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# federal register

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October 25, 1999

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# Rules and Regulations

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

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 966

**[Docket No. FV99–966–1 IFR]**

### Tomatoes Grown in Florida; Decreased Assessment Rate

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

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

**SUMMARY:** This rule decreases the assessment rate established for the Florida Tomato Committee (Committee) for the 1999–2000 and subsequent fiscal periods from $0.03 per 25-pound container to $0.025 per 25-pound container of tomatoes handled. The Committee is responsible for local administration of the marketing order which regulates the handling of tomatoes grown in Florida. Authorization to assess tomato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** October 26, 1999. Comments received by December 27, 1999, will be considered prior to issuance of a final rule.

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

**FOR FURTHER INFORMATION CONTACT:** Doris Jamieson, Southeast Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276; telephone: (941) 299–4770, Fax: (941) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR part 966), regulating the handling of tomatoes grown in Florida, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Florida tomato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable Florida tomatoes beginning August 1, 1999, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule deceases the assessment rate established for the Florida Tomato Committee for the 1999–2000 and subsequent fiscal periods from $0.03 per 25-pound container to $0.025 per 25-pound container of tomatoes.

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

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

The Committee met on September 10, 1999, and unanimously recommended 1999–2000 expenditures of $2,088,900 and an assessment rate of $0.025 per 25-pound container of tomatoes. In comparison, last year's budgeted expenditures were $1,926,000. The assessment rate of $0.025 is $0.005 lower than the rate currently in effect. For the previous fiscal period, the Committee had planned to use funds from its authorized reserves to cover some of its approved expenses. The

reserve fund was larger than the Committee believed it needed for program operations. However, there was a larger than expected supply of assessable tomatoes during 1998–99, and instead of the reduction, the amount in the reserve fund increased. In another effort to reduce the amount in the reserve fund, the Committee unanimously recommended reducing the assessment rate and using reserve funds to pay some of its operating expenses.

The major expenditures recommended by the Committee for the 1999–2000 fiscal period include $436,000 for salaries, $241,000 for research, $1,000,000 for education and promotion, and $150,000 for Market Access Program export promotion. Budgeted expenses for these items in 1998–99 were $364,000, $212,000, $900,000, and $200,000 respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Florida tomatoes. Tomato shipments for the year are estimated at 50,000,000 25-pound containers which should provide $1,250,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve (currently $1,879,557) will be kept within the maximum permitted by the order (§ 966.44; approximately one fiscal period's expenses).

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

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1999–2000 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

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

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

There are approximately 75 producers of tomatoes in the production area and approximately 65 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on the industry and committee data for the 1998–99 season, the average annual f.o.b. price for fresh Florida tomatoes during the 1998–99 season was around $7.17 per 25-pound container, and total fresh shipments for the 1998–99 season are estimated at 56.7 million 25-pound containers of tomatoes. Committee data indicates that approximately 20 percent of the Florida handlers handle 80 percent of the total volume shipped outside the regulated area. Based on this information, the shipment information for the 1998–99 season, and the 1998–99 season average price, the majority of handlers would be classified as small entities as defined by the SBA. The majority of producers of Florida tomatoes also may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 1999–2000 and subsequent fiscal periods from $0.03 per 25-pound container to $0.025 per 25-pound container of tomatoes. The Committee unanimously recommended 1999–2000 expenditures of $2,088,900 and an assessment rate of $0.025 per 25-pound container. The assessment rate of $0.025 is $0.005 lower than the 1998–99 rate. The quantity of assessable tomatoes for the 1999–2000 season is estimated at 50,000,000. Thus, the $0.025 rate should provide $1,250,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 1999–2000 year include $436,000 for salaries, $241,000 for research, $1,000,000 for education and promotion, and $150,000 for Market Access Program export promotion. Budgeted expenses for these items in 1998–99 were $364,000, $212,000, $900,000 and $200,000, respectively.

For the 1998–99 fiscal period, the Committee decided to use reserve funds to cover some of its authorized expenses. The reserve fund was larger than the Committee believed it needed for program operations. However, there was a larger than expected supply of assessable tomatoes in 1998–99, and instead of the anticipated reduction, the amount in the reserve fund increased. In another effort to reduce the amount in the reserve fund, the Committee unanimously recommended reducing the assessment rate. The funds collected from assessments, along with money from the reserve fund will be adequate to cover the Committee's expenditures for the 1999–2000 fiscal year. Pursuant to § 966.44, the Committee is authorized to maintain an operating reserve not to exceed approximately one fiscal period's expenses.

The Committee reviewed and unanimously recommended 1999–2000 expenditures of $2,088,900 which included increases in salaries, research, and education and promotion programs. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Executive Subcommittee, Finance Subcommittee, Research Subcommittee, and Education and Promotion Subcommittee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research projects to the tomato industry. The assessment rate of $0.025 per 25-pound container of assessable tomatoes was then determined by dividing the total recommended budget by the quantity of assessable commodity, estimated at 50,000,000 25-pound containers for the 1999–2000 fiscal period. This is approximately $624,900 below the anticipated expenses, which the Committee determined to be acceptable as a means of reducing its operating reserves.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 1999–2000 season could range between $6.09 and

$9.70 per 25-pound container of tomatoes. Therefore, the estimated assessment revenue for the 1999–2000 fiscal period as a percentage of total grower revenue could range between .26 and .41 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the Florida tomato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the September 10, 1999, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

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

A small business guide on complying with fruit, vegetable, and speciality crop marketing agreements and orders may be viewed at the following web site: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 1999–2000 fiscal period began on August 1, 1999, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable tomatoes handled during such fiscal period; (2) this action decreases the assessment rate for assessable tomatoes beginning with the 1999–2000 fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

**List of Subjects in 7 CFR Part 966**

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

For the reasons set forth in the preamble, 7 CFR part 966 is amended as follows:

## PART 966—TOMATOES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 966 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 966.234 is revised to read as follows:

**§ 966.234 Assessment rate.**

On and after August 1, 1999, an assessment rate of $0.025 per 25-pound container is established for Florida tomatoes.

Dated: October 18, 1999.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 99–27742 Filed 10–22–99; 8:45 am]

BILLING CODE 3410–02–P

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Parts 701, 703, 704, 709, 712, 713, 723, 790, 791 and 792

### Credit Unions; Miscellaneous Technical Amendments

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final Rule.

**SUMMARY:** NCUA is correcting minor errors or omissions made in several rules. These amendments are technical rather than substantive.

**DATES:** This rule is effective October 25, 1999.

**FOR FURTHER INFORMATION CONTACT:** Chrisanthy J. Loizos, Staff Attorney, Division of Operations, Office of General Counsel, (703) 518–6540, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

**SUPPLEMENTARY INFORMATION:** NCUA has issued final rules over several years that contain minor technical mistakes or omissions. Through various amendments, NCUA is correcting the errors found in the following rules.

**12 CFR 701.2**

NCUA is removing this section because it currently indicates that a publication entitled ''Federal Credit Union Bylaws'' is incorporated by reference into NCUA's regulations. However, NCUA does not have such a publication approved by the Office of the Federal Register.

**12 CFR 701.21(a) and 12 CFR 703.20(c)**

On March 5, 1998, § 701.27 was removed and incorporated into part 712, entitled ''Credit Union Service Organizations (CUSOs).'' 63 FR 10756. Therefore, NCUA is replacing references to § 701.27 with part 712 in these sections.

**12 CFR 703.20(a) and 12 CFR 704.7(d)**

Prior to September 29, 1998, member business loans were excluded from part 703 through § 701.21(h). On that date, NCUA issued an interim final rule that removed the member business loan provisions from § 701.21(h) and relocated them to part 723. 63 FR 51799. This change became final on May 27, 1999. 64 FR 28729. When part 723 was issued, NCUA unintentionally failed to amend § 703.20(a) to reflect the change. Similarly, NCUA is also replacing the reference to § 701.21(h) within § 704.7(d) to part 723.

**12 CFR 709.5(e)**

Section 709.5(e) refers to a list of claims found in paragraph (b) of this section. When paragraph (b)(9) was added to § 709.5(b), NCUA failed to amend paragraph (e) to reflect the change. 62 FR 12949, Mar. 19, 1997. Therefore, NCUA is now amending the last sentence of § 709.5(e).

**12 CFR Part 712**

Part 712 was adopted with the title to § 712.9 mislabeled in its table of contents. 63 FR 10756, Mar. 5, 1998. Therefore, NCUA is correcting the table of contents to represent the title of § 712.9 accurately.

**12 CFR 712.3(a)**

NCUA recently amended this section, but the amended language inadvertently repeated the first sentence of this paragraph. 64 FR 33187, June 22, 1999.

NCUA is removing the duplicative sentence.

**12 CFR 713.2**

NCUA recently adopted this section with a typographical error. 64 FR 28720, May 27, 1999. NCUA is replacing the word ''potentials'' with the word ''potential.''

**12 CFR 723.1(b)(3)**

NCUA is removing the word ''or'' from the phrase ''amount equal to or less than $50,000'' found in this paragraph. This language, relating to the definition of a member business loan, was adopted originally in an interim final rule and adopted in final form on May 27, 1999. 63 FR 51800, Sept. 29, 1998 and 64 FR 28730. NCUA is amending this rule to mirror the definition of member business rule found in the Federal Credit Union Act at 12 U.S.C. 1757a(c)(1)(B)(iii).

**12 CFR 790.2(b)(7) and (b)(16)**

NCUA changed the name of its Office of Information Systems to the Office of Technology and Information Systems. 59 FR 47072, Sept. 14, 1994. At the time the rule was amended, the name change was not reflected in paragraph (b)(7). Therefore, NCUA is correcting this omission. During the same rulemaking, NCUA created the Office of Corporate Credit Unions at § 790.2(b)(16). 59 FR 47072, Sept. 14, 1994. NCUA is changing a punctuation mark in this paragraph to distinguish clearly the duties listed for the office.

**12 CFR 791.18(e)**

Part 790 formerly consisted of rules regarding NCUA's structure and the disclosure of official records. NCUA restructured part 790 and moved the rules relating to the Freedom of Information Act to part 792. 54 FR 18476, May 1, 1989. The pertinent rules referenced in this section were redesignated to part 792, but NCUA did not amend this section to reflect the change. Therefore, NCUA is correcting the outdated citations with references to part 792.

**12 CFR 792.54(b)**

This paragraph refers to § 792.23. However, § 792.23 was redesignated to § 792.55. 63 FR 14338, March 25, 1998. Therefore the reference in § 792.54(b) will be changed to refer to § 792.55.

**12 CFR 792.55(a) and 12 CFR 792.56(a)**

Both of these sections refer to § 792.22. However, § 792.22 was redesignated to § 792.54. 63 FR 14338, March 25, 1998. Therefore, the references to § 792.22 will be changed to refer to § 792.54.

**12 CFR 792.66(b)(2)**

This section, formerly § 792.34(b)(2), was adopted with a typographical error by referring to System NCUA–4 rather than System NCUA–15. 54 FR 18476, May 1, 1989 and 60 FR 31912, Jun. 19, 1995. NCUA has consistently given notice that System NCUA–4 is the Verified Employee Mailing List and that System NCUA–15 contains investigative reports regarding criminal activity. Therefore, NCUA is amending the reference within § 792.66(b)(2) from System NCUA–4 to System NCUA–15. Additionally, the name of System NCUA–15 was changed from Investigative Reports Involving Possible Felonies and/or Violations of the Federal Credit Union Act to Investigative Reports Involving Any Crime, Suspected Crime or Suspicious Activity Against a Credit Union, NCUA. 61 FR 8690, March 5, 1996. NCUA is amending this section to adopt the new name of System NCUA–15.

**Regulatory Procedures**

*Final Rule Under the Administrative Procedure Act*

The amendments to the final rule are technical rather than substantive. NCUA finds good cause that notice and public comment are unnecessary under sec. 553(b)(B) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B).

*Effective Date*

NCUA also finds good cause to dispense with the 30-day delayed effective date requirement under sec. 553(d)(3) of the APA. The rule is technical rather than substantive. The rule will, therefore, be effective immediately upon publication of this notice.

*Regulatory Flexibility Act*

An initial regulatory flexibility analysis under the Regulatory Flexibility Act is required only when an agency is required to publish a general notice of proposed rulemaking for any proposed rule. 5 U.S.C. 603. As noted previously, NCUA has determined that it is not necessary to publish a notice of proposed rulemaking for this rule. Accordingly, an initial regulatory analysis is not required. Moreover, since this final rule imposes no new requirements and makes only technical amendments, NCUA has determined and certifies that this rule will not have any significant economic impact on a substantial number of small credit unions (primarily those under $1 million in assets).

*Small Business Regulatory Enforcement Fairness Act*

Title II of the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121) provides, generally, for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act. 5 U.S.C. 551. The Office of Management and Budget has reviewed this rule and has determined that for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 it is not a major rule.

*Paperwork Reduction Act*

NCUA has determined that the final rule does not increase paperwork requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and regulations of the Office of Management and Budget.

*Executive Order 12612*

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. A portion of this final rule will apply to all federally-insured credit unions. This final rule will not have a direct effect 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. NCUA has determined that this final rule does not constitute a significant regulatory action for purposes of the executive order.

**List of Subjects**

*12 CFR Part 701*

Credit unions, Incorporation by reference, Credit.

*12 CFR Part 703*

Credit unions, Investments, Credit.

*12 CFR Part 704*

Credit unions, Corporate credit unions, Credit.

*12 CFR Part 709*

Credit unions, Liquidation.

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*12 CFR Part 723*

Credit Unions, Credit, Reporting and recordkeeping requirements.

*12 CFR Part 790*

Credit unions.

*12 CFR Part 791*

Credit unions, Sunshine Act, Reporting and recordkeeping requirements.

*12 CFR Part 792*

Administrative practice and procedure, Credit unions, Freedom of Information Act, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on October 12, 1999.

**Becky Baker,**

*Secretary of the Board.*

For the reasons stated in the preamble, NCUA amends 12 CFR chapter VII as set forth below:

## PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 reads as follows:

**Authority:** 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

### § 701.2 [Removed and Reserved]

2. Remove and reserve § 701.2.

### § 701.21 [Amended]

3. In § 701.21(a), remove the word ''§ 701.27'' and add, in its place, the words ''Part 712''.

## PART 703—INVESTMENT AND DEPOSIT ACTIVITIES

4. The authority citation for part 703 continues to read as follows:

**Authority:** 12 U.S.C. 1757(7), 1757(8), 1757(15).

### § 703.20 [Amended]

5. In § 703.20(a), remove the words ''and 701.23'' and add in their place, the words ''701.23, and part 723''; and in § 703.20(c), remove the word ''§ 701.27'' and add, in its place, the words ''part 712''.

## PART 704—CORPORATE CREDIT UNIONS

6. The authority citation for part 704 continues to read as follows:

**Authority:** 12 U.S.C. 1762, 1766(a), 1781, and 1789.

### § 704.7 [Amended]

7. In § 704.7(d), remove the word ''§ 701.21(h)'' and add, in its place, the words ''part 723''.

## PART 709—INVOLUNTARY LIQUIDATION OF FEDERAL CREDIT UNIONS AND ADJUDICATION OF CREDITOR CLAIMS INVOLVING FEDERALLY INSURED CREDIT UNIONS IN LIQUIDATION

8. The authority citation for part 709 continues to read as follows:

**Authority:** 12 U.S.C. 1766; Pub. L. 101–73, 103 Stat. 183, 530 (1989) (12 U.S.C. 1787 *et seq.*).

### § 709.5 [Amended]

9. In § 709.5(e), remove ''(b)(8)'' and add, in its place ''(b)(9)''.

## PART 712—CREDIT UNION SERVICE ORGANIZATIONS (CUSOs)

10. The authority citation for part 712 continues to read as follows:

**Authority:** 12 U.S.C. 1756, 1757(5)(D) and (7)(I), 1766, 1782, 1785, and 1786.

### § 712.3 [Amended]

11–12. In § 712.3(a), remove one sentence that reads ''An FCU can invest in or loan to a CUSO only if the CUSO is structured as a corporation, limited liability company, or limited partnership.''

## PART 713—FIDELITY BOND AND INSURANCE COVERAGE FOR FEDERAL CREDIT UNIONS

13. The authority citation for part 713 continues to read as follows:

**Authority:** 12 U.S.C. 1761a, 1761b, 1766(a), 1766(h), 1789(a)(11).

### § 713.2 [Amended]

14. In § 713.2, remove ''potentials'' and add, in its place ''potential''.

## PART 723—MEMBER BUSINESS LOANS

15. The authority citation for part 723 continues to read as follows:

**Authority:** 12 U.S.C. 1756, 1757, 1757A, 1766, 1785, 1789.

### § 723.1 [Amended]

16. In § 723.1(b)(3), remove ''to or less'' and add, in its place, ''to less''.

## PART 790—DESCRIPTION OF NCUA; REQUESTS FOR AGENCY ACTION

17. The authority citation for part 790 continues to read as follows:

**Authority:** 12 U.S.C. 1766, 1789, 1795f.

### § 790.2 [Amended]

18. In § 790.2(b)(7), remove ''Information Systems'' and add, in its place, ''Technology and Information Systems''.

19. In § 790.2(b)(16), remove the comma after the word ''manner'' and add a semicolon in its place.

## PART 791—RULES OF NCUA BOARD PROCEDURE; PROMULGATION OF NCUA RULES AND REGULATIONS; PUBLIC OBSERVATION OF NCUA BOARD MEETINGS

20. The authority citation for part 791 continues to read as follows:

**Authority:** 12 U.S.C. 1766, 1789 and 5 U.S.C. 522b.

### § 791.18 [Amended]

21. In § 791.18(e), remove all the references to ''790'' and add, in their place, ''792''.

## PART 792—REQUESTS FOR INFORMATION UNDER THE FREEDOM OF INFORMATION ACT AND PRIVACY ACT, AND BY SUBPOENA; SECURITY PROCEDURES FOR CLASSIFIED INFORMATION

22. The authority citation for part 792 continues as follows:

**Authority:** 5 U.S.C. 301, 552, 552a, 552b; 12 U.S.C 1752a(d), 1766, 1789, 1795f; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235; E.O. 12958, 60 FR 19825, 3 CFR, 1995 Comp., p. 333.

### § 792.54 [Amended]

23. In § 792.54(b), remove ''§ 792.23'' and add, in its place, ''§ 792.55''.

### § 792.55 [Amended]

24. In § 792.55(a), remove ''§ 792.22'' and add, in its place, ''§ 792.54''.

### § 792.56 [Amended]

26. In § 792.56(a), remove ''§ 792.22(a)'' and add, in its place, ''§ 792.54(a)''.

### § 792.66 [Amended]

27. In § 792.66(b)(2), remove ''NCUA–4'' and add, in its place, ''NCUA–15''; and remove the words ''Investigative Reports Involving Possible Felonies and/or Violations of the Federal Credit Union Act'' and add, in their place ''Investigative Reports Involving Any Crime, Suspected Crime or Suspicious Activity Against a Credit Union, NCUA''.

[FR Doc. 99–27567 Filed 10–22–99; 8:45 am]

BILLING CODE 7535–01–P

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Parts 121 and 125

### Government Contracting Programs

**AGENCY:** Small Business Administration.

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

**SUMMARY:** The Small Business Administration (SBA) is amending its regulations to address contract bundling due to changes set forth in the Small Business Reauthorization Act of 1997 (Pub. L. 105–135, 111 Stat. 2617). In addition, this rule restates SBA's current authority to appeal to the head of a procuring agency decisions made by the agency that SBA believes to adversely affect small businesses.

**DATES:** Effective Date: December 27, 1999.

*Comment Date:* Comments due on or before December 27, 1999.

**ADDRESSES:** Address comments to Linda G. Williams, Deputy Associate Deputy Administrator for Government Contracting and Minority Enterprise Development, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Anthony Robinson, Office of Government Contracting, (202) 205–6465.

**SUPPLEMENTARY INFORMATION:** Section 15(a) of the Small Business Act, 15 U.S.C. 644(a), authorizes SBA to appeal to the head of a procuring agency certain decisions made by the agency that SBA believes adversely affects small businesses. Section 413(b)(1) of Pub. L. 105–135 reinforced existing appeal rights and further defined section 15(a) of the Small Business Act for ''an unnecessary or unjustified bundling of contract requirements.'' It left intact, however, SBA's current appeal rights. In this regard, the Joint Explanatory Statement of the bundling provisions contained in Public Law 105–135 as set forth in the Congressional Record specifically provided that ''(n)othing in [the bundling amendments] is intended to amend or change in any way the existing obligations imposed on a procuring activity or the authority granted to the Small Business Administration under section 15(a) of the Small Business Act.'' 143 Cong. Rec. S11522, S11526 (daily ed. Oct. 31, 1997).

On January 13, 1999, SBA published a proposed rule in the **Federal Register** requesting public comments on implementation of sections 411–417 of the Small Business Reauthorization Act of 1997 (Pub. L. 105–135). *See* 64 FR 2153, Jan. 13, 1999. The statutory amendments recognize that the consolidation of contract requirements may be necessary and justified, in some cases. The rule requires that each Federal agency, to the maximum extent practicable, take steps to avoid unnecessary and unjustified bundling of contract requirements that preclude small business participation as prime contractors. The rule also requires each agency to eliminate obstacles to small business participation as prime contractors.

The comment period for 64 FR 2153 closed on March 15, 1999. SBA received 32 comments in response to the proposed rule. The comments are comprised of 11 (34 percent) from Government agencies, 11 (34 percent) from trade associations, 9 (28 percent) from small-businesses, and 1 (3 percent) from a large business.

SBA specifically requested comments on three difficult definitional areas: (1) What constitutes substantial bundling?; (2) what constitutes measurably substantial benefits as a justification for bundling?; and (3) what quantifiable test constitutes substantial if reduction of administrative or personnel costs is the sole basis for bundling? The comments and recommendations received by SBA to these questions and to other provisions of the proposed rule are discussed below in the section-by-section analysis.

SBA also identifies in the section-by-section analysis below the number of specific comments relating to particular provisions of the rule. Not all comments received addressed the issues contained in the proposed rule. For instance, several commenters identified a particular provision, but spoke of the problems caused by bundling generally, and not how the provision itself should be changed. Other commenters stated that they agreed with or disagreed with a particular provision without offering any reasoning or alternatives. Thus, SBA has not identified every comment that it received in response to a particular provision and responded to them.

Consistent with the statutory amendments, this rule defines ''bundling,'' identifies the circumstances under which such ''bundling'' may be necessary and justified, and permits SBA to appeal bundling actions that it believes to be unnecessary and unjustified to the head of the procuring agency. It also authorizes two or more small businesses to form a contract team and for that team to be considered a small business for purposes of a bundled procurement requirement, provided that each small business partner to the teaming arrangement individually qualifies as a small business under the SIC code for the requirement. Finally, the rule restates SBA's current authority to appeal to the head of an agency other procurement decisions made by procuring activities that SBA believes will adversely affect small business.

The rule reorganizes and amends 13 CFR 125.2 to more clearly explain SBA's current rights under section 15(a) of the Small Business Act. The rule sets forth a procuring activity's current responsibilities to submit a proposed procurement to SBA for review whenever the procurement includes in its statement of work goods or services currently being performed by a small business and the magnitude of the quantity or estimated dollar value of the proposed procurement would render small business prime contract participation unlikely. It also requires a procuring activity to submit a proposed procurement to SBA for review where a proposed procurement for construction seeks to package or consolidate discrete construction projects. In addition, it authorizes SBA to appeal disagreements over the suitability of a particular acquisition for a small business set-aside first to the head of the contracting activity, and then to the head of the agency. This authority is currently granted to SBA by section 15(a) of the Small Business Act and was not affected by the addition of new rights regarding ''bundling.'' This rule does not apply to contracts to be *awarded and performed* entirely outside of the United States.

In implementing the new statutory bundling provisions, the rule also requires a procuring activity to submit a proposed procurement to SBA for review whenever the procurement includes in its statement of work a ''bundled'' requirement, and authorizes SBA to appeal to the head of the contracting activity, and then to the head of the agency, ''bundled'' requirements that SBA believes are not necessary and justified. Whenever the procurement includes in its statement of work a ''substantial bundling'' of contract requirements, Section 15(a)(3) of the Small Business Act requires that the procuring activity document the benefits to be derived from the bundled contract and to justify its use.

The Small Business Act does not define ''substantial bundling.'' The SBA defines substantial bundling in this interim rule.

The rule also defines what constitutes ''measurably substantial benefits'' for purposes of determining whether

bundling is necessary and justified. The rule defines ''measurably substantial benefits'' to include, in any combination, or in the aggregate, cost savings; quality improvements that will save time, improve, or enhance performance or efficiency; reduction in acquisition cycle times; better terms and conditions; or any other benefits. In assessing whether benefits would be achieved through bundling, the analysis must compare the cost that was charged by small businesses for the work that they performed and, where available, the cost that could have been or could be charged by small businesses for the work not previously performed by small business. To proceed with a bundled procurement, a procuring activity must quantify the identified benefits as noted herein and explain how their impact would be measurably substantial.

The statute recognizes that in some circumstances bundling should be permitted because of the benefits that flow to the Government as a result of consolidation of requirements. Congress determined that those benefits may overcome any impact on small business in certain circumstances. The statutory language requires contracting officers to demonstrate ''measurably substantial benefits'' and the Joint Explanatory Statement calls for meaningful, enforceable controls to preclude unnecessary and unjustified bundling. Pursuant to the statute, there are two requirements that must be satisfied before items are bundled. The benefits to be derived by the Government must be ''measurable'' and they must be ''substantial.'' In order to be ''measurable,'' the benefits must be quantifiable. Pursuant to the statutory language, however, quantifiable benefits are not sufficient to justify bundling unless they are also ''substantial.'' SBA developed objective, quantifiable criteria for determining when a consolidation of procurements will provide ''measurably substantial benefits,'' and, thus, when bundling will be necessary and justified.

The proposed regulation (64 FR 2153) identified areas in which there may be ''measurably substantial benefits,'' including cost savings or price reduction; quality improvements that will save time or improve or enhance performance or efficiency; reduction in acquisition cycle times; or better terms and conditions. The proposed rule also established specific criteria for measuring whether these benefits or improvements, which are to be derived, are ''substantial.'' Those criteria are maintained in this interim rule.

The proposed regulation (64 FR 2153) also reiterated the statutory requirement that the reduction of administrative or personnel costs alone cannot be a justification for bundling unless the administrative or personnel costs are expected to be ''substantial'' in relation to the dollar value of the procurement (including options) to be consolidated. In determining whether the reduction of administrative or personnel costs are ''substantial,'' the statute clearly required a comparison between the administrative or personnel costs without bundling to those anticipated with bundling. In response to public comment, this interim rule implements a quantifiable test, outlined below, for determining whether administrative or personnel cost savings are expected to be ''substantial.''

SBA is concerned that bundled contracts will render small business participation as prime contractors unlikely. Section 125.2(b)(5) of this interim rule authorizes SBA's Procurement Center Representatives (PCRs) to recommend alternative procurement methods to agencies to provide prime contract opportunities. These strategies include, under appropriate circumstances: (1) Breaking up the procurement into smaller discrete procurements to render them suitable for small business set-asides; (2) breaking out discrete components, where practicable, to be set aside for small business; or (3) when issuing multiple awards against a single solicitation, reserving one or more awards for small companies.

**Section by Section Analysis**

SBA received 10 comments concerning proposed § 121.103(f)(3). This section authorizes an exclusion from SBA's affiliation rules for a procurement that qualifies as a ''bundled'' requirement. Eight comments were in strong support of this section. One comment thought that this section should ''address the implications of past performance.'' SBA believes that past performance should have no bearing on this regulatory provision for several reasons. Section 121.103(f)(3) is a *size* regulation. Past performance is more typically associated with responsibility, or a firm's ability to perform a specific contract opportunity. A firm's ability to perform a given contract, based on capacity, past performance, or other responsibility criteria, does not affect whether the concern is a small business or not. Moreover, this provision is a size rule for joint ventures or teaming relationships. A joint venture is normally a one-time association to perform a particular contract. There most likely is not any past performance history on the joint venture entity. In addition, one commenter suggested that the proposed rule reference a number of existing FAR provisions dealing with liability, consent to subcontracts, and performance and payment bonds. SBA believes existing Federal Acquisition Regulation (FAR) provisions are adequate for purposes of this rule and sees no need to amend this section.

SBA received two comments concerning § 125.2(a). One commenter thought that a literal reading of this section requires all awards to be made to small businesses. SBA first notes that the language contained in the regulations repeats almost verbatim the statutory language contained in section 15(a) of the Small Business Act. SBA does not agree that language requires what the commenter suggests. The statutory and regulatory language requires award to a small business only where ''SBA and the procuring or disposal agency'' determine one of four things to be present. If the procuring or disposal agency does not agree that one of those circumstances exists and SBA does not appeal that decision to the head of the agency, award need not be made to a small business. Another commenter suggested extending the rule to include nonprofit agencies contracting with the Government. SBA's size regulations have historically defined a ''small business concern'' to be a business entity organized for profit. This rule is not the appropriate vehicle to consider changes to that longstanding position, and SBA makes no changes in that regard.

SBA received no comments concerning § 125.2(b)(1), which generally discusses the duties of SBA PCRs. As such, § 125.2(b)(1) remains as proposed.

SBA received eight comments concerning § 125.2(b)(2), which requires the procuring agency to provide a copy of a proposed acquisition strategy to the PCR 30 days prior to issuance or to the Government Contracting Area Office if a PCR is not assigned to the buying activity. This section is consistent with FAR 19.202–1(e)(1) (Encouraging Small Business Participation). Most of the comments expressed concern about possible delays in SBA's response. The procedures and time frames for PCR response are set forth in FAR 19.402(c)(2) and FAR 19.505 (48 CFR 19.402 and 19.505) which SBA believes are adequate. Therefore, the interim rule remains as proposed.

SBA received four comments concerning § 125.2(b)(3) that requires the procuring agency to give the PCR a written statement of explanation and justification for bundling. The statement

must explain why certain small business accommodations are not possible. One commenter thought this section would be burdensome and adds little value given the other criteria in the rule. Sections 411 through 417 of SBA's Reauthorization Act specifically require this written justification. As such, it remains as proposed in this interim rule.

SBA received one comment concerning § 125.2(b)(4), which requires PCRs to identify capable small businesses, including small business teams, for particular requirements on bundled contracts. The commenter suggested a 30-calendar-day requirement for such an identification process to avoid or limit acquisition delays. Timeframes regarding PCR actions are currently addressed in 48 CFR 19.5. This section remains as proposed.

Six commenters endorsed the proposed change to § 125.2(b)(5), which provides the SBA's PCRs with a number of alternatives to recommend to procurement officials who are considering the bundling of contracts into one larger contract. These commenters also recommended that proposed § 125.2(b)(5) be modified to include the following two additional alternatives: recommending the solicitation and resultant contract specifically state the small business subcontracting goals which are expected of the contractor awardee, and recommending that the small business subcontracting goals be based on contract dollars versus subcontract dollars. SBA finds that these suggestions have merit and have incorporated them in this interim rule.

