirement Income Security Act, Party in interest, Law enforcement, Pensions, Prohibited transactions.

**Proposed Regulations**

In view of the foregoing, the Department proposes to amend parts 2520, 2560, and 2570 of Chapter XXV of title 29 of the Code of Federal Regulations 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. By adding a new § 2520.104a-8 to read as follows:

**§ 2520.104a-8 Requirement to furnish documents to the Secretary of Labor on request.**

(a) *In general.* (1) Under section 104(a)(6) of the Act, the administrator of any employee benefit plan subject to the provisions of Part 1 of Title I of the Act shall furnish to the Secretary, upon service of a written request, any documents relating to the employee benefit plan.

(2) *Multiple requests for document(s).* Multiple requests under this section for the same or similar document or documents shall be considered separate requests for purposes of § 2560.502c-6(a) of this chapter.

(b) *Service of request.* Requests under this section shall be served in accordance with § 2560.502c-6(i) of this chapter.

(c) *Furnishing documents.* A document is not considered furnished to the Secretary until the date on which such document is received by the Department of Labor at the address specified in the request.

## PART 2560—RULES AND REGULATIONS FOR ADMINISTRATION AND ENFORCEMENT

3. The authority citation for part 2560 continues to read as follows:

Section 2560.502–1 also issued under sec. 502(b)(2), 29 U.S.C. 1132(b)(2).

Section 2560.502i–1 also issued under sec. 502(i), 29 U.S.C. 1132(i).

Section 2560.503–1 also issued under sec. 503, 29 U.S.C. 1133.

**Authority:** Secs. 502, 505 of ERISA, 29 U.S.C. 1132, 1135, and Secretary's Order 1–87, 52 FR 13139 (April 21, 1987).

4. By adding a new § 2560.502c–6 in the appropriate place to read as follows:

**§ 2560.502c–6 Civil Penalties Under section 502(c)(6).**

(a) *In general.* (1) Pursuant to the authority granted the Secretary under section 502(c)(6) of the Employee Retirement Income Security Act of 1974, as amended (the Act), the administrator (within the meaning of section 3(16)(A)) of an employee benefit plan (within the meaning of section 3(3) and § 2510.3–1 of this chapter) shall be liable for civil penalties assessed by the Secretary under section 502(c)(6) of the Act in each case in which there is a failure or refusal to furnish to the Secretary documents requested under section 104(a)(6) of the Act and § 2520.104a–8 of this chapter.

(2) For purposes of this section, a failure or refusal to furnish documents shall mean a failure or refusal to furnish, in whole or in part, the documents requested under section 104(a)(6) of the Act and § 2520.104a–8 of this chapter at the time and in the manner prescribed in the request.

(b) *Amount assessed.* (1) The amount assessed under section 502(c)(6) shall be an amount up to $100 a day determined by the Department of Labor, taking into consideration the amount of willfulness of the failure or refusal to furnish the documents requested under section 104(a)(6), but in no event in excess of $1,000 per request. Subject to paragraph (b)(2) of this section, the amount shall be computed from the date of the administrator's failure or refusal to furnish any document or documents requested by the Department.

(2) For purposes calculating the amount to be assessed under this section, the date of a failure or refusal to furnish documents shall not be earlier than the 30th day after service of the

request under section 104(a)(6) of ERISA and § 2520.104a–8 of this chapter.

(c) *Notice of intent to assess a penalty.* Prior to the assessment of any penalty under section 502(c)(6), the Department shall provide to the administrator of the plan a written notice that indicates the Department's intent to assess a penalty under section 502(c)(6), the amount of the penalty, the period to which the penalty applies, and the reason(s) for the penalty.

(d) *Waiver of assessed penalty.* The Department may waive all or part of the penalty to be assessed under section 502(c)(6) on a showing by the administrator that the failure or refusal to furnish a document or documents requested by the Secretary was the result of matters reasonably beyond the administrator's control.

(e) *Statement showing matters reasonably beyond the control of the plan administrator.* Upon issuance by the Department of a notice of intent to assess a penalty, the administrator shall have 30 days from the date of the service of the notice, as described in paragraph (i) of this section, to file a statement that the failure resulted from matters reasonably beyond the control of the administrator or that the penalty, as calculated, should not be assessed. The statement must be in writing and set forth all the facts alleged as matters reasonably beyond the control of the administrator. The statement must contain a declaration by the administrator that the statement is made under the penalties of perjury.

(f) *Failure to file a statement of matters reasonably beyond the control of the plan administrator.* Failure to file a statement of matters reasonably beyond the control of the administrator within the 30 day period described in paragraph (e) of this section shall be deemed to constitute a waiver of the right to appear and contest the facts alleged in the notice, and such failure shall be deemed an admission of the facts alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(6). Such notice shall then become a final order of the Secretary, within the meaning of § 2570.111(g) of this chapter.

(g) *Notice of determination on statement of matters reasonably beyond the control of the plan administrator.* (1) The Department, following a review of all of the facts alleged in support of a complete or partial waiver of the penalty, shall notify the administrator, in writing, of its intention to waive the penalty, in whole or in part, and/or assess a penalty. If it is the intention of the Department to assess a penalty, the notice shall indicate the amount of the penalty, not to exceed the amount described in paragraph (c) of this section. This notice is a ''pleading'' for purposes of § 2570.111(m) of this chapter.

(2) Except as provided in paragraph (h) of this section, a notice issued pursuant to paragraph (g)(1) of this section indicating the Department's intention to assess a penalty shall become a final order, within the meaning of § 2570.111(g) of this chapter, 30 days after the date of service of the notice.

(h) *Administrative hearings.* A notice issued pursuant to paragraph (g)(1) of this section will not become a final order, within the meaning of § 2570.111(g) of this chapter, if, within 30 days from the date of service of the notice, an answer, as defined in § 2570.111(c) of this chapter, is filed in accordance with § 2570.112 of this chapter.

(i) *Service of notice.* (1) Service of notice under this section shall be made by:

(i) Delivering a copy to the administrator or representative thereof;

(ii) Leaving a copy at the principal office, place of business, or residence of the administrator or representative thereof; or (iii) Mailing a copy to the last known address of the administrator or representative thereof.

(2) If service is accomplished by certified mail, service is complete upon mailing. If done by regular mail, service is complete upon receipt by the addressee.

(j) *Liability.* (1) If more than one person is responsible as administrator for the failure to furnish the document or documents requested under section 104(a)(6) and its implementing regulations (§ 2520.104a–8 of this chapter), all such persons shall be jointly and severally liable with respect to such failure.

(2) Any person, or persons under paragraph (j)(1), against whom a civil penalty has been assessed under section 502(c)(6) pursuant to a final order, within the meaning of § 2570.111(g) of this chapter, shall be personally liable for the payment of such penalty.

(k) *Cross reference.* See §§ 2570.110 through 2570–121 of this chapter for procedural rules relating to administrative hearings under section 502(c)(6) of the Act.

## PART 2570—PROCEDURAL REGULATIONS UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT

5. Revise the authority citation for part 2570 to read as follow:

**Authority:** 29 U.S.C. 1108 (a), 1132 (c), 1132 (i), 1135; 5 U.S.C. 8477 (c) (3); Reorganization Plan no. 4 of 1978; Secretary of Labor's Order 1–87.

Subpart A is also issued under 29 U.S.C. 1132(c)(1).

Subpart F is also issued under sec. 4, Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note), as amended by sec. 31001(s)(1), Pub. L. 104–134, 110 Stat. 1321–373.

6. Part 2570 is amended by adding new subpart F to read as follows:

### Subpart F—Procedures for the Assessment of Civil Penalties Under ERISA Section 502(c)(6)

Sec.



## Subpart F—Procedures for the Assessment of Civil Penalties Under ERISA Section 502(c)(6)

### § 2570.110 Scope of rules.

The rules of practice set forth in this subpart are applicable to ''502(c)(6) civil penalty proceedings'' (as defined in § 2570.111(n) of this subpart) under section 502(c)(6) of the Employee Retirement Income Security Act of 1974. The rules of procedure for administrative hearings published by the Department's Office of Law Judges at part 18 of this title will apply to matters arising under ERISA section 502(c)(6) except as modified by this section. These proceedings shall be conducted as expeditiously as possible, and the parties shall make every effort to avoid delay at each stage of the proceedings.

### § 2570.111 Definitions.

For section 502(c)(6) civil penalty proceedings, this section shall apply in lieu of the definitions in § 18.2 of this title:

(a) *Adjudicatory proceeding* means a judicial-type proceeding before an administrative law judge leading to the formulation of a final order;

(b) *Administrative law judge* means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105;

(c) *Answer* is defined for these proceedings as set forth in § 18.5(d)(1) of this title;

(d) *Commencement of proceeding* is the filing of an answer by the respondent;

(e) *Consent agreement* means any written document containing a specified proposed remedy or other relief acceptable to the Department and consenting parties;

(f) *ERISA* means the Employee Retirement Income Security Act of 1974, as amended;

(g) *Final order* means the final decision or action of the Department of Labor concerning the assessment of a civil penalty under ERISA section 502(c)(6) against a particular party. Such final order may result from a decision of an administrative law judge or the Secretary, the failure of a party to file a statement of matters reasonably beyond the control of the plan administrator described in § 2560.502c-6(e) of this chapter within the prescribed time limits, or the failure of a party to invoke the procedures for hearings or appeals under this title within the prescribed time limits. Such a final order shall constitute final agency action within the meaning of 5 U.S.C. 704;

(h) *Hearing* means that part of a proceeding which involves the submission of evidence, either by oral presentation or written submission, to the administrative law judge;

(i) *Order* means the whole or any part of a final procedural or substantive disposition of a matter under ERISA section 502(c)(6);

(j) *Party* includes a person or agency named or admitted as a party to a proceeding;

(k) *Person* includes an individual, partnership, corporation, employee benefit plan, association, exchange or other entity or organization;

(l) *Petition* means a written request, made by a person or party, for some affirmative action;

(m) *Pleading* means the notice as defined in § 2560.502c–6(g) of this chapter, the answer to the notice, any supplement or amendment thereto, and any reply that may be permitted to any answer, supplement or amendment;

(n) *502(c)(6) civil penalty proceeding* means an adjudicatory proceeding relating to the assessment of a civil penalty provided for in section 502(c)(6) of ERISA;

(o) *Respondent* means the party against whom the Department is seeking to assess a civil sanction under ERISA section 502(c)(6);

(p) *Secretary* means the Secretary of Labor and includes, pursuant to any delegation of authority by the Secretary, any assistant secretary (including the Assistant Secretary for Pension and Welfare Benefits), administrator, commissioner, appellate body, board, or other official; and

(q) *Solicitor* means the Solicitor of Labor or his or her delegate.

**§ 2570.112 Service: Copies of documents and pleadings.**

For 502(c)(6) penalty proceedings, this section shall apply in lieu of § 18.3 of this title.

(a) *General.* Copies of all documents shall be served on all parties of record. All documents should clearly designate the docket number, if any, and short title of all matters. All documents to be filed shall be delivered or mailed to the Chief Docket Clerk, Office of Administrative Law Judges, 800 K Street, NW, Suite 400, Washington, DC 20001–8002, or to the OALJ Regional Office to which the proceeding may have been transferred for hearing. Each document filed shall be clear and legible.

(b) *By parties.* All motions, petitions, pleadings, briefs, or other documents shall be filed with the Office of Administrative Law Judges with a copy, including any attachments, to all other parties or record. When a party is represented by an attorney, service shall be made upon the attorney. Service of any document upon any party may be made by personal delivery or by mailing a copy to the last known address. The Department shall be served by delivery to the Associate Solicitor, Plan Benefits Security Division, ERISA section 502(c)(6) Proceeding, PO Box 1914, Washington, DC 20013. The person serving the document shall certify to the manner and date of service.

(c) *By the Office of Administrative Law Judges.* Service of orders, decisions and all other documents shall be made by regular mail to the last known address.

(d) *Form of pleadings.* (1) Every pleading shall contain information indicating the name of the Pension and Welfare Benefits Administration (PWBA) as the agency under which the proceeding is instituted, the title of the proceeding, the docket number (if any) assigned by the Office of Administrative Law Judges and a designation of the type of pleading or paper (*e.g.*, notice, motion to dismiss, etc.). The pleading or paper shall be signed and shall contain the address and telephone number of the party or person representing the party. Although there are no formal specifications for documents, they should be typewritten when possible on standard size 8½ x 11 inch paper.

(2) Illegible documents, whether handwritten, typewritten, photocopies, or otherwise, will not be accepted. Papers may be reproduced by any duplicating process provided all copies are clear and legible.

**§ 2570.113 Parties, how designated.**

For 502(c)(6) civil penalty proceedings, this section shall apply in lieu of § 18.10 of this title.

(a) The term ''party'' wherever used in these rules shall include any natural person, corporation, employee benefit plan, association, firm, partnership, trustee, receiver, agency, public or private organization, or government agency. A party against whom a civil penalty is sought shall be designated as ''respondent.'' The Department shall be designated as the ''complainant.''

(b) Other persons or organizations shall be permitted to participate as parties only if the administrative law judge finds that the final decision could directly and adversely affect them or the class they represent, that they may contribute materially to the disposition of the proceedings and their interest is not adequately represented by existing parties, and that in the discretion of the administrative law judge the participation of such persons or organizations would be appropriate.

(c) A person or organization not named as a respondent wishing to participate as a party under this section shall submit a petition to the administrative law judge within fifteen (15) days after the person or organization has knowledge of or should have known about the proceeding. The petition shall be filed with the administrative law judge and served on each person or organization who has been made a party at the time of filing. Such petition shall concisely state:

(1) Petitioner's interest in the proceeding;

(2) How his or her participation as a party will contribute materially to the disposition of the proceeding;

(3) Who will appear for petitioner;

(4) The issues on which petitioner wishes to participate; and

(5) Whether petitioner intends to present witnesses.

(d) Objections to the petition may be filed by a party within fifteen (15) days of the filing of the petition. If objections to the petition are filed, the administrative law judge shall then determine whether petitioners have the requisite interest to be a party in the proceedings, as defined in paragraph (b) of this section, and shall permit or deny participation accordingly. Where petitions to participate as parties are made by individuals or groups with common interests, the administrative law judge may request all such petitioners to designate a single representative, or he or she may

recognize one or more of such petitioners. The administrative law judge shall give each such petitioner, as well as the parties, written notice of the decision on his or her petition. For each petition granted, the administrative law judge shall provide a brief statement of the basis of the decision. If the petition is denied, he or she shall briefly state the grounds for denial and shall then treat the petition as a request for participation as amicus curiae.

**§ 2570.114 Consequences of default.**

For 502(c)(6) civil penalty proceedings, this section shall apply in lieu of § 18.5 (a) and (b) of this title. Failure of the respondent to file an answer to the notice of determination described in § 2560.502c–6(g) of this chapter within the 30-day period provided by § 2560.502c–6(h) of this chapter shall be deemed to constitute a waiver of his or her right to appear and contest the allegations of the notice of determination, and such failure shall be deemed to be an admission of the facts as alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(6) of the Act. Such notice shall then become the final order of the Secretary.

**§ 2570.115 Consent order or settlement.**

For 502(c)(6) civil penalty proceedings, the following shall apply in lieu of § 18.9 of this title.

(a) *General.* At any time after the commencement of a proceeding, but at least five (5) days prior to the date set for hearing, the parties jointly may move to defer the hearing for a reasonable time to permit negotiation of a settlement or an agreement containing findings and an order disposing of the whole or any part of the proceeding. The allowance of such a deferral and the duration thereof shall be in the discretion of the administrative law judge, after consideration of such factors as the nature of the proceeding, the requirements of the public interest, the representations of the parties and the probability of reaching an agreement which will result in a just disposition of the issues involved.

(b) *Content.* Any agreement containing consent findings and an order disposing of a proceeding or any part thereof shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the notice and the agreement;

(3) A waiver of any further procedural steps before the administrative law judge;

(4) A waiver of any right to challenge or contest the validity of the order and decision entered into in accordance with the agreement; and

(5) That the order and decision of the administrative law judge shall be final agency action.

(c) *Submission.* On or before the expiration of the time granted for negotiations, but, in any case, at least five (5) days prior to the date set for hearing, the parties or their authorized representative or their counsel may:

(1) Submit the proposed agreement containing consent findings and an order to the administrative law judge; or

(2) Notify the administrative law judge that the parties have reached a full settlement and have agreed to dismissal of the action subject to compliance with the terms of the settlement; or

(3) Inform the administrative law judge that agreement cannot be reached.

(d) *Disposition.* In the event a settlement agreement containing consent findings and an order is submitted within the time allowed therefore, the administrative law judge shall issue a decision incorporating such findings and agreement within thirty (30) days of his receipt of such document. The decision of the administrative law judge shall incorporate all of the findings, terms, and conditions of the settlement agreement and consent order of the parties. Such decision shall become final agency action within the meaning of 5 U.S.C. 704.

(e) *Settlement without consent of all parties.* In cases in which some, but not all, of the parties to a proceeding submit a consent agreement to the administrative law judge, the following procedure shall apply:

(1) If all of the parties have not consented to the proposed settlement submitted to the administrative law judge, then such non-consenting parties must receive notice, and a copy, of the proposed settlement at the time it is submitted to the administrative law judge;

(2) Any non-consenting party shall have fifteen (15) days to file any objections to the proposed settlement with the administrative law judge and all other parties;

(3) If any party submits an objection to the proposed settlement, the administrative law judge shall decide within thirty (30) days after receipt of such objections whether he shall sign or reject the proposed settlement. Where the record lacks substantial evidence upon which to base a decision or there is a genuine issue of material fact, then the administrative law judge may establish procedures for the purpose of receiving additional evidence upon which a decision on the contested issues may reasonably be based;

(4) If there are no objections to the proposed settlement, or if the administrative law judge decides to sign the proposed settlement after reviewing any such objections, the administrative law judge shall incorporate the consent agreement into a decision meeting the requirements of paragraph (d) of this section.