One commenter suggested a time frame to develop alternatives to bundling. FAR 19.402(c)(2) already specifies the time frame.

SBA received three comments concerning § 125.2(b)(6), which authorizes a PCR to appeal to the head of the contracting activity and subsequently to the secretary of the department, or the head of the agency, in cases where there is disagreement between the PCR and the contracting officer. One commenter suggested that this section be clarified by stating that the appeal be initiated within 30 calendar days of following receipt of the contracting activity's acquisition strategy statement. SBA believes that existing provisions in FAR 19.505 adequately address this issue.

SBA received one comment concerning § 125.2(b)(7), which requires the PCR to work with the procuring activity's Small Disadvantaged Business Utilization Specialists (SADBUS). The commenter stated that term was changed to Small Business Specialist in 1997. This term was changed by the Federal Acquisition Streamlining Act (FASA) in 1995. Accordingly SBA will incorporate the recommended change.

SBA received one comment concerning § 125.2(d)(1), which defines certain identified terms used in these regulations. The comment related to the impact of the rule on simplified acquisitions and administrative lead-time. Since the interim rule establishes a dollar value standard for the determination of substantial bundling, this section need not be changed from the proposed rule.

SBA received no comments concerning § 125.2(d)(2), which restates the statutory mandates. This section is not changed in this interim rule.

SBA received 38 separate comments concerning § 125.2(d)(3) and its subsections. Paragraph (d)(3)(i) mandates market research to determine whether bundling is necessary and justified. We believe that the paragraph, as written, meets the congressional intent, and it will remain as proposed. The comments received concerning § 125.2(d)(3)(iii)(A) were diverse, but none offered definitive criteria from which to quantify measurably substantial benefits. SBA has reconsidered its original proposal and has formulated a two tiered approach to quantify measurably substantial benefits. In the first approach, depending upon the estimated dollar value of the procurement (including options), the contracting activity must quantify the identified benefits and explain how their impact would be measurably substantial. SBA has established percentages to quantify the benefits which must be met. In the second approach, where the benefits do not meet the thresholds established by SBA, the Assistant Secretaries with responsibility for acquisition matters (Service Acquisition Executives) or the Under Secretary of Defense for Acquisition and Technology (for other Defense Agencies) in the Department of Defense, and the Deputy Under Secretary or equivalent for civilian agencies can determine on a non-delegable basis, that the consolidated requirement is critical to the success of the agency's mission. The procedures in § 125.2(d)(3)(iii) (A) and (B) are not applicable to consolidated procurements that are subject to the cost comparisons conducted in accordance with OMB Circular A–76.

SBA received two comments concerning § 125.2(d)(4), which requires agencies, in cases of substantial bundling, to document their procurement strategies and to include a determination that the anticipated benefits justify the use of bundling. One commenter believed that the rule should state that SBA will assist the contracting officer in identifying less obvious obstacles to small business participation. Because this is implicitly stated elsewhere in the rule, SBA believes that re-statement here is unnecessary.

One commenter recommended deletion of § 125.2(d)(4)(iii), as its might be confusing. SBA believes that the provision is clear, and does not change it from the proposed rule.

SBA received six comments concerning proposed § 125.2(d)(5), which specified values for small business evaluation criteria. Some commenters believed that this proposal unduly involved the SBA in another agency's contractor selection process. SBA believes that its statutory mandate provides authority to require this evaluation criteria. Accordingly, this section remains unchanged in this interim rule.

SBA received eight comments on § 125.6(g). This section provides that when the small business members of a team submitting an offer are exempt from affiliation, the performance of work requirements shall apply to the cooperative effort of the team or joint venture, not its individual members. Seven commenters recommended that for services, this section should be strengthened to require that the cooperative effort of the team or joint venture perform at least 70 percent of the cost of the contract incurred for personnel. Changing the percentages of work required by small businesses is beyond the scope of this rule.

Another commenter suggested clarifying language regarding contractual obligations, similar to an earlier recommendation. SBA finds this change unnecessary.

**Defining Substantial Bundling**

The SBA sought comments on appropriate ways to define substantial bundling (for example, in terms of threshold contract value or a threshold number of geographic locations and Standard Industrial Classification (SIC) codes). Several commenters recommended that substantial bundling not be defined and to leave determinations of substantial bundling to the discretion of the contracting officer. The supporting rationale for this approach is that if the Congress wanted to define substantial bundling they would have done so in statute. The absence of a clear-cut definition of substantial bundling, however, creates a

number of serious administrative issues, which, if unresolved, would defeat congressional intent. SBA's approach is to provide a clear and reasonable standard. For example, in evaluating the level of substantial bundling, the Congress directed that the Federal Procurement Data Center track bundling of contract awards at the five million-dollar level. While SBA believes that this level is too low for the purpose of defining ''substantial bundling,'' it demonstrates that a single dollar standard for defining substantial bundling is consistent with congressional intent. Several other commenters supported an objective standard for determining what constitutes ''substantial bundling.''

Bundling is any contract consolidation that renders a contract likely to be unsuitable for award to a small business concern due to the aggregate dollar value of the anticipated award; the diversity, size, or specialized nature of the elements of the performance specified; the geographic dispersion of contract performance sites; or any combination of these three criteria. SBA determined that the aggregate dollar value of the anticipated award is the single most important criteria for determining substantial bundling. The other criteria, while significant, do not rise to the level of importance as the aggregate dollar value of anticipated award. In addition, the other criteria are generally correlated to high aggregate dollar levels.

As such, this interim rule defines substantial bundling as the aggregation of two or more contracts whose combined average annual value is at least $10 million. Typically, contracts are described in terms of their total value over the life of the contract. Thus, for example, a one-year contract with four one-year options with a value of $10 million for the base year and each option year, would be considered a $50 million contract. SBA determined that the $10 million substantial bundling threshold will meet the statutory mandate to avoid unnecessary and unjustified bundling of contract requirements that precludes small-business participation as prime contractors. Establishing the $10 million threshold will not unduly burden federal agencies with the administrative requirements of this regulation. Using the threshold, contracting officers and the public can easily determine whether a given consolidation of requirements constitutes substantial bundling. For example, a consolidation of two contracts each with an average value of $6 million into one contract with an average annual value of $12 million constitutes substantial bundling.

**Defining Measurably Substantial Benefits**

When a procuring activity intends to proceed with a ''bundled'' requirement, it must document that the bundling is necessary and justified. If it cannot do so, the procuring activity cannot go forward with the consolidation. In order for bundling to be necessary and justified, the consolidation must achieve ''measurably substantial benefits.'' In its proposed rule, SBA specifically asked for comments on how SBA could best objectively define this term. SBA received 11 comments regarding how ''measurable substantial benefits'' should be defined. Of these eleven, four were from Federal Government agencies, six from trade associations, and one from a small business firm.

Several commenters suggested that ''measurably substantial benefits'' cannot be defined since the criteria set forth in the legislation are not directly comparable. SBA recognizes the lack of direct comparability in the criteria as commonly understood. However, to meet Congressional intent, SBA has determined that for purposes of this interim rule all anticipated benefits be expressed in dollars. This will permit computation of benefits as a percentage of the total anticipated contract award.

After considering all comments received, SBA concluded that measurably substantial benefits must be expressed as a percentage of the anticipated contract award value (including options). This is necessary in order to facilitate comparisons among the varying benefits to be derived. In other words, a reduction in cycle time must be converted to a dollar value in order to be compared to the other criteria such as cost savings. Without a common denominator such as dollars, or percent of dollars, the careful analysis and justification the law contemplates would not be possible. The inability to express the various competing criteria without a common denominator would, in effect, prevent evaluation. Several commenters offered a percentage savings. Two recommended 25 percent and one recommended 20 percent. One commenter advocated flexibility and did not propose a percentage. Even though the commenters recommended a higher percentage than those adopted by SBA in this interim rule, SBA believes that its approach provides an appropriate balance between the efficiencies of larger procurements and the socio-economic benefits derived through the use of small businesses.

SBA determined that measurably substantial benefits should be quantified using a two tiered approach: (1) Benefits equivalent to 10 percent if the contract value (including options) is $75 million or less; or (2) benefits equivalent to 5 percent if the contract value (including options) is over $75 million. The benefits may include cost savings and/or price reduction, quality improvements that will save time or improve or enhance performance or efficiency, reduction in acquisition cycle times, better terms and conditions and any other benefits that individually, in combination, or in the aggregate would lead to the above benefits. The rule also permits the Assistant Secretaries with responsibility for acquisition matters (Service Acquisition Executives) or the Under Secretary of Defense for Acquisition and Technology (for other Defense Agencies) in the Department of Defense, and the Deputy Secretary or equivalent for civilian agencies, on a non-delegable basis, to determine that a bundled contract is necessary and justified when: (1) There are benefits that do not meet the thresholds defined above but, in the aggregate, are critical to the agency's mission success; and (2) the procurement strategy provides for maximum practicable participation by small businesses.

The procedures described above do not apply to consolidated procurements that are subject to the cost comparisons conducted in accordance with OMB Circular A–76.

SBA believes that this approach takes into consideration the likelihood that savings will vary depending on the size of the contract. SBA has no historical data on cost savings associated with bundled contracts from which to determine a quantifiable measure. However, SBA does maintain records on the value of bundled contracts that we review. Based on data that SBA has collected over the past 4 years, it was determined that the majority of bundled contracts fell within a range between $50 million and $75 million. We believe that the highest percentage to quantify the benefits should be applied to contracts of $75 million or less. At levels above $75 million, benefits equivalent to 5 percent of the contract value (including options) would still equate to measurably substantial benefits.

**Defining Measurably Substantial Administrative or Personnel Cost Savings**

This interim rule reiterates the statutory requirement that the reduction of administrative or personnel costs

alone cannot be a justification for bundling unless the administrative or personnel costs are expected to be ''substantial'' in relation to the dollar value of the procurement (including options) to be consolidated. In determining whether the reduction of administrative or personnel costs are ''substantial,'' the statute clearly requires a comparison between the administrative or personnel costs without bundling to those anticipated with bundling. SBA is committed to implementing a quantifiable test for determining whether administrative or personnel cost savings are expected to be ''substantial.''

SBA specifically requested comments on how best to define ''substantial'' administrative or personnel cost savings. SBA received six comments regarding defining ''measurably substantial administrative or personnel cost savings,'' two from Federal agencies, three from trade associations, and one from a small business concern. Several commenters offered specific percentages to define substantial administrative savings. Commenters suggested 10 percent, 20 percent and 25 percent. SBA determined that a saving of at least 10 percent of the anticipated contract award (including options) will be deemed substantial for purposes of this section.

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

SBA certifies that this interim rule, if adopted in final form, would not be a significant rule within the meaning of Executive Order 12866. The rule does not impose costs upon the businesses, which may be affected by it. It is not likely to have an annual economic impact of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

SBA has determined that this interim rule may have a significant beneficial economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. §§ 601–612. The interim rule can potentially apply to all small businesses that are performing or may want to perform on the prime contract opportunities of the Federal Government. While there is no precise estimate of the number of small entities or the extent of the economic impact, SBA believes that a significant number of small businesses would be affected. SBA has submitted a complete Initial Regulatory Flexibility Analysis of this interim rule to the Chief Counsel for Advocacy of the Small Business Administration. For a copy of this analysis, please contact Anthony Robinson at (202) 205–6465.

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

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

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

**List of Subjects**

*13 CFR Part 121*

Government procurement, Government property, Grant programs-business, Individuals with disabilities, Loan programs-business, Small businesses.

*13 CFR Part 125*

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

For the reasons stated in the preamble, SBA amends 13 CFR part 121 and 125 as follows:

## PART 121—SMALL BUSINESS SIZE REGULATIONS

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

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

2. Section 121.103, revise paragraphs (f)(3)(i) to read as follows:

**§ 121.103 What is affiliation?**

* * * * *

(f) * * *

(3) * * *

(i) A joint venture or teaming arrangement of two or more business concerns may submit an offer as a small business for a Federal procurement without regard to affiliation under paragraph (f) of this section so long as each concern is small under the size standard corresponding to the SIC code assigned to the contract, provided:

(A) The procurement qualifies as a ''bundled'' requirement, at any dollar value, within the meaning of § 125.2(d)(1)(i) of this chapter; or

(B) The procurement is other than a ''bundled'' requirement within the meaning of § 125.2(d)(1)(i) of this chapter, and:

(*1*) For a procurement having a revenue-based size standard, the dollar value of the procurement, including options, exceeds half the size standard corresponding to the SIC code assigned to the contract; or

(*2*) For a procurement having an employee-based size standard, the dollar value of the procurement, including options, exceeds $10 million.

* * * * *

## PART 125—GOVERNMENT CONTRACTING PROGRAMS

1. The authority citation for 13 CFR part 125 is revised to read as follows:

**Authority:** 15 U.S.C. 634(b)(6), 637 and 644; 31 U.S.C. 9701, 9702.

2. In § 125.2, redesignate paragraphs (a) and (b) as paragraphs (b) and (c), respectively, revise newly designated paragraph (b), and add new paragraphs (a) and (d) to read as follows:

**§ 125.2 Prime contracting assistance.**

(a) *General.* Small business concerns must receive any award or contract, or any contract for the sale of Government property, that SBA and the procuring or disposal agency determine to be in the interest of:

(1) Maintaining or mobilizing the Nation's full productive capacity;

(2) War or national defense programs;

(3) Assuring that a fair proportion of the total purchases and contracts for property, services and construction for the Government in each industry category are placed with small business concerns; or

(4) Assuring that a fair proportion of the total sales of Government property is made to small business concerns.

(b) *PCR and procuring activity responsibilities.* (1) SBA Procurement Center Representatives (PCRs) are generally located at Federal agencies and buying activities which have major contracting programs. PCRs review all acquisitions not set-aside for small businesses to determine whether a set-aside is appropriate.

(2) A procuring activity must provide a copy of a proposed acquisition strategy (e.g., Department of Defense Form 2579, or equivalent) to the applicable PCR (or to the SBA Office of Government Contracting Area Office serving the area in which the buying activity is located if a PCR is not assigned to the procuring activity) at least 30 days prior to a solicitation's issuance whenever a proposed acquisition strategy:

(i) Includes in its description goods or services currently being performed by a small business and the magnitude of the quantity or estimated dollar value of the proposed procurement would render small business prime contract participation unlikely;

(ii) Seeks to package or consolidate discrete construction projects; or

(iii) Meets the definition of a bundled requirement as defined in paragraph (d)(1)(i) of this section.

(3) Whenever any of the circumstances identified in paragraph (b)(2) of this section exist, the procuring activity must also submit to the applicable PCR (or to the SBA Office of Government Contracting Area Office serving the area in which the buying activity is located if a PCR is not assigned to the procuring activity) a written statement explaining why:

(i) If the proposed acquisition strategy involves a bundled requirement, the procuring activity believes that the bundled requirement is necessary and justified under the analysis required by paragraph (d)(3)(iii) of this section; or

(ii) If the description of the requirement includes goods or services currently being performed by a small business and the magnitude of the quantity or estimated dollar value of the proposed procurement would render small business prime contract participation unlikely, or if a proposed procurement for construction seeks to package or consolidate discrete construction projects:

(A) The proposed acquisition cannot be divided into reasonably small lots to permit offers on quantities less than the total requirement;

(B) Delivery schedules cannot be established on a basis that will encourage small business participation;

(C) The proposed acquisition cannot be offered so as to make small business participation likely; or

(D) Construction cannot be procured as separate discrete projects.

(4) In conjunction with their duties to promote the set-aside of procurements for small business, PCRs will identify small businesses that are capable of performing particular requirements, including teams of small business concerns for larger or bundled requirements (see § 121.103(f)(3) of this chapter).

(5)(i) If a PCR believes that a proposed procurement will render small business prime contract participation unlikely, or if a PCR does not believe a bundled requirement to be necessary and justified, the PCR shall recommend to the procurement activity alternative procurement methods which would increase small business prime contract participation. Such alternatives may include:

(A) Breaking up the procurement into smaller discrete procurements;

(B) Breaking out one or more discrete components, for which a small business set-aside may be appropriate; and

(C) Reserving one or more awards for small companies when issuing multiple awards under task order contracts.

(i) Where bundling is necessary and justified, the PCR will work with the procuring activity to tailor a strategy that preserves small business prime contract participation to the maximum extent practicable.

(ii)The PCR will also work to ensure that small business participation is maximized through subcontracting opportunities. This may include:

(A) Recommending that the solicitation and resultant contract specifically state the small business subcontracting goals which are expected of the contractor awardee; and

(B) Recommending that the small business subcontracting goals be based on total contract dollars instead of subcontract dollars.

(6) In cases where there is disagreement between a PCR and the contracting officer over the suitability of a particular acquisition for a small business set-aside, whether or not the acquisition is a bundled or substantially bundled requirement within the meaning of paragraph (d) of this section, the PCR may initiate an appeal to the head of the contracting activity. If the head of the contracting activity agrees with the contracting officer, SBA may appeal the matter to the secretary of the department or head of the agency. The time limits for such appeals are set forth in 19.505 of the Federal Acquisition Regulation (FAR) (48 CFR 19.505).

(7) PCRs will work with a procuring activity's Small Business Specialist (SBS) to identify proposed solicitations that involve bundling, and with the agency acquisition officials to revise the acquisition strategies for such proposed solicitations, where appropriate, to increase the probability of participation by small businesses, including small business contract teams, as prime contractors. If small business participation as prime contractors appears unlikely, the SBS and PCR will facilitate small business participation as subcontractors or suppliers.

* * * * *

(d) Contract bundling—(1) Definitions—(i) Bundled requirement or bundling. The term ''bundled requirement or bundling'' refers to the consolidation of two or more procurement requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract that is likely to be unsuitable for award to a small business concern due to:

(A) The diversity, size, or specialized nature of the elements of the performance specified;

(B) The aggregate dollar value of the anticipated award;

(C) The geographical dispersion of the contract performance sites; or

(D) Any combination of the factors described in paragraphs (d)(1)(i) (A), (B), and (C).

(ii) *Separate smaller contract:* A separate smaller contract is a contract that has previously been performed by one or more small business concerns or was suitable for award to one or more small business concerns.

(iii) *Substantial bundling:* Substantial bundling is any contract consolidation, which results in an award whose average annual value is $10 million or more.

(2) *Requirement to foster small business participation:* The Small Business Act requires each Federal agency to foster the participation of small business concerns as prime contractors, subcontractors, and suppliers in the contracting opportunities of the Government. To comply with this requirement, agency acquisition planners must:

(i) Structure procurement requirements to facilitate competition by and among small business concerns, including small disadvantaged, 8(a) and women-owned business concerns; and

(ii) Avoid unnecessary and unjustified bundling of contract requirements that inhibits or precludes small business participation in procurements as prime contractors.

(3) *Requirement for market research.* (i) In addition to the requirements of paragraph (b)(2) of this section and before proceeding with an acquisition strategy that could lead to a contract containing bundled or substantially bundled requirements, an agency must conduct market research to determine whether bundling of the requirements is necessary and justified. During the market research phase, the acquisition team should consult with the applicable PCR (or if a PCR is not assigned to the procuring activity, the SBA Office of Government Contracting Area Office serving the area in which the buying activity is located).

(ii) The procuring activity must notify each small business which is performing a contract that it intends to consolidate that requirement with one or more other requirements at least 30

days prior to the issuance of the solicitation for the bundled or substantially bundled requirement. The procuring activity, at that time, should also provide to the small business the name, phone number and address of the applicable SBA PCR (or if a PCR is not assigned to the procuring activity, the SBA Office of Government Contracting Area Office serving the area in which the buying activity is located).

(iii) When the procuring activity intends to proceed with an acquisition involving bundled or substantially bundled procurement requirements, it must document the acquisition strategy to include a determination that the bundling is necessary and justified, when compared to the benefits that could be derived from meeting the agency's requirements through separate smaller contracts.

(A) The procuring activity may determine a consolidated requirement to be necessary and justified if, as compared to the benefits that it would derive from contracting to meet those requirements if not consolidated, it would derive measurably substantial benefits. The procuring activity must quantify the identified benefits and explain how their impact would be measurably substantial. The benefits may include cost savings and/or price reduction, quality improvements that will save time or improve or enhance performance or efficiency, reduction in acquisition cycle times, better terms and conditions, and any other benefits that individually, in combination, or in the aggregate would lead to:

(*1*) Benefits equivalent to 10 percent if the contract value (including options) is $75 million or less; or

(*2*) Benefits equivalent to 5 percent if the contract value (including options) is over $75 million.

(B) Notwithstanding paragraph (d)(3)(iii)(A) of this section, the Assistant Secretaries with responsibility for acquisition matters (Service Acquisition Executives) or the Under Secretary of Defense for Acquisition and Technology (for other Defense Agencies) in the Department of Defense and the Deputy Secretary or equivalent in civilian agencies may, on a non-delegable basis determine that a consolidated requirement is necessary and justified when:

(*1*) There are benefits that do not meet the thresholds set forth in paragraph (d)(3)(iii)(A) of this section but, in the aggregate, are critical to the agency's mission success; and

(*2*) Procurement strategy provides for maximum practicable participation by small business.

(C) Notwithstanding paragraph (d)(3)(iii)(A) and (B) of this section, a consolidated requirement is necessary and justified when it is subject to the cost comparison conducted in accordance with OMB Circular A–76.

(D) The reduction of administrative or personnel costs alone shall not be a justification for bundling of contract requirements unless the administrative or personnel cost savings are expected to be substantial, in relation to the dollar value of the procurement to be consolidated (including options). To be substantial, such cost savings must be at least 10 percent of the contract value (including options).

(E) In assessing whether cost savings and/or a price reduction would be achieved through bundling, the procuring activity and SBA must compare the price that has been charged by small businesses for the work that they have performed and, where available, the price that could have been or could be charged by small businesses for the work not previously performed by small business.

(4) *Substantial bundling.* Where a proposed procurement strategy involves a substantial bundling of contract requirements, the procuring agency must, in the documentation of that strategy, include a determination that the anticipated benefits of the proposed bundled contract justify its use, and must include, at a minimum:

(i) The analysis for bundled requirements set forth in paragraph (d)(3)(iii) of this section;

(ii) An assessment of the specific impediments to participation by small business concerns as prime contractors that will result from the substantial bundling;

(iii) Actions designed to maximize small business participation as prime contractors, including provisions that encourage small business teaming for the substantially bundled requirement; and

(iv) Actions designed to maximize small business participation as subcontractors (including suppliers) at any tier under the contract or contracts that may be awarded to meet the requirements.

(5) *Significant subcontracting opportunity.* (i) Where a bundled or substantially bundled requirement offers a significant opportunity for subcontracting, the procuring agency must designate the following factors as significant factors in evaluating offers:

(A) A factor that is based on the rate of participation provided under the subcontracting plan for small business in the performance of the contract; and

(B) For the evaluation of past performance of an offeror, a factor that is based on the extent to which the offeror attained applicable goals for small business participation in the performance of contracts.

(ii) Where the offeror for such a bundled contract qualifies as a small business concern, the procuring agency must give to the offeror the highest score possible for the evaluation factors identified in paragraph (d)(5)(i) of this section.

5. In § 125.6, add new paragraph (g) to read as follows:

**§ 125.6 Prime contractor performance requirements (limitations on subcontracting).**

* * * * *

(g) Where an offeror is exempt from affiliation under § 121.103(f)(3) of this chapter and qualifies as a small business concern, the performance of work requirements set forth in this section apply to the cooperative effort of the team or joint venture, not its individual members.

Dated: October 19, 1999.

**Aida Alvarez,**

*Administrator.*

[FR Doc. 99–27801 Filed 10–22–99; 8:45 am]

BILLING CODE 8025–01–P

## FEDERAL TRADE COMMISSION

## 16 CFR Part 241

## Guides for the Dog and Cat Food Industry

**AGENCY:** Federal Trade Commission.

**ACTION:** Recession of the Guides for the Dog and Cat Food Industry; announcement of enforcement policy.

**SUMMARY:** On March 18, 1999, the Commission published a **Federal Register** document initiating the regulatory review of the Federal Trade Commission's (''Commission'' or ''FTC'' Guides for the Dog and Cat Food Industry (''Dog and Cat Food Guides'' or ''Guides'') and seeking public comment. The Commission has now completed its review, and this document announces the Commission's decision to rescind the Guides.

**EFFECTIVE DATE:** October 25, 1999.

**ADDRESSES:** Requests for copies of this document should be send to the Consumer Response Center, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The document is available on the Internet at the Commission's website. http://www.flc.gov.

**FOR FURTHER INFORMATION CONTACT:** Jock Chung, Attorney, Federal Trade Commission, Division of Enforcement, 600 Pennsylvania Avenue NW, S–4302, Washington, DC 20580, (202) 326–2984, e-mail <jchung@flc.gov.>.

**SUPPLEMENTARY INFORMATION:** .

## I. Introduction

The Dog and Cat Food Guides address claims about food for dogs or cats, including dry, semimost, frozen, canned, and other commercial foods manufactured or marketed for consumption by domesticated dogs or cats, as well as claims about special candy for dogs and cats, but not claims about animal medicines or remedies. The Guides apply to ''industry members,'' defined as any person, firm, corporation, or organization engaged in the importation, manufacture, sale or distribution of dog or cat food. In summary, the Dog and Cat Food Guides advise against:

(1) Misrepresenting dog or cat food in any material respect; for example, misrepresenting the composition, form, suitability, quality, color, flavor of any dog or cat food; misrepresenting that any dog or cat food meets the dietary or nutritional needs of dogs and cats; or misrepresenting that any dog or cat food will provide medicinal or therapeutic benefits;

(2) Misrepresenting that any dog or cat food is fit for human consumption or has been made under the same sanitary conditions as food for humans;

(3) Misrepresenting the processing methods used in the manufacture or processing of any dog or cat food;

(4) Making false statements about the conduct of competitors or about the quality of competitors' products;

(5) Misrepresenting the length of time a dog or cat food company has been in business, its rank in the industry, or that it owns a laboratory or other testing facilities;

(6) Using deceptive endorsements or testimonials, or deceptively claiming that any dog or cat food has received an award;

(7) Offering for sale any dog or cat food when the offer is not a bona fide effort to sell the product so offered as advertised and at the advertised price;

(8) Failing to include details, such as the manner in which the guarantor will perform and the identity of the guarantor, for all guarantees, or warranties offered for dog or cat food; and

(9) Misrepresenting the price at which any dog or cat food may be purchased.

As part of the Commission's ongoing review of all current Commission rules and guides, the Commission published a **Federal Register** notice on March 18, 1999, 64 FR 13368, seeking comments about the Guides' overall costs and benefits, and the continuing need for the Guides. The Commission received six comments in response.[1]

One comment, from the American Pet products Manufacturers Association, Inc., favors eliminating the Guides. It suggests that the Association of American Feed Control Officials (''AAFCO'')[2] Model Pet Food Regulations (AAFCO Model Regulations) now act as ''an authoritative guide for regulator to review labels.'' It further suggests that elimination of the guides will eliminate confusion, and notes that ''dog and cat food manufacturers are compelled to conform to general truth in advertising standards set by FTC for all consumer goods.''

The remaining five comments support retaining the Guides. In general, these comments suggest that the Guides are useful in providing guidance and setting standards for dog and cat food advertising, while the AAFCO Model Regulations, and the individual state regulations patterned after the AAFCO Model Regulations, are limited to setting standards for pet food labeling. These comments further generally suggest that the Guides impose minimal costs because they ''are essentially similar to other regulations.''

After carefully reviewing the comments and the Guides, the Commission has concluded that the Guides no longer are needed. The Commission, therefore, has determined to rescind the Dog and Cat Food Guides. In the following part of this notice, the Commission explains its decision o rescind the Guides, and provides guidance to industry members, who must continue to comply with the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 41–58, when labeling and advertising dog and cat food.

## II. Reasons for Rescission

The purpose of guides is to assist industry members in complying with the FTC Act, and especially with Section 5 of the FTC Act, 15 U.S.C. 45(a)(1), which prohibits ''unfair or deceptive acts or practices in or affecting commerce.'' Guides are particularly useful when they resolve uncertainty over what claims are likely to be considered deceptive. The current Guides, however, in many sections only advise against making misrepresentations on various subjects and thus do not elaborate on the requirements of section 5 in a meaningful way. Except for topics also addressed by pet food model regulations drafted by AAFCO or animal food regulations issued by the Food and Drug Administration (''FDA''), the Guides do not provide substantial guidance regarding what specific claims the Commission is likely to find deceptive.

The AAFCO Model Regulations provide detailed requirements for labeling pet food, including dog and cat food.[3] For example, the Model Regulations contain detailed feeding protocols for proving growth claims for dog foods and for cat foods, and define various terms used to advertise pet food.[4] The FDA also has issued regulations covering animal food labeling, 21 CFR Part 501. These regulations contain detailed requirements for the labeling of packaged animal foods, including pet foods. Portions of these regulations can also provide guidance to industry members about, for example, the terminology to be used to identify pet

[1] The Commission's request for public comment elicited six comments from industry, educational, and regulatory entities, and no comments from consumers or consumer groups: (1) American Feed Industry Association; (2) State of Delaware Department of Agriculture; (3) American Pet Products Manufacturers Association, Inc.; (4) Pet Food Institute; (5) University of Minnesota College of Veterinary Medicine; and (6) Division of Animal Feeds of the Food and Drug Administration's Center for Veterinary Medicine. These comments are on the public record in file number P994242 as document numbers B25346100001 through B25346100006, and are available for viewing in Room 130 at the Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580, from 8:30 AM to 5 PM, Monday-Friday.

[2] AAFCO is an association open to officials or employees of any state, dominion, federal, or other governmental agency responsible for ''regulating the production, labeling, distribution, or sale of animal feeds or livestock remedies.'' Among other things, AAFCO promotes uniform laws, regulations, and enforcement policies by creating model regulations, including Model Pet Food Regulations setting requirements for pet food labels. At present, AAFCO has representatives from agencies in all fifty states and Puerto Rico, as well as from Canada and federal agencies.

[3] The AAFCO Model Regulations specify labeling requirements for pet food (including food for dogs, cats, and other pets). The Model Regulations require that certain nutritional information appear on labels, and prohibit a variety of misrepresentations, *e.g.*, Regulation PF2(f) prohibits graphics or pictures that misrepresent the contents of the package. The Model Regulations cover claims about nutrition, ingredients, and product characteristics, such as that a pet food controls tartar.