**§ 2570.116 Scope of discovery.**

For 502(c)(6) civil penalty proceedings, this section shall apply in lieu of § 18.14 of this title.

(a) A party may file a motion to conduct discovery with the administrative law judge. The motion for discovery shall be granted by the administrative law judge only upon a showing of good cause. In order to establish ''good cause'' for the purposes of this section, a party must show that the discovery requested relates to a genuine issue as to a material fact that is relevant to the proceeding. The order of the administrative law judge shall expressly limit the scope and terms of discovery to that for which ''good cause'' has been shown, as provided in this paragraph.

(b) A party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (a) of this section and prepared in anticipation of or for the hearing by or for another party's representative (including his or her attorney, consultant, surety, indemnitor, insurer, or agent) only upon showing that the party seeking discovery has substantial need of the materials or information in the preparation of his or her case and that he or she is unable without undue hardship to obtain the substantial equivalent of the materials or information by other means. In ordering discovery of such materials when the required showing has been made, the administrative law judge shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representatives of a party concerning the proceeding.

**§ 2570.117 Summary decision.**

For 502(c)(6) civil penalty proceedings, this section shall apply in lieu of § 18.41 of this title.

(a) *No genuine issue of material fact.* (1) Where no issue of a material fact is found to have been raised, the administrative law judge may issue a

decision which, in the absence of an appeal pursuant to §§ 2570.119 through 2570.121 of this subpart, shall become a final order.

(2) A decision made under this paragraph shall include a statement of:

(i) Findings of fact and conclusions of law, and the reasons therefor, on all issues presented; and

(ii) Any terms and conditions of the rule or order.

(3) A copy of any decision under this paragraph shall be served on each party.

(b) *Hearings on issues of fact.* Where a genuine question of a material fact is raised, the administrative law judge shall, and in any other case may, set the case for an evidentiary hearing.

**§ 2570.118 Decision of the administrative law judge.**

For section 502(c)(6) civil penalty proceedings, this section shall apply in lieu of § 18.57 of this title.

(a) *Proposed findings of fact, conclusions, and order.* Within twenty (20) days of the filing of the transcript of the testimony, or such additional time as the administrative law judge may allow, each party may file with the administrative law judge, subject to the judge's discretion, proposed findings of fact, conclusions of law, and order together with a supporting brief expressing the reasons for such proposals. Such proposals and briefs shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision of the administrative law judge.* Within a reasonable time after the time allowed for the filing of the proposed findings of fact, conclusions of law, and order, or within thirty (30) days after receipt of an agreement containing consent findings and order disposing of the disputed matter in whole, the administrative law judge shall make his or her decision. The decision of the administrative law judge shall include findings of fact and conclusions of law with reasons therefor upon each material issue of fact or law presented on the record. The decision of the administrative law judge shall be based upon the whole record. In a contested case in which the Department and the Respondent have presented their positions to the administrative law judge pursuant to the procedures for 502(c)(6) civil penalty proceedings as set forth in this subpart, the penalty (if any) which may be included in the decision of the administrative law judge shall be limited to the penalty expressly provided for in section 502(c)(6) of ERISA. It shall be supported by reliable and probative evidence. The decision of the administrative law judge shall become final agency action within the meaning of 5 U.S.C. 704 unless an appeal is made pursuant to the procedures set forth in §§ 2570.119 through 2570.121.

**§ 2570.119 Review by the Secretary.**

(a) The Secretary may review a decision of an administrative law judge. Such a review may occur only when a party files a notice of appeal from a decision of an administrative law judge within twenty (20) days of the issuance of such decision. In all other cases, the decision of the administrative law judge shall become final agency action within the meaning of 5 U.S.C. 704.

(b) A notice of appeal to the Secretary shall state with specificity the issue(s) in the decision of the administrative law judge on which the party is seeking review. Such notice of appeal must be served on all parties of record.

(c) Upon receipt of a notice of appeal, the Secretary shall request the Chief Administrative Law Judge to submit to him or her a copy of the entire record before the administrative law judge.

**§ 2570.120 Scope of review.**

The review of the Secretary shall not be *de novo* proceeding but rather a review of the record established before the administrative law judge. There shall be no opportunity for oral argument.

**§ 2570.121 Procedures for review by the Secretary.**

(a) Upon receipt of the notice of appeal, the Secretary shall establish a briefing schedule which shall be served on all parties of record. Upon motion of one or more of the parties, the Secretary may, in his or her discretion, permit the submission of reply briefs.

(b) The Secretary shall issue a decision as promptly as possible after receipt of the briefs of the parties. The Secretary may affirm, modify, or set aside, in whole or in part, the decision on appeal and shall issue a statement of reasons and bases for the action(s) taken. Such decision by the Secretary shall be final agency action within the meaning of 5 U.S.C. 704.

Signed at Washington, DC, this 28th day of July 1999.

**Richard M. McGahey,**

*Assistant Secretary, Pension and Welfare Benefits Administration, Department of Labor.*

[FR Doc. 99–19861 Filed 8–4–99; 8:45 am]

BILLING CODE 4510–29–P

Federal Register

Thursday
August 5, 1999

# Part IV

# Department of Transportation

## Federal Aviation Administration

**14 CFR Parts 65, 66, and 147**

**Revision of Certification Requirements: Mechanics and Repairmen; Proposed Rule**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Parts 65, 66, and 147**

**[Docket No. 27863; Notice No. 98–5]**

**RIN 2120–AF22**

## Revision of Certification Requirements: Mechanics and Repairmen

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

**ACTION:** Notice of proposed rulemaking (NPRM); withdrawal.

**SUMMARY:** The FAA is withdrawing a previously published NPRM (July 9, 1998, 63 FR 37172) that proposed to amend the certification and training requirements for mechanics and repairmen. The NPRM was the result of the completion of the review of the certification requirements for mechanics and repairmen by the Aviation Rulemaking Advisory Committee (ARAC). Proposals made in the NPRM were based on the ARAC recommendation forwarded to the FAA in the form of a draft NPRM. During the comment period for the NPRM, more than 1,500 members of the aviation industry submitted comments. The majority of the comments received, including those submitted by ARAC, indicated opposition to the proposal. In light of this opposition, the FAA has decided to withdraw the NPRM in its entirety for further internal study.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Vipond, Manager, Airworthiness System and Air Agencies Branch, (AFS–350), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3269; facsimile (202) 267–5115.

**SUPPLEMENTARY INFORMATION:**

### Background

In 1991, the FAA chartered the ARAC. At its first meeting on Air Carrier General Aviation Maintenance Issues ARAC established the part 65 Working Group (working group) (56 FR 20492, May 3, 1991). The working group was composed of representatives from several aviation associations, including the European Association of Aerospace Manufacturers, the Aeronautical Repair Station Association (ARSA), the Aerospace Industries Association, the Air Freight Association, the Air Line Pilots Association (ALPA), the Air Transport Association (ATA), the Aircraft Electronics Association, the Aircraft Owners and Pilots Association (AOPA), the Airline Dispatchers Federation, the Allied Pilots Association, the American Helicopter Society, the Aviation Consumer Action Project, the Aviation Insurance Association, the Aviation Technician Education Council (ATEC), the Equipment Leasing Association of America, the Experimental Aircraft Association, Flight Dispatchers, the General Aviation Manufacturers Association, the Helicopter Association International (HAI), the Independent Pilots Association, the International Association of Machinists and Aerospace Workers (IAM), the Joint Aviation Authorities (JAA), the Light Aircraft Manufacturers Association, the National Air Carrier Association, the National Air Transportation Association (NATA), the National Business Aircraft Association (NBAA), the Parachute Industry Association, the Professional Aviation Maintenance Association (PAMA), the Regional Airline Association (RAA), the Small Aircraft Manufacturers Association, the Teamsters Airline Division, Transport Canada, the University Aviation Association, and the Used Aircraft Certification Conformity Committee. The working group was chaired by NATA.

The ARAC tasked this working group to conduct a review of the certification requirements for mechanics, mechanics holding inspection authorizations, and repairmen. At that time, these requirements were in part 65, subparts D and E. After the ARAC analysis of the working group's extensive efforts, the ARAC submitted to the FAA its recommendation in the form of a draft NPRM, which would establish part 66. Based on this draft NPRM, the FAA issued an NPRM (Notice No. 98–5) proposing to revise the certification requirements for mechanics and repairmen (63 FR 37172, July 9, 1998).

### Reason for Withdrawal

As previously noted, the proposals in Notice No. 98–5 were based on the work performed by the working group and the recommendation of ARAC. Because the ARAC forwarded the document to the FAA, the FAA assumed, for the most part, the ARAC and the aviation community generally would support Notice No. 98–5. However, of the more than 1,500 commenters who submitted comments on Notice No. 98–5, most opposed the NPRM, either in part or in full. Commenters especially opposed the creation of the Aviation Maintenance Technician and Aviation Maintenance Technician (Transport) certificates. Several working group member associations, including AOPA, ARSA, NATA, PAMA, and RAA, opposed the NPRM and some asked the FAA to withdraw Notice No. 98–5.