[4] For example, Regulation PF8(b)(1)a. requires that any dog food product labeled as being ''lean'' must contain no more than 9% crude fat for products containing less than 20% moisture, no more than 7% crude fat for products containing 20% or more but less than 65% moisture, and no more than 4% crude fat for products containing 65% or more moisture. Regulation PF8(b)(1)b. places similar requirements on any cat food product labeled as being ''lean.''

foods,[5] to describe pet food ingredients,[6] or to describe flavoring.[7]

Several commentators stated that they do not consider the AAFCO Model Regulations to be sufficient to protect consumers, primarily because the AAFCO Model Regulations (and state regulations based on the AAFCO Model Regulations) do not cover advertising. By rescinding the Guides, however, the Commission is not relinquishing jurisdiction over the labeling and advertising of dog and cat food. In fact, pet food labeling and advertising, including labeling and advertising for foods for pets other than dogs and cats, must still comply with Section 5 of the FTC Act. In enforcing Section 5, however, the Commission will be unlikely to challenge advertising claims under the FTC Act that are consistent with labeling claims that satisfy the requirements of the AAFCO Model Regulations or the regulations issued by the FDA. As in any area of policy, the Commission strives to minimize regulatory burdens on industry by avoiding conflicts with other federal and state regulatory agencies.

For those topics not addressed by the AAFCO Model Regulations or by FDA's regulations, the Dog and Cat Food Guides provide only limited guidance, and do not resolve demonstrated uncertainty regarding what claims are likely to be deceptive. For example, §§ 241.3, 241.6, 241.7, and 241.11 of the Guides merely admonish industry members not to misrepresent various characteristics of dog or cat food.[8] The Commission does not believe that it is necessary to retain guides that simply admonish sellers not to misrepresent various items, especially when, as here, there is no evidence that sellers to not understand that such misrepresentations are illegal.

Further, there do not currently appear to be particular areas covered by the Guides where industry members would have difficulty in determining whether specific claims are likely to be deceptive. For example, the Commission believes that industry members should have little difficulty determining that a representation that a dog or cat food contains whole fresh milk is likely to be deceptive if it does not contain whole fresh milk (*see* 16 CFR 241.5(f)). In addition, industry members should know, without the Guides, that they should not disseminate advertising for dog or cat food that contradicts the labeling on the product (*see* 16 CFR 241.6(m)). Thus, the Dog and Cat Food Guides do not appear to clarify specific representations that likely will be considered deceptive.

Other sections of the Guides dealing with claims beyond dog and cat food content and nutrition are also unnecessary, for they do not provide guidance beyond that given in other Commission guides. For example, §§ 241.15, Bait advertising, and 241.16, Guarantees, warranties, etc., of the Guides do not give significant guidance beyond that already contained in the Commission's Guides Against Bait Advertising (16 CFR 238) and Guides for the Advertising of Warranties and Guarantees (16 CFR part 239).

For all of these reasons, the Commission has determined to rescind the Dog and Cat Food Guides.

## III. Other Guidance

In rescinding the Guides, the Commission directs the industry's attention to the principles of law articulated in the FTC's Deception Statement[9] and pertinent Commission and court decisions on deception, both of which are generally applicable to all industries. As articulated in the Policy Statement on Deception, the Commission ''will find deception if there is a representation, omission, or practice that is likely to mislead the consumer acting reasonably in the circumstances, the consumer's detriment.'' In addition, industry members are required to possess substantiation for objective claims made about products.[10] That is, advertisers must have a reasonable basis for claims before they are disseminated.

Therefore, sellers must have competent and reliable evidence to substantiate objective claims about dog or cat food, such as claims that dog or cat food provides adequate nutrition or promotes health in dogs or cats. In this respect, the AAFCO Model Regulations and FDA's regulations on animal food labeling may provide industry members with useful guidance. Other tests, research, or information, however, also might be used by sellers to substantiate claims. Industry members bear the responsibility of ensuring that such information constitutes competent and reliable evidence in support of their claims. The Commission will evaluate the adequacy of substantiation on a case-by-case basis.

### List of Subjects in 16 CFR Part 241

Advertising, Animal food, Foods, Labeling, Pets, Trade practices.

### PART 241—[REMOVED]

The Commission, under the authority of Sections 5(a) and 6(g) of the Federal Trade Commission Act, 15 U.S.C. 45(a) and 46(g), amends chapter I of title 16 in the Code of Federal Regulations by removing part 241.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 99–27783 Filed 10–22–99; 8:45 am]

BILLING CODE 6750–01–M

[5] For example, 21 CFR 501.3(e) requires that the term ''imitation'' be used to identify certain animal foods.

[6] For example, 21 CFR 501.4(b)(ii)(3) permits concentrated skim milk or reconstituted skim milk to be referred to as ''skim milk'' on labels.

[7] For example, 21 CFR 501.22(a)(3) sets requirements for using the terms ''natural flavor'' or ''natural flavoring.''

[8] Section 241.3, for example, advises industry members not to misrepresent dog or cat food ''in any . . . material respect.''

[9] Deception Statement, appended to Cliffdale Associates, Inc., et al., 103 F.T.C. 110, 175 (1984).

[10] Policy Statement Regarding Advertising Substantiation, 48 FR 10471 (Mar. 11, 1983), appended to Thompson Medical Co., 104 F.T.C. 648, 839 (1984).

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## 18 CFR Parts 153, 157, 380

**[Docket No. RM98–17–000; Order No. 609]**

## Landowner Notification, Expanded Categorical Exclusions, and Other Environmental Filing Requirements

Issued October 13, 1999.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is amending its regulations under the Natural Gas Act (NGA) by adding certain early landowner notification requirements that will ensure that landowners who may be affected by a pipeline's proposal to construct natural gas pipeline facilities have sufficient opportunity to participate in the Commission's certificate process. The Commission also is amending certain areas of its regulations to provide pipelines with greater flexibility and to further expedite the certificate process, including expanding the list of activities categorically excluded from the need for an Environmental Assessment in § 380.4 of the Commission's regulations; and expanding the types of events that allow pipelines to rearrange facilities under their blanket construction certificates.

Finally, the Commission also is requiring that pipelines conduct an abbreviated consultation with the National Marine Fisheries Service concerning essential fish habitat as

required by regulations implementing the Magnuson-Stevens Fishery Conservation and Management Act; and applying the Upland Erosion Control, Revegetation and Maintenance Plan and the Wetland and Waterbody Construction and Mitigation Procedures to activities conducted under the pipelines' blanket construction certificates.

**DATES:** These regulations become effective November 24, 1999.

**ADDRESSES:** Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

**FOR FURTHER INFORMATION CONTACT:**

John S. Leiss, Office of Pipeline Regulation, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–1106

Carolyn Van Der Jagt, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–2246

**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, NE, Room 2A, Washington, DC 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 8.0. User assistance is available at 202–208–2474 or by E-mail to cips.master@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, NE, Washington, DC 20426.

## I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending its regulations under the Natural Gas Act (NGA) by adding certain early landowner notification requirements that will ensure that landowners who may be affected by a pipeline's proposal to construct natural gas pipeline facilities have sufficient opportunity to participate in the Commission's certificate process. The Commission also is amending certain areas of its regulations to provide pipelines with greater flexibility and to further expedite the certificate process, including: (1) Expanding the list of activities categorically excluded from the need for an Environmental Assessment in § 380.4 of the Commission's regulations; and (2) expanding the types of events that allow pipelines to rearrange facilities under their blanket construction certificates.

Finally, the Commission also is: (1) Requiring that pipelines conduct abbreviated consultations with the National Marine Fisheries Service concerning essential fish habitat as required by regulations implementing the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson Act); and (2) applying the Upland Erosion Control, Revegetation and Maintenance Plan (Plan) and the Wetland and Waterbody Construction and Mitigation Procedures (Procedures) to activities conducted under the pipelines' blanket construction certificates.

## II. Background

As part of an ongoing review of its regulations, the Commission continues to seek ways to make its certificate process more efficient and effective. Recently, it has become evident that landowners that may be affected by a pipeline's proposal to construct facilities want earlier and better notice of that pipeline's intent to construct pipeline facilities on or near their property.

Under the Commission's current practice, landowners with property on a proposed pipeline route, adjacent to compressor station or LNG plant sites, or adjacent to existing fee-owned rights-of-way which would be used for a proposed pipeline, are generally notified by the Commission as part of its environmental review of the proposed project. Generally, the Commission notifies the potentially affected landowners when it issues a Notice of Intent to Prepare an Environmental Impact Statement (EIS) or Environmental Assessment (EA) as required by the National Environmental Policy Act of 1969 (NEPA).[1] The Notice of Intent is mailed to the affected landowners after the Commission has begun to process the pipeline's application and after the Commission notices the application for the new facilities and, usually, after the intervention period has run.[2]

Recently, landowners and other citizens have expressed increasing interest in participating in the major pipeline projects, especially the greenfield pipelines and pipeline expansions in heavily populated areas.[3] On April 28, 1999, the Commission issued a Notice of Proposed Rulemaking (NOPR)[4] proposing that, among other things, applicants that file to construct pipeline facilities notify affected landowners within three days of filing the application.

The Final Rule adopts the Commission's landowner notification proposal with minor modifications. The Final Rule also adopts the Commission's proposals to: (1) Expand the list of activities categorically excluded from the need for an EA; (2) expand the authority to rearrange facilities under the blanket construction authority; (3) require that pipelines consider essential fish habitat under the Magnuson Act; and (4) require that the pipelines apply the Commission's Plan and Procedures to blanket construction activities.

The Final Rule also incorporates a number of changes from the proposals in the NOPR in response to the comments filed. Some of the changes in the Final Rule include: (1) Clarifying that the Commission expects that the pipelines would use a good faith effort to notify all affected landowners; (2) requiring, in addition to notification of individual landowners, that the pipelines publish notification of their applications in a local newspaper; (3) allowing for hand delivery of the notification; (4) establishing an

[1] Specifically, NEPA requires that federal agencies carefully weigh the potential environmental impact of all their decisions and consult with federal and state agencies and the public on serious environmental questions.

[2] Once the application is filed, the Commission issues a notice of the filing, which is published in the **Federal Register**. The notice appears approximately 10 days after the filing. The notice specifies an intervention period, usually extending 21 days from the notice date.

[3] Greenfield pipelines are pipeline proposals that will be located in a new pipeline right-of-way for most of their length.

[4] Landowner Notification, Expanded Categorical Exclusions, and Other Environmental Filing Requirements, 64 FR 27717 (May 21, 1999), IV FERC Stats. and Regs. ¶ 32,540, (Apr. 28, 1999).

exception to the notification requirement for abandonments by sale or transfer; (5) providing for notification of landowners with property that abuts the edge of a proposed right-of-way; (6) requiring that pipelines notify any landowner with property containing a residence within one-half a mile of proposed compressors, their enclosures, or LNG facilities; (7) clarifying that ''property rights'' includes all rights listed in the tax records, surface and subsurface, within the certificated boundaries of a storage field; (8) explaining that the Commission pamphlet ''An interstate natural gas pipeline on my land? What do I need to know?'' will be updated and modified consistent with this and other recent rulemakings; (9) adding additional requirements for the notice, including a general map of the applicant's proposal; (10) deleting the notification requirement for activities performed under § 2.55 of the Commission's regulations; and (11) creating several exemptions from landowner notification requirements for activities performed under the Commission's blanket certificate authorization.

## III. Discussion

### *A. Pre-Filing Meetings*

In the NOPR, the Commission stated that it was in the pipelines' best interest to attempt to involve the public early on in the construction process, specifically before an application is filed, by seeking public input before determining the exact route of a proposed pipeline. The Commission contended that earlier landowner participation could result in a more definitively defined route that would help alleviate some of the significant delays the Commission is presently experiencing in processing a certificate due to the time needed to address and resolve landowner concerns. The Commission stated that it wished to encourage pipelines to hold pre-filing meetings, but it did not believe it was necessary to mandate those meetings at this time. However, it solicited further comments concerning this issue.

*Comments.* Generally, the Interstate Natural Gas Association of America (INGAA), Algonquin Gas Transmission Company and Texas Eastern Transmission Corporation (Algonquin), Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company (Columbia), Great Lakes Gas Transmission LP (Great Lakes) , El Paso Energy Corporation Interstate Pipelines (El Paso), Enron Interstate Pipelines (Enron), and the Process Gas Consumers Group, American Iron and Steel Institute and Georgia Industrial Group (Industrials) contend that the Commission should encourage, but not mandate, pre-filing meetings. They assert that the pipelines should continue to have the flexibility to determine the substance and scope of notification prior to filing an application based on the specifics of each individually proposed project. Additionally, they claim that such pre-filing procedures could seriously impair the efficiency of the current certificate process.

Conversely, several parties support the need for pre-filing meetings. The Iowa Utilities Board (Iowa Board) believes pre-filing information meetings are highly beneficial to landowners and should seriously be considered. However, it indicates that as long as the landowners are given sufficient time and opportunity to participate meaningfully, the proposed route is easily modified in response to landowner concerns, and landowner's rights are protected, post-filing notification may be acceptable.

GASP Coalition (GASP) contends that the Commission's proposal to have landowners notified when a application is filed does not cure what is wrong with the process and is too late. GASP urges that the Commission establish a structured pre-filing notification requirement and also require collaboration with potentially affected landowners from the inception of a project. GASP asserts that notification at the time of filing does not create a level playing field. It states that few landowners have the financial resources, the tenacity, the time, or the ability to participate. Alice and Peter Supa, property owners along the proposed Millennium Pipeline route, contend that landowner notification needs to be changed to require natural gas companies to communicate in good faith with each landowner, the public, municipalities, and public officials long before an application is filed. They argue that the Commission should require pipelines to purchase legal notices in local newspapers and penny savers and to conduct several local informational meetings.

*Commission Response.* We are unconvinced by the argument that prefiling notification would impair the certificate process to any significant degree. To the contrary, as stated, we believe that the more landowners and the local community know of the application before it is filed, the more expediently the Commission will be able to process that application. Therefore, although we do not intend to mandate pre-filing meetings at this time, we believe that there is a strong incentive for the applicant to conduct such meetings.

We also believe that notifying landowners at the beginning of the Commission's process, when the application is filed, will give landowners sufficient time and opportunity to become involved in the process and to have meaningful participation, as recommended by the Iowa Board. As part of its NEPA review process, the Commission studiously reviews all suggestions and recommendations concerning alternative sites before making a final decision. Many times the Commission adopts these suggestions and recommendations in approving the ultimate route for the pipeline.[5] It also considers all other concerns raised by all participants in the proceeding, including, among other things, safety, air quality, noise, and other issues as appropriate to each proceeding.

Further, we believe notification at the time the application is filed gives landowners fair and adequate access to the Commission's process. It provides them with notice of a proposed application at the same time, if not sooner, than other parties that monitor the Commission's issuances and the **Federal Register**. Further, it allows them to participate equally with other parties.

Finally, we note that the Commission is investigating other areas and is implementing other programs to facilitate the application and review process. These initiatives will foster more efficient and effective landowner participation. These initiatives include the *ex parte* rule in Docket No. RM98–1–000,[6] the complaint rule in Docket No. RM98–13–000,[7] the electronic service rule in Docket No. RM99–6–000,[8] and the collaborative process rule adopted in Docket No. RM98–16–000.[9] In the *ex parte* rule, the Commission exempts communications related to developing environmental documentation from the Commission's

[5] *See* Vector Pipeline LP, 87 FERC ¶ 61,225, 61,892–94 (1999).

[6] Regulations Governing Off-the-Record Communications, Order No. 607, 64 FR 51222 (Sept. 22, 1999), III FERC Stats. and Regs. ¶ 31,079 (Sept. 15, 1999).

[7] Complaint Procedures, Order No. 602, 64 FR 17087, (Apr. 8, 1999), FERC Stats. and Regs. ¶ 31,070 (Mar. 31, 1999), *order on reh'g*, Order No. 602–A, 64 FR 43600, (Aug. 11, 1999), III FERC Stats. and Regs. ¶ 31,076 (July 28, 1999).

[8] Electronic Service of Documents, Order No. 604, 64 FR 31493 (June 11, 1999), III FERC Stats. and Regs. ¶ 31,074 (May 26, 1999).

[9] Collaborative Procedures for Energy Facility Applications, Order No. 608, 64 FR 51209 (Sept. 22, 1999), III FERC Stats. and Regs. ¶ 61,080, (Sept. 15, 1999).

*ex parte* rules. In the complaint rule, the Commission encourages and supports consensual resolution of complaints, and organizes complaint procedures so that all complaints are handled in a timely and fair manner. In the electronic service rule, the Commission stated that it would permit participants to a proceeding to voluntarily serve documents on one another by electronic means. Finally, in the collaborative process rule the Commission delineates a program under which it establishes an optional pre-filing consultation process for potential applicants to foster constructive dialog between the applicant and other interested parties to help resolve disputes among the participants before an application is filed with the Commission. The Commission believes that these initiatives will facilitate greater and more efficient and effective landowner participation in certificate matters.

At this time, we believe that the landowner notification requirement adopted here is adequate. However, the Commission continuously reviews its policies and procedures and updates them regularly with policy statements and subsequent rulemakings. If the Commission determines that its landowner notification policy needs subsequent revisions, it will make such modifications at a later date.

*B. Notification Requirement*

In the NOPR, the Commission proposed to require that all applicants proposing NGA section 7 projects notify all affected landowners of record from the most recent tax rolls by certified or first class mail within three (3) business days following the date they file the application with the Commission. The Commission also proposed to require that the pipeline make a good-faith effort to determine the correct address for any undeliverable notices and to send notices to the corrected addresses.

1. Good-Faith Effort To Notify

*Comments*. Columbia requests that the Commission clarify that the requirement to notify all landowners falls under the good faith effort concept. Columbia asserts that many of its facilities are in locations where property has been handed down from one generation to another over long periods of time resulting in diffused ownership spread over many heirs. It contends that the rigidity implied by the word ''all'' sets up an unrealistic and, in some cases, unachievably high standard. Therefore, it requests that the Commission extend the good faith effort concept to the landowner notification requirement.

The Industrials contend that the Commission should only require that the pipeline attempt to notify all affected landowners. They claim that some of the affected landowners will be difficult to identify, and in some cases there may not even be agreement as to who the landowners are (*e.g.* where there is a dispute among decedents or other land claimants). They state that the Commission should not create legal rights that could be used to block or delay pipeline construction.

The Iowa Board proposes several options to deal with landowners who may not get notification. First, it suggests that the Commission adopt a substantial compliance provision, which would provide that missed landowners would not negate the entire notification effort if the pipeline company can show a good faith effort to identify and notify all parties. Another option it recommends is that in addition to mailed notices, that a public notice should be published in newspapers along the pipeline route. It also recommends that landowners who did not receive the notice should be given an opportunity to file for late intervention or submit late-filed comments.

*Commission Response*. The Commission's intent behind the landowner notification requirement was that the applicant should make a good faith effort to serve all affected landowners. However, to clarify this we will modify § 157.6(d)(1) to specifically state that the applicant shall make a good faith effort to notify all affected landowners.

We will also modify § 157.6 by adding a requirement that the applicant also publish notice of the application in newspapers of general distribution in the project area within a week of the filing of the application. We will leave it to the applicant's discretion how many newspapers may be appropriate. However, a reasonable guideline, consistent with requirement in §§ 157.10(b) and (c) of the Commission's regulations concerning placing copies of the application in accessible central locations, would be one per county involved in the project unless a single newspaper fits the general distribution criterion in more than one county.

This newspaper notification will serve not only to embrace those individuals who may not have received notification along the proposed route, but also to give some advance notice to people in the general project area who might be affected by alternatives. Further, the Commission may subsequently decide, on a project-specific basis, what additional notification may be appropriate for other landowners potentially affected by alternatives.

To the extent some notices may be received by the affected landowner after the intervention deadline, § 385.101(e) of the Commission's regulations provides for waiver of the Commission's rules for good cause. Traditionally, the Commission has granted waivers of its intervention requirements and allowed late interventions when the party did not receive notice of a pending application until after the intervention deadline had passed. Further, §§ 157.10 and 380.10(a)(1)(i) allow parties to intervene in response to Commission action in its environmental documentation.[10]

2. Hand Delivery of Notices

*Comments*. Williston Basin Interstate Pipeline Company (Williston Basin) asserts that it continues to believe that the landowner notification requirement should be performance based and that the Commission should not impose the notification rules on all pipelines. It contends that the Commission should only require landowner notification if it receives valid complaints against a particular pipeline. Williston Basin believes the current policy, which allows each pipeline company flexibility in landowner notification and which takes into account the geographic and demographic characteristics of the areas in which the proposed construction will take place, is the most appropriate policy. In the alternative, it suggests that, at a minimum, the Commission should modify the regulations proposed in §§ 153.3, 157.6(d), and 157.103, to allow pipelines the option to hand-deliver this information to affected landowners. Williston Basin states that it should be allowed the opportunity to explain to the landowner that the contents of the notice are being provided in compliance with Federal regulations and not in anticipation of condemnation through an eminent domain proceeding.

*Commission Response*. The Commission does not believe it is appropriate to require notification only on a performance basis. First, the large greenfield pipeline project is most likely to be filed by a new pipeline trying to enter the market and who will have no track record of appropriate public relations. Given the considerable public outcry over the lack of notification for several such projects recently, we do not believe that a wait-and-see policy is justified.

[10] *See* Southern Natural Gas Company, 79 FERC ¶ 61,280, 62,202 (1997).

Second, we believe it is discriminatory to require only some companies to provide the notification. In the worst case scenario, this would allow a company to potentially be a bad neighbor until some threshold was reached in terms of the number of complaints the Commission received. In the meantime, the landowners who have not been treated well may have irrevocably lost the opportunity to have early and complete involvement in the Commission's process.

Finally, we will modify §§ 153.3, 157.6(d), and 157.103 to allow the applicant to hand deliver the notification. However, we note that no matter how delivery is made, the applicant is required to deliver the notice to the landowner of record, which may not necessarily be the person occupying the property. Moreover, the contents of the notification must be the same regardless of the mechanism of delivery.

3. Docket Number

*Comments.* INGAA requests that the Commission assign the application a docket number at the time the filing is made. It contends that if the Commission assigns the application a docket number subsequent to when the application is filed, it will be difficult for the pipelines to meet the Commission's notice requirements in a timely matter. It proposes that the Commission revise § 157.6(d) and related sections to provide that the pipelines notify all affected landowners within three business days following the date the Commission assigns a docket number to the application. The Industrials, Algonquin, and El Paso make similar requests.

Columbia requests that the Commission clarify the requirement to notify all affected landowners within three days refers to the mailing date of the notice and not the date of receipt by the landowner. It contends that requiring that the notice be received by the landowners within three days of the filing of the application is unreasonably burdensome and not justified for the purpose of the new regulation.

*Commission Response.* While the Commission believes that it is rare that a filing is not docketed the day it is received, we will modify § 157.6(d) and require that the notice be sent within three-business days of the day the application is assigned a docket number. The three business day requirement applies to the date of mailing or the day the notice is hand delivered. In other words, the notification must be in the mail by the end of the third business day after the docket number is assigned, or, if the company chooses to deliver the notification by hand, then it must be so delivered within three business days of the date the filing is assigned a docket number.

4. Abandonments

*Comments.* National Fuel Gas Supply Corporation (National Fuel) contends that the Commission should clarify that the landowner notification requirement applies to activities involving construction and not to activities such as abandonments by transfer and customer name changes. It contends that facility transfers do not involve any disturbance of property. Therefore, it asserts there is no need to enlarge on whatever rights of notice or consent the landowners may have under applicable rights-of-way. Also, it requests that the Commission clarify that advance landowner notice can be waived by the landowner.

National Fuel also claims that there are abandonment situations when consultations with landowners would not be appropriate. For example, it cites instances where the abandoned pipeline may be utilized to cathodically protect another pipeline, or where the pipeline crosses under a roadway or stream and it is impractical to remove the pipeline. It requests the Commission clarify that its intent is to require the applicant to identify landowner consultations, or provide an explanation as to why particular consultations were not made.

INGAA contends that the requirement to notify landowners about abandonments impinges on binding easement agreements. It states that often the pipeline's easement document will specify whether a pipeline is permitted to abandon its pipeline in place. It claims that the Commission's requirement amounts to a unilateral renegotiation of the easement by allowing the landowner to request that the pipeline be removed. It also asserts that it may falsely lead landowners to believe they have rights contrary to their negotiated easement agreements. Further, it contends that implying that the landowner may request removal of the pipeline may create unnecessary landowner tension should environmental and other factors make it impractical to honor the landowner's request. Great Lakes makes a similar argument.

Algonquin contends that a requirement that the pipeline consult with landowners prior to abandoning facilities will raise expectations that facilities will be removed when there is no practical reason to do so and the cost of removing the facilities is excessive under the circumstances. In fact, it argues that unless there is a legitimate reason to remove the facilities, removal in virtually all cases will result in totally unnecessary environmental disturbances. Also, it claims that the pipeline's right-of-way agreement may specify whether a pipeline is to be abandoned in place or not. It asserts that the Commission has not identified any reason to interfere with such agreements.

*Commission Response.* First, we note that we agree that the notification discussed herein does not need to be done for name changes or other activities that do not affect the use of the easement. Therefore, in § 157.6(d)(1) we will exempt abandonments of facilities by sale or transfer. However, we do not agree that all abandonments should automatically be exempt from the notification requirements.

In a NGA section 7(b) abandonment proceeding, the Commission will review all the relevant factors concerning the abandonment and make a determination if it is in the public convenience and necessity to grant the abandonment. While it is possible, as some of the commenters allege, that easement agreements may specify the pipeline's responsibility under the agreement upon abandonment of the easement, that is not always true. Further, the presence of such a stipulation in the easement does not necessarily override the other considerations that the Commission must weigh in ruling on the abandonment.

In the case of abandonment by removal, the same individuals who would have been affected by construction of the facilities also may be affected by the removal. However, changed circumstances since the original construction of the facility could warrant that the existing landowner be notified.

The Commission is aware that in many cases the environmental impact of removal is unwarranted or that other considerations mentioned by the commenters, *e.g.*, cost, use of the abandoned pipeline for cathodic protection, presence of a road or railroad, may make it impractical or undesirable to remove the pipeline. The pipeline applying for abandonment may identify the reasons it believes its proposed disposition of the pipeline is appropriate. Those reasons may be economic, environmental, related to safety, or stem from the landowner's choice, but in order to make a reasoned decision on the effects of its approval of the abandonment, the Commission needs to have this information. If the Commission decides that it is in the

public convenience and necessity to have the pipeline disposed of in a different manner than stipulated in the easement agreements, it will explain its reasons in the order granting the abandonment.

With respect to National Fuel's request for advance waiver of the right to notification, we see little advantage to the pipeline or to the Commission. These pipelines are in the ground for many years. Further, facts, circumstances, and the law change over time. The Commission believes it is important to review all the relevant factors in place at the time the pipeline is proposed to be abandoned. Therefore, we do not believe that a waiver of the notice requirement in these situations is appropriate.

5. Tax Records

*Comments.* Market Hub Partners LP (Market Hub) claims that the Commission's definition does not specify what county/city tax record the pipeline must examine in determining what landowner to notify. Specifically, it asks if the pipeline must only examine the annual tax rolls, or must it look at other property records, update its search quarterly, or obtain the most recent tax roll prior to sending out its notice. It also contends that the pipeline can ''hide behind'' the tax roll if it has reason to believe it is incomplete or incorrect. It requests that the Commission clarify that the applicant is required to examine the annual records as well as any quarterly updates and that it must provide notice to any other affected landowners it is aware of that do not appear on the public record.

*Commission Response.* The requirement to make a good faith effort implicitly involves using the most current source at the time of filing. It would include any independent material the applicant has in its possession concerning the landowners it must deal with to obtain property rights. Given the need to obtain those rights and to obtain permission to survey property for various environmental requirements in our regulations, we see very little reason or advantage for the applicant to avoid deriving a good faith list.

6. Route Changes

*Comments.* The Iowa Board points out that the route may change during the certificate process and the landowners on the alternative routes may not be included in the initial notice. It suggests that: (1) The landowners on any alternative routes also being considered by the applicant be included in the initial notification process; (2) the Commission require notice within a corridor wide enough to accommodate minor route shifts; and (3) landowners affected by a major route shift proposed during the certificate process should be given notice as soon as possible and provided the opportunity for late intervention or late-filed comments.

*Commission Response.* The Commission will not at this time require that the pipeline notify any landowners other than those potentially affected by the proposed route/facilities. The range of potential relocations of facilities is so broad that it would not be productive to require such notification. We will also not require that the pipelines notify all landowners along alternatives it looks at on its own. This would tend to be a real disincentive for the applicant to look at any alternatives until later in the process. We intend to rely on the Commission's staff to determine which additional individuals should be notified during the environmental analysis.

Nevertheless, we will point out to potential applicants that it is in their best interest to make sure a wide universe of landowners is aware of the project as early as possible to ensure input into the routing/location of facilities. In addition, waiting for the Commission's staff to determine who should receive notification may tend to lengthen the Commission's review process.

Also, as discussed, we are adding a requirement to § 157.6(d)(1), that the applicant publish notice of the application in local newspapers. We believe this is sufficient notice at this time.

*C. Affected Landowner*

In the NOPR, the Commission proposed to define affected landowners to include owners of: (1) Property directly affected by the proposed activity, including all property subject to the right-of-way and temporary work space; (2) property abutting an existing right-of-way (owned in fee by a utility) in which the facilities would be constructed; (3) property abutting a compressor or LNG facility; or (4) property over new storage fields or expansions of storage fields and any applicable buffer zones.

1. Property Directly Affected

Market Hub argues that the term ''directly affected'' introduces ambiguity into the definition of ''affected landowner''. It contends that the word ''directly'' does not add or delete any substance from the definition of ''affected landowner''. It states that it is uncertain whether the word ''directly'' is intended to impose an obligation to notify landowners who would not otherwise be notified. It requests that it be deleted.

*Commission Response.* The Commission deliberately used the term ''directly'' to indicate that the property would be physically used by, or for the construction of, a facility. The word was used to distinguish the properties which would be used in some way for the project from those properties which would simply be within view or earshot. However, we will add a parenthetical to § 157.6(d)(2)(i) clarifying our intent to mean those properties being used or crossed by construction activities.

2. Abutters

INGAA requests clarification that any pipeline that owns the right-of-way in fee is not considered a utility company and therefore is not required to notify affected landowners that abut its right-of-way. It claims that to impose such a condition could discourage construction along existing rights-of-way. Similarly, the Industrials question why notice should be legally required for landowners adjacent to property that is actually owned by the pipeline. They argue that when the pipeline owns the right-of-way in fee, it has a legal right to do what it wants in the right-of-way. Columbia also objects to the inclusion of abutters to existing rights-of-way in the list of affected landowners. It contends that abutting landowners will not have facilities on their property, will not be subject to condemnation and will not have restrictions on the use of their property.

Market Hub requests that the Commission clarify whose property abuts a right-of-way or facility site for the purpose of this rule. It states that a facility site should mean actual facilities that are a part of the operating facility, *i.e.*, the actual pipeline, or the actual compressors used for gas injection. In the alternative, it recommends that the Commission replace its proposed ''abuts'' rules with one that simply requires pipelines to give notice to all owners of property rights on or in parcels of property adjacent to the property and/or property rights that have been or will be acquired by the pipeline.

INGAA, Enron, and the Industrials generally question the usefulness of notifying a landowner that abuts a large block of land owned by a utility where the pipeline only acquires a right-of-way on a small piece of the property that is distant from the abutting landowner's property. INGAA and Enron request that the Commission clarify § 157.6(d)(2)(ii) to provide for notification where the

pipeline is in an utility right-of-way and construction/disturbance is proposed within 50 feet of the adjacent property. The Industrials request that the Commission clarify that this provision, at most, requires notice only to those landowners whose abutting property is adjacent to that portion of the existing right-of-way or facility site that will be used for the proposed pipeline facility construction.

The Supas recommend that landowners within 150 feet of construction be notified and the Schavers, landowners who participated in the Vector Pipeline proceeding, recommend that all landowners who will be affected by pollution, accidents, noise, or visual obstructions be notified.

*Commission Response.* First, we will clarify that the requirement to notify abutters (in § 157.6(d)(2)(ii)) refers to *any* utility right-of-way owned in fee. We see no reason to distinguish between natural gas pipelines and other utilities. The important consideration is whether there is construction-related activity taking place in the area, not whether this utility or that owns the land. It is the abutting landowner's right to comment on the project work area that is of concern.

Further, we do not believe that this requirement will discourage the use of existing rights-of-way since there are many advantages of using them, not the least of which is the ability to potentially deal with only a single landowner (the utility) for the use of extensive lengths of right-of-way. The issue here is simply whether people get notified and comment on the project. The Commission's long-standing preference for such co-location will still encourage pipelines to propose using existing rights-of-way. A decision to do otherwise, will still need to be justified in the application.

We believe that requiring notice to the abutters of existing ''in fee owned'' right-of-way is appropriate. It is our experience, as borne out by comments from other governmental agencies and private citizens, that the more notification that is provided, the more useful relevant information that can be obtained from the local individuals who are likely to be most knowledgeable about the project area. Notification to just the landowner (the utility company) would not allow any significant public notice and would not stimulate much public input to the process. We think this consideration alone warrants the proposed notification to abutters. In addition, we are simply codifying our current practice.

In the case of a new natural gas pipeline across land not owned in fee or not previously encumbered by a right-of-way, we believe that notification of all abutters is equally appropriate to treat them in the same way as abutters to ''in fee owned'' right-of-way. In general, this requirement will not significantly increase the number of landowners who need to be notified since easements more commonly cross property than share property boundaries. In addition, these additional properties will be easy to identify along with those properties crossed. Therefore, we will modify § 157.6(d) and require that the pipeline provide notice to all landowners whose property abuts the right-of-way.

Finally, we believe that property owners with residences within sight or hearing of a compressor station or LNG facilities also deserve notification. The impact of such facilities extends beyond the localized potential for effect from a pipeline. For instance, the Schavers' suggestion that people who would be affected by noise or visual effects of projects be notified applies to these kinds of facilities, since they have the potential for long-term effects of this kind. Choosing an appropriate distance is difficult; however, our experience with the potential noise impact of compressors indicates that a reasonable distance is one-half mile. Within this range it is not uncommon for the noise restrictions we usually place on compressors to come into play. We also submit that within this range the existence of a new compressor station or LNG facility may also be apparent to the unaided eye.

3. Storage Areas

Market Hub contends that the Commission's landowner notification rules should take into account the various estates that exist in a single parcel of property, including separate rights to surface, subsurface, minerals, oil and gas extraction, and oil and gas storage estates. It requests that the Commission require pipelines to notify the owners of all estates and rights-of-way in the parcel of property at issue as they are identifiable based on public land records. Similarly, Mr. Edward Deming, a landowner with property on a CNG Transmission Corporation storage field, states that the Commission should require notification of all affected property owners in areas of storage facilities including owners of surface and subsurface rights. On the other hand, Enron requests that the Commission clarify that the phrase ''owners'' means surface owners only.

Columbia recommends that notification of owners of property rights within new storage fields be limited to the owners of properties on which facilities (above and below ground) will be constructed. It asserts that the focus should be on those surface landowners who will be directly affected by the construction proposals in contrast to others within the boundaries of new storage fields whose property will not be disturbed.

Market Hub states that the phrase ''within the area of new storage fields or expansions of storage fields and any applicable buffer zone'' is vague. It explains that storage operations sometimes involve drilling wells that reach several thousand feet below the surface, and involve the storage of gas in formations that cover large areas. It contends that various owners and various property interests may be affected by a proposal to build or modify a storage facility. Therefore, it asserts that the storage operator's notification obligation should apply to all owners of property rights within the existing certificated boundaries of the relevant storage field.

New York State Department of Environmental Conservation (NYSDEC) states that it is unclear that the rules as currently proposed will provide owners of property within the boundaries of proposed storage projects adequate information to meet the Commission's goal of ensuring affected landowners sufficient and timely opportunity to actively participate. It also asserts that the Commission's pamphlet ''An interstate natural gas pipeline on my land? What do I need to know?'' does not address property rights or environmental concerns as they relate to storage fields. For example, it points out that the pamphlet states that the right-of-way may be 75–100 feet wide, whereas a storage field may be hundreds of acres or several square miles in size. It states that property rights issues such as in-place resources of native gas or salt are unique to storage safety issues. Also, it contends that the pamphlet does not inform landowners that certain storage field expansions may be categorically excluded from the Commission's environmental review. It recommends that the contents of the notice for storage projects be expanded to include additional issues of concern that are unique to storage fields.

*Commission Response.* The Commission's intent in § 157.6(d)(2)(v) is to include all recorded property interests in the area within the entire certificated boundaries of the storage field. We believe this is appropriate because once a storage field is certificated, there may be future construction within the boundaries of the field for which no additional

Commission authorization will be required. For example, auxiliary facilities of many kinds may be installed subsequent to the Commission's initial authorization without any further Commission involvement. In addition, pipelines within a storage field may be relocated under blanket authority without any further Commission action. There may be landowners affected by this future construction that would not have been affected when the original proposal was approved. Therefore, we believe it is appropriate to notify all property interest owners that potentially could be affected within the storage field even if the facilities proposed in the current application would not directly affect them.

Additionally, the Commission's intent is for the applicant to notify all property interests noted in the tax records, surface and subsurface. As stated, the Commission believes that all owners of property interests that may be affected by the applicant's proposal have a right to know what the pipeline intends to do. Finally, we believe that surface landowners have a right to know that natural gas is proposed to be stored beneath their property and have the opportunity to have their views on the proposal heard even if the surface area of their property will not be disturbed as a result of the applicant's proposal.

While the current edition of the landowner pamphlet does not contain any information specific to the issues of interest for storage field projects, the Commission intends to update the information in the pamphlet consistent with the changes made in this and other recently issued rulemakings. It also will make appropriate modifications in the future as the need arises. Additionally, we note that the applicant may add any additional information that it deems necessary to its notice that would clarify or explain how the pamphlet pertains to its particular project.

4. Buffer Zones

*Comments.* Market Hub objects to the term ''buffer zone'' because it proposes to bestow upon pipelines rights to an amorphous zone for which the pipeline has not acquired some or all of the surface or sub-surface property rights. It argues that the Commission has failed to explain the basis for its legal authority under NGA section 7 to reach zones that are outside the certificated 7(c) boundary. If the Commission has authority over the buffer zone, it should explain the rights conveyed on an applicant that receives approval of a buffer zone. Additionally, it states that the owners of property within a buffer zone should be accorded all the same rights and notifications of those in the active zone of a proposed project. Finally, it asserts that the Commission should make clear what jurisdictional activities are permissible inside the buffer zone.

*Commission Response.* Since the delineation of the gas storage reservoir confinement cannot be precisely established for most fields, the Commission certificates a buffer zone or protective area beyond the estimated reservoir boundaries to assure continued reservoir integrity of the gas storage field. This practice is consistent with some state requirements. The buffer zone, which will vary in size based on the geologic and engineering data available to define the lateral boundaries of the storage field, identifies the area under which the company has the right to store natural gas in the specified formation as determined in the certificate authorization. It is the storage operator's responsibility to verify and define the storage boundary through the life of the storage operation as additional operational experience is obtained. If there is any migration from the certificated boundaries of the field, including the buffer zone, the operator is obligated to notify the Commission and apply for a new boundary to the field.

Section 157.6(d)(2)(v) expressly requires that all recorded owners of property interests in the applicable buffer zone should receive notification of the applicant's proposal for that area. We note that the Commission's certificate authority only gives the applicant the authority to construct, operate, and maintain the storage facilities within the certificated boundary. It does not bestow upon the applicant any specific property rights outside of that area. The company may only conduct jurisdictional activities expressly approved by the Commission in the certificate authorization.

*D. Contents of Notice*

In the NOPR, the Commission proposed that the notice should include: (1) The docket number of the filing; (2) a detailed description of the proposed facilities including specific details of their location, the purpose of the project, and the timing of the project; (3) a description of the applicant; (4) the name of specific contacts at the pipeline where the landowner can obtain additional information about the project; and (5) a location where the applicant has made copies of the application available.[11] Additionally, the notice should either include map(s) of the project or information where detailed map(s) of the project can be viewed or obtained. The pipeline contact should be knowledgeable about the project and should be able to answer specific questions concerning the project. The NOPR also proposed that the notice include a copy of the Commission's pamphlet ''An interstate natural gas pipeline on my land? What do I need to know?''.

*Comments.* National Fuel states that the requirement to include the Commission's pamphlet should only be required for landowners affected by pipeline construction. It contends that the pamphlet does not address other types of activities, such as compressor station construction or modification, storage field development or expansion, or pipeline abandonment and should not be required in those situations.

GASP claims that the Commission's pamphlet is not appropriate. It asserts that the pamphlet takes for granted the pipeline's right to take the landowner's property, and discourages landowner intervention in the process.

The Iowa Board suggests the following additions to the Commission's proposal: (1) The rule should specifically require the inclusion of a map showing the proposed route of the pipeline, it recommends two maps for larger projects, one showing the total project and another the local area (*i.e.* the county or township); (2) the notice should include a general, up-front statement that easements will be sought, and explaining the nature of the rights the pipeline will seek on those easements; and, (3) the Commission should require that the notice provide information concerning the legal rights of the landowners. It suggests that since easement acquisition, and usually condemnation, is a function of the laws of the individual state, the Attorney General of the affected state should be requested by the Commission to prepare and provide the summary of legal rights. Additionally, the Iowa Board states that the Commission may want to review the proposed notice before it is mailed.

*Commission Response.* The pamphlet was created specifically for pipeline facilities and has been adopted for this larger purpose at the suggestion of previous commenters including INGAA and other industry and Congressional representatives. As stated, the Commission intends to revise the

[11] In new § 157.10, promulgated in RM98–9–000, the pipelines are required to make complete copies of the application available in central locations in each county in the project area.

current version of the pamphlet consistent with the action taken in this and other recent rulemakings. We expect to revise the pamphlet as needed to allow it to cover as many of the facility types as is reasonably feasible.[12] Further, as stated, the applicant is free to provide any additional information it deems necessary in its notice to further clarify or explain the Commission's process as it applies to the applicant's proposed project.

As for GASP's claim that the pamphlet is inappropriate, we note that the purpose of the pamphlet is to explain the Commission's process and how the landowner may participate in that process. The pamphlet simply states the factual situation which is that once a certificate has been issued, the pipeline has the right to take property if it cannot negotiate an easement agreement with the landowner.

The Iowa Board makes some good suggestions for the contents of the notice. Accordingly, we find that requiring a map would not burden the applicant since maps are part of the application, including a map of the overall project. We also believe that the applicant can also easily include a generic description of what the applicant will need from the landowner if the project is approved and a brief description of the eminent domain rules in the relevant state. Finally, we do not believe it is necessary to impose upon the state attorneys general to provide a summary of their state's laws. We will modify § 157.6(d)(3) accordingly.

*E. Landowner Notification Under §§ 2.55 and 157.202*

In the NOPR, the Commission proposed to add a landowner notification requirement to §§ 2.55 and 157.202 that requires that pipelines notify the affected landowner 30 days prior to commencing construction under these sections. The notification would include: (1) A brief description of the facilities to be constructed/replaced and the effect the construction activity will have on the landowner's property; (2) the name and phone number of a company representative that is knowledgeable about the project; and (3) a description of the Commission's Enforcement Hotline procedures explained in § 1b.21 of the Commission's regulations and the Enforcement Hotline phone number.

*Comments.* Generally, many of commentors contend that the existing easement agreements should determine what type of landowner notification should be required for projects constructed under §§ 2.55 and 157.202 and that the proposed 30-day notice requirement is unnecessary. They contend that there is no substantial evidence of significant landowner concerns in the case of § 2.55 or 157.202 activities that would warrant any change in existing procedures.

1. Section 2.55

INGAA contends that formal notification under § 2.55 is not consistent with the type of work performed. Specifically, it states that § 2.55(b) involves existing lines with previously negotiated easements and established pipeline/landowner relationships. Additionally, it asserts that the work often requires completion in less than 30 days from the time it is identified or it involves a problem that must be corrected immediately, including situations that could not properly be characterized as emergencies, but nevertheless demand some action in a short period of time. INGAA contends that under these circumstances, the pipeline/landowner easement agreements should control how and when the pipelines provide landowner notification. Further, it notes that the 30-day waiting period may be in conflict with the requirements of the easement agreements as well as safety and environmental regulations. Algonquin, Columbia, El Paso, and Williston Basin raise similar arguments.

*Commission Response.* Upon reconsideration, we agree that there is no need for this Commission to require advance notification to landowners for replacement conducted under § 2.55. As the commentors point out, all of the activity involved with such a replacement is within existing right-of-way and subject to an existing easement agreement which dictates the pipeline's right to obtain access to maintain the facilities. However, we believe that prudence would dictate that the pipeline should give the landowner as much advance warning as is possible to avoid misunderstandings and ill-will.

2. Blanket Certificates

INGAA believes that the pipeline/landowner easement agreement should also control for routine construction for activities performed under the pipeline's automatic blanket certificate. It argues that to perform new construction under its blanket certificate, the pipeline must already have or have obtained the necessary right-of-way and, in the normal course of business, notify the resident prior to entering the property. Therefore, it contends that the Commission's notification requirement is unnecessary. Additionally, it claims that the Commission's requirement to notify all affected landowners of real property is too restrictive. It recommends that the Commission adopt the ''good faith'' language of the Commission's section 7(c) notification requirement.

Similarly, El Paso agues that the Commission's advance notification requirement for construction performed under the automatic authorization essentially nullifies those provisions. Further, it contends that the notification requirement is not necessary. For new construction in an area covered by an existing easement, El Paso asserts that advance notification is not necessary because the landowner previously granted the pipeline the property rights necessary to perform the construction. It states that the Commission should not interfere with the existing relationship between the pipeline and the landowner. As for construction in new rights-of-way, El Paso contends that it must obtain additional easement rights with the landowner before beginning construction and that this serves as adequate notice of the impending construction. It claims that an additional 30-day notification requirement would only unnecessarily delay construction.

For prior notice activities, INGAA asserts that the pipeline/landowner easement agreement should govern the type and timing of notice provided to landowners for activities performed under the prior notice provisions. It claims that as a condition precedent, a pipeline performing new construction under its blanket certificate would have had to negotiate with the landowners for right-of-way easements. Therefore, it states that the Commission's notification requirement duplicates what the pipeline already negotiated or provided with the landowner. Further, INGAA states that it is concerned that the requirement that the pipeline inform the landowner of its right to protest almost invites protests and may mislead landowners into believing that a protest is necessary to be a participant in the process. At a minimum, INGAA suggests that whether verbal or written, the notice describe the right to intervene or protest and also alert the landowner that the Director of the Office of Pipeline Regulation (OPR) has the authority to dismiss unsubstantiated protests.

The Industrials object to a notification requirement where the pipeline's filing indicates it has secured all rights-of-way and easements for the project in advance of the filing. They contend that

[12] We note that the current version of the pamphlet is available for downloading off the Commission's Internet Home Page.

there is little to be gained from imposing new filing notice burdens on this class of projects. They also state that if the Commission proceeds with imposition of the new landowner notice provision , it should at least amend the language to require that the pipeline only attempt to notify all directly affected landowners.

Columbia and Williston Basin believe that the Commission should build sufficient flexibility into this process and allow for a waiver of the waiting period when necessary for the pipeline to properly operate and maintain its system. National Fuel recommends that the Commission have an exception for replacement work necessitated by an immediate threat to public safety. Further, it claims that the Commission should clarify that the advance landowner notification requirement can be waived by the landowner. El Paso asserts that the proposed regulation would unduly delay prompt replacements of unsafe, deteriorated facilities. It contends that a 30-day delay under these circumstances would be untenable.

Similarly, Great Lakes contends that the pipelines may not be able to identify replacement projects conducted under § 157.203(d)(1) a full 30 days prior to the date on which the work should or will be done. It argues that the 30-day notice provision for replacement projects is unnecessary and burdensome. As an example, it explains that a pipeline may discover a defective mainline pipe section while working on installing a new loopline. It argues that under the Commission's proposal, the pipeline would have to wait 30 days to do this work. It contends that the delay would raise the cost of the project by requiring the trench to be re-opened and the necessary equipment returned to the site, and may increase the risk to the pipeline and the public during the waiting period.

Enron states that the 30-day landowner notification requirement will create conflicts with a pipeline's efforts to comply with the Department of Transportation (DOT) and environmental regulations. The Industrials request that the Commission, at a minimum, exempt from the proposed notice requirements automatically authorized construction of eligible facilities required to address unplanned or emergency repair or maintenance situations or other circumstances in which there are valid business reasons for proceeding without prior written notice.

National Fuel contends that the 30-day prior notice requirement should be shortened to 10 days. It asserts that a shorter notice period is appropriate because these projects promote public safety and only impact owners of properties already affected by pipeline construction and maintenance. Similarly, the Industrials request that if the Commission does impose a pre-construction notice requirement, it should be less than 30 days.

If the Commission declines to eliminate the 30-day notice requirement, INGAA suggests: (1) The notice period be eliminated for unplanned maintenance and replacements (e.g. line hits, equipment failures); (2) the notice time frame for planned work should be reduced from 30 days to three days or a time period provided for in the easement agreement or such period as agreed upon in writing by the landowner, *i.e.*, a waiver of notification rights; (3) the notice be limited to the immediate landowners affected by the construction activity (as compared to the broader definition of affected landowners for section 7(c) applications); and (4) that verbal notice be permitted as long as the pipeline maintains records of who was notified and provides the landowner with a company contact person and telephone number.

El Paso suggests that the Commission should, at a minimum, eliminate the requirement for projects which clearly have a *de minims* impact on landowners. For example, it refers to: (1) Construction which occurs within a fenced area, *e.g.* a compressor or meter station yard); (2) construction of above-ground facilities where no ground disturbance is involved; and (3) replacements performed for safety reasons.

Finally, Columbia is concerned that the Commission's notification requirement for blanket construction activities creates an open-ended process for which there appears to be no closure from a timing standpoint. It contends that the Commission's proposal is silent on the internal process that will be adopted in connection with administering the increased contacts that may result from the notification requirement

*Commission Response.* Unlike activities performed under § 2.55, the Commission believes that many of the activities performed under the pipeline's blanket construction certificate authorization require that the pipeline notify the affected landowners regardless of the terms of the easement agreements. While the Commission may not have seen specific expressions of concern regarding blanket projects, this could easily be a result of the fact that most people outside the natural gas industry are not familiar with the Commission or its programs. Nevertheless, we are trying to make sure that our regulations provide for similar protections for similar activities. Therefore, we find a need for advance notification of landowners for blanket certificate activities.

Additionally, we believe that the landowners deserve the opportunity to air their views and concerns regarding the activity proposed for their property. The Commission also wants the opportunity to act on those concerns if necessary. Whenever the pipeline conducts an activity subject to the Commission's jurisdiction, the Commission has the authority to impose conditions on that activity. However, in light of the comments received, we will make certain modifications to the notification requirements for blanket certificate activities as proposed in the NOPR.

First, we note that removing the notice requirement for activities performed under § 2.55 largely eliminates the concern raised by the commentors for replacements done for safety, DOT compliance, and unplanned maintenance reasons. However, there may still be certain situations that will require that these activities be performed under the pipeline's blanket certificate. Therefore, in § 157.203(d)(3)(i) we will exempt replacements that are being done for safety, DOT compliance, or unplanned maintenance reasons which the pipeline has not foreseen and which require immediate attention.

Additionally, we realize that there will be blanket-authorized projects that would have been done under § 2.55 except that they involve a change in the capacity of the facilities. To the extent that these activities involve only the existing right-of-way construction work area, we also find that advance landowner notification is not necessary. Therefore, we will also exempt these types of activities in § 157.203(d)(3)(i).

Finally, in § 157.203(d)(3)(ii), we will clarify that the notification requirement applies only to activities which involve the abandonment of facilities if the pipeline is intends to relinquish the right-of-way, and the facilities are not intended for continued use by the landowner or the future holder of the easement.

For all other activities under the blanket authorization, we will continue to require that the pipeline notify the landowner at least 30 days prior to commencing construction as proposed in the NOPR. However, we will clarify that the pipeline may deliver the notification by hand or by mail. Further,

if the pipeline is negotiating for a new easement, it must deliver the notice either before or at the time it initiates easement negotiations. The 30-day notice period and the easement negotiations could run concurrently.

We do not believe it is appropriate to allow the pipeline to deliver the notice orally. First, several of the components of the required notice cannot be conveyed orally. Second, it is not fair to expect landowners, who may have no premonition that they are about to be approached with respect to the use of their land, to assimilate the details of the required notice without any written materials to study.

For activities under the prior notice procedure, we will allow pipelines to give the landowner notice before or after the application is filed. If the pipeline gets landowner approval for the proposed activity before it files the application, it should provide evidence of that approval with the application and no further notification will be required. If the pipeline needs to commence construction prior to the end of the 30 days, it should request a waiver of the requirement from the Director of OPR. We believe that for most of the activities not covered by the exceptions discussed above, the pipeline knows in advance of the thirty days that it intends to construct facilities.

3. Enforcement Hotline

*Comments.* National Fuel also opposes the inclusion of information about the Enforcement Hotline. It contends that it may be misleading to suggest that the Enforcement Hotline is the appropriate dispute resolution mechanism. It requests that if the Commission includes this requirement it should clearly describe the range of issues appropriate for bringing to the attention of the Enforcement Hotline.

INGAA asks that the Commission eliminate the reference in §§ 2.55(b)(1)(iv)(3) and 157.203(d)(1)(iii) to the Enforcement Hotline. It contends that it implies that the pipeline is acting unlawfully in some way and that some form of regulatory oversight is necessary for an activity which is generally handled through a self-implementing authorization. Further, it claims that the reference to the Enforcement Hotline encourages an escalation of landowner's concerns on what are likely to be routine maintenance activities. It states that calling the company representative identified on the notice would put the responsibility to address the landowner's concern where it belongs, on the company.

Columbia asserts that the pipelines need to be assured that adequate resources are available to resolve any Enforcement Hotline matters that may arise. It claims that a significant number of landowners will avail themselves of the opportunity to use the Enforcement Hotline regardless of whether they have a legitimate substantive problem, because they would prefer that the facility not be on their property. It also asserts that the Commission should not entertain issues of landowner allegations over the lease agreements. It states that the pipelines must have certainty that the issues will be resolved within the 30-day period and that they will be able to begin construction at the expiration of the 30-day period. It argues that to suggest that the work cannot begin until the Enforcement Hotline process is exhausted is impractical, burdensome, and provides landowners with a method to effectively undercut property rights they or their predecessors have already granted to the pipeline.

Algonquin asserts that the Commission's proposal invites protests or Enforcement Hotline calls regardless of the merit and could well convert what is now an expedited construction process into a traditional section 7 process and impair the pipeline's ability to construct minor facilities in a short time period.

*Commission Response.* We agree that the Commission 's Enforcement Hotline may not necessarily be the appropriate mechanism of first resort. We cannot force the landowner to take this approach, and we will not forego providing the landowner with information on how to contact the Commission.

Further, we do not believe that including a reference to the Enforcement Hotline implies the company is doing something unlawful. It would, of course, be possible to present this information in such a way that this was the implication. However, we have not specified how the company is to present the Enforcement Hotline number and we expect the companies will be able to present it as merely being a means to contact the Commission, which is in fact what it is.

Columbia states that the Commission must resolve protests quickly and limit the protests to issues properly before the Commission. It recommends that the form of notification include not only references to the landowner's right to protest but also to the Director of OPR's power to reject non-substantive protests. As stated, the pipeline is not foreclosed from further explaining the Commission's regulations in its notice. Further, the Commission does not envision that providing the landowners with information concerning the Commission and its processes would necessarily delay any of the pipeline's activities under its blanket certificate. The Commission will address any situations that may arise on a case-by-case basis.

*E. Observation Wells*

In the NOPR, the Commission stated that it was beyond the intent of the blanket certificate for pipelines to construct new injection and withdrawal wells. However, it proposed to allow pipelines to drill observation wells under their blanket certificate authorization.

*Comments.* NGAA contends that observation wells are drilled under § 2.55. Therefore, it states that they do not need to be codified under the blanket certificate regulations and should not be subject to the new advance landowner notification requirements. Williston Basin and Enron request that the Commission clarify that deteriorated wells can be replaced under § 2.55.

Market Hub contends that the Commission's proposal to allow drilling of observation wells will be used to circumvent the Commission's authority and to avoid obtaining advance site-specific approval for new storage/injection wells. It requests that the Commission require site-specific approval before a pipeline may drill or construct any and all wells. Specifically, it states that a pipeline might avoid obtaining approval for the drilling and construction of storage injection/withdrawal wells by calling all wells observation wells at the time they are drilled. Then, after drilling and completing a well a pipeline will seek approval to convert the observation well for use as an injection/withdrawal well. This, it argues, will diminish the Commission's ability to conduct a site-specific review of the new well and will eliminate the ability of affected landowners or other intervener to review and object to the drilling of such wells. Mr. Deming also asserts that the Commission should not allow storage companies to drill any wells without getting specific approval.

Market Hub also contends that the Commission's proposed rule favors storage facilities that have occasion to drill observation wells (*e.g.* depleted reservoir facilities) over storage facilities that generally do not (*e.g.* salt cavern storage facilities). Thereby, creating an unfair and discriminatory advantage by

''handing additional loopholes to depleted reservoir facilities''.[13]

In the alternative, Market Hub requests that the Commission adopt regulations that articulate standards distinguishing between legitimate observation wells and ''convert'' storage injection/withdrawal wells. For example, it recommends that the Commission: (1) Impose restrictions upon the diameter of the well bore because the well bore for observation wells is typically smaller than the well bore used for injection/withdrawal wells; (2) limit the area where the well can be drilled because observation wells normally are drilled either near the edges of an active storage field, or outside the confines of the storage field; (3) review the type of equipment and facilities used in or on the well.

On the other hand, INGAA also requests that the Commission revise § 157.202 to allow for replacement wells to be drilled under the pipeline's blanket certificate authority. Similarly, Williston Basin believes that the Commission should revise § 157.202 to allow storage related replacement wells under blanket certificates in order to provide pipelines with additional flexibility regarding such facilities. As far as landowner issues are concerned, it contends that most storage rights-of-way or easement agreements are in place for the entire storage field. It asserts that these agreements generally define the rights of storage field operators to construct replacement storage wells and detail the compensation due the property owners. If there is no agreement, it contends, then a new agreement will be entered into before any storage well replacement takes place. Therefore, Williston Basin concludes that the agreements will control what notice is required if the operator needs to install replacement facilities.

NYSDES requests that the Commission clarify that its proposal to allow observation wells to be drilled under a blanket certificate does not supersede applicable state well permitting requirements.

*Commission Response.* In *Natural Gas Pipeline of America*,[14] the Commission stated that ''[o]bservation wells are not facilities within section 7(c) of the Natural Gas Act, and therefore do not require [a] certificate.'' As such, as the commentors point out, they can be constructed under § 2.55(a) of the Commission's regulations. Consequently, we will withdraw our proposal to include such wells within the ambit of the blanket certificate program.

We will also clarify that we fully intended § 2.55(b) to be available for the replacement of wells which fit the requirements of that section. Therefore, injection/withdrawal wells which meet the specifications of § 2.55(b)(1)(i and ii) may be replaced using this section of our regulations.

We reject the comment that just because the physical characteristics of the typical storage field using depleted oil or natural gas reservoirs, or aquifers make observation wells necessary whereas observation wells are unnecessary in conjunction with the salt cavern storage of natural gas, allowing companies that need such facilities to drill them is in any way discriminatory. The fact that some pipelines may not benefit from a particular Commission's regulations does not make that regulation discriminatory.

Further, we do not believe that site-specific approval is necessary before a pipeline can drill or construct any and all wells. As stated, the Commission currently allows pipelines to do minor construction on existing wells under § 2.55 of its regulations. The types of activities performed under this section are relatively minor ones that do not significantly disrupt the environment and do not warrant further Commission review. The Commission does not believe it is necessary to further restrict or add further standards to these activities at this time.

However, we do not believe that the Commission's blanket certificate authorization provides adequate oversight for the construction of new injection/withdrawal wells. As stated in the NOPR, and the rehearing order in Order No. 603–A, we do not intend for the change in this section to allow pipelines to drill additional injection/withdrawal wells under the blanket certificate because such wells may inherently alter the deliverability, capacity, or boundary of a reservoir. Drilling new injection/withdrawal wells in existing storage pools requires separate section 7(c) authorization.

Finally, in general, inclusion of facilities under the blanket certificate does not exempt them from obtaining any applicable permits required by any other jurisdiction. However, as the courts have ruled, no non-Federal jurisdiction may use its permitting authority under state or local statute to delay or counteract the execution of a Commission certificate.

### *F. Plan and Procedures*

In the NOPR, the Commission proposed to apply the same erosion control procedures (the Plan) and stream and wetland crossing mitigation measures (the Procedures) to activities conducted under blanket certificate authorization as are routinely used in the regular certificate process.

*Comments.* Generally, INGAA, Williston Basin, Algonquin, and Enron request that the Commission clarify that the Plan and Procedures are guidelines which may or may not apply to a particular project and have not been adopted in this proceeding as requirements. INGAA asserts that if the Plan and Procedures continue as guidelines, its member pipelines would reflect in their annual report whether they have employed the guidelines or equivalent procedures. INGAA also requests that the Commission permit pipelines, independent of any specific project, to file and obtain approval for company procedures that they may intend to employ in lieu of the Plan and Procedures. INGAA and El Paso also state that pipelines should be allowed to obtain blanket waivers of the Plan and Procedures for construction in certain regions of the country where they do not fit local conditions. Enron and El Paso state that they should be permitted to establish their own Plans and Procedures adapted to fit different geographic regions.