### Decision

Because of the overwhelming opposition to Notice No. 98–5, the FAA has decided to withdraw Notice No. 98–5. The FAA will study the issue internally, and, if the FAA decides to make any changes to the regulations concerning the certification and training requirements for mechanics and repairmen, the FAA may later issue an NPRM for public comment.

Accordingly, Notice No. 98–5, published on July 9, 1998 (63 FR 37172), is hereby withdrawn.

Issued in Washington, DC, on July 28, 1999.

**L. Nicholas Lacey,**

*Director, Flight Standards Service.*

[FR Doc. 99–20023 Filed 8–4–99; 8:45 am]

**BILLING CODE 4910–13–P**

Federal Register

Thursday
August 5, 1999

# Part V

# Department of Transportation

## Coast Guard

**46 CFR Parts 10 and 12**

**User Fees for Licenses, Certificates of Registry, and Merchant Mariner Documents; Final Rule**

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**46 CFR Parts 10 and 12**

**[USCG–1997–2799]**

**RIN 2115–AF49**

## User Fees for Licenses, Certificates of Registry, and Merchant Mariner Documents

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard revises the user fees for its services relating to the issuance of merchant mariner licenses, certificates of registry, and merchant mariner documents. We based the revisions on the most recent recalculation of program costs. We have changed the format of the two CFR sections in which the fees are published from narrative text to tables that are easier to use.

**DATES:** This final rule is effective October 4, 1999.

**ADDRESSES:** Documents as indicated in this preamble are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. You may also electronically access the public docket for this rulemaking on the Internet at http://dms.dot.gov.

**FOR FURTHER INFORMATION CONTACT:** For information concerning the final rule provisions, contact CDR Mark McEwen, Project Manager, U.S. Coast Guard Headquarters, Office of Planning and Resources (G–MRP), telephone 202–267–0785. For questions on viewing material in the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

**SUPPLEMENTARY INFORMATION:**

### Background

*Regulatory History*

The Coast Guard published a final rule entitled ''User Fees for Marine Licensing, Certification of Registry and Merchant Mariner Documentation'' in the **Federal Register** on March 19, 1993 (59 FR 15228). That rule established marine license, certificate of registry, and merchant mariner document user fees in 46 CFR parts 10 and 12.

On September 27, 1994, we added user fees for renewals of certificates of registry and MMDs to these fee schedules.

On April 1, 1998, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled ''User Fees for Licenses, Certificates of Registry, and Merchant Mariner Documents'' in the **Federal Register** (63 FR 16024) [corrected April 20, 1998 at 63 FR 19580]. The NPRM proposed revised fees based on our latest cost recalculations.

We allowed 180 days for mariners to review the NPRM and submit written comments. During this time, we received 22 comments on a variety of issues including one request for a series of public meetings. Since the written comments addressed a wide variety of issues, the Coast Guard did not find that public meetings were needed to provide additional helpful information for the rulemaking and determined that a public meeting would not be helpful to develop the final rule.

### Discussion of Comments and Changes

The following paragraphs discuss the comments received and explain the changes we have made in the final rule.

*Opposition to User Fees*

Thirteen comments objected to all user fees in general, and specifically to the user fees we proposed for merchant mariner licenses and documents. Some comments agreed that the fees were necessary, but objected to the amount of the proposed fees. Some comments stated that the fee for the service exceeded the value of the service to the recipient.

The Omnibus Budget Reconciliation Act of 1990 (the Act) amended 46 U.S.C. 2110 to require that the Coast Guard establish and collect fees for Coast Guard services. Our fees are based on the cost to the Coast Guard of providing the service.

*Improve Service at RECs*

We received four comments discussing the quality of service at the 17 Regional Examination Centers (REC). The comments suggested that the Coast Guard lower costs and fees by reducing procedures and increasing productivity at the RECs, and by allowing a third party to process merchant mariner document (MMD) applications and certify merchant mariners.

This rule does not include general changes to REC procedures or to the licensing and documentation system. However, we have forwarded these comments to the program managers and to the licensing reengineering team for their consideration.

Five comments stated that they would prefer that the fees that were paid would be used to improve service to the customer. Fees paid for merchant mariner licensing and documentation (MMLD) services are deposited in the general fund of the U.S. Treasury as offsetting receipts of the Department of Transportation and ascribed to Coast Guard activities. The Coast Guard cannot use fee receipts for any purpose unless specifically authorized by Congress.

*$17 Fee for Criminal Record Check*

One comment stated that we should not charge the mariner a $17 fee for a Federal Bureau of Investigation (FBI) criminal record check because the mariner does not benefit from this service.

The United States Court of Appeals upheld the Coast Guard's authority to charge the $17 fee for an FBI criminal record check (Seafarers International Union of North America, *et al.* v. the United States Coast Guard, 81 F.3d 185–186, (DC Cir. 1996)). We will start collection of the $17 FBI criminal record check fee when this rule becomes effective. The fee is included in the evaluation phase fee for original documents.

*Schedule for Recalculation and Implementation of Fees*

One comment suggested that we should not recalculate the fees now because we are considering privatizing certain licensing functions. Another comment recommended that we increase the fees once every 10 years and ''adjust the fees for inflation only.'' One comment recommended that we gradually implement the new fee schedule over a 4-year period.

We must review and, if necessary, recalculate the licensing and documentation user fees every 2 years as required by OMB Circular A–25. Based on the recalculated costs, we may adjust the fees to recover the costs of providing services. The Coast Guard's settlement with Seafarers International Union (SIU) dated September 17, 1997, obligates the Coast Guard to ''going forward with notice and comment rulemaking as to its MMLD program and further commits that this rulemaking will include the recalculation of its costs and reassessment of its fees.'' A phased implementation of fees is not practical because the fee reviews required by OMB are too frequent to allow phased implementation.

Four comments stated that the user fees are unfair because they are an additional burden to mariners who must already pay other costs to maintain their

licenses or advance their careers such as required courses, travel to required courses, and travel to the RECs.

The Coast Guard is aware of these other professional costs and we discussed them in the rulemaking that established the original fees on March 19, 1993 (58 FR 15228). We have not increased the fees since that time. This rulemaking is the first adjustment of the MMLD fees based on a recalculation of the costs of providing MMLD services.

*Paying for Multiple Transactions*

Three comments suggested that multiple license, MMD, and endorsement renewals for one individual should all expire simultaneously at 5-year intervals. This would consolidate all licensing fees into a single payment for multiple transactions once every 5 years. Mariners have the option to simplify their renewal process by renewing all their documents at the same time, putting them all on the same 5-year expiration schedule. The fee schedule provides savings to mariners when more than one document is processed using a single application.

*Recalculation*

One comment stated that the ''recalculation is not a true cost analysis or an economic time test study, but an exercise in justifying the Congressional mandate to impose user fees.''

We did the recalculation to comply with a court order resulting from litigation initiated by SIU. That case was settled after we completed the recalculation. The court ordered the Coast Guard to reassess its fees based on that recalculation. This rulemaking does so.

*Regulatory Assessment*

One comment criticized the draft regulatory assessment because the same user fee would represent a greater percentage of the average annual income for an able seaman than that of a third mate.

The fees in this rule are based only on the costs of providing each type of licensing and documentation service.

The same comment stated that ''Coast Guard fees are also significantly higher than fees imposed by the government for similar federally mandated licenses and documents'' such as by the Federal Aviation Administration and the Federal Communications Commission.

Unless the licensing systems of other agencies are the same as the Coast Guard's licensing system, the fees for licensing services will be different in each agency. Each agency has different direct and indirect costs for providing the service and their fees are related to those costs. Comparisons with other government or professional organizations are useful for evaluating the potential cumulative impacts on affected persons, but each agency's or organization's system is unique and each agency's license has different requirements for obtaining certification.

*Estimate of Uninspected Small Passenger Vessels*

One comment disagreed with the Coast Guard's estimate of only 480 uninspected small passenger vessels and stated that the number should be much higher.

The Coast Guard agrees with the comment that the 480 figure is incorrect and, upon further research, the Coast Guard estimates there are approximately 30,000 uninspected passenger vessels that could have license holders both owning and operating their vessels as small businesses.

*STCW*

One comment suggested that the proposed fees, in addition to the requirements of the implementation of the International Convention on Standards, Training, Certification and Watchkeeping (STCW), ''* * * would place an unacceptable financial burden upon individual mariners and upon vessel operators.''

The June 26, 1997, STCW final rule (62 FR 34525) discussed the costs associated with implementation of that rule. However, the costs of providing STCW services were not part of our recalculation used for merchant mariner license and documentation fees in this rule. The Coast Guard has not charged fees for STCW certification services and this rule does not establish fees for these services. We have added new entries to tables 10.109 and 12.02–18 for processing STCW forms, and we clearly state there is no fee charged for this activity.