National Fuel states that if the Commission intends to make the Plan and Procedures applicable to all blanket certificate projects, it should consider the specific comments National Fuel raised about the Plan and Procedures in RM98–9–000. Additionally, National Fuel requests that the Commission clarify that it intends to allow state permitting agencies and local land management agencies to grant variances to the Plan and Procedures. It contends that the clarification would avoid most of the conflicts between the requirements of permitting agencies and the Plan and Procedures. Finally, it asserts that the Commission should have clear procedures in place for efficiently processing requests for variances by the time the final rule in this proceeding takes effect.

The Iowa Board states that by making the Plan and Procedures mandatory, it is unclear whether the Commission intends to preempt the state standards or state agreements. It urges the Commission to continue, explicitly, to allow states to enforce state and local standards and agreements more stringent than the federal requirements, as long as the state and local standards and agreements are consistent with the federal requirements.

*Commission Response.* As part of its responsibility under NEPA, the

[13] Market Hub's comments, at 17.

[14] 32 FERC 61,287 n.1 (1985)

Commission needs to ensure that pipelines employ proper erosion control and stream and wetland crossing mitigation measures for activities performed under their blanket certificate authorizations. In the NOPR, the Commission proposed to use the Plan and Procedures in the context of blanket certificate projects in a manner similar to the way they are employed in a traditional NGA section 7(c) filing.

In case-specific section 7 filings, the applicant has two choices regarding these mitigation measures: (1) Either use the Plan and Procedures as specified by the Commission; or (2) specify what alternative procedures it intends to use. In the latter case the Commission determines if the alternative methodology is acceptable. The requirements proposed here continue to give the certificate holder the same alternatives. However, since the Commission does not generally review blanket certificate construction activities in advance, we will allow pipelines to substitute the recommendations of the local state and Federal agencies in place of the Commission's Plan and Procedures.

If the certificate holder can obtain agreement from the appropriate agency(ies) to use a different set of procedures, then it may do so under the blanket certificate program. However, the agency must make a conscious decision to choose the alternative method and, therefore, must be provided with a copy of the Commission's Plan and/or Procedures, to use in its review process.

We will not allow certificate holders to come in with generic alternative plans for each section of the country for the Commission to review, as suggested by some commentors. We believe it would be a better use of Commission time and resources to review such requests on a case-by-case basis, as necessary, given the regional nature of this issue and the relatively minor nature of the projects constructed under the blanket certificate program.

Finally, as noted in the Final Rule in Docket No. RM98–9–000, we intend to revise the Plan and Procedures in light of the suggestions raised by National Fuel and as other needs arise. The Commission will issue notices when changes are made to alert pipelines of the specific modifications.

*G. Magnuson Act*

In the NOPR, the Commission stated that the pipelines should be contacting the National Marine Fisheries Service (NMFS) to determine what level of consultation is necessary for their projects for the appropriate consideration of ''essential fish habitat'' (EFH). It proposed regulations that would require that the pipelines consult with NMFS.

*Comments.* The Department of Commerce (Commerce) contends that the Commission's proposed rule may unnecessarily increase filing requirements for pipeline companies and makes the following recommendations. First, it recommends that the Commission provide a separate subsection dealing with compliance with the Magnuson Act similar to § 380.13 of the regulations for the Endangered Species Act (ESA). Second, it states that under the EFH regulations, a non-Federal representative can conduct an abbreviated consultation with the NMFS when an action does not have the potential to cause substantial adverse effects on EFH. However, it points out that an expanded consultation is required if the proposed action would result in substantial adverse effects on EFH, or if additional analysis is needed to accurately assess the effects of the proposed action. It states that the EFH regulations do not allow expanded consultations to be conducted by non-Federal representatives. It asserts that the Commission should clarify its proposed rule to state that pipeline companies could only be designated to conduct abbreviated consultations and EFH assessments.

Third, it contends that while the designated non-Federal representative may conduct certain activities, the EFH regulations require that the agency provided written notice of such designation to NMFS. It states that the Commission should modify its proposed rule to conform with the NMFS regulations regarding notice of designation of non-Federal representatives. Fourth, it states that under section 305(b)(4)(B) of the Magnuson Act, the Federal agency is required to provide certain information to the NMFS. It asserts that the Commission should revise its proposed rule to reflect the Commission's responsibility to respond to the EFH recommendations. Fifth, its states that the Commission should revise Resource Report 3 to prevent confusion with ESA consultations by removing references to EFH and adding the following: ''Provide information on all EFH, as identified by the pertinent Federal fishery management plans, that may be adversely affected by the project and the results of consultation with NMFS.

Finally, it recommends that the Commission consult with the NMFS to determine if certain categories of activities can be treated on a programmatic basis or in combination with other existing consultation processes.

INGAA and El Paso assert that the NMFS does not consult with individual companies or respond to the pipelines' consultation requests. Therefore, they contend that it may be difficult, if not impossible for pipelines to comply with the revised regulations. They suggest that the Commission consult with the NMFS regarding compliance with the Magnuson Act.

*Commission Response.* The Commission is presently working with Commerce on how to best address the requirements of the Magnuson Act in its regulations. However, in the interim, the purpose of the Commission's proposal in the NOPR was to preliminarily put pipelines on notice that they need to comply with the requirements of the Magnuson Act and to provide guidance on what the Commission expects. Accordingly, we will modify Resource Report 3 to reflect that the Commission will require that the applicant identify all federally listed EFH and to provide the results of any abbreviated consultations the applicant may have had with NMFS. If necessary, we will address Commerce's specific comments in a subsequent rulemaking to codify the more specific requirements of the Magnuson Act.

*H. Categorical Exclusions*

In the NOPR, the Commission proposed to add several new categories to the list of categorical exclusions, including, among others, abandonment, construction, or replacement of a facility (other than compression) solely within an existing building within a natural gas facility (other than LNG facilities), so long as it does not increase the noise or air emissions from the facility, as a whole.

*Comments.* INGAA, Columbia, and Enron request that the Commission replace the phrase ''within an existing building'' with ''within the previously disturbed station yard'' because not all compression is housed within a building.

*Commission Response.* The Commission specifically limited this categorical exclusion to ''within an existing building'' because such a change, combined with the other requirements, would not be detectable outside the property. In addition, it would have no potential to affect threatened or endangered species or cultural resources. Changes ''within the previously disturbed station yard'' would normally be detectable outside the property and, while there may be low potential for an effect on threatened

or endangered species, cultural resources potentially could be affected. Accordingly, we will not extend the exclusion to include facilities outside of the existing building.

*I. Intervention Status*

Several landowner groups requested that the Commission change its intervention process to accommodate the small filer. In response, the Commission explained that its regulations allow for the waiver of a rule for good cause and stated that if parties were having difficulty participating in a proceeding, they should request a waiver of the Commission's service rule.

*Comments.* Market Hub agrees that landowners who arguably cannot afford to participate in a certificate proceeding may request appropriate waivers, but should not be given special status which would allow them to take advantage of reduced filing or service requirements as a matter of course. It contends that there is no reason for the Commission to adopt a new system to relieve administrative burdens on landowners on a global basis, because it could unfairly burden jurisdictional pipelines and prejudice other participants in the regulatory process.

Conversely, GASP contends that landowners should be able to participate in the process without having to spend thousands of dollars on copying and postage to protect their property rights. It recommends that the landowner be permitted to file pleadings and serve them on the applicant and any party that would be directly or adversely affected by what the landowner is proposing. It argues that the Commission should routinely grant landowners waivers of the Commission's rule requiring service of pleadings on all parties.

*Commission Response.* The Commission will consider the need for special filing or service requirements on a case-by-case basis. We do not believe it is necessary to create a special class of filers who automatically do not need to serve copies of their filings on everyone. This would not be fair to the rest of the universe of filers. Additionally, as stated, the Commission now permits participants to a proceeding to voluntarily serve documents on one another by electronic means.[15] This should help reduce some of the costs of participating in a Commission proceeding.

*J. Construction Inspectors*

In the NOPR, in response to comments, the Commission explained that as part of the environmental conditions imposed in a certificate proceeding, it requires that the pipelines hire environmental inspectors to make sure that the environmental conditions of the certificate are appropriately applied.

*Comments.* The Shavers ask why environmental inspectors are not assigned by the Commission. They contend that the pipelines should pay their salary but they should not be allowed to hire their own inspectors.

*Commission Response.* The Commission's staff and its contractors routinely inspect projects. In addition, there have been cases where the Commission has had the company pay for inspectors who are directly under the control of the Commission. We will continue to use these various methods of ensuring compliance as necessary, on a project-specific basis.

Further, we do not find any reason that would warrant a ban on pipelines hiring independent contract inspectors. The pipelines recognize it is in their best interest to meet the certificate conditions, so they are protecting themselves by hiring inspectors. In addition, these inspectors are usually professionals who have a vested interest in their credibility. They move from one project to another and their work becomes known within the industry and at the Commission. The independent contract inspectors are not only hired by the pipelines, they are occasionally hired by the Commission. It would be detrimental to their future employment interests if the Commission were to find that they are not being impartial in their inspections.

*K. Need/Eminent Domain/ Compensation*

GASP questions the Commission's current policy concerning the demonstration of public need for proposed facilities. It contends that the Commission is granting certificates based on private convenience and ''corporate greed'', and not public need. It claims that the Commission has strayed from its statutory mandate by substituting desires of the marketplace for demonstrated public need.

The Shavers argue that market demand cannot be twisted to mean the same thing as public need. They state that courts condemn the land for market value with no consideration for loss of use to the landowner. They argue that the courts assume the certificate means a critical shortage will exist for gas at the end of the pipeline. They question why the landowner should pay a higher price than the recipients of the gas, while the pipeline company profits. They also claim that public convenience and necessity can only be argued if new customers (who did not previously have gas service) or additional volumes of gas for existing customers is being provided. They argue that the Commission's policy of using contracts to determine need leaves more half-empty pipelines and is only convenient to pipelines, utilities, and shareholders.

Ms. Laurie Smith, a landowner that had participated in a Southern Natural Gas pipeline proceeding, contends that the Commission is misinterpreting and misusing the power of eminent domain granted in NGA section 7. She argues that this misuse has led to the violation of landowners' Fifth Amendment property rights. Ms. Smith states that proper notification and explanation does not justify violating landowners' constitutional rights. She states that the rights of eminent domain, as spelled out in the NGA, are not applicable in a deregulated, competitive natural gas industry and that ''[i]t is time that the Commission recognizes what the real issues are and that their current stance on them only pits the landowner against the pipeline rather than forming a mutual beneficial business relationship.'' [16]

The Shavers question the Commission's statement that the pipeline's right to eminent domain is not optional. They contend that the Commission makes it optional when it allows pipelines to construct facilities under the optional certificate regulations. They argue that risk and actual necessity are two different things. Ms. Supa contends that the pipelines should pay a royalty to the landowner yearly for the use of their land.

The Iowa Board recommends that the Commission consider whether the record shows the pipeline company has made a good faith effort to obtain voluntary easements before granting a certificate that conveys the right of eminent domain.

*Commission Response.* First, we note that how the Commission determines the need for a pipeline and the right to eminent domain are not issues in this proceeding. The goal of this rulemaking is to implement landowner notification requirements, make minor changes to the Commission's regulations to help expedite the certificate process, and to implement additional environmental requirements.

[15] *See* Electronic Service of Documents, Order No. 604, 64 FR 31493 (June 11, 1999), III FERC Stats. and Regs. ¶ 31,074 (May 26, 1999).

[16] Ms. Smith's letter filed June 21, 1999.

The Commission generally determines the need for a proposed pipeline on a case-by-case basis, based on the facts and circumstances in each proceeding. In addition, the Commission recently issued a policy statement to provide guidance as to how it will evaluate proposals for new construction. In the policy statement, we stated that our goal is to appropriately consider the enhancement of competitive transportation alternatives, the possibility of overbuilding, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.[17] The Commission intends to apply this criteria on a case-by-case basis.

As stated in the NOPR, a pipeline's right to use eminent domain is a statutory right imposed by Congress. NGA section 7(h), confers the right to obtain property through the power of eminent domain if the certificate holder cannot otherwise reach an agreement with the property owner. The courts have uniformly held that the Commission has no authority to deny unilaterally that power to the certificate holder.[18] Further, a pipeline's right to use eminent domain to acquire the necessary property does not violate the landowner's constitutional rights. Issues of an unconstitutional taking arise only when the government acts in a way to deprive a citizen of its property without compensation. The Fifth Amendment does not proscribe the taking of property; it proscribes taking without compensation.[19]

Finally, compensation for rights-of-ways is determined by the laws of the state in which the condemnation proceeding takes place. The Commission has no jurisdiction over those issues.

*L. Easement Documents*

In the NOPR, in response to landowners' requests, the Commission stated it did not believe it was necessary to review every easement document negotiated by a pipeline or submitted for condemnation proceedings. However, we stated that we expected that pipelines would negotiate with landowners for easement rights fairly and in good faith, and that certain information would be provided to the landowner.

*Comments.* INGAA explains that a pipeline may enter into easement agreements prior to the time it files its certificate application or before the certificate has been granted. Therefore, it asserts that the pipeline would not have the exact right-of-way location at that time. It states that the pipeline will generally explain to the landowner the proposed route. It also contends that if the pipeline negotiates in good faith, it should not be prohibited from acquiring more land than is covered by the ultimate certificate.

Similarly, Questar Pipeline Company (Questar) asserts that the Commission's proposal to inform landowners of the proposed uses of their land ignores the practicalities of undertaking pipeline construction. It contends that many pipelines negotiate and secure right-of-way agreements prior to filing a certificate application. It states that the Commission's proposal would discourage any pre-filing efforts and thereby delay construction of the facilities. Questar claims that the Commission's proposal would allow property owners to object to the project or previously negotiated easement once the application is filed thus avoiding their side of the easement agreement. Further, it argues that the Commission has no authority to examine or require the alteration of easement agreements entered into prior to the Commission's granting the certificate.

Great Lakes requests that the Commission reconsider its intent to place easement conditions on certificates, and to clarify that such conditions will not affect existing pipeline easements, including those negotiated with landowners prior to receipt of a certificate. Additionally, Great Lakes is concerned that the Commission will require the pipeline to re-negotiate every easement agreement it holds with the landowners if the Commission conditions the certificate. It claims that this would create an enormous delay and aggravation for both the pipelines and landowners.

Columbia presents similar arguments and states that pipelines must be able to acquire property rights necessary for a project on timetables consistent with their present and long range project plans. It claims that there has been no showing of any need to regulate freely negotiated property rights transactions.

In contrast, GASP questions the Commission's statement that the pipeline will negotiate with landowners fairly and in good faith. It alleges that in that case the ''landowners are being lied to, threatened, intimidated, and badgered to give up more than the certificate requires.''

Further, INGAA states that easement agreements are long-term documents and that identifying company representatives and phone numbers in the document should not be required. Great Lakes questions the usefulness of such a requirement since the landowners know with whom they negotiated with and the description of the affected property will be set forth in the easement documents and the easements are subject to applicable state statutes on recording and legal descriptions that would render the Commission's requirements duplicative. It also asserts that requiring to put pipeline contacts and phone numbers in the easement documents is unlikely to provide up-to-date contact information to the landowner. Questar states that the Commission should not use its certificate authority to tinker with the form and substance of easement agreements. Specifically, it points out that as a practical matter, adding phone numbers and names to easement agreements does not make sense since the numbers and names will change long before the easements do. Enron makes similar arguments.

*Commission Response.* The Commission has received numerous complaints from landowners alleging that pipelines are not negotiating with landowners for easement rights. In essence, filings in recent proceedings allege that the pipelines are threatening landowners with a take-it or be-subject-to-condemnation deal in which the landowner is not allowed any meaningful negotiations. Additionally, they allege that the pipelines are representing to the landowners that the property they may need for their long range plans will be included in any condemnation proceeding. Landowners also claim that the pipelines are wrongly representing that the Commission's certificate will give them the authority to use the property for whatever use they deem necessary, including the placement of fiber optic cable. They also contend that the pipelines are representing that if landowners do not sign the agreement voluntarily, the pipeline will have the right to acquire the same rights in a condemnation proceeding.

The Commission understands that the pipelines would like to be able to acquire the property rights necessary for their present and long range plans. However, the pipelines should specifically explain to the landowner during negotiations what exactly they would have the right to in a condemnation proceeding, and what

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[17] Certification of New Interstate Natural Gas Pipeline Facilities, 88 FERC ¶ 61,227 (1999).

[18] *See FPC* v. *Tuscarora Indian Nation,* 362 U.S. 99, 123–24 (1960); Columbia Gas Transmission Corp. v. Exclusive Natural Gas Storage Easement, 776 F.2d 125, 129 n.1 (6th Cir. 1985)(holding that issuance of a certificate authorizing a pipeline to operate any facility gives the pipeline the right to condemn the necessary easements).

[19] *See Williamson County Reg'l Planning Comm'n* v. *Hamilton Bank,* 473 U.S. 172, 194 (1985).

extras they are seeking in the negotiations for an easement agreement. Landowners should be compensated for such extras. We do not believe it is appropriate for the pipelines to take advantage of the landowners' lack of knowledge by negotiating an agreement using misrepresentation or the incomplete disclosure of all the relevant facts to the landowners.

The Commission does not intend to change or challenge existing negotiated easement agreements. However, we note that to the extent the pipelines are acquiring rights through questionable tactics, the validity those agreements would be determined by applicable state law.

Finally, the Commission only intends to consider the imposition of conditions on a pipeline's easement agreements on a case-by-case basis in individual proceedings where the Commission deems such action to be necessary. Any objections to the specific details of such conditions may be raised in the individual proceedings.

## IV. Information Collection Statement

The Office of Management of Budget's (OMB) regulations in 5 CFR 1320.11 require that it approve certain reporting and record keeping requirements (collection of information) imposed by an agency. Upon approval of collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this Final Rule shall not be penalized for failing to respond to these collections of information unless the collections of information display valid OMB control numbers.

The collection information related to the subject of the Final Rule falls under the Commission's FERC–537[20] and FERC–577[21] data collections. Specifically, the subject rule would require notification of all landowners whose land may be affected by proposed natural gas pipeline projects.

In accordance with Section 3507(d) of the Paperwork Reduction Act of 1995,[22] the proposed data requirements in the subject rulemaking have been submitted to the Office of Management and Budget (OMB) for review.

The estimated reporting burden related to the notification requirements in the Final Rule is shown in the tables below. The estimates include an initial one-time start-up burden of 8,800 hours for the first year plus an on-going annual burden of 10,744 hours under FERC–577 and a decrease of 12,600 hours under FERC–537. The net change in total reporting burden under the data collections would be an estimated net increase of 6,944 hours for the first year. In subsequent years, there would be a net decrease of 1,856 hours.

The burden estimates for complying with the Final Rule are as follows:

*Public Reporting Burden:* Estimated Annual Burden: The burden estimates for complying with this proposed rule are as follows:

| Data collection | Number of respondents | Number of responses | Hours per response | Total annual hours |
|---|---|---|---|---|
| FERC–537 | 50 | −50 | 252 | −12,600 |
| FERC–577 | 70 | −20 | [23] 13.9 | [24] +19,544 |
| Total | 70 | −70 | [25] 4.1 | +6,944 |

[23] The increase per response based on an estimated 1,160 responses per year. *Note:* Detail may not add to total because of rounding.
[24] Includes one-time initial start-up burden of 8,800 hours.
[25] Represents the increase per response (rounded) based on the net increase in total reporting burden (6,944 hours) divided by the total number of responses expected annually under both FERC–537 and FERC–577 (1,690 responses).

*Total Annual Hours for Collections:* Annual reporting burden (including one-time start-up burden during the first year of implementation) plus record keeping (if appropriate) = 6,944 hours.

Based on the Commission's experience with processing applications for construction and acquisition of pipeline facilities over the last three fiscal years (FY96–FY98), it is estimated that 1,690 filings/responses per year (under both data collections) will be made over the next three years. The average burden per filing would increase 4.1 hours. Following the first year of implementation, the reporting burden under FERC–577 would be reduced by 8,800 hours.

*Information Collection costs:* The average annualized cost for all respondents during the first year of implementation to be:

| Data collection | Annualized capital/ start-up costs | Annualized on-going costs (operations and maintenance) | Total annualized costs |
|---|---|---|---|
| FERC–537 | ..... | −$665,674 | −$665,674 |
| FERC–577 | $464,915 | 567,619 | 1,032,534 |
| Total | 464,915 | −98,055 | 366,860 |

OMB regulations require its approval of certain information collection requirements imposed by agency rule.[26] Accordingly, pursuant to OMB regulations, the Commission has provided notice of its proposed information collections to OMB.

*Title:* FERC–537 ''Gas Pipeline Certificate: Construction, Acquisition, and Abandonment.'' and FERC–577 ''Environmental Impact Statement.''

*Action:* Proposed Data Collections.

*OMB Control No.:* 1902–0060 (FERC–537); 1902–0128 (FERC–577).

Applicants shall not be penalized for failure to respond to these collections of information unless the collections of information display a valid OMB control number.

[20] Gas Pipeline Certificates: Construction, Acquisition, and Abandonment.
[21] Gas Pipeline Certificates: Environmental Impact Statement.
[22] 44 U.S.C. 3507(d).
[26] 5 CFR 1320.11.

*Respondents:* Businesses or other for profit. (Interstate natural gas pipelines (Not applicable to small business))

*Frequency of Responses:* On occasion.

*Necessity of Information:* The Final Rule revises the Commission's regulations governing the filing of applications for the construction and operation of pipeline facilities to provide service or to abandon facilities or service under section 7 of the NGA. Section 7 of the NGA requires the Commission to issue certificates of public convenience and necessity for all interstate sales and transportation of natural gas, the construction and operation of natural gas facilities used for those interstate sales and transportation and prior Commission approval of abandonment of jurisdictional facilities or services. The Commission has determined that portions of its regulations need to be revised to reflect a recent increase in sensitivity of the public to pipeline construction, and a desire on the part of the public to receive more timely notification of pipeline construction proposals. Certain other changes are being made because of the Commission's experience in the processing of some applications for which an Environmental Assessment is unnecessary.

*Internal Review:* The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the natural gas industry.

For information on the requirements, submitting comments concerning the collection of information and the associated burden estimates, including suggestions for reducing this burden, please send your comments to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 [Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202)208–1415, fax: (202)273–0873, e-mail: mike.miller@ferc.fed.us]. In addition, comments on reducing the burden and/or improving the collections of information should also be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Federal Energy Regulatory Commission, 725 17th Street, NW, Washington, DC 20503, phone (202)395–3087, fax: (202)395–7285.

## V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA) requires agencies to prepare certain statements, descriptions and analyses of proposed rules that will have a significant economic impact on a substantial number of small entities. [27] The Commission is not required to make such analyses if a rule would not have such an effect.[28]

The Commission does not believe that this rule would have such an impact on small entities. The regulations adopted here impose requirements only on interstate pipelines, which are not small businesses. Accordingly, pursuant to section 605(b) of the RFA, the Commission hereby certifies that the regulations proposed herein will not have a significant adverse impact on a substantial number of small entities.

## VI. Environmental Statement

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[29] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[30] Generally, the actions proposed to be taken here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[31] While the additions of the categorical exclusions in §§ 380.4(a)(31) through (36) include construction-type activities, the NOPR discussion of those sections explains why they do not have a significant effect on the environment. Accordingly, we do not believe that any further analysis is needed. Therefore, an Environmental Assessment is unnecessary and has not been prepared in this rulemaking.

## VII. Effective Date

These regulations become effective November 24, 1999. The Commission has concluded, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.

[27] 5 U.S.C. 601–612.

[28] 5 U.S.C. 605(b).

[29] Regulations Implementing the National Environmental Policy Act, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Regulations Preambles 1986–1990, ¶30,783 (Dec. 10, 1987).

[30] 18 CFR 380.4.

[31] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

## List of Subjects

*18 CFR Part 153*

Exports, Imports, Natural gas, Reporting and recordkeeping requirements.

*18 CFR Part 157*

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

*18 CFR Part 380*

Environmental impact statements, Reporting and recordkeeping requirements.

By the Commission.

**David P. Boergers,**

*Secretary.*

In consideration of the foregoing, the Commission amends Parts 153, 157, and 380 Chapter I, Title 18, Code of Federal Regulations, as follows.

## PART 153—APPLICATIONS FOR AUTHORIZATION TO CONSTRUCT, OPERATE, OR MODIFY FACILITIES USED FOR THE EXPORT OR OF IMPORT NATURAL GAS

1. The authority citation for part 153 continues to read as follows:

**Authority:** 15 U.S.C. 717b, 717o; E.O. 10485, 3 CFR, 1949–1953 Comp., p. 970, as amended by E.O. 12038, 3 CFR, 1978 Comp., p.136. DOE Delegation Order No. 0204–112. 49 FR 6684 (February 22, 1984).

2. New § 153.3 is added to read as follows:

### § 153.3 Notice requirements.

All applications filed under this part are subject to the landowner notification requirements in § 157.6(d) of this chapter.

## PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

3. The authority citation for part 157 continues to read as follows:

**Authority:** 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

4. In § 157.6, a new paragraph (d) is added to read as follows:

### § 157.6 Applications; general requirements.

* * * * *

(d) *Landowner notification.* (1) For all applications filed under this subpart which include construction of facilities or abandonment of facilities (except for abandonment by sale or transfer where the easement will continue to be used for transportation of natural gas), the applicant shall make a good faith effort to notify all affected landowners:

(i) By certified or first class mail, sent within 3 business days following the date that a docket number is assigned to its application; or

(ii) By hand, within the same time period; and

(iii) By including notice of the project in a newspaper(s) of general circulation in the project area within a week of such filing.

(2) All affected landowners includes owners of property interests, as noted in the most recent county/city tax records as receiving the tax notice, whose property:

(i) Is directly affected (*i.e.*, crossed or used) by the proposed activity, including all facility sites, rights-of-way, access roads, pipe and contractor yards, and temporary workspace;

(ii) Abuts either side of an existing right-of-way or facility site owned in fee by any utility company, or abuts the edge of a proposed right-of-way which runs along a property line in the area in which the facilities would be constructed;

(iii) Contains a residence within one-half mile of proposed compressors or their enclosures or LNG facilities; or

(iv) Is within the area of new storage fields or expansions of storage fields, including any applicable buffer zone.

(3) The notice shall include:

(i) The docket number of the filing;

(ii) The most recent edition of the Commission's pamphlet that explains the Commission's certificate process and addresses the basic concerns of landowners. Except: pipelines are not required to include the pamphlet in notifications of abandonments or in the published newspaper notice;

(iii) A description of the applicant and the proposed project, its location (including a general location map), its purpose, and the timing of the project;

(iv) A general description of what the applicant will need from the landowner if the project is approved, and how the landowner may contact the applicant, including a local or toll-free phone number and a name of a specific person to contact who is knowledgeable about the project;

(v) A brief summary of what rights the landowner has at FERC and in proceedings under the eminent domain rules of the relevant state; and

(vi) Information on how the landowner can get a copy of the application from the company or the location(s) where a copy of the application may be found as specified in § 157.10.

(4) If the notice is returned as undeliverable, the applicant will make a reasonable attempt to find the correct address and notify the landowner.

(5) Within 30 days of the date the application was filed, applicant shall file an updated list of affected landowners, including information concerning notices that were returned as undeliverable.

5. In § 157.103, a new paragraph (k) is added to read as follows:

**§ 157.103 Terms and conditions; other requirements.**

* * * * *

(k) Applications filed under this section are subject to the landowner notification requirements described in § 157.6(d).

6. In § 157.202, paragraphs (b)(6)(ii) and (b)(11)(i) are revised to read as follows:

**§ 157.202 Definitions.**

* * * * *

(b) * * *

(6) * * *

(ii) When required by highway construction, dam construction, encroachment of residential, commercial, or industrial areas, erosion, or the expansion or change of course of rivers, streams or creeks, or

* * * * *

(11) *Sensitive environmental area* means:

(i) The habitats of species which have been identified as endangered or threatened under the Endangered Species Act (Pub. L. 93–205, as amended) and essential fish habitat as identified under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801, *et seq.*);

* * * * *

7. In § 157.203, new paragraph (d) is added to read as follows:

**§ 157.203 Blanket certification.**

* * * * *

(d) *Landowner notification.*

(1) Except as identified in paragraph (d)(3) of this section, no activity described in paragraph (b) of this section is authorized unless the company makes a good faith effort to notify all affected landowners, as defined in § 157.6(d)(2), at least 30-days prior to commencing construction or at the time it initiates easement negotiations, whichever is earlier. The notification shall include at least:

(i) A brief description of the facilities to be constructed or replaced and the effect the construction activity will have on the landowner's property;

(ii) The name and phone number of a company representative who is knowledgeable about the project; and

(iii) An explanation of the Commission's Enforcement Hotline procedures, as codified in § 1b.21 of this chapter, and the Enforcement Hotline telephone number.

(2) For activities described in paragraph (c) of this section, the company shall make a good faith effort to notify all affected landowners, as defined in § 157.6(d)(2), within at least three business days of filing its application or at the time it initiates easement negotiations, whichever is earlier. The notice should include at least:

(i) A brief description of the facilities to be constructed or replaced and the effect the construction activity will have on the landowner's property;

(ii) The name and phone number of a company representative that is knowledgeable about the project;

(iii) The docket number (if assigned) for the company's application; and

(iv) The following paragraph: This project is being proposed under the prior notice requirements of the blanket certificate program administered by the Federal Energy Regulatory Commission. Under the Commission's regulations, you have the right to protest this project within 45 days of the date the Commission issues a notice of the pipeline's filing. If you file a protest, you should include the docket number listed in this letter and provide the specific reasons for your protest. The protest should be mailed to the Secretary of the Federal Energy Regulatory Commission, 888 First St., NE, Room 1A, Washington, DC 20426. A copy of the protest should be mailed to the pipeline at [pipeline address]. If you have any questions concerning these procedures you can call the Commission's Office of External Affairs at (202) 208–1088.

(3) *Exceptions.*

(i) No landowner notice is required for replacements which would have been done under § 2.55 of this chapter but for the fact that the replacement facilities are not of the same capacity and as long as they meet the location requirements of § 2.55(b)(1)(ii) of this chapter; or any replacement done for safety, DOT compliance, environmental, or unplanned maintenance reasons that are not foreseen and that require immediate attention by the certificate holder.

(ii) No landowner notice is required for abandonments which involve only the sale or transfer of the facilities, and the easement will continue to be used for transportation of natural gas.

8. In § 157.206, new paragraphs (b)(2)(xii) and (b)(3)(iv) are added to read as follows:

**§ 157.206 Standard conditions.**

* * * * *

(b) *Environmental compliance.* * * *

(2) * * *

(xii) Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801, *et seq.*)

(3) * * *

(iv) Paragraphs (b)(2)(i) and (viii) of this section only if it adheres to Commission staff's current ''Upland Erosion Control, Revegetation and Maintenance Plan'' and ''Wetland and Waterbody Construction and Mitigation Procedures'' which are available on the Commission Internet home page or from the Commission staff, or gets written approval from the staff or the appropriate Federal or state agency for the use of project-specific alternatives to clearly identified portions of those documents.

* * * * *

## PART 380—REGULATIONS IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

9. The authority citation for Part 380 continues to read as follows:

**Authority:** 42 U.S.C. 4321–4370–a; 7101–7352; E.O. 12009, 3 CFR 1978 Comp., p. 142.

10. In § 380.4, new paragraphs (a)(31) through (a)(36) are added to read as follows:

**§ 380.4 Projects or actions categorically excluded.**

(a) * * *

(31) Abandonment of facilities by sale that involves only minor or no ground disturbance to disconnect the facilities from the system;

(32) Conversion of facilities from use under the NGPA to use under the NGA;

(33) Construction or abandonment of facilities constructed entirely in Federal offshore waters that has been approved by the Minerals Management Service and the Corps of Engineers, as necessary;

(34) Abandonment or construction of facilities on an existing offshore platform;

(35) Abandonment, construction or replacement of a facility (other than compression) solely within an existing building within a natural gas facility (other than LNG facilities), if it does not increase the noise or air emissions from the facility, as a whole; and

(36) Conversion of compression to standby use if the compressor is not moved, or abandonment of compression if the compressor station remains in operation.

* * * * *

11. In § 380.12, paragraphs (c)(5) and (c)(10) are revised; paragraphs (e)(6) and (e)(7) are redesignated (e)(7) and (e)(8); and new paragraph (e)(6) is added to read as follows:

**§ 380.12 Environmental reports for Natural Gas Act applications.**

* * * * *

(c) * * *

(5)(i) Identify facilities to be abandoned, and state how they would be abandoned, how the site would be restored, who would own the site or right-of-way after abandonment, and who would be responsible for any facilities abandoned in place.

(ii) When the right-of-way or the easement would be abandoned, identify whether landowners were given the opportunity to request that the facilities on their property, including foundations and below ground components, be removed. Identify any landowners whose preferences the company does not intend to honor, and the reasons therefore.

* * * * *

(10) Provide the names and mailing addresses of all affected landowners specified in § 157.6(d) and certify that all affected landowners will be notified as required in § 157.6(d).

* * * * *

(e) * * *

(6) Identify all federally listed essential fish habitat (EFH) that potentially occurs in the vicinity of the project. Provide information on all EFH, as identified by the pertinent Federal fishery management plans, that may be adversely affected by the project and the results of abbreviated consultations with NMFS, and any resulting EFH assessments.

* * * * *

12. In Appendix A to Part 380, paragraph 8 in Resource Report 1 and paragraphs 7 and 8 of Resource Report 3 are revised to read as follows:

**Appendix A to Part 380-Minimum Filing Requirements for Environmental Reports Under the Natural Gas Act**

Resource Report 1—General Project Description

* * * * *

8. Provide the names and address of all affected landowners and certify that all affected landowners will be notified as required in § 157.6(d). (§§ 380.12(a)(4) and (c)(10))

* * * * *

Resource Report 3—Vegetation and Wildlife

* * * * *

7. Identify all federally listed essential fish habitat (EFH) that potentially occurs in the vicinity of the project and the results of abbreviated consultations with NMFS, and any resulting EFH assessments. (§ 380.12(e)(6))

8. Describe any significant biological resources that would be affected. Describe impact and any mitigation proposed to avoid or minimize that impact. (§§ 380.12(e)(4 & 7))

* * * * *

[FR Doc. 99–27782 Filed 10–22–99; 8:45 am]

BILLING CODE 6717–01–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 60

[OK17–1–7410; FRL–6463–2]

### Standards of Performance for New Stationary Sources (NSPS); Supplemental Delegation of Authority to the State of Oklahoma

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

**ACTION:** Delegation of authority.

**SUMMARY:** The purpose of this document is to inform the public that the EPA approved the updated delegation of authority to the State of Oklahoma for implementation and enforcement of NSPS. This action is in response to a request from the Oklahoma Department of Environmental Quality (ODEQ).

On November 2, 1998, the State of Oklahoma approved an emergency rule that incorporates by reference EPA's New Source Performance Standards in 40 CFR part 60. Both emergency and permanent rules incorporating by reference the NSPS were adopted by the Environmental Quality Board on September 15, 1998 and the permanent rules took effect June 1, 1999. The State adopted all of the NSPS except subpart AAA, New Residential Wood Heaters, and those sections that contain authorities reserved by the EPA.

**EFFECTIVE DATE:** The effective date of the delegation of authority is October 8, 1999.

**ADDRESSES:** The related materials in support of this action may be requested by writing to the following address: Environmental Protection Agency, Region 6, Air Planning Section (6PD–L),

1445 Ross Avenue, Dallas, Texas 75202–2733.

Oklahoma Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101–1677.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ken Boyce, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202, telephone: (214) 665–7259.

**SUPPLEMENTARY INFORMATION:**

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### I. What is the Authority for Delegation?

Sections 110, 111(c)(1) and 301, of the Clean Air Act (ACT) as amended November 15, 1990, authorize EPA to delegate authority to implement and enforce the standards set out in 40 CFR part 60, NSPS.

### II. What was the Existing Delegation?

The original delegation of NSPS authority to Oklahoma was granted by EPA on March 25, 1982. This delegation was granted based on the State incorporating the NSPS requirements into future permits; therefore, the delegation excluded the authority to enforce the standards against sources constructed or modified prior to the effective date of the delegation.

### III. What is Being Delegated?

On November 2, 1998, under the State's ''Emergency Rules'' statute (75 Oklahoma Statue, supplement 1998, section 253, Statutes and Reports), the State adopted emergency rules that incorporated by reference the NSPS in 40 CFR part 60. Both emergency and permanent rules were adopted by the Oklahoma Environmental Quality Board on September 15, 1998, and both were signed by the Governor on November 2, 1998. While the emergency rules took effect on November 2, 1998, the Oklahoma legislature reviewed and approved the permanent rules that became effective on June 1, 1999.

After a thorough review of the newly adopted rule, the Regional Administrator has determined that this action was appropriate for all source categories constructed or modified prior to the effective date of this delegation. All sources subject to the requirements of 40 CFR part 60 will now be under the jurisdiction of the State as appropriate.

Since review of the pertinent laws, rules, and regulations for the State has down them to be adequate for implementation and enforcement authority, EPA hereby notifies the public that it has extended the delegation of authority to all sources upon the effective date of the Regional Administrator's letter. Based on ODEQ's additional authority, EPA has updated the delegation agreement. This delegation is based upon the State's incorporation by reference of NSPS which will apply regardless of date. It is also important to note that EPA retains concurrent enforcement authority.

### IV. What is not Being Delegated?

It is important to note that no delegation authority is granted to the ODEQ for Indian lands. In 1983, the President established a Federal Indian Policy which emphasized the principle of Indian ''self-government,'' and direct dealing with Indian Nations on a ''government-to-government'' basis. We have adopted this policy for administration of the environmental programs on Indian lands. Also, no authority is delegated to the State for 40 CFR part 60, subpart AAA, Standards of Performance for New Residential Wood Heaters.

### V. What About the NESHAP Delegation Agreement?

This will not affect the 1982 delegation agreement with ODEQ for NESHAPs. Any changes with that agreement will be addressed separately in the future.

### VI. Administrative Requirements

Under Executive Order (E.O.) 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore, not subject to review by the Office of Management and Budget.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, as that term is defined in 5 U.S.C. 804(3).

**Authority:** This document is issued under the authority of sections 101, 110, 111, and 301 of the Act, as Amended (42 U.S.C. 7401, 7410, 7411, and 7601).

Dated: October 7, 1999.

**Jerry Clifford,**

*Acting Regional Administrator, Region 6.*

[FR Doc. 99–27796 Filed 10–22–99; 8:45 am]

BILLING CODE 6560–50–M

## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

## 49 CFR Part 544

**[Docket No.: 99–001; Notice 02]**

**RIN 2127–AH62**

## Insurer Reporting Requirements; List of Insurers Required to File Reports

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Final Rule.

**SUMMARY:** This final rule updates the lists in Appendices A, B, and C of Part 544 of passenger motor vehicle insurers that are required to file reports on their motor vehicle theft loss experiences, pursuant to 49 U.S.C. 33112. Each insurer listed must file a report for the 1996 calendar year not later than October 25, 1999.

**DATES:** This final rule is effective October 25, 1999.

Reporting Date: Insurers listed in the appendices are required to submit their reports on CY 1996 experience on or before October 25, 1999. Previously listed insurers whose names are removed by this notice need not submit reports for CY 1996. Insurers newly listed in this final rule must submit their reports for calendar year 1996 on or before October 25, 1999. Under part 544, as long as an insurer is listed, it must file reports each October 25. Thus, any insurer listed in the appendices as of the date of the most recent final rule must file a report on the following October 25, and on each succeeding October 25, absent a further amendment removing the insurer's name from the appendices.

**FOR FURTHER INFORMATION CONTACT:** Ms. Henrietta L. Spinner, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Ms. Spinner's telephone number is (202) 366–4802. Her fax number is (202) 493–2290.

**SUPPLEMENTARY INFORMATION:**

### Background

Pursuant to 49 U.S.C. 33112, Insurer reports and information, NHTSA requires certain passenger motor vehicle insurers to file an annual report with the agency. Each insurer's report includes information about thefts and recoveries of motor vehicles, the rating rules used by the insurer to establish premiums for comprehensive coverage, the actions taken by the insurer to reduce such premiums, and the actions taken by the

insurer to reduce or deter theft. Under the agency's implementing regulation, 49 CFR part 544, the following insurers are subject to the reporting requirements: (1) Those issuers of motor vehicle insurance policies whose total premiums account for 1 percent or more of the total premiums of motor vehicle insurance issued within the United States; (2) Those issuers of motor vehicle insurance policies whose premiums account for 10 percent or more of total premiums written within any one State; and (3) Rental and leasing companies with a fleet of 20 or more vehicles not covered by theft insurance policies issued by insurers of motor vehicles, other than any governmental entity. Pursuant to its statutory exemption authority, the agency has exempted smaller passenger motor vehicle insurers from the reporting requirements.

*A. Small Insurers of Passenger Motor Vehicles*

Section 33112(f)(2) provides that the agency shall exempt small insurers of passenger motor vehicles if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information in the reports, either nationally or on a state-by-state basis. The agency may not, however, exempt an insurer under this section if it is considered an insurer only because of section 33112(b)(1); that is, if it is a self-insurer. The term ''small insurer'' is defined, in section 33112(f)(1)(A) and (B), as an insurer whose premiums for motor vehicle insurance issued directly or through an affiliate, including pooling arrangements established under State law or regulation for the issuance of motor vehicle insurance, account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also stipulates that if an insurance company satisfies this definition of a ''small insurer,'' but accounts for 10 percent or more of the total premiums for all motor vehicle insurance issued in a particular State, the insurer must report about its operations in that State.

As provided in 49 CFR part 544, NHTSA exercises its exemption authority by listing in Appendix A each insurer which must report because it had at least 1 percent of the motor vehicle insurance premiums nationally. Listing the insurers subject to reporting instead of each insurer exempted from reporting because it had less than 1 percent of the premiums nationally is administratively simpler since the former group is much smaller than the latter. In Appendix B, NHTSA lists those insurers that are required to report for particular States because each insurer had a 10 percent or a greater market share of motor vehicle premiums in those States. In establishing part 544 (52 FR 59, January 2, 1987), the agency stated that Appendices A and B will be updated annually. It has been NHTSA's practice to update the appendices based on data voluntarily provided by insurance companies to A.M. Best, and made available for the agency each spring. The agency uses the data to determine the insurers' market shares nationally and in each state.

*B. Self-insured Rental and Leasing Companies*

In addition, upon making certain determinations, NHTSA is authorized to grant exemptions to self-insurers, defined in 49 U.S.C. 33112(b)(1) as any person who has a fleet of 20 or more motor vehicles (other than any governmental entity) which are used primarily for rental or lease and which are not covered by theft insurance policies issued by insurers of passenger motor vehicles. Under 49 U.S.C. 33112(e)(1) and (2), NHTSA may exempt a self-insurer from reporting, if the agency determines:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer; and

(2) The insurer's report will not significantly contribute to carrying out the purposes of Chapter 331.

In a final rule published June 22, 1990 (55 FR 25606), the agency granted a class exemption to all companies that rent or lease fewer than 50,000 vehicles because it believed that reports from only the largest companies would sufficiently represent the theft experience of rental and leasing companies. NHTSA concluded those reports by the many smaller rental and leasing companies do not significantly contribute to carrying out NHTSA's statutory obligations and that exempting such companies will relieve an unnecessary burden on most companies that potentially must report. As a result of the June 1990 final rule, the agency added a new Appendix C that consists of an annually updated list of the self-insurers that are subject to part 544.

Following the same approach, as in the case of Appendix A, NHTSA has included, in Appendix C, each of the relatively few self-insurers subjected to reporting instead of relatively numerous self-insurers exempted. NHTSA updated Appendix C based primarily on information from the publications, Automotive Fleet Magazine and Business Travel News.

**Notice of Proposed Rulemaking**

*1. Insurers of Passenger Motor Vehicles*

On May 14, 1999, NHTSA published a notice of proposed rulemaking (NPRM) to update the list of insurers in Appendices A, B, and C required to file reports (64 FR 26352). Based on the 1996 calendar year A.M. Best data for market shares, NHTSA proposed to amend the listing in Appendix A of insurers which must report because each had at least 1 percent of the motor vehicle insurance premiums on a national basis. The list was last amended in a notice published on December 18, 1998 (See 63 FR 70051). Three companies, Aetna Life & Casualty Group, Safeco Insurance Companies, and Travelers Insurance Group, were proposed to be removed from Appendix A. One company, Travelers PC Group, was proposed to be added.

Under part 544, each of the 18 insurers listed in Appendix A of the NPRM would have been required to file a report not later than October 25, 1999, setting forth the information required by Part 544 for each State in which it did business in the 1996 calendar year. As long as those 18 insurers remain listed, they would be required to submit reports by each subsequent October 25 for the calendar year ending slightly less than 3 years before.

Appendix B of the NPRM listed those insurers that would be required to report for particular States for calendar year 1996, because each insurer had a 10 percent or a greater market share of motor vehicle premiums in those States. Based on the 1996 calendar year A.M. Best's data for market shares, it was proposed that Island Insurance Group, reporting on its activities in the State of Hawaii be removed from Appendix B.

Under part 544, each of the 11 insurers listed in Appendix B of the NPRM would have been required to report no later than October 25, 1999, on their calendar year 1996 activities in every state in which they had a 10 percent or greater market share, and set forth the information required by Part 544. As long as those 11 insurers remain listed, they would be required to submit reports on or before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

*2. Rental and Leasing Companies*

Based on information in Automotive Fleet Magazine and Business Travel News for 1996, the most recent year for which data are available, NHTSA proposed one change in Appendix C. As

indicated above, that appendix lists rental and leasing companies required to file reports. Based on the data reported in the above mentioned publications, it proposed that one rental and leasing company, Citicorp Bankers Leasing Corporation, be removed from Appendix C.

Under part 544, each of the 19 companies (including franchisees and licensees) listed in Appendix C would have been required to file reports for calendar year 1996 no later than October 25, 1999, and set forth the information required by part 544. As long as those 19 companies remain listed, they would be required to submit reports on or before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

**Public Comments on Final Determination**

*1. Insurers of Passenger Motor Vehicles*

In response to the NPRM, the agency received two comments. Both commentors were companies listed in the May 1999 NPRM. Each commentor questioned the appropriateness of its inclusion in one of the appendices.

Travelers Property Casualty Corporation (Travelers) wrote to request that it not be included in Appendix A. As stated, NHTSA's proposal to include Travelers was based on market share data provided by A.M. Best. Travelers wrote that it was created following the purchase by Travelers of Aetna Life and Casualty's property casualty business on April 2, 1996. Since Traveler's acquisition of Aetna in 1996, the companies have integrated its auto insurance products, reentered some states from which each had previously withdrawn, and achieved solid growth under the Travelers Property Casualty Corporation banner. The insurer, Travelers, believes that because the business was not consolidated until 1999, compiling the data required for reporting for the years prior to CY 1999 would be extremely burdensome, and in some cases, it might not even be possible.

The agency notes Travelers request for an exemption from the October 25, 1999, 2000 and 2001 insurer reporting requirements. However, the agency does not believe that Travelers meets any of the exemption requirements provided under U.S.C. 33112(e)(1) and (2). The agency does not believe that the cost of preparing and furnishing this report will be excessive in relation to the size of the insurer's business. Additionally, the agency believes that because Travelers' insurer information would contribute significally to the agency's statutory requirements, it should submit a report of its CY 1996 insurer information and adhere to the reporting requirements for any subsequent years it is required to report. Since Travelers does not meet the criteria for exemption, NHTSA determines that Travelers should remain listed on Appendix A. Additionally, the agency was subsequently notified that the GEICO Corporation Group, an insurance entity, became a wholly owned subsidiary of Berkshire Hathaway Inc. Therefore, both names will be listed on Appendix A, but the GEICO Corporation Group will continue to report for purposes pursuant to 49 U.S.C. 33112.

Nodak Mutual Insurance Company (Nodak) in North Dakota wrote to request that it not be listed in Appendix B. Nodak indicated that it is not the largest writer of automobiles in the state of North Dakota, although it is the largest property/casualty insurer in that state. The insurer stated that the subject report relates strictly to automobiles, and, therefore, it does not feel the company is in the best position to make comments on stolen vehicles. Nodak stated that it has few auto theft claims, and it does not have any great bearing on the statistics. For instance, in calendar years 1994 and 1995, Nodak reported 14 and 18 stolen vehicles respectively. It believes that the small amount of the vehicles stolen affecting its company would have no bearing on nationwide statistics. Further, Nodak feels that the efforts they would take to acquire statistics of this nature would be an undue hardship considering the lack of effect its information would have on the statistical data gathered nationwide. Finally, Nodak stated that it is a small company and is not in a position to take steps on a nationwide basis to promote programs that deter theft.

The agency notes Nodaks' rationale that its auto theft has declined over the past year and the undue hardship it believes it will endure to provide the required insurer information. The agency also notes Nodak's comment that it believes it is not in the best position to comment on stolen vehicles because while it is the largest property/casualty insurer in North Dakota, it is not the largest writer of automobiles in the state of North Dakota. Therefore, Nodak requests to be exempted from further insurer reporting requirements. However, the agency has determined that the exemption authority provided in section 33112(e)(1) and (2) should not be applied to this insurer. Nodak does not qualify as a ''small insurer'' because its *total premiums* written exceed 10 percent of the total written in North Dakota. As defined by 49 U.S.C. 33112(f)(1)(B), a small insurer means an insurer whose premiums for motor vehicle insurance account for *less* than 10 percent of the total premiums for *all* forms of motor vehicle insurance issued by the insurers in any State. Section 33112 provides that if an insurance company satisfies the section's definition of small insurer nationally, but accounts for 10 percent or more of the total premiums for *all forms* of motor vehicle insurance issued by insurers within a particular State, such insurer must report this information about its operation in that State. Additionally, the agency believes that the cost of preparing and furnishing this report would not be excessive in relation to the size of the insurers' business. The agency also notes that there have been several other companies similar in premium size for a given State who have experienced anywhere from none to a very few thefts and have continued to provide the required insurer information in a timely fashion. Therefore, because the agency believes that the submission of Nodaks' required information will not be excessive in relation to the size of its business, and that its report will contribute to carrying out the agency's statutory requirements, the agency has determined that the Nodak Mutual Insurance Company should remain on Appendix B.

After reviewing the public comments and in making the appropriate adjustment to Appendix B, NHTSA has determined that each of the 18 insurers listed in Appendix A, each of the 11 insurers in Appendix B, and each of the 19 insurers listed in Appendix C, are required to submit an insurer report under Part 544. Each listed insurer must report on its experience for calendar year 1996, and set forth the information required by 49 CFR part 544.

**Regulatory Impacts**

*1. Costs and Other Impacts*

This notice has not been reviewed under Executive Order 12866. NHTSA has considered the impact of this final rule and has determined the action not to be ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures. This rule implements the agency's policy of ensuring that all insurance companies that are statutorily eligible for exemption from the insurer reporting requirements are in fact exempted from those requirements. Only those companies that are not statutorily eligible for an exemption are required to file reports.

NHTSA does not believe that this rule, reflecting more current data, affects

the impacts described in the final regulatory evaluation prepared for the final rule establishing part 544 (52 FR 59, January 2, 1987). Accordingly, a separate regulatory evaluation has not been prepared for this rulemaking action. Using the cost estimates in the 1987 final regulatory evaluation, the agency estimates that the cost of compliance will be about $50,000 for any insurer added to Appendix A, about $20,000 for any insurer added to Appendix B, and about $5,770 for any insurer added to Appendix C. In this final rule, for Appendix A, the agency would add one insurer and remove three insurers; for Appendix B, the agency would remove one insurer; and for Appendix C, the agency would remove one company. The agency therefore estimates that the net effect of this final rule will be a cost decrease to insurers, as a group of approximately $125,770.

*2. Paperwork Reduction Act*

The information collection requirements in this final rule have been submitted to and approved by the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This collection of information was assigned OMB Control Number 2127–0547 (''Insurer Reporting Requirements'') and was approved for use through July 31, 2000.

*3. Regulatory Flexibility Act*

The agency has also considered the effects of this rulemaking under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). I certify that this final rule would not have a significant economic impact on a substantial number of small entities. The rationale for the certification is that none of the companies included in Appendices A, B, or C would be construed to be a small entity within the definition of the RFA. ''Small insurer'' is defined, in part under 49 U.S.C. 33112, as any insurer whose premiums for all forms of motor vehicle insurance account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States, or any insurer whose premiums within any State, account for less than 10 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the State. This notice would exempt all insurers meeting those criteria. Any insurer too large to meet those criteria is not a small entity. In addition, in this rulemaking, the agency proposes to exempt all ''self insured rental and leasing companies'' that have fleets of fewer than 50,000 vehicles. Any self insured rental and leasing company too large to meet that criterion is not a small entity.

*4. Federalism*

This action has been analyzed according to the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

*5. Environmental Impacts*

In accordance with the National Environmental Policy Act, NHTSA has considered the environmental impacts of this final rule and determined that it would not have a significant impact on the quality of the human environment.

*6. Civil Justice Reform*

This final rule does not have any retroactive effect, and it does not preempt any State law, 49 U.S.C. 33117 provides that judicial review of this rule may be obtained pursuant to 49 U.S.C. 32909, section 32909 does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

**List of Subjects in 49 CFR Part 544**

Crime insurance, Insurance, Insurance companies, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 544 is amended as follows:

## PART 544—[AMENDED]

1. The authority citation for part 544 continues to read as follows:

**Authority:** 49 U.S.C. 33112; delegation of authority at 49 CFR 1.50.

2. Paragraph (a) of § 544.5 is revised to read as follows:

**§ 544.5 General requirements for reports.**

(a) Each insurer to which this part applies shall submit a report annually not later than October 25, beginning on October 25, 1986. This report shall contain the information required by § 544.6 of this part for the calendar year three years previous to the year in which the report is filed (e.g., the report due by October 25, 1999 would contain the required information for the 1996 calendar year).

* * * * *

3. Appendix A to part 544 is revised to read as follows:

**Appendix A—Insurers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business**

Allstate Insurance Group
American Family Insurance Group
American Financial Group
American International Group
California State Auto Association
CNA Insurance Group
Erie Insurance Group
Farmers Insurance Group
Berkshire Hathaway/GEICO Corporation Group
GEICO Corporation Group
Hartford Insurance Group
Liberty Mutual Group
Nationwide Group
Progressive Group
Prudential of America Group
State Farm Group
Travelers PC Group [1]
USAA Group
Zurich Insurance Group-U.S.

4. Appendix B to Part 544 is revised to read as follows:

**Appendix B—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States**

Alfa Insurance Group (Alabama)
Allmerica P & C Companies (Michigan)
Arbella Mutual Insurance (Massachusetts)
Auto Club of Michigan Group (Michigan)
Commerce Group, Inc. (Massachusetts)
Commercial Union Insurance Companies (Maine)
Concord Group Insurance Companies (Vermont)
Kentucky Farm Bureau Group (Kentucky)
Nodak Mutual Insurance Company (North Dakota)
Southern Farm Bureau Group (Arkansas, Mississippi)
Tennessee Farmers Companies (Tennessee)

5. Appendix C to Part 544 is revised to read as follows:

**Appendix C—Motor Vehicle Rental and Leasing Companies (Including Licensees and Franchisees) Subject to the Reporting Requirements of Part 544**

Alamo Rent-A-Car, Inc.
ARI (Automotive Rentals, Inc.)
Associates Leasing Inc.
A T & T Automotive Services, Inc.
Avis, Inc.
Budget Rent-A-Car Corporation
Dollar Rent-A-Car Systems, Inc.
Donlen Corporation
Enterprise Rent-A-Car
GE Capital Fleet Services
Hertz Rent-A-Car Division (subsidiary of Hertz Corporation)
Lease Plan USA, Inc.
National Car Rental System, Inc.
Penske Truck Leasing Company
PHH Vehicle Management Services

[1] Indicates a newly listed company which must file a report beginning with the report due on October 25, 1999.

Ryder System, Inc. (Both rental and leasing operations)
U-Haul International, Inc. (Subsidiary of AMERCO)
USL Capial Fleet Services
Wheels Inc.

Issued on: October 15, 1999.

**Stephen R. Kratzke,**

*Acting Associate Administrator for Safety Performance Standards.*

[FR Doc. 99–27514 Filed 10–22–99; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Parts 222 and 223

**[Docket No.950427117–9278–11;I.D. 100899A]**

**RIN 0648–AN30**

## Sea Turtle Conservation; Shrimp Trawling Requirements

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

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

**SUMMARY:** NMFS issues this temporary action to allow the use of limited tow times by shrimp trawlers as an alternative to the use of Turtle Excluder Devices (TEDs) in inshore waters of Matagorda Bay, Texas, east of the line running from the Matagorda Jetties, along the Matagorda Ship Channel, to Matagorda Ship Channel Mile Marker 54 (Lat. 28°33'38≥N, Long.96°30'50≥W) and thence to Sand Point (Lat. 28°34'08≥N, Long. 96°29'29≥W), including Carancahua and Tres Palacios Bays.

**DATES:** This action is effective from October 19, 1999 through November 18, 1999. Comments on this action are requested, and must be received by November 18, 1999.

**ADDRESSES:** Comments on this action should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Charles A. Oravetz, 727–570–5312, or Barbara A. Schroeder, 301–713–1401.

**SUPPLEMENTARY INFORMATION:**

### Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. Loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

The incidental take of these species as a result of shrimp trawling activities has been documented in the Gulf of Mexico and along the Atlantic. Under the ESA and its implementing regulations, taking sea turtles is prohibited, with exceptions identified in 50 CFR 223.206. Existing sea turtle conservation regulations (50 CFR part 223, subpart B) require most shrimp trawlers operating in the Gulf and Atlantic areas to have a NMFS approved TED installed in each net rigged for fishing, year-round.

The regulations provide for the use of limited tow times as an alternative to the use of TEDs for vessels with certain specified characteristics or under certain special circumstances. The provisions of 50 CFR 223.206 (d)(3)(ii) specify that the Assistant Administrator for Fisheries, NOAA (AA), may authorize compliance with tow time restrictions as an alternative to the TED requirement, if [she] determines that the presence of algae, seaweed, debris, or other special environmental conditions in a particular area makes trawling with TED-equipped nets impracticable. The provisions of 50 CFR 223.206(d)(3)(i) specify the maximum tow times that may be used when tow-time limits are authorized as an alternative to the use of TEDs. The tow times may be no more than 55 minutes from April 1 through October 31 and no more than 75 minutes from November 1 through March 31. These tow time limits are designed to minimize the level of mortality of sea turtles that are captured by trawl nets not equipped with TEDs.

### Recent Events

The Director of the Division of Coastal Fisheries, TPWD, stated in a September 22 letter to the NMFS Southeast Regional Administrator that the shrimp fishery in Matagorda Bay has been experiencing serious problems since early to mid-August caused by an unusual infestation of the bryozoan, *Bugula sp*. TPWD has received complaints from shrimp fishermen about unusually dense concentrations of what the fishermen called sauerkraut weed (later identified as a bryozoan, *Bugula sp*.) being caught in shrimp trawls and clogging their TEDs. TPWD has also observed this phenomenon in sample trawls made aboard cooperating shrimp vessels, and supplied NMFS with photographic documentation of the problem.

Drought conditions have produced salinities exceeding 30 parts per thousand in Matagorda Bay. Elevated salinities and water temperatures are believed to be responsible for the extraordinarily high concentrations of the bryozoan, *Bugula sp*. The dense, filamentous bryozoan becomes lodged in the TEDs after relatively short periods of towing, rendering the TEDs ineffective in expelling sea turtles as well as negatively impacting fishermen's catches.

The TPWD letter requested that NMFS use its authority to allow the use of limited tow times as an alternative to the use of TEDs in Matagorda Bay, bounded on the west by a line running from the Matagorda Jetties north along the Matagorda Ship Channel to Mile Marker 54 and east to Sand Point. Essentially, most of Matagorda Bay, excluding Lavaca Bay and the western edge of Matagorda Bay proper, is included in the exemption area requested by TPWD. According to TPWD personnel, the problematic concentrations of *Bugula sp*. are difficult to pinpoint or chart precisely, due to tidal and wind action which continuously moves and shifts the bryozoans from area to area. A NMFS gear specialist, working with Matagorda Bay shrimpers in early October, confirmed the severity and wide distribution of the bryozoan clogging problem. TPWD has asked NMFS to authorize the use of limited tow times for most of Matagorda Bay for a 30-day period.

NMFS and the Texas Parks and Wildlife Department (TPWD) will monitor the situation to ensure there is adequate protection for sea turtles in this area and to determine whether bryozoan concentrations continue to make TED use impracticable. The intent of this action is to relieve the economic hardship on Matagorda Bay shrimpers while ensuring adequate protection of threatened and endangered sea turtles.