*Other Changes*

We have changed §§ 10.110 and 12.02–18 to allow for payment of fees for all phases at the time of application or for payment at each phase.

We are also adding language to both sections permitting RECs, as they become equipped, to accept payment by credit card.

**Regulatory Evaluation**

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040; February 26, 1979). A separate regulatory assessment document, however, has been prepared for this rule and is available in the docket for inspection or copying where indicated under **ADDRESSES.**

The total annual revenues from direct user fees under subtitle II of 46 U.S.C. 2110 does not exceed $23.1 million and the merchant marine licensing and documentation (MMLD) revenues for fiscal year 1996 were only $4.6 million. The revised fees will increase these revenues to an estimated $9.3 million. This represents the maximum amount of revenue that could be collected based on recalculated data and transaction figures. The total revenue of direct user fees under subtitle II of 46 U.S.C. 2110 for fiscal year 1997 did not exceed $23.1 million, well below the $100 million threshold that makes a rulemaking economically significant.

This final rule will affect all mariners required to hold a license or certificate of registry (COR) in accordance with 46 CFR part 10 or a merchant mariner document (MMD) in accordance with 46 CFR part 12. Data from the RECs (1994) indicate a grand total of 57,529 transactions, including new license issuances as well as renewals.

The impact of the fees on the individual merchant mariner will occur at the time fees are paid. At all other times during the validity of the license, document, or certificate, if there are no document transactions, no payments are made. The relative economic impact of the fees on each mariner would vary depending upon the number and type of documents held by the mariner and the mariner's ability to pay.

To assess the impact of the fees on the individual mariner, the Coast Guard annualized fees over the period the documents were valid. We determined that the document transactions a typical mariner may require over the first 10 years he or she holds a license or document will include renewals as well as raises in grade or endorsements. Our analysis of the costs borne by the mariner covers a 10-year period.

Based on these assumptions, the annualized fee differences range from a low of $0.80 for Upper Level Licenses to a high of $16.30 for a Merchant Mariner's Document with qualified rating.

*Summary*

The Coast Guard found that the impact of the revisions will vary with the financial situation of each individual mariner. However, the data suggested the financial impact of the fee

revisions are not significantly different from the user and licensing fees of other professions, both in terms of actual fees and as a percent of salary. The impact of the fee revisions to the individual merchant mariner occurs over the phases of the document transactions at the time a fee is paid for each transaction phase. Absent further transactions during the document's 5-year period of validity, no other payments would be necessary until the renewal of the document.

The Coast Guard understands that the fee revisions may represent only one of several expenses incurred by the individual mariner when acquiring a Coast Guard license, COR, or MMD. Within the marine professions and trades, the fees for MMLD transactions have essentially become part of the overall cost associated with working in the industry.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities. *Small entities* include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The fee revisions in this final rule will impact the individual mariner. However, some license holders both own and operate their vessels as small businesses. For those individuals, this final rule has small entity implications. The annual impact of these fee revisions on any sole proprietor will be less than $20. The Coast Guard estimates that few sole proprietors work as towing vessel operators, offshore supply vessel operators, and mobile offshore drilling unit operators. However, we believe that there are a number of sole proprietors in the small passenger vessel industry. As a business, sole proprietors can claim their licensing and documentation user fees as a business expense for tax purposes and many can pass along the expense of the licensing fees to the consumer in the form of higher rates. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612) that this final rule will not have a significant economic impact on a substantial number of small entities.

**Assistance for Small Entities**

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement action of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**Collection of Information**

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

**Federalism**

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

**Unfunded Mandates**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4, 109 Stat. 48) requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. The UMRA requires a written statement of economic and regulatory alternatives for rules that contain Federal mandates. A ''Federal mandate'' is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This final rule will not impose Federal mandates on any State, local, or tribal governments, or the private sector.

**Environment**

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(a) of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

**Other Executive Orders on the Regulatory Process**

In addition to the statutes and executive orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this final rule and reached the following conclusions—

**E.O. 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights**

This rule will not effect a taking of private property or otherwise have taking implications under this Order.

**E.O. 12875, Enhancing the Intergovernmental Partnership**

This rule will not impose, on any State, local, or tribal government, a mandate that is not required by statute and that is not funded by the Federal government.

**E.O. 12988, Civil Justice Reform**

This rule meets the applicable standards in sections 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

**E.O. 13045, Protection of Children From Environmental Health Risks and Safety Risks**

This rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

**List of Subjects**

*46 CFR Part 10*

Fees, Reporting and recordkeeping requirements, Schools, Seamen.

*46 CFR Part 12*

Fees, Reporting and recordkeeping requirements, Seamen.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR parts 10 and 12 as follows:

## PART 10—LICENSING OF MARITIME PERSONNEL

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

**Authority:** 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110; 46 U.S.C. Chapter 71; 46 U.S.C. 7502, 7505, 7701; 49 CFR 1.45, 1.46.

Section 10.107 is also issued under the authority of 44 U.S.C. 3507.

2. Revise § 10.109 to read as follows:

**§ 10.109 Fees.**

Use table 10.109 to determine the fees that you must pay for license and certificate of registry activities in this part.

TABLE 10.109—FEES

| If you apply for... | And you need... Evaluation Then the fee is: | Examination Then the fee is: | Issuance Then the fee is: |
|---|---|---|---|
| License: | | | |
| Original upper level | $115 | $110 | $45 |
| Original lower level | 115 | 95 | 45 |
| Raise of grade | 100 | 45 | 45 |
| Modification or removal of limitation or scope | 50 | 45 | 45 |
| Endorsement | 50 | 45 | 45 |
| Renewal | 50 | 45 | 45 |
| Renewal for continuity purposes | n/a | n/a | 45 |
| Reissue, Replacement, and Duplicate | n/a | n/a | [1] 45 |
| Radio Officer License: | | | |
| Original | 65 | n/a | 45 |
| Endorsement | 50 | 45 | 45 |
| Renewal | 50 | n/a | 45 |
| Renewal for continuity purposes | n/a | n/a | 45 |
| Reissue, Replacement, and Duplicate | n/a | n/a | [1] 45 |
| Certificate of Registry: | | | |
| Original (MMD holder) | 105 | n/a | 45 |
| Original (MMD applicant) | 120 | n/a | 45 |
| Renewal | 50 | n/a | 45 |
| Renewal for continuity purposes | n/a | n/a | 45 |
| Endorsement | n/a | n/a | 45 |
| Reissue, Replacement, and Duplicate | n/a | n/a | [1] 45 |
| STCW Certification: | | | |
| Original | ([2]) | ([2]) | ([2]) |
| Renewal | ([2]) | ([2]) | ([2]) |

[1] Duplicate for document lost as result of marine casualty—No Fee.
[2] No fee.

3. Revise § 10.110 to read as follows:

**§ 10.110 Fee payment procedures.**

(a) You may pay—

(1) All fees required by this section when you submit your application; or

(2) A fee for each phase at the following times:

(i) An evaluation fee when you submit your application.

(ii) An examination fee before you take the first examination section.

(iii) An issuance fee before you receive your license or certificate of registry.

(b) If you take your examination someplace other than a Regional Examination Center (REC), you must pay the examination fee to the REC at least one week before your scheduled examination date.

(c) Unless the REC provides additional payment options, your fees may be paid as follows:

(1) Your fee payment must be for the exact amount.

(2) Make your check or money order payable to the U.S. Coast Guard, and write your social security number on the front of each check or money order.

(3) If you pay by mail, you must use either a check or money order.

(4) If you pay in person, you may pay with cash, check, or money order at Coast Guard units where Regional Examination Centers are located.

(d) Unless otherwise specified in this part, when two or more documents are processed on the same application—

(1) *Evaluation fees.* If a certificate of registry transaction is processed on the same application as a license transaction, only the license evaluation fee will be charged; and

(2) *Issuance fees.* A separate issuance fee will be charged for each document issued.

**§ 10.209 [Amended]**

4. In § 10.209(e)(4), remove the symbols ''§§'' and add, in their place, ''the tables in §§''.

**§§ 10.205, 10.207, 10.209, 10.217, and 10.219 [Amended]**

5. In addition to the amendments set forth above, in 46 CFR part 10, remove the word ''§ 10.109'' and add, in its place, the words ''table 10.109 in § 10.109'' in the following places:

(a) Section 10.205(a);

(b) Section 10.207(a);

(c) Section 10.209(a)(1), (e)(3)(i)(A), and (f)(1);

(d) Section 10.217(a)(1) and (a)(2); and

(e) Section 10.219(c).

## PART 12—CERTIFICATION OF SEAMEN

6. The authority citation for part 12 continues to read as follows:

**Authority:** 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110, 7301, 7302, 7503, 7505, 7701; 49 CFR 1.46.

7. Revise § 12.02–18 to read as follows:

**§ 12.02–18 Fees.**

(a) Use table 12.02–18 to determine the fees that you must pay for merchant mariner document activities in this part.