### Special Environmental Conditions

The AA finds that the impacts of the current drought conditions in southern Texas on Matagorda Bay have created special environmental conditions that may make trawling with TED-equipped nets impracticable. Therefore, the AA issues this notification to authorize the use of restricted tow times as an alternative to the use of TEDs in inshore waters of Matagorda Bay, Texas, east of the line running from the Matagorda Jetties, along the Matagorda Ship Channel, to Matagorda Ship Channel

Mile Marker 54 (Lat. 28°33'38≥N, Long.96°30'50≥W) and thence to Sand Point (Lat. 28°34'08≥N, Long. 96°29'29≥W), including Carancahua and Tres Palacios Bays. TPWD is continuing to monitor the situation and will cooperate with NMFS in determining the ongoing extent of the bryozoan problem in Matagorda Bay. Moreover, the TPWD Director of Coastal Fisheries has stated that TPWD' game wardens would enforce the restricted tow times and commit additional effort to the task. Ensuring compliance with tow time restrictions is critical to effective sea turtle protection, and the commitment from the TPWD Director of Coastal Fisheries to provide additional enforcement of the tow time restrictions is an important factor enabling NMFS to issue this authorization.

**Continued Use of TEDs**

NMFS encourages shrimp trawlers in Matagorda Bay, Texas, to continue to use TEDs if possible, even though they are authorized under this action to use restricted tow times. NMFS studies have shown that the problem of clogging by seagrass, algae or by other debris is not unique to TED-equipped nets. When fishermen trawl in problem areas, they may experience clogging with or without TEDs. A particular concern of fishermen, however, is that clogging in a TED-equipped net may hold open the turtle escape opening and increase the risk of shrimp loss. On the other hand, TEDs also help exclude certain types of debris and allow shrimpers to conduct longer tows. NMFS observed large amounts of *Bugula sp*. in Matagorda Bay and noticed extremely heavy concentrations of cannonball jellyfish. Matagorda Bay shrimpers were generally using TEDs with a narrow bar spacing to eliminate these jellyfish. If fishermen remove their TEDs, they will have to contend with extremely heavy catches of cannonball jellyfish that will force them to use very short tows. NMFS intends to continuing working with local shrimpers to find a technical TED configuration that will exclude jellyfish while minimizing clogging from *Bugula*.

While working on a specific solution for this situation, NMFS' gear experts have provided several general operational recommendations to fishermen to maximize the debris exclusion ability of TEDs that may allow some fishermen to continue using TEDs without resorting to restricted tow times. To exclude debris, NMFS recommends the use of hard TEDs made of either solid rod or of hollow pipe that incorporate a bent angle at the escape opening, in a bottom-opening configuration. In addition, the installation angle of a hard TED in the trawl extension is an important performance element in excluding debris from the trawl. High installation angles can result in debris clogging the bars of the TED; NMFS recommends an installation angle of 45°, relative to the normal horizontal flow of water through the trawl, to optimize the TED's ability to exclude turtles and debris. Even lower angles may be necessary to exclude the bulky bryozoan. Furthermore, the use of accelerator funnels, which are allowable modifications to hard TEDs, is not recommended in areas with heavy amounts of debris or vegetation. Lastly, the webbing flap that is usually installed to cover the turtle escape opening may be modified to help exclude debris quickly: the webbing flap can either be cut horizontally to shorten it so that it does not overlap the frame of the TED or be slit in a fore-and-aft direction to facilitate the exclusion of debris.

All of these recommendations represent legal configurations of TEDs for shrimpers fishing in inshore waters of Matagorda Bay, i.e., inshore of the 72 COLREGS demarcation line, who are not subject to special requirements effective in the Gulf Shrimp Fishery-Sea Turtle Conservation Area. This action does not authorize any other departure from the TED requirements, including any illegal modifications to TEDs. In particular, if TEDs are installed in trawl nets, they may not be sewn shut.

**Alternative to Required Use of TEDs**

The authorization provided by this rule applies to all shrimp trawlers that would otherwise be required to use TEDs in accordance with the requirements of 50 CFR 223.206(d)(2) who are operating in inshore waters of Matagorda Bay, Texas, east of the line running from the Matagorda Jetties, along the Matagorda Ship Channel, to Matagorda Ship Channel Mile Marker 54 (Lat. 28°33'38≥N, Long.96°30'50≥W) and thence to Sand Point (Lat. 28°34'08≥N, Long. 96°29'29≥W), including Carancahua and Tres Palacios Bays. This area excludes Lavaca Bay and the southwestern edge of Matagorda Bay. ''Inshore waters,'' as defined at 50 CFR 222.102, means the marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by NOAA (Coast Charts, 1:80,000 scale) and as described in 33 CFR part 80. Instead of the required use of TEDs, shrimp trawlers may opt to comply with the sea turtle conservation regulations by using restricted tow times. Through October 31, 1999, a shrimp trawler utilizing this authorization must limit tow times to no more than 55 minutes, measured from the time trawl doors enter the water until they are retrieved from the water. From November 1, 1999 until November 18, 1999, tow times must be limited to no more than 75 minutes measured from the time trawl doors enter the water until they are retrieved from the water.

**Alternative to Required Use of TEDs; Termination**

The AA, at any time, may modify the alternative conservation measures through publication in the **Federal Register**, if necessary to ensure adequate protection of endangered and threatened sea turtles. Under this procedure, the AA may modify the affected area or impose any necessary additional or more stringent measures, including more restrictive tow times or synchronized tow times, if the AA determines that the alternative authorized by this rule is not sufficiently protecting turtles, as evidenced by observed lethal takes of turtles aboard shrimp trawlers, elevated sea turtle strandings, or insufficient compliance with the authorized alternative. The AA may also terminate this authorization for these same reasons, or if compliance cannot be monitored effectively, or if conditions do not make trawling with TEDs impracticable. The AA may modify or terminate this authorization, as appropriate, at any time. A document will be published in the **Federal Register** announcing any additional sea turtle conservation measures or the termination of the tow time option in Texas inshore waters (Matagorda Bay). This authorization will expire automatically on November 18, 1999, unless it is explicitly extended through another notification published in the **Federal Register**.

**Classification**

This action has been determined to be not significant for purposes of E.O. 12866.

The AA has determined that this action is necessary to respond to an emergency situation to allow more efficient fishing for shrimp, while providing adequate protection for endangered and threatened sea turtles pursuant to the ESA and other applicable law.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds that there is good cause to waive prior notice and opportunity to comment on this rule. It is impracticable

and contrary to the public interest to provide prior notice and opportunity for comment. The AA finds that unusually high densities of the bryozoan (*Bugula sp*) are creating special environmental conditions that may make trawling with TED-equipped nets impracticable. The AA has determined that the use of limited tow times for the described area and time would not result in a significant impact to sea turtles. Notice and comment are contrary to the public interest in this instance because providing notice and comment would prevent the agency from providing relief within the necessary time frame. The public was provided with notice and an opportunity to comment on 50 CFR 223.206(d)(3)(ii).

Pursuant to 5 U.S.C. 553(d)(1), because this rule relieves a restriction, it is not subject to a 30-day delay in effective date. NMFS is making the rule effective October 19, 1999 through November 18, 1999.

Since prior notice and an opportunity for public comment are not required to be provided for this action by 5 U.S.C. 553, or by any other law, the analytical requirements of 5 U.S.C. 601 *et seq*. are inapplicable.

The AA prepared an Environmental Assessment (EA) for the final rule (57 FR 57348, December 4, 1992) requiring TED use in shrimp trawls and creating the regulatory framework for the issuance of notices such as this. Copies of the EA are available (see **ADDRESSES**).

Dated: October 19, 1999.

**Andrew A. Rosenberg, Ph.D.,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 99–27692 Filed 10–19–99; 4:59 pm]

**BILLING CODE 3510–22–F**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 226

**[Docket No. 990525143–9277–02; I.D. 120197A]**

**RIN 0648–AM41**

## Designated Critical Habitat: Revision of Critical Habitat for Snake River Spring/Summer Chinook Salmon

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

**ACTION:** Final rule.

**SUMMARY:** Through this rule, NMFS revises critical habitat for Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*), pursuant to the Endangered Species Act (ESA) of 1973. After a review of the best available scientific information, NMFS determines that Napias Creek Falls constitutes a naturally impassable barrier for Snake River spring/summer chinook salmon. NMFS, therefore, excludes areas above Napias Creek Falls from designated critical habitat for this species.

**DATES:** The effective date of this determination is November 24, 1999.

**ADDRESSES:** Requests for information concerning this action should be submitted to Chief, Protected Resources Division, NMFS, 525 NE Oregon Street, Suite 500, Portland, OR 97232. Copies of the USGS publication and maps may be obtained from the USGS, Map Sales, Box 25286, Denver, CO 80225. Copies may be inspected at NMFS, Protected Resources Division, 525 NE Oregon Street - Suite 500, Portland, OR 97232–2737, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Garth Griffin at (503) 231–2005 or Chris Mobley at (301) 713–1401.

**SUPPLEMENTARY INFORMATION:**

### Background

On June 27, 1991, NMFS proposed the listing of Snake River spring/summer chinook salmon as a threatened species under the ESA (56 FR 29542). The final determination listing Snake River spring/summer chinook salmon as a threatened species was published on April 22, 1992 (57 FR 14653), and corrected on June 3, 1992 (57 FR 23458). Critical habitat was designated on December 28, 1993 (58 FR 68543). In that document, NMFS designated all river reaches presently or historically accessible to listed spring/summer chinook salmon (except river reaches above impassable natural falls, and Dworshak and Hells Canyon Dams) in various hydrologic units as critical habitat (58 FR 68543). Napias Creek, the area in question, occurs within one of these designated hydrologic units (Middle Salmon-Panther, U.S. Geological Survey Hydrologic Unit 17060203).

On January 6, 1997, the Secretary of Commerce (Secretary) received a petition from Meridian Gold Company (Meridian) to revise critical habitat for Snake River spring/summer chinook salmon in Napias Creek, a tributary to the Salmon River, located near Salmon, Idaho. In accordance with section 4(b)(3)(D) of the ESA, NMFS issued a determination on April 28, 1997, that the petition presented substantial scientific information indicating that a revision may be warranted (62 FR 22903). In that document of finding, NMFS solicited information and comments from interested parties and interested tribal governments concerning the petitioned action (62 FR 22903).

On September 16, 1997, Meridian submitted additional information in support of its petition. Specifically, Meridian submitted three new reports entitled: (1) ''Ability of Salmon and Steelhead to Pass Napias Creek Falls''; (2) ''Investigation of Physical Conditions at Napias Creek Falls''; and (3) ''Historical and Ethnographic Analysis of Salmon Presence in the Leesburg Basin, Lemhi County, Idaho.'' This new information was added to the administrative record and was considered by NMFS in its 12-month determination published on January 30, 1998 (63 FR 4615).

On January 30, 1998, NMFS determined that the petitioned action was not warranted since available information indicated that the falls was likely passable to chinook salmon at some flows and that the presence of relict indicator species indicated historical usage by anadromous species (63 FR 4615). Subsequent to this determination, Meridian submitted a ''petition for reconsideration,'' providing additional data and analyses concerning the likelihood Napias Creek Falls constitutes a naturally impassable barrier to anadromous salmonid migration (Meridian, 1998a, 1998b; Chapman, 1998). While NMFS' ESA implementing regulations do not provide a process for reconsidering findings on petitions, NMFS nonetheless agreed in a letter dated July 31, 1998, to consider Meridian's new information and provide Meridian with a written determination regarding its findings (NMFS, 1998a; Meridian, 1998d). On October 30, 1998, NMFS staff met with Meridian representatives to discuss the new technical information and its interpretations (NMFS, 1998b).

On December 29, 1998, Meridian expressed its desire to withdraw its ''petition for reconsideration'' stating that it interpreted NMFS' continuing treatment of the area as critical habitat as a denial of its petition (Meridian, 1998c). However, at that time, NMFS had not yet reached a conclusion regarding the additional information submitted by Meridian, nor had NMFS provided Meridian with a written determination on the matter as it had committed to do in its July 31, 1998, letter (NMFS, 1998a). NMFS ultimately

concluded this information is part of the best scientific information available regarding whether the area in question constitutes critical habitat for the species. Therefore, in accordance with section 4(b)(1)(A) of the ESA, NMFS considered this information in its review of Meridian's ''petition for reconsideration.''

On June 2, 1999, NMFS published a proposed rule to revise critical habitat for Snake River spring/summer chinook salmon (64 FR 29618). In the proposed rule, NMFS determined that available evidence suggests that Napias Creek Falls, while passable at some flows, constitutes an effective migrational barrier for chinook salmon. This conclusion was based on an analysis of available hydrological and biological data, as well as some ethnographical information. In reaching this conclusion, NMFS recognized that scientific uncertainty remained whether (1) chinook salmon could establish a naturally reproducing population above the falls if present in sufficient numbers in Napias Creek; and (2) whether chinook salmon historically occurred above the falls. To help resolve this uncertainty, NMFS specifically requested comments and information regarding the proposed determination. Discussion of the comments received on the proposal follow.

**Definition of Critical Habitat**

Critical habitat is defined in section 3(5)(A) of the ESA as ''(i) the specific areas within the geographical area occupied by the species * * * on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species * * * upon a determination by the Secretary that such areas are essential for the conservation of the species'' (see 16 U.S.C. 1532(5)(A)). The term ''conservation,'' as defined in section 3(3) of the ESA, means '' * * * to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary'' (see 16 U.S.C. 1532(3)).

Defining specific river reaches that constitute critical habitat for chinook salmon, and anadromous fish species in general, is difficult to do because of our imperfect understanding of the species' freshwater distribution, both current and historical, and the lack of comprehensive sampling efforts dedicated to monitoring these species. Given this scientific uncertainty, NMFS' approach to designating critical habitat for chinook salmon is to designate all areas currently accessible to the species within the range of the Evolutionarily Significant Unit. NMFS believes that this inclusive approach to designating critical habitat is appropriate because it (1) recognizes the species' extensive use of diverse habitats and underscores the need to account for all of the habitat types supporting the species' freshwater and estuarine life stages; and (2) takes into account the natural variability in habitat use.

**Process for Defining Critical Habitat**

Developing a proposed critical habitat designation involves three main considerations. First, the biological needs of the species are evaluated, and essential habitat areas and features are identified. Second, the need for special management considerations or protection of the area(s) or features identified are evaluated. Finally, the probable economic and other impacts of designating these essential areas as ''critical habitat'' are evaluated. After considering the requirements of the species, the need for special management, and the impacts of the designation, a notification of the proposed critical habitat is published in the *Federal Register* for comment. The final critical habitat designation, considering comments on the proposal and impacts assessment, is typically published within 1 year of the proposed rule. Final critical habitat designations may be revised as new information becomes available.

**Consultation with Affected Indian Tribes**

The unique and distinctive relationship between the United States and Indian tribes is defined by treaties, statutes, executive orders, judicial decisions, and agreements, and differentiates tribes from the other entities that deal with, or are affected by, the Federal government. This relationship has given rise to a special Federal trust responsibility, involving the legal responsibilities and obligations of the United States toward Indian tribes and the application of fiduciary standards with respect to Indian lands, tribal trust and treaty resources, and the exercise of tribal rights.

As a means of recognizing the responsibilities and relationship previously described, the Secretary of Commerce and the Secretary of the Interior issued a Secretarial Order entitled ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' on June 5, 1997. The Secretarial Order clarifies the responsibilities of NMFS and the U.S. Fish and Wildlife Service when carrying out authorities under the ESA and requires that they consult with, and seek the participation of, affected Indian tribes to the maximum extent practicable.

During the course of this rulemaking, NMFS consulted with, and solicited comments from, affected Indian tribes, including the Shoshone-Bannock Tribes (Tribes). The Tribes, in turn, provided written comments and testimony on the proposed rule a discussion as follows.

**Summary of Comments**

During the public comment period on the proposed rule, NMFS received seven written comments from a variety of sources. On August 31, 1999, NMFS held a public hearing in Boise, Idaho at which seven people provided testimony concerning the proposed rule. Of the seven parties providing comments and testimony, five supported the conclusions reached in the proposed rule and two, including the Tribes, disagreed with such conclusions. Commenters provided no additional scientific information that resolves issues raised in the proposed rule. Pertinent comments are summarized here.

*Comment 1*: Two parties commented on the historic presence of chinook salmon above the falls in question and the historic value of this area. The Tribes stated that ''salmon hunting above the falls that NMFS presently concludes is a barrier to salmon, has been reported by tribal fishermen.'' Another commenter stated that it is possible Tribal accounts may reflect historical fishing activities (and, thus, the presence of chinook salmon) before the formation of the existing barrier.

*Response*: The question of historic Tribal usage of areas above the falls, and, thus, presence of chinook salmon in this area, is a difficult one to analyze. The Tribal oral history indicates chinook salmon historically occurred above the falls; however, NMFS does not believe, based on current scientific information, that this area has supported chinook salmon populations over any appreciable and continuous length of time. Current biological information indicates that chinook salmon have not occurred above the falls over evolutionary time periods. For example, the absence of a native fish community above the falls and the presence of non-native fish species indicate that areas above the falls have been, and continue to be, isolated from areas below the falls. Further, a number

of ethnographic studies indicate that chinook have not occurred in this area in recent times (i.e., within the last 100 years) (e.g., Larhen, 1999).

While available scientific evidence supports the conclusion that areas above the falls have not supported self-sustaining populations of chinook salmon, it is possible that this species may have periodically inhabited this area under certain environmental conditions. Such a possibility is supported by NMFS' passage analysis (a discussion follows) that indicates the falls is likely passable to chinook salmon under certain flow conditions. This intermittent habitation of chinook would likewise be consistent with Tribal accounts of fishing above the falls.

*Comment 2*: Two commenters, including the Tribes, expressed concern about potential impacts to water quality and other critical habitat elements in Napias Creek and areas downstream as a result of revising this designation. The Tribes also expressed concern that revision of critical habitat may hinder efforts to reestablish chinook salmon in Panther Creek.

*Response*: NMFS has previously stated that Napias Creek constitutes an important source of dilution water within the Panther Creek system and that any degradation of dilution flows from Napias Creek would likely hinder efforts to reestablish anadromous fisheries in Panther Creek (63 FR 4615, 4618). Recognizing this, NMFS intends to carefully evaluate proposed actions that may adversely affect salmonid habitat in this area (See Special Management Considerations).

*Comment 3*: Several parties commented on NMFS' conclusion that Napias Creek Falls is likely passable to chinook salmon at certain flow conditions. The Tribes concurred with NMFS' assessment, stating that such conclusions are consistent with reports from tribal fishermen of salmon above the falls during the months of May and June. One commenter disagreesed with NMFS' assessment, stating that existing hydrologic studies refute this conclusion.

*Response*: Aside from providing hydrographs that simply validate assumptions made in previous modeling exercises, commenters present no additional scientific information that NMFS has not considered in its passage assessments. Furthermore, NMFS has thoroughly reviewed available technical information and analyses, and has conducted on-site investigations to verify the validity of its conclusions. In doing so, NMFS has consistently concluded that chinook salmon can likely migrate past Napias Creek Falls under certain flow conditions (i.e., at about 49 cfs) (NMFS, 1997; NMFS, 1998; NMFS, 1999a).

Even though NMFS concludes that the falls in question are passable to chinook salmon at certain flows, NMFS recognizes that it is difficult to determine whether the falls constitutes an ''effective'' migrational barrier for the species, thus, precluding the species from colonizing areas above the falls (NMFS, 1999a). Since chinook salmon do not presently occur in Napias Creek, NMFS must rely on historical accounts and other biological and ecological information to infer whether Napias Creek Falls effectively constitutes a migrational barrier to the species. Such information indicates that chinook salmon have not historically colonized habitat above the falls, thus, leading 1 to the conclusion that the falls constitute an effective migrational barrier.

**Analysis of Available Information**

Two lines of evidence suggest that habitat above Napias Creek Falls is not presently accessible or essential for the conservation or recovery of the listed species. This evidence includes (1) current passage conditions at the falls; and (2) surveys of salmonid presence above the falls.

On several previous occasions, NMFS analyzed the specific hydrologic conditions present at Napias Creek Falls (NMFS 1997; 1998; 1999a). NMFS also conducted on-site evaluations of the falls to verify its theoretical analysis. During the public comment period, no additional information was presented that changes NMFS' previous conclusion that chinook salmon can likely migrate past Napias Creek Falls under certain flow conditions (i.e., at about 49 cfs). However, NMFS recognizes that it is difficult to predict the likelihood that chinook salmon would in fact colonize areas above the falls if present in Napias Creek. Since chinook salmon do not presently occur in Napias Creek, NMFS must rely on historical accounts and other biological information to infer whether Napias Creek Falls effectively constitutes a migrational barrier to the species.

Studies submitted by Meridian, as well as the opinions of Federal and state resource agencies (i.e., U.S. Forest Service [USFS], Idaho Department of Fish and Game, Idaho Division of Environmental Quality) indicate that Napias Creek Falls is a historic barrier to anadromous salmonid passage. However, this conclusion is in conflict with comments from a USFS fishery biologist. In a report dated February 8, 1996, Bruce Smith, Salmon and Challis National Forest Fisheries Biologist, concludes that Napias Creek historically contained chinook salmon (Smith, 1996a). Smith also states that areas above Napias Creek Falls currently contain relict indicator species (Smith, 1996a), indicating pre-historic accessibility of this area to anadromous salmonid species (Smith, 1996b).

In its January 30, 1998, determination, NMFS found Smith's analysis persuasive on the question of the historical presence of chinook salmon above Napias Creek Falls (63 FR 4615, 4617). However, since that time, NMFS has reconsidered its reliance on this information. While such relict indicator species as rainbow trout occur above the falls, other native fish species (e.g., mountain whitefish, westslope cutthroat trout, sculpins, and dace) do not presently occur above the falls, indicating that salmonids in the area may have been the result of hatchery introductions or transfers (Chapman 1998). This explanation is supported by the presence of other nonnative fish species above the falls (i.e., brook trout), and the apparent history of fish stocking in Napias Creek (Smith 1996a).

Available ethnographic information supports the conclusion that chinook salmon have not historically used habitat above Napias Creek Falls in recent times. Furthermore, available historic literature and surveys of nearby residents indicate chinook salmon have not occurred above the falls in recent times (Larhen, 1999).

After considering comments received on the proposed rule, NMFS concludes that habitat above Napias Creek Falls is outside the current range of listed spring/summer chinook salmon and that habitat in this area is not now essential for the conservation of the species. This conclusion is based on several considerations. First, while NMFS concludes the falls is likely passable to chinook salmon at certain flows, historic evidence suggests that chinook salmon have not used areas above the falls with any frequency in recorded history. Second, while relict indicator species occur above the falls suggesting historic use, the origin of these indicator species is uncertain.

Even though uncertainty remains regarding NMFS' conclusions, chinook salmon do not presently occur in Napias Creek, and therefore, habitat above the falls would not likely be used by the species in the near-term even if it were accessible. Furthermore, any potential long-term risk of harm to the species is lessened by the fact NMFS may revise its determination if in the future additional information indicates that

habitat above Napias Creek Falls constitutes critical habitat for the species.

**Special Management Considerations**

Section 424.12(b) of NMFS' ESA implementing regulations states that in determining what areas constitute critical habitat, NMFS shall consider ''physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection.'' (Emphasis added). As discussed earier, NMFS concludes that areas above the falls are outside the current range of chinook salmon, and are not now essential for conservation of the species. While these conclusions essentially end NMFS' inquiry into whether areas above the falls constitute critical habitat, in this case it is useful to consider the management implications of this conclusion.

NMFS believes that Napias Creek constitutes an important source of dilution water within the Panther Creek system and that any degradation of dilution flows from Napias Creek would likely hinder efforts to reestablish anadromous fisheries in Panther Creek (63 FR 4615, 4618; January 30, 1998). NMFS recently completed a section 7 biological opinion (BO) concerning the operation of the Beartrack Gold Project owned by Meridian Gold Company (NMFS, 1999b). In this BO, NMFS concluded that the proposed operation of the mine would jeopardize listed chinook, and recommended a reasonable and prudent alternative that requires Meridian to monitor and protect water quality in Napias Creek over the long-term. It is NMFS' belief that while mitigative measures contained in this BO will change as a result of this revision, such changes will not result in substantial impacts to salmonid habitat below the falls.

In addition to the presence of listed steelhead and chinook salmon in Napias Creek, bull trout also occur above Napias Creek Falls (Smith, 1996a). On June 10, 1998, the U.S. Fish and Wildlife Service (FWS) listed the Columbia River distinct population segment of bull trout (including populations in Panther Creek) as a threatened species (63 FR 31647). Consequently, the practical significance of excluding areas above Napias Creek Falls from chinook salmon critical habitat is debatable because federal agencies must ensure their actions do not jeopardize bull trout located in this area.

**Expected Economic Impacts**

Section 4(b)(2) of the ESA requires NMFS to consider the economic impact of specifying any particular areas as critical habitat. However, section 4(b)(1)(A) of the ESA prohibits NMFS from considering economic impacts associated with species listings. Consequently, when designating critical habitat, NMFS considers only the incremental economic impacts associated with the designation above the economic impacts attributable to the listing of the species or authorities other than the ESA. Incremental impacts result from special management activities in those areas, if any, outside the present distribution of the listed species that NMFS has determined to be essential for the conservation of the species.

In this particular case, positive economic impacts will likely result to parties in the subject area. Meridian owns and operates Beartrack Mine, which is adjacent to Upper Napias Creek (Napias Creek above the Falls), within the Salmon National Forest. Meridian is subject to a BO that contains measures to protect designated critical habitat in Napias Creek. NMFS is not aware of any other business operating in Upper Napias Creek whose operations might adversely modify potential salmon habitat. This action would reduce the ESU's critical habitat, by eliminating Upper Napias Creek from critical habitat. In turn, measures contained in the BO that relate to this designate are no longer applicable. Therefore, the reduction of critical habitat would lessen Meridian's economic burden resulting from measures contained in the BO.

**Determination**

After considering the best available scientific and commercial information, NMFS concludes that Napias Creek Falls likely constitutes a naturally impassable barrier for Snake River spring/summer chinook salmon. While the falls may be passable to chinook salmon at certain flows, available evidence suggests this species has not mounted this falls with any regularity in the recent past, nor is it likely do so in the future. NMFS will reevaluate this conclusion in the future if information indicates areas above the falls are essential for conservation of chinook salmon in the Panther Creek drainage.

**References**

A complete list of all references cited herein and maps describing the range of proposed Snake River spring/summer chinook salmon are available upon request (see ADDRESSES).

**Classification**

The Assistant Administrator for Fisheries, NOAA, has determined this rule is not significant for purposes of E.O. 12866.

Through this rule, NMFS designates only the current range of this chinook salmon ESU as critical habitat. Given the affinity of this species to spawn in small tributaries, this current range encompasses a wide range of habitat, including headwater streams, as well as mainstem, off-channel and estuarine areas. Areas excluded from this proposed designation include marine habitats in the Pacific Ocean and any historically occupied areas above impassable natural barriers (e.g., long-standing, natural waterfalls). NMFS concludes that the currently inhabited areas within the range of this ESU are the minimum habitat necessary to ensure the species' conservation and recovery.

Since NMFS is designating the current range of the listed species as critical habitat, this designation will not impose any additional requirements or economic effects upon small entities beyond those which may accrue from section 7 of the ESA. Section 7 requires Federal agencies to insure that any action they carry out, authorize, or fund is not likely to jeopardize the continued existence of any listed species or to result in the destruction or adverse modification of critical habitat (ESA section 7(a)(2)). The consultation requirements of section 7 are nondiscretionary and are effective at the time of species' listing. Therefore, Federal agencies must consult with NMFS and ensure their actions do not jeopardize a listed species, regardless of whether critical habitat is designated.

In the future, should NMFS determine that designation of habitat areas outside the species' current range is necessary for conservation and recovery, NMFS will analyze the incremental costs of that action and assess its potential impacts on small entities, as required by the Regulatory Flexibility Act. Until that time, a more detailed analysis would be premature and would not reflect the true economic impacts of the proposed action on local businesses, organizations, and governments.

Meridian owns and operates Beartrack Mine, which is adjacent to Upper Napias Creek (Napias Creek above the Falls), within the Salmon National Forest. NMFS is not aware of any other business operating in Upper Napias Creek whose operations might adversely modify potential salmon habitat. This

revision would reduce the ESU's critical habitat, by eliminating Upper Napias Creek from critical habitat. To the extent that Meridian may be impacted by the current designation of Upper Napias Creek as critical habitat, the reduction of critical habitat would lessen Meridian's economic burden, if any, from that impact.

Accordingly, the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the critical habitat designation, if adopted, would not have a significant economic impact on a substantial number of small entities, as described in the Regulatory Flexibility Act.

This final rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

NMFS has determined that Environmental Assessments or an Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared for this critical habitat designation. See *Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied, 116 S. Ct. 698 (1996).

**List of Subjects in 50 CFR Part 226**

Endangered and threatened species.

Dated: October 15, 1999.

**Andrew A. Rosenberg,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 226 is amended as follows:

## PART 226—DESIGNATED CRITICAL HABITAT

1. The authority citation for part 226 continues to read as follows:

**Authority:** 16 U.S.C. 1531 *et seq.*

2. In § 226.205, paragraph (b) is revised to read as follows:

**§ 226.205 Critical habitat for Snake River sockeye salmon, Snake River fall chinook salmon, and Snake River spring/summer chinook salmon.**

* * * * *

(b) *Snake River Spring/Summer Chinook Salmon (Oncorhynchus tshawytscha).* Geographic Boundaries. Critical habitat is designated to include the Columbia River from a straight line connecting the west end of the Clatsop jetty (south jetty, Oregon side) and the west end of the Peacock jetty (north jetty, Washington side) and including all Columbia River estuarine areas and river reaches proceeding upstream to the confluence of the Columbia and Snake Rivers; all Snake River reaches from the confluence of the Columbia River upstream to Hells Canyon Dam. Critical habitat also includes river reaches presently or historically accessible (except reaches above impassable natural falls (including Napias Creek Falls) and Dworshak and Hells Canyon Dams) to Snake River spring/summer chinook salmon in the following hydrologic units: Hells Canyon, Imnaha, Lemhi, Little Salmon, Lower Grande Ronde, Lower Middle Fork Salmon, Lower Salmon, Lower Snake-Asotin, Lower Snake-Tucannon, Middle Salmon-Chamberlain, Middle Salmon-Panther, Pahsimeroi, South Fork Salmon, Upper Middle Fork Salmon, Upper Grande Ronde, Upper Salmon, Wallowa. Critical habitat borders on or passes through the following counties in Oregon: Baker, Clatsop, Columbia, Gillium, Hood River, Morrow, Multnomah, Sherman, Umatilla, Union, Wallowa, Wasco; the following counties in Washington: Asotin, Benton, Clark, Columbia, Cowlitz, Franklin, Garfield, Klickitat, Pacific, Skamania, Wahkiakum, Walla, Whitman; and the following counties in Idaho: Adams, Blaine, Custer, Idaho, Lemhi, Lewis, Nez Perce, Valley.