(b) Unless otherwise specified in this part, when two documents are processed on the same application—

(1) *Evaluation fees.* If a merchant mariner document transaction is processed on the same application as a license or certificate of registry transaction, only the license or certificate of registry evaluation fee will be charged;

(2) *Examination fees.* If a license examination under part 10 also fulfills the examination requirements in this part for a merchant mariner document, only the fee for the license examination is charged; and

(3) *Issuance fees.* A separate issuance fee will be charged for each document issued.

(c) You may pay—

(1) All fees required by this section when you submit your application; or

(2) A fee for each phase at the following times:

(i) An evaluation fee when you submit your application.

(ii) An examination fee before you take the first examination section.

(iii) An issuance fee before you receive your merchant mariner document.

(d) If you take your examination someplace other than a Regional Examination Center (REC), you must pay the examination fee to the REC at least one week before your scheduled examination date.

(e) Unless the REC provides additional payment options, your fees may be paid as follows:

(1) Your fee payment must be for the exact amount.

(2) Make your check or money order payable to the U.S. Coast Guard, and write your social security number on the front of each check or money order.

(3) If you pay by mail, you must use either a check or money order.

(4) If you pay in person, you may pay with cash, check, or money order at Coast Guard units where Regional Examination Centers are located.

(f) The Coast Guard may assess charges for collecting delinquent payments or returned checks. The Coast Guard will not provide documentation services to a mariner who owes money for documentation services previously provided.

TABLE 12.02–18—FEES

| If you apply for... | And you need... | | |
|---|---|---|---|
| | Evaluation Then the fee is: | Examination Then the fee is: | Issuance Then the fee is: |
| Merchant Mariner Document: | | | |
| Original without endorsement | $110 | n/a | $45 |
| Original with endorsement | 110 | 140 | 45 |
| Endorsement for qualified rating | 95 | 140 | 45 |
| Upgrade or Raise in Grade | 95 | 140 | 45 |
| Renewal without endorsement for qualified rating | 50 | n/a | 45 |
| Renewal with endorsement for qualified rating | 50 | 45 | 45 |
| Renewal for continuity purposes | n/a | n/a | 45 |
| Reissue, Replacement, and Duplicate | n/a | n/a | [1] 45 |
| STCW Certification: | | | |
| Original | ([2]) | ([2]) | ([2]) |
| Renewal | ([2]) | ([2]) | ([2]) |
| Other Transactions: | | | |
| Duplicate Continuous Discharge Book | n/a | n/a | 10 |
| Duplicate record of sea service | n/a | n/a | 10 |
| Copy of certificate of discharge | n/a | n/a | 10 |

[1] Duplicate for document lost as result of marine casualty—No Fee.
[2] No Fee.

**§ 12.02–27 [Amended]**

7. In § 12.02–27(e)(4) and (f), remove the symbols ''§§'' and add, in their place, ''tables in §§''.

**§§ 12.02–23 and 12.02–27 [Amended]**

8. In addition to the amendments set forth above, in 46 CFR part 12, remove the word ''§ 12.02–18'' and add, in its place, the words ''table 12.02–18 in § 12.02–18'' in the following places:

(a) Section 12.02–23(b) and (c)(2); and

(b) Section 12.02–27(a)(1) and (e)(3)(i)(A).

Dated: July 27, 1999.

**R.C. North,**

*Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.*

[FR Doc. 99–20037 Filed 8–4–99; 8:45 am]

BILLING CODE 4910–15–P

Federal Register

Thursday
August 5, 1999

## Part VI

# Department of Labor

**Employment and Training Administration**

**Consultation Papers on Performance Accountability Under Title I of the Workforce Investment Act of 1998 (WIA); Notice**

## DEPARTMENT OF LABOR

## Employment and Training Administration, Labor

## Consultation Papers on Performance Accountability Under Title I of the Workforce Investment Act of 1998 (WIA)

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** The purpose of this notice is to disseminate consultation papers for interested parties on the performance accountability system for title I of the Workforce Investment Act. There are two papers. The first paper provides a framework regarding the approach and processes for continuous improvement under title I of the Workforce Investment Act of 1998. The second paper provides a framework for the approach and processes for customer satisfaction measures under title I of the Workforce Investment Act. Interested parties have 30 days to provide comments on these papers.

**FOR FURTHER INFORMATION CONTACT:** Mr. Eric Johnson, Workforce Implementation Taskforce Office, U.S. Department of Labor, 200 Constitution Avenue, NW, Room S–5513, Washington, D.C., Telephone: (202) 219–0316 (voice) (This is not a toll free number), or 1–800–326–2577 (TDD). Information may also be found, or comments provided, at the website—http://usworkforce.org.

**SUPPLEMENTARY INFORMATION:** The Workforce Investment Act (WIA or Act) Pub. L. 105–220 (August 7, 1998) provides the framework for a reformed national workforce investment system designed to meet the needs of the nation's employers, job seekers and those who want to further their careers. One of the key reforms contained in the Act is the establishment of a comprehensive accountability system to assess the effectiveness of State and local areas in providing employment and training services. The Act requires:

- A focus on results defined by core indicators of performance;
- Measures of customer satisfaction with programs and services;
- A strong emphasis on continuous improvement;
- Annual performance levels developed as a result of negotiations among Federal, State and local partners;
- Incentive awards and financial sanctions based on State performance; and
- Reporting and dissemination of performance results.

The two papers contained in this notice focus on two of these requirements—continuous improvement and customer satisfaction.

The Department is approaching the development of this new performance accountability system on two tracks. First, definitions of the core measures of performance and temporary reporting instructions have been developed and disseminated for those States who are implementing WIA in Program Year (PY) 1999. Second, the Department is working with States and local governments to develop definitions and reporting requirements for use in PY 2000 and beyond. Part of this process will include using the lessons learned from the early implementing States and working with the Department of Education and other Federal agencies to develop common definitions for performance measures across programs. In general, the Department is considering PY 1999 to be a transition year. The comments received on these two papers will be used in developing the performance accountability system for PY 2000 and beyond.

Comments are solicited on the overall framework and approaches being proposed for customer satisfaction and continuous improvement under title I of WIA.

Signed at Washington, D.C., this 30th day of July 1999.

**Raymond L. Bramucci,**

*Assistant Secretary of Labor, Employment and Training Administration.*

### Attachment 1—Continuous Improvement Under Title I of the Workforce Investment Act of 1998

### I. Introduction

*A. Legal Framework*

The Workforce Investment Act of 1998 envisions a high performance workforce investment system in this country—a system that is customer-driven, results-oriented, flexible, and continuously improving. The Act's purpose is clearly stated as: To provide workforce investment activities that increase participants' employment, retention, earnings, and skill attainment and as a result:

- Improve the quality of the workforce;
- Reduce welfare dependency; and
- Enhance the productivity and competitiveness of the nation.

The Act envisions a workforce investment system that strives for high performance rather than settling for compliance levels of performance, and that delivers unparalleled levels of services to customers—job seekers, workers, and employers. Although WIA has numerous references to continuous improvement, this consultation paper focuses on three major provisions contained in Section 136 of the legislation:

- A comprehensive performance accountability system will include an assessment of the effectiveness of state and local areas in achieving continuous improvement of workforce investment activities. Section 136(a).
- The Governor/Secretary agreement on State adjusted levels of performance must take into account the extent to which those levels promote continuous improvement in performance. Section 136(b)(3)(A)(iv)(III).
- States must conduct ongoing evaluations of workforce investment activities to promote and implement methods for continuously improving them. Section 136(e)(1).

*B. Guiding Principles*

The U.S. Department of Labor (DOL) is using the following as guiding principles in designing a system-wide approach for continuous improvement.

- DOL's role in continuous improvement is primarily one of leadership carried out through an effective technical assistance effort.
- For the workforce investment system to strive toward performance excellence, continuous improvement practices must be embraced at all levels—local, State, and DOL Regional and National Offices.
- DOL will integrate existing quality initiatives to drive continuous improvement through a technical assistance strategy that includes award and recognition efforts, access to information on best practices, and the availability of a variety of tools.
- The Malcolm Baldrige Criteria for Performance Excellence will be used as the framework for continuously improving performance in the workforce investment system.

*C. Malcolm Baldrige Criteria*

The Malcolm Baldrige Criteria for Performance Excellence and the Baldrige Scoring Guidelines are proposed as the framework for enabling organizations within the workforce investment system to advance toward high performance. This framework is widely accepted as the standard for defining performance excellence in public and private organizations. The Criteria and Scoring Guidelines are excellent diagnostic instruments that can help leaders identify organizational strengths and key areas for improvement and work to achieve higher levels of performance. DOL will provide resources and technical assistance to

state and local organizations that are interested in using the Baldrige Criteria to help improve performance. The following is excerpted from the 1999 ''Criteria for Performance Excellence,'' and includes for informational purposes the relative point value assigned to each category:

| Award category | Point value |
|---|---|
| Leadership | 125 |
| Strategic Planning | 85 |
| Customer and Market Focus | 85 |
| Information and Analysis | 85 |
| Human Resource Focus | 85 |
| Process Management | 85 |
| Business Results | 450 |
| Total | 1,000 |

## II. Approach to Continuous Improvement

### *A. Overview of the Approach*

According to leading Baldrige experts, continuous improvement is the systematic and ongoing improvement of products, programs, services and processes by small increments and major breakthroughs. Continuous improvement is the process of building dynamic, high achieving systems within every organization, and becomes embedded in the way the organization conducts its daily activities.

DOL's role in the continuous improvement process is primarily based on providing leadership and technical assistance. In striving to improve performance as measured by the performance and customer satisfaction indicators, states and localities will need resources, information and technical assistance to help them continuously improve organizational effectiveness. The approach to continuous improvement proposed in this consultation paper envisions that DOL will play a strong, proactive role in providing States and localities with information, resources, tools, training and technical assistance to help them enhance their performance. DOL will also apply these tools to continuously improve the effectiveness of ETA National and Regional Offices.

DOL's Continuous Improvement Strategy is aimed at improving outcomes for the customers of the workforce investment system by enhancing system-wide performance. The objectives of the strategy are to:

- Effectively align system-wide resources to achieve performance excellence.
- Recognize and award top performers within the system.
- Provide organizations and individuals with learning opportunities to acquire the skills needed to operate in a high performance mode.

### *B. Continuous Improvement in State Workforce Investment Plans*

A rigorous approach to continuous improvement must be applied at all levels of the workforce investment system in order for that system to achieve the high levels of performance envisioned in the Workforce Investment Act. For States to develop a Statewide workforce investment system that incorporates a rigorous approach to continuous improvement, each State needs to start with a snapshot or baseline of its system capacity—its ''as is'' capacity at the point in time when the State Plan is developed. Ideally, States would establish both an ''as is'' state for each organization's capability to become a high performance organization (organizational effectiveness), as well as the ''as is'' state for each organization's current program results and outcomes.

In the spirit of partnership and shared accountability, State officials and DOL officials would have this data before them as the basis for establishing the baseline. From the State's perspective, the baseline or starting point for continuous improvement is simply defined as, ''where you are now.'' (This process has been further defined in the consultation paper on Reaching Agreement on State Adjusted Levels of Performance.)

The State's continuous improvement strategy becomes its approach for closing the gap between the current ''as is'' capacity and a time-sensitive ''desired state'' set forth in the State's plan. This approach addresses both the voluntary ''organizational improvement'' strategy and the more traditional compliance-oriented strategies for meeting minimum WIA specified performance measures. This offers states the opportunity to propose a rigorous and comprehensive approach to continuous improvement—one that establishes an effort to develop and improve organizational capacity (systems and processes) thus enabling committed organizations to deliver high performance, customer-focused services, as well as meeting all other requirements of the Act.

### *C. Voluntary Approach to Assessment and Benchmarking*

DOL's role is to make available to States the resources, tools and services that will help them advance toward high performance through a rigorous continuous improvement strategy. The basic tools and services would include organizational assessment tools, resources to aid in the development of improvement plans, best practices, and benchmarking for continuous improvement services. ''Benchmarking'' is the use of information and data on processes and results that represent best practices and the highest levels of performance.

As part of its continuous improvement strategy, DOL would gather and make easily accessible to States and local organization benchmarks of the highest levels of performance both in processes and results within the workforce investment system, and for similar processes and results for organizations outside the system. Benchmarks represent the very essence of high performance business practices—comparing your organization to the very best in class and striving continuously to attain that level of performance. It is a voluntary practice carried out by the best organizations as a fundamental component of their continuous improvement strategy.

### *D. Supporting Continuous Improvement Activities*

Under WIA, States are to ensure that the principle of continuous improvement is embedded in Statewide workforce investment activities. Again, this would represent the regimen for achieving the systematic and ongoing improvement of workforce investment programs, services, and processes by small increments and major breakthroughs. This continuous improvement regimen will foster enhancements in performance levels desired by each level of the system.

The State's Workforce Investment Plan must include a description of the State's strategy for developing and operating this continuous improvement approach. While each State has latitude to use a range of resources, tools and approaches for accomplishing this, the States are encouraged to work with the Employment and Training Administration (ETA) Regional Office to take advantage of resources available from or brokered through ETA's Continuous Improvement Strategy.

Generally, DOL is seeking comment on the following strategy to support the local, State, Regional and National organizations in continuous improvement—

- Establish a system of organizational and individual learning to acquire skills needed to support high performance within the workforce investment system.
- Utilize the Malcolm Baldrige Criteria for Performance Excellence as a

proven and rigorous methodology to transform local, State, and National workforce investment organizations.

- Establish an award and recognition system in support of high performing organizations at all levels.
- Work closely with early implementing States as partners to begin the system-wide transformation process toward performance excellence.
- Provide local and State organizations, Regional Offices and National Office with easily accessible information on benchmarks and best practices, as well as affordable and effective assessment tools.

**Attachment II: Customer Satisfaction Under Title I of the Workforce Investment Act of 1998**

**I. Introduction**

*A. Legal Framework*

In addition to the core measures, the Workforce Investment Act of 1998 [WIA Section 136(b)(2)(B)] states that ''the customer satisfaction indicator of performance shall consist of customer satisfaction of employers and participants with services received from the workforce investment activities authorized under this subtitle.'' The Act [Section 136(b)(3)(A)(i)] also requires that there be State-adjusted levels of performance for customer satisfaction and that ''the levels of performance established * * * shall, at a minimum—

(1) Be expressed in an objective, quantifiable, and measurable form; and

(2) Show the progress of the State toward continuously improving in performance.''

WIA draws a clear link between the core indicators of performance and customer satisfaction. The levels of performance attained for the core indicators must ''assist the State in attaining a high level of customer satisfaction'' (WIA Section 136(b)(3)(a)(iv)(I)). WIA further states that ''customer satisfaction may be measured through surveys conducted after the conclusion of participation in workforce investment activities'' (WIA Section 136(b)(2)(B)).

Effective high performance organizations listen to their customers and build their organization around meeting their customers' expectations. Determining a customer's expectations and satisfaction is an integral part of a continuous improvement strategy. Under the Workforce Investment Act, customer satisfaction is both a process of identifying and listening to customers, as well as an outcome for measuring program success.

WIA emphasizes the importance of a customer-driven workforce system by including customer satisfaction as a required measure, along with the core indicators of performance. Customer satisfaction measures provide feedback to supervisors and staff about how their actions affect customers, giving them critical information to motivate and guide continuous improvement. Customer satisfaction feedback also sends a clear message to staff, management, and customers that customers matter.

*B. Guiding Principles*

DOL is using the following guiding principles in designing a system-wide approach for measurement of customer satisfaction:

- Customer satisfaction is the foundation of an organization's strategy for continuous improvement.
- Customer satisfaction should be measured after completion of the service and should be quantifiable.
- Customer satisfaction surveys need to contain a set of required questions to form a customer satisfaction indicator.
- Comparability is an important element in negotiating customer satisfaction performance levels and in providing opportunities for benchmarking and sharing best practices.
- States and local organizations are encouraged to add customized questions to inform their efforts to align resources or redesign processes to achieve better results.

**II. Approach**

*A. Overview of the Approach*

The Act, in requiring a customer satisfaction indicator for employers and participants, presents a general framework for developing a national approach. Customer satisfaction indicators are a specific part of the performance accountability system and are the foundation of an organization's strategy for continuous improvement. They provide a guide to achieving the vision and goals of the Act, and provide a focused and structured process for listening to and learning from customers.

To meet the customer satisfaction requirements for Title I, DOL proposes the use of customer satisfaction surveys. There are two purposes for surveying customers. The first is to produce an outcome measure for each State as part of the performance accountability system. This will be accomplished by a small set of required questions that will form a customer satisfaction index. The second purpose is to gain customer feedback to help in improving processes and services. This will be accomplished through a set of recommended questions addressing each service component and any additional questions that the State and local areas choose to ask, depending on their particular needs and service mix.

DOL will provide guidelines for collecting customer satisfaction data that will lay out the strategy and standards (e.g., sample size, response rate) for implementing the survey while providing as much flexibility for the states and localities as possible. The survey will contain the required questions that form the indicator. In addition, to cover many of the most commonly delivered services, the guidelines will suggest sets of questions that States may choose to use along with the indicator questions. The advantage of using these questions will be that they provide additional opportunities for benchmarking and learning from the best practices of others.

*B. Proposed Customer Satisfaction Strategy*

Consistent with the Workforce Investment Act, measures of customer satisfaction:

- Must address participants and employers;
- Must be quantifiable;
- Must be able to track progress toward improvement;
- Must be comparable across states;
- May be measured at the conclusion of participation; and
- Must promote continuous improvement in performance along with the core measures.

The Act calls for assessment of two customer categories: (1) participants, and (2) employers. Consistent with the approach taken for core measures, two options are presented. The first option is to report the participant indicator for each of the four groups:

- Adults
- Dislocated Workers
- Youth 19–21 served with youth funds, and
- Youth 14–18.

The second option is to aggregate the four groups to provide a single indicator of participant satisfaction.

The advantages of reporting each of the four groups separately are to:

1. Allow for a more comprehensive analysis of results. An analysis by group will provide an assessment of the degree to which core indicator performance contributes to customer satisfaction.

2. Allow program managers to evaluate the degree to which they are satisfying different customer segments.

The advantage of the second option is that it will simplify customer surveying

and reporting, and will emphasize high expectations for all of the groups. It should be noted that, under both options, the four groups identified above would also include those participating in incumbent worker training. Customer surveying for other services that are not covered under Title I would be at the discretion of other one-stop partner programs.

For employers, it is proposed that services to employers be grouped into the following three service categories: (1) informational, (2) labor exchange, and (3) special services such as rapid response. Capturing customer satisfaction within each of these three categories will allow a clearer picture of service to employers and is one way to expand the system's ability to be accountable for services to a significant customer base. While States would not be required to report the three customer indicators for employers at a National level, they may utilize this method as a way to better understand their employer customers.

*C. Collecting Customer Satisfaction Information*

There are a number of different methods to collect customer satisfaction information.

- The simplest approach is to train staff to listen to the customers they serve and to ask questions that elicit customer needs while they are providing service.
- Focus groups and group interviews are another strategy.
- A trained manager or staff person can circulate in the resource center where people are waiting and ask questions informally to gain a better understanding of customer needs and concerns.
- Suggestion boxes are also a way of gathering information.
- Telephone surveys of customers are used to gather specific information.

To meet the WIA customer satisfaction requirements for Title I, the method proposed in this paper is customer satisfaction surveys. This is the most effective method that allows state and national aggregation of comparable, quantifiable data.

As part of a comprehensive continuous improvement strategy, organizations will use a combination of strategies in addition to the proposed surveys, since each serves a somewhat different purpose and provides different types of information.

*D. Proposed Measures*

The customer satisfaction indicator will be derived from surveys that must have a minimum set of common questions asked in a common format to assure comparability. These common questions are used to form an index, which is a single score. An index has the advantage of addressing different dimensions of the customer's experience, and is more reliable than a single question. The creation of an index provides a proven methodology to capture common customer satisfaction information across programs and organizations that can be aggregated to a State and National level. The responses of the embedded questions will be rolled up to the State level and reported annually at a specified time. This approach will continue to be modified as the Department receives feedback and validation through consultation with the workforce investment system.

Satisfaction for all customers in all service categories will be measured through a set of 3–5 questions that together form the indicator. We propose that the surveys include these three questions:

- ''Overall, how satisfied were you with the services received?'' (Ranging from 1—Very Dissatisfied to 10—Very Satisfied)
- ''How likely would you be to refer others to these services?'' (Ranging from 1—Not Very Likely to 10—Very Likely)
- ''If you were in a similar situation again, how likely would you be to use these services?'' (Ranging from 1—Not Very Likely to 10—Very Likely)

The above questions provide an indicator sensitive enough to record change but less prone to random fluctuations common to indicators that are composed of a single question. [This protects States from being sanctioned when random error depresses the indicator's performance level and prevents states from being rewarded for high performance resulting solely from random error.] The satisfaction score will be reported on a 0–100 scale. To simplify reporting to the Federal level, scores for each service category can be aggregated into two satisfaction indices, one for participants and one for employers.

*E. Comparability Across States*

Comparability is important for several reasons. First, customer satisfaction performance levels are negotiated along with the core measures. One of the factors affecting those negotiations are ''how the levels compare with state adjusted levels of performance established for other States * * *.''

Comparability also provides for fairness in determining incentives and sanctions. Additionally, comparability contributes to continuous improvement across the system. Having comparable measures will allow benchmarks to be developed to promote continuous improvement. Comparability will also facilitate the sharing of best practices within and among the States.

*F. When To Measure*

Consistent with WIA, it is proposed that customer satisfaction be measured at completion of the service. For continuous improvement purposes, it is particularly important to measure customer satisfaction as close to the point of service for the following reasons:

- The immediacy of a person's impression makes a significant difference in terms of what he/she will remember;
- The highest response rate is obtained at point of service;
- Due to the time delay to track outcome-related data (e.g., the core indicators), this immediate customer feedback provides much needed real time data for staff and program managers.

The point in time will vary based on the type of customer and level of service received.

Participant Customers

For self-help/information and core services, the survey will be conducted at the point of contact, immediately after the service is provided. For intensive and training services, the participant will be surveyed after the completion of services (this does not mean necessarily that they have ''exited'' or been ''terminated'' from a program). Additional surveying may be conducted as part of follow-up to determine other aspects of satisfaction. Such surveys are proposed to be optional, given the additional reporting burden they would create.

Employer Customers

For informational services, the survey will be conducted at the point of contact, immediately after the service is provided. For labor exchange and special services, the employer will be surveyed after the completion of services.

*G. Using Customer Satisfaction in a Continuous Improvement Process*

The customer satisfaction indicators, in addition to being a specific part of the performance accountability system, are also the foundation of an organization's strategy for continuous improvement. The indicators provide a guide to achieving the vision and goals of the Act. Additional questions of local importance to customers, program

operators and service providers deepen the understanding of how to reach these goals.

By adding customized questions, organizations can use customer satisfaction as part of an integrated continuous improvement approach. They can determine where to focus more resources, or redesign programs or sequences of services in order to achieve better results. This use of customer satisfaction will not be federally mandated in order to maintain local flexibility, and to recognize differing approaches in program designs that vary depending upon the service mix and each area's economic and demographic conditions.

*H. Definition of Measures*

Measurement of Participant Customers

The degree to which participant customers are satisfied with the core, intensive and training services provided by the workforce investment system.

Measurement of Employer Customers

The degree to which employer customers are satisfied with the informational, labor exchange, and special services provided by the workforce investment system.

*I. Pilot Testing*

DOL will work with a number of pilot sites to better determine the range of customer satisfaction levels (i.e., baseline data), and to explore technical issues of survey timing, methodology, and questionnaire construction. The sites will be selected based on interest and previous experience with customer satisfaction surveys. DOL will use the results of the pilot testing and the feedback from this consultation paper to issue guidance or technical standards for the survey methodology.

[FR Doc. 99–20119 Filed 8–4–99; 8:45 am]

BILLING CODE 4510–30–P

# Reader Aids

**Federal Register**

Vol. 64, No. 150

Thursday, August 5, 1999

## CUSTOMER SERVICE AND INFORMATION



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## FEDERAL REGISTER PAGES AND DATES, AUGUST



## CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

## REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

## RULES GOING INTO EFFECT AUGUST 5, 1999

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Air quality implementation plans; approval and promulgation; various States:
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**FEDERAL COMMUNICATIONS COMMISSION**

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**FEDERAL TRADE COMMISSION**

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**HEALTH AND HUMAN SERVICES DEPARTMENT**

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## COMMENTS DUE NEXT WEEK

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- Texas; comments due by 8-9-99; published 7-19-99

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- Colorado; comments due by 8-13-99; published 7-14-99

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- Polymer and resin production facilities (Group IV); comments due by 8-9-99; published 6-8-99

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- New Mexico; comments due by 8-9-99; published 7-8-99
- Ohio; comments due by 8-11-99; published 7-12-99
- Texas; comments due by 8-9-99; published 7-8-99
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Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
- Tennessee; comments due by 8-11-99; published 7-12-99

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- Interstate ozone transport reduction—
  - Nitrogen oxides budget trading program; Section 126 petitions; findings of significant contribution and rulemaking; comments due by 8-9-99; published 6-24-99

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Cytokinins, etc. (plant regulators); comments due by 8-10-99; published 6-11-99

Toxic substances:
- In vitro dermal absorption rate testing of certain chemicals of interest to Occupational Safety and Health Administration; comments due by 8-9-99; published 6-9-99

**FEDERAL COMMUNICATIONS COMMISSION**

Common carrier services:
- Telecommunications Act of 1996; implementation—
  - Competitive networks promotion in local telecommunications markets; comments due by 8-13-99; published 8-2-99
  - Competitive networks promotion in local telecommunications markets; comments due by 8-13-99; published 8-2-99
  - Competitive networks promotion in local telecommunications markets; comments due by 8-13-99; published 8-2-99

Radio stations; table of assignments:
- Montana; comments due by 8-9-99; published 6-29-99
- Nevada; comments due by 8-9-99; published 6-29-99
- Utah; comments due by 8-9-99; published 6-29-99

**FEDERAL TRADE COMMISSION**

Trade regulation rules:
- Funeral industry practices; comments due by 8-11-99; published 7-2-99

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Food and Drug Administration**

Food for human consumption:
- Dietary supplements; Center for Food Safety and

## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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**H.R. 4/P.L. 106–38**

National Missile Defense Act of 1999 (July 22, 1999; 113 Stat. 205)

**H.R. 2035/P.L. 106–39**

To correct errors in the authorizations of certain programs administered by the National Highway Traffic Safety Administration. (July 28, 1999; 113 Stat. 206)

**Last List July 22, 1999**

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