* * * * *

[FR Doc. 99–27585 Filed 10–22–99; 8:45 am]

BILLING CODE 3510–22–F

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 622

**[Docket No. 990625173–9274–02; I.D. 033199C]**

**RIN 0648–AL57**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 16B

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement Amendment 16B to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). This final rule establishes size limits for banded rudderfish, lesser amberjack, cubera snapper, dog snapper, mahogany snapper, mutton snapper, schoolmaster, scamp, gray triggerfish, and hogfish; excludes banded rudderfish, lesser amberjack, and hogfish from the 20–fish aggregate (combined) reef fish bag limit; establishes new bag limits for hogfish, speckled hind, warsaw grouper, and for banded rudderfish and lesser amberjack combined; and removes queen triggerfish from the listing of Gulf reef fish and from the applicable regulations. The intended effect of this rule is to conserve and manage the reef fish resources of the Gulf of Mexico.

**DATES:** This final rule is effective November 24, 1999.

**FOR FURTHER INFORMATION CONTACT:** Dr. Roy E. Crabtree at 727-570-5305; Fax: 727-570-5583.

**SUPPLEMENTARY INFORMATION:** The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On April 14, 1999, NMFS announced the availability of Amendment 16B and requested comments on the amendment (64 FR 18395). On July 2, 1999, NMFS published a proposed rule to implement the measures in Amendment 16B and requested comments on the rule (64 FR 35981). The background and rationale for the measures in the amendment and proposed rule are contained in the preamble to the proposed rule and are not repeated here. No comments were received on Amendment 16B or on the proposed rule. On July 14, 1999, NMFS approved Amendment 16B. The proposed rule has been adopted as final without change.

### Classification

The Regional Administrator, Southeast Region, NMFS, with the concurrence of the Assistant Administrator for Fisheries, NOAA, determined that Amendment 16B is necessary for the conservation and management of the reef fish fishery of the Gulf of Mexico and that Amendment 16B is consistent with the Magnuson-Stevens Act and other applicable law.

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received regarding

this certification. As a result, a regulatory flexibility analysis was not prepared.

**List of Subjects in 50 CFR Part 622**

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: October 15, 1999.

**Andrew A. Rosenberg,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

## PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.34, the last sentence in paragraph (g)(1) is revised to read as follows:

### § 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(g) * * *

(1) * * * The provisions of this paragraph do not apply to the following species: dwarf sand perch, hogfish, and sand perch.

* * * * *

3. In § 622.37, the section heading, introductory text, and paragraph (d) are revised to read as follows:

### § 622.37 Size limits.

All size limits in this section are minimum size limits unless specified otherwise. Except for undersized king and Spanish mackerel allowed in paragraphs (c)(2) and (c)(3) of this section, a fish not in compliance with its size limit, as specified in this section, in or from the Caribbean, Gulf, South Atlantic, and/or Mid-Atlantic EEZ, as appropriate, may not be possessed, sold, or purchased. A fish not in compliance with its size limit must be released immediately with a minimum of harm. The operator of a vessel that fishes in the EEZ is responsible for ensuring that fish on board are in compliance with the size limits specified in this section.

* * * * *

(d) *Gulf reef fish*—(1) *Snapper.* (i) Lane snapper—8 inches (20.3 cm), TL.

(ii) Vermilion snapper—10 inches (25.4 cm), TL.

(iii) Cubera, dog, gray, mahogany, and yellowtail snappers and schoolmaster—12 inches (30.5 cm), TL.

(iv) Red snapper—15 inches (38.1 cm), TL.

(v) Mutton snapper—16 inches (40.6 cm), TL.

(2) *Grouper.* (i) Scamp—16 inches (40.6 cm), TL.

(ii) Black, red, and yellowfin groupers and gag—20 inches, (50.8 cm), TL.

(3) *Other Gulf reef fish species.* (i) Gray triggerfish—12 inches (30.5 cm), TL.

(ii) Hogfish—12 inches (30.5 cm), fork length.

(iii) Banded rudderfish and lesser amberjack—14 inches (35.6 cm), fork length (minimum size); 22 inches (55.9 cm), fork length (maximum size).

(iv) Greater amberjack—28 inches (71.1 cm), fork length, for a fish taken by a person subject to the bag limit specified in § 622.39(b)(1)(i); and 36 inches (91.4 cm), fork length, for a fish taken by a person not subject to the bag limit.

* * * * *

4. In § 622.39, the second and third sentences of paragraph (a)(1), and paragraphs (b)(1)(ii), (b)(1)(v), and (b)(2) are revised; and paragraphs (b)(1)(vi) and (b)(1)(vii) are added to read as follows:

### § 622.39 Bag and possession limits.

(a) * * *

(1) * * * Unless specified otherwise, bag limits apply to a person on a daily basis, regardless of the number of trips in a day. Unless specified otherwise, possession limits apply to a person on a trip after the first 24 hours of that trip. * * *

* * * * *

(b) * * *

(1) * * *

(ii) Groupers, combined, excluding jewfish and Nassau grouper—5 per person per day, but not to exceed 1 speckled hind and 1 Warsaw grouper per vessel per day.

* * * * *

(v) Gulf reef fish, combined, excluding those specified in paragraphs (b)(1)(i) through (b)(1)(iv) and paragraphs (b)(1)(vi) through (b)(1)(vii) of this section and excluding dwarf sand perch and sand perch—20.

(vi) Banded rudderfish and lesser amberjack, combined—5.

(vii) Hogfish—5.

(2) *Possession limits.* A person, or a vessel in the case of speckled hind or Warsaw grouper, on a trip that spans more than 24 hours may possess no more than two daily bag limits, provided such trip is on a vessel that is operating as a charter vessel or headboat, the vessel has two licensed operators aboard, and each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the length of the trip.

* * * * *

**Table 3 of Appendix A to Part 622—Gulf Reef Fish [Amended]**

5. In Table 3 of Appendix A to Part 622, the entry, ''Queen triggerfish, *Balistes vetula*'', is removed.

[FR Doc. 99–27584 Filed 10–22–99; 8:45 am]

BILLING CODE 3510–22–F

# Proposed Rules

**Federal Register**
Vol. 64, No. 205
Monday, October 25, 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 46

**[Docket No. FV99–361]**

### Perishable Agricultural Commodities Act: Recognizing Limited Liability Companies

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

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Agriculture (USDA) is proposing to amend the regulations under the Perishable Agricultural Commodities Act (PACA or Act) to recognize a limited liability company (LLC) as a legal entity, and also to recognize each member of an LLC, and/or any other person authorized by the members to conduct business on behalf of an LLC, as ''responsibly connected'' with the LLC, as defined in the PACA.

**DATES:** Comments must be received by November 24, 1999.

**FOR FURTHER INFORMATION CONTACT:** Charles W. Parrott, Acting Chief, PACA Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2095–So. Bldg., P.O. Box 96456, Washington, DC. 20090–6456, phone (202) 720–2272. Email—charles.parrott@usda.gov. All comments should reference the docket number and the date and page number of this issue in the **Federal Register** and will be made available for public inspection in the PACA Branch during regular business hours and posted on the internet at www.ams.usda.gov/fv/paca.htm.

**SUPPLEMENTARY INFORMATION:** This proposal is issued under authority of section 15 of the PACA (7 U.S.C. 499o).

#### Background

The Perishable Agricultural Commodities Act (PACA or Act) establishes a code of fair trade practices covering the marketing of fresh and frozen fruits and vegetables in interstate and foreign commerce. The PACA protects growers, shippers, distributors, and retailers dealing in those commodities by prohibiting unfair and fraudulent trade practices. In this way, the law fosters an efficient nationwide distribution system for fresh and frozen fruits and vegetables, benefitting the whole marketing chain from farmer to consumer. USDA's Agricultural Marketing Service (AMS) administers and enforces the PACA.

Any person who buys or sells commercial quantities of fruits and vegetables in interstate or foreign commerce must be licensed under the PACA. Under the Act and regulations, the term ''person'' means any individual, partnership, corporation, association, or separate legal entity. 7 U.S.C. 499a(b)(1); 7 CFR 46.2(i). Separate licenses are required for each person. A person is designated as ''responsibly connected'' with a firm under the PACA if that person is affiliated as an owner, as a partner in a partnership, or as an officer, director or holder of more than 10 percent of the outstanding stock of a corporation or association. 7 U.S.C. 499a(b)(9); 7 CFR 46.2(ff). In the event that a licensee is found to have violated the Act and USDA suspends or revokes the firm's license, then the licensee and its ''responsibly connected'' principals face PACA licensing and employment restrictions which may include the denial of a license, a prohibition on employment with another PACA licensee, or the requirement that a bond be posted as a prerequisite to licensing or employment in the fruit and vegetable industry. 7 U.S.C.. 499h.

Although the PACA and PACA regulations do not specifically define a limited liability company as a ''person,'' it is USDA policy to recognize an LLC as a separate legal entity, just as LLC's are recognized in most states, subject to licensing under the PACA. USDA published its current policy about recognizing LLC's in the **Federal Register** on April 14, 1999 (64 FR 18397) and no comments were received from the public. The proposed regulatory amendments herein will adopt that policy by expanding the current regulations to include LLC's under the PACA, especially with regard to the licensing of LLC's and the responsibly connected status of LLC members and managers.

An LLC may be described as a cross between a partnership and a corporation. This hybrid business structure is now available to businesses in most states. The personal liability protection afforded by the LLC is similar to that of a corporation. For example, the members are insulated from liability arising solely from being a member but are not insulated from liability for the acts of the LLC which violate any laws or regulations. Liability issues may vary somewhat according to state law and the LLC's organizational agreement.

Although an LLC affords personal liability protection to its owners that is similar to that of a corporation, the ownership characteristics of an LLC more closely resemble those of a partnership. The LLC owners are often referred to as members, and member-managers may be designated. Membership requirements in an LLC can be determined by the members; for example, members may join through financial contributions or through the performance of services.

In general, state LLC statutes require the filing of documentation similar to articles of incorporation, sometimes called articles of organization. In addition, an operating agreement is entered into which usually designates who has the authority to run the LLC company. This operating agreement usually details the process to be followed in choosing the manager(s) and sets forth the manager(s)'' authority and the authority retained by the members. The manager(s) is often, but not always, a member of the LLC. Specific requirements vary by state.

Because of the unique composite nature of the LLC, an LLC's members are analogous to partners in a partnership, while managers, who are not always members, may be analogous to corporate officers, depending on the manager's responsibilities as set out by the LLC's operating agreement. Therefore, the proposed amendments would clarify that all LLC members, regardless of the member's financial contribution, are ''responsibly connected'' persons under the PACA, just as all partners are ''responsibly connected'' with a partnership. In addition, any person(s), whether or not a member, who is authorized by the LLC to be in charge of the daily business operations, management, and control of the LLC, would also be considered responsibly

connected to the LLC, just as officers in a corporation are under the PACA. The determination of whether a person other than a member is ''responsibly connected'' would depend upon the terms of the LLC's operating agreement. These agreements are similar to a partnership agreement or corporate bylaws which outline who is in charge of the business' daily operations. Those persons whom the LLC authorizes to be in charge of the day-to-day operation, management and control of the LLC's daily business activities may include, but would not be limited to, those with the titles of managers, officers, and/or directors.

An LLC members' ownership in the company closely resembles a partnership. Therefore, the proposed amendments would require that all LLC members, including corporations or other entities, be identified on the firm's PACA license application. If a member is a corporation or other legal entity, more information, such as the names of officers of the corporation or other data, would be required by AMS. LLCs submitting PACA license applications would be required to submit organizational information about the company, including, but not limited to, documentation filed with the state in which the LLC is legally established, such as its articles of organization and its operating agreement. Only one LLC member's signature would be required to make a valid PACA application. In addition, just as is required of other legal entities, if the articles of organization or the operating agreements were to change, the LLC would be required to notify AMS'' PACA Branch as soon as possible and submit revised documents to the PACA Branch.

The LLC business structure has become widely accepted throughout the United States as a new legal entity. AMS is hereby proposing that the PACA regulations be amended to require certain information from an LLC in order to obtain a license under the PACA. In addition, the proposed amendment would also expand the definition of the term ''responsibly connected'' to include all LLC members and LLC managers, even when they are not also members. The ''responsibly connected'' status of LLC managers would be determined on a case-by-case basis, depending upon the terms of the LLC's operating agreement and the ways in which the person's status is analogous to that of an officer, director or shareholder of a corporation. Therefore, both members and managers would be subject to PACA sanctions if the Act is violated by the LLC.

**Executive Orders 12866 and 12988**

This proposed rule, issued under the Perishable Agricultural Commodities Act (7 U.S.C. 499 *et seq.*), as amended, has been determined to be not significant for the purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget (OMB).

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform and is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

**Effects on Small Businesses**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), USDA has considered the economic impact of this proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Small agricultural service firms have been defined by the Small Business Administration (13 CFR part 121) as those with less than 500 employees. The PACA requires all businesses that operate subject to its provisions to maintain a license issued by USDA. There are approximately 15,700 PACA licensees, the majority of which may be classified as small entities.

The proposed revisions to the PACA regulations would recognize a limited liability company (LLC) as a legal entity under the PACA regulations, and amend the definition of ''responsibly connected'' under the regulations to include any member of an LLC, and/or any other person authorized by the members to conduct business on behalf of an LLC. The LLC business structure has become widely accepted throughout the United States as a new legal entity and these proposed revisions to the regulations would clarify how USDA deals with these entities and their principals under the PACA.

Like a sole proprietorship, partnership, corporation, or any other separate legal entity, a LLC, whether a small or large business, must obtain and maintain a valid PACA license if it buys or sells commercial quantities of fruits and vegetables in interstate or foreign commerce. AMS believes that this proposed rule would have no more impact on an LLC than the current PACA regulations have on sole proprietorships, partnerships, associations, or corporations operating subject to the PACA, whether large or small.

Since LLC's are required to be licensed under the PACA as a ''separate legal entity,'' they are subject to disciplinary actions by USDA for violating the PACA and regulations. Therefore, these proposed revisions would mainly impact those persons USDA considers as ''responsibly connected'' with the LLC under the PACA. If USDA suspends or revokes a firm's license for PACA violations, the firm and any person found ''responsibly connected'' with the firm are restricted for a certain period of time from holding a PACA license or from being employed with another PACA licensee. However, these restrictions apply to any firm which has been found to have violated the PACA, regardless of the firm's size or type of ownership.

Given the preceding discussion, AMS has determined that the provisions of this proposed rule would not have a significant economic impact on a substantial number of small entities.

**Paperwork Reduction Act**

The revisions set forth in this proposed rule involve a change in the existing information collection and record keeping requirements which were previously approved by the Office of Management and Budget (OMB) under provisions of 44 U.S.C. Chapter 35. In accordance with the Paperwork Reduction Act of 1995, this notice announces AMS' intentions to request a revision to a currently approved information collection in support of the Reporting and Record Keeping Requirement under the Regulations (Other Than Rules of Practice) Under the Perishable Agricultural Commodities Act (PACA) (7 U.S.C. 499a—499t).

*Title:* Reporting and Record Keeping Requirements Under Regulations (Other Than Rules of Practice) Under the Perishable Agricultural Commodities Act, 1930.

*OMB Number:* 0581–0031.

*Expiration Date of Approval:* April 30, 2001.

*Type of Request:* Revision of a currently approved information collection.

*Abstract:* The PACA was enacted by Congress in 1930 to establish a code of fair trading practices covering the marketing of fresh and frozen fruits and vegetables in interstate or foreign commerce. It protects growers, shippers, and distributors dealing in those

commodities by prohibiting unfair and fraudulent trade practices.

The law provides for the enforcement of contracts by providing a forum for resolving contract disputes, and for the collection of damages from anyone who fails to meet contractual obligations. In addition, the PACA imposes a statutory trust on licensees for perishable agricultural commodities received, products derived from them, and any receivables or proceeds due from the sale of the commodities for the benefit of suppliers, sellers, or agents that have not been paid.

The PACA is enforced through a licensing system and is user-fee financed through a license fee. All commission merchant, dealers, and brokers engaged in business subject to the PACA must be licensed. The license is effective for three (3) years for retailers and grocery wholesalers, and must be renewed on a triennial basis. The license for all other licensees is effective for up to three (3) years. These licensees must also renew their licenses, but have the option of a 1-year, 2-year, or 3-year license term. Those who engage in practices prohibited by the PACA may have their licenses suspended or revoked.

The information collected from respondents is used to administer licensing provisions under the PACA. The records maintained are used to adjudicate reparation and administrative complaints filed against licensees to determine the imposition of sanctions on firms and responsibly connected individuals who have engaged in unfair trade practices. Since the LLC business structure became accepted by states and USDA first accepted PACA applications from LLC's, we have found that the majority of LLC applicants did not properly report the identities of the firms' principals. In most instances, AMS has found it necessary to request that LLC's submit copies of their articles of organization and operating agreements in order to identify the persons responsibly connected with each firm. Under the circumstances, USDA in this proposed revision to the PACA regulations would require that an LLC submit its articles or organization and its operating agreement as part of its application.

We estimate the paperwork and time burden on the above to be as follows:

*Regulations Section 46.4(b)(3)—Application for License:* LLC's submission of Articles of Organization and Operating Agreement.

*Estimate of Burden:* Public reporting burden for the collection of information is estimated to average .083 hours per response.

*Respondents:* Commission merchants, dealers, and brokers who are organized as limited liability companies and are engaged in the business of buying, selling, or negotiating the purchase or sale of fresh and/or frozen fruits and vegetables in interstate or foreign commerce are required to be licensed under the PACA (7 U.S.C. 499(c)(a)).

*Estimated Number of Respondents:* 160.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 13 hours.

The revision to the information collection requirements approved under 0581–0031 also requests approval of existing requirements associated with this program.

A revision of collection 00581–0031 was submitted on December 1, 1997, and was subsequently approved by OMB on April 1, 1998. This revision allowed for respondents to use a business reply card (Form FV–232) as a means of informing USDA that a license was not required for their firm. We have discontinued the use of Form FV–232, Business Reply Card after a trial period. We found that our customers were not utilizing the form in sufficient numbers to make it cost effective for the program to continue its use. We also found that our customers continued to call or write us to verify whether or not they needed a PACA license. Under the circumstances, we are reducing the public's reporting burden by 330 hours (10,000 respondents × 2 minutes per business reply card = 330 hours).

In addition, the PACA requires that USDA mail each licensee a license renewal application (Form FV–231–1 to non-retailers and non-grocery wholesalers, who pay license fees, or FV–231–2 to retailers and grocery wholesalers, who do not pay license fees) at least 30 days prior to the licensee's PACA license anniversary date. If a licensee is continuing to operate subject to the PACA, it must renew its license prior to its anniversary date. If a licensee fails to renew its license prior to that date, the licensee has 30 days under the PACA to reinstate its license by submitting the proper license fee plus a $50 reinstatement fee. Currently, we notify licensees by letter of the need to reinstate their licenses and request that they submit Form FV–231–1 or FV–231–2, along with the license and reinstatement fees, to AMS so that the license renewal can be processed.

We have found this process creates confusion and raises difficulties for our licensees. In most instances, the licensees no longer have the renewal application (Form FV–231–1 or FV–231–2), or they inform us that they never received it in the mail. They usually contact one of the PACA programs' regional offices to find out how to reinstate a license.

We have developed Forms FV–231–lA and FV–231–2A, ''Reinstatement Notice,'' for use only in the event we do not receive a licensee's renewal application. These two new forms are duplicates of the renewal applications (Form FV–231–1 or Form FV–231–2). A reinstatement notice (Form FV–231–1A or Form FV231–2A) is sent to a licensee only in the event AMS does not receive the licensee's renewal application (Form FV–231–1 or Form FV–231–2). We believe that the development of the reinstatement form will reduce confusion and other related problems that AMS'' customers have with the reinstatement letter. Either form, FV–231–1/FV–231–2, or FV–231–1A/FV–231–2A would be sufficient for a licensee to send to AMS, along with the proper fees, for a renewed PACA license. We believe that there will be no additional reporting burden on the public with the addition of Form FV–231–1A/FV–231–2A.

AMS is now accepting Visa and MasterCard payments for PACA license and complaint fees. This change was adopted for customer convenience. Until now, customers/licensees had to pay fees by check, money order, or cash. We are updating our license, renewal, and reinstatement applications to include an area for the credit number and expiration date. No additional burden should result from this change.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) 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 those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Charles W. Parrott, Acting Chief, PACA Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2095–So. Bldg., P.O. Box 96456, Washington, D.C. 20090–6456. Email—charles.parrott@usda.gov.

All comments received will be available for public inspection during regular business hours at the same address.

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.

**List of Subjects in 7 CFR Part 46**

Agricultural commodities, Brokers, Penalties, Reporting and record keeping requirements.

For the reasons set forth in the preamble, 7 CFR part 46 is proposed to be amended as follows:

## PART 46—[AMENDED]

1. The authority citation for part 46 continues to read as follows:

**Authority:** Sec. 15, 46 Stat. 537; 7 U.S.C. 499o

2. In § 46.2, paragraph (i) and (ff) would be revised to read as follows:

**§ 46.2 Definitions.**

* * * * *

(i) *Person* means any individual, partnership, limited liability company, corporation, association, or separate legal entity.

* * * * *

(ff) *Responsibly connected* means affiliation as individual owner, partner in a partnership, member, manager, officer, director or holder of more than a 10 percent ownership stake in a limited liability company, or officer, director or holder of more than 10 percent of the outstanding stock of a corporation or association.

* * * * *

3. Section 46.4, is amended as follows:

a. Paragraphs (b)(3) and (b)(4) are revised,

b. Paragraphs (b)(6)(ii) and (b)(6)(iii) are removed,

c. Paragraph (b)(6)(iv) is redesignated as paragraph (b)(6)(ii) and revised,

d. Paragraphs (b)(6)(v) and (b)(6)(vi) are redesignated as paragraphs (b)(6)(iii) and (b)(6)(iv), and

e. The introductory text of paragraph (b)(6) and paragraph (c) are revised to read as follows:

**§ 46.4 Application for license.**

* * * * *

(b)* * *

* * * * *

(3) Type of ownership. If a corporation or limited liability company, the applicant shall furnish the month, day, and year incorporated or organized; the State in which incorporated or organized; the name in which incorporated or organized; and the address of the principal office. A limited liability company shall also furnish a copy of its articles of organization and its operating agreement.

(4) Full legal name, all other names used, if any, and home address of owner. If a partnership, the applicant shall furnish the legal names, all other names used, if any, and home address of all partners, indicating whether general, limited, or special partners. If a limited liability company, the applicant shall furnish the full legal names, all other names used, if any, and home address of all members, managers, officers, directors and holders of more than 10 percent of the ownership stake, and the percentage of ownership in the company held by each such person. If an association or corporation, the applicant shall furnish the full legal names, all other names used, if any, and home address of all officers, directors and holders of more than 10 percent of the outstanding stock and the percentage of stock held by each such person. Minors shall also furnish the full name and home address of their guardian. If the applicant is a trust, the name of the trust and the full name and home address of the trustee must be furnished. If the applicant is a limited liability company and a member or holder of more than 10 percent of the ownership stake is a partnership, another limited liability company, corporation, association, or separate legal entity, the applicant shall furnish the full legal names and home address of that member's partners, members, managers, directors, and officers.

* * * * *

(6) Whether the applicant, or in case the applicant is a partnership, any partner, or in case the applicant is a limited liability company, any member, manager, officer, director or holder of more than 10 percent of the ownership stake, or in case the applicant is an association or corporation, any officer, director, or holder of more than 10 percent of the outstanding stock, has prior to the filing of the application:

(i)* * *

(ii) Within three years been adjudicated or discharged as a bankrupt or was an officer, director, stockholder, partner, member, manager or owner of a firm adjudicated or discharged as a bankrupt.* * *

* * * * *

(c) The application shall be signed by the owner, all general partners, or in case the applicant is a limited liability company, a member or manager, or in case the applicant is an association, or corporation, a duly authorized officer.

* * * * *

4. The first sentence of § 46.11 would be revised to read as follows:

**§ 46.11 What constitutes valid license, form and use.**

Each license shall bear a serial number, the names in which authorized to conduct business, type of ownership, if the business is individually owned, the name of the owner; if a partnership, the names of all general partners; if a limited liability company, the names of all members, managers, officers, directors and holders of more than 10 percent of the ownership stake, and the percentage of ownership in the company held by each such person; if a corporation or association, the names of all officers, directors, and shareholders of more than 10 percent of the outstanding stock and the percentage of stock held by each such person; the facsimile signature of the Deputy Administrator, the seal of the Department and shall be duly countersigned. * * *

5. Section 46.13 would be amended by revising paragraphs (a)(2) and (a)(5) to read as follows:

**§ 46.13 Address, ownership, changes in trade name, changes in number of branches, changes in members of partnership, and bankruptcy.**

The licensee shall:

(a) * * *

(2) Any changes in officers, directors, members, managers, holders of more than 10 percent of the outstanding stock in a corporation, with the percentage of stock held by such person, and holders of more than 10 percent of the ownership stake in a limited liability company, and the percentage of ownership in the company held by each such person;

* * * * *

(5) When the licensee, or if the licensee is a partnership, any partner is subject to proceedings under the bankruptcy laws. A new license is required in case of a change in the ownership of a firm, the addition or withdrawal of partners in a partnership, or in case business is conducted under a different corporate charter, or in case a limited liability company conducts business under different articles or organization from those under which the license was originally issued.

* * * * *

Dated: October 18, 1999.

**Eric M. Forman,**

*Acting Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 99–27743 Filed 10–22–99; 8:45 am]

BILLING CODE 3410–02–P

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 63

### Round Table Discussion on Defense in Depth as Applied to a Possible High-Level Waste Repository at Yucca Mountain, NV

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Notice of facilitated Round Table Discussion in Las Vegas, Nevada.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has recently concluded the public comment period on the proposed licensing criteria for disposal of high-level radioactive wastes in a possible geologic repository at Yucca Mountain, Nevada (10 CFR Part 63). The proposed rule was published in the **Federal Register** on February 22, 1999 (64 FR 8640). Comments were received regarding the concept and implementation of defense in depth, as applied to a possible geologic repository at Yucca Mountain.

The NRC staff will hold a facilitated Round Table Discussion in Las Vegas, Nevada to foster a common understanding among the stakeholders on issues associated with repository defense in depth. The meeting will open with an NRC presentation of an overview and issues associated with the defense in depth concept, followed by public discussion facilitated by Francis X. Cameron, Special Counsel for Public Liaison, of the NRC Office of the General Counsel.

**DATES:** The Round Table Discussion will be held on Tuesday, November 2, 1999, from 1:30 p.m. to 5:00 p.m (Pacific time).

**ADDRESSES:** The Alexis Park Hotel, 375 East Harmon Avenue, Las Vegas, Nevada 89109.

**FOR FURTHER INFORMATION CONTACT:** Francis X. Cameron, Special Counsel for Public Liaison, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington D.C. 20555–0001, or by telephone: (301) 415–1642 or e-mail: fxc@nrc.gov.

**SUPPLEMENTARY INFORMATION:** NRC's plan to clarify defense in depth as applied to a possible high-level waste repository at Yucca Mountain was discussed in SECY–99–186, dated July 16, 1999. Both the plan and the proposed rule can be obtained from the NRC website (http://www.nrc.gov/NRC/COMMISSION/SECYS/1999–186scy.html) and (http://www.nrc.gov/NMSS/DWM/hlwreg.html), respectively, or by contacting Ms. Christiana Lui at (301) 415–6200 or via e-mail at cxl@nrc.gov. Copies of both documents will also be available at the Round Table Discussion.

Dated at Rockville, Maryland this 19th day of October, 1999.

For the Nuclear Regulatory Commission.

**Keith I. McConnell,**

*Acting Chief, High-Level Waste and Performance Assessment Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 99–27764 Filed 10–22–99; 8:45 am]

**BILLING CODE 7590–01–P**

## FEDERAL RESERVE SYSTEM

### 12 CFR Parts 202, 205, 213, 226, and 230

**[Regulations B, E, M, Z, and DD; Docket Nos. R–1040, R–1041, R–1042, R–1043, and R–1044]**

### Equal Credit Opportunity; Electronic Fund Transfers; Consumer Leasing; Truth in Lending; Truth in Savings

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Request for comments; extension of comment period.

**SUMMARY:** On September 14, 1999, the Board published revised proposals for public comment that would permit electronic delivery of federally mandated disclosures under five consumer protection regulations: B (Equal Credit Opportunity), E (Electronic Fund Transfers), M (Consumer Leasing), Z (Truth in Lending), and DD (Truth in Savings). The Board is extending the comment period to give the public additional time to provide comments.

**DATES:** Comments must be received by November 15, 1999.

**ADDRESSES:** Comments may be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. Comments should refer to Docket No. R–1040 for Regulation B, Docket No. R–1041 for Regulation E, Docket No. R–1042 for Regulation M, Docket No. R–1043 for Regulation Z, and Docket No. R–1044 for Regulation DD. Comments addressed to Ms. Johnson may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room at all other times. The mail room and the security control room, both in the Board's Eccles Building, are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room MP–500 between 9:00 a.m. and 5:00 p.m., pursuant to the Board's Rules Regarding the Availability of Information, 12 CFR Part 261.

**FOR FURTHER INFORMATION CONTACT:** Natalie E. Taylor or Michael L. Hentrel, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412. Users of Telecommunications Device for the Deaf (TDD) only, contact Dorothea Thompson at (202) 452–3544.

**SUPPLEMENTARY INFORMATION:** On September 14, 1999, the Board published proposed amendments to permit electronic delivery of federally mandated disclosures under Regulations B (Equal Credit Opportunity), 64 FR 49688; E (Electronic Fund Transfers), 64 FR 49699; M (Consumer Leasing), 64 FR 49713; Z (Truth in Lending), 64 FR 49722; and DD (Truth in Savings), 64 FR 49740. The Board is extending the comment period to give the public additional time to comment on the proposals.

By order of the Secretary of the Board, acting pursuant to delegated authority for the Board of Governors of the Federal Reserve System, October 18, 1999.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 99–27589 Filed 10–22–99; 8:45 am]

**BILLING CODE 6210–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 98–NM–94–AD]**

**RIN 2120–AA64**

### Airworthiness Directives; Aerospatiale Model ATR42–200, ATR42–300, and ATR42–320 Series Airplanes

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

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

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42–300 and ATR42–320 series airplanes, that currently requires inspections to determine the proper installation of rivets in certain key holes and to detect cracks in the area of the key holes where rivets are missing; and correction of discrepancies. This action would increase the compliance time for the existing requirements and expand the

applicability of the existing AD to include additional airplanes. This action also would require various inspections of the subject area for discrepancies, and corrective actions, if necessary; and replacement of certain cargo door hinges with new hinges. For certain airplanes, this action would also require replacement of friction plates, stop fittings, and bolts with new parts. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent fatigue cracks of the cargo door skin, certain frames, and entry door stop fittings and friction plates, which could result in reduced structural integrity of the airplane.

**DATES:** Comments must be received by November 24, 1999.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–94–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

**SUPPLEMENTARY INFORMATION:**

### 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 shall 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 98–NM–94–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, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–94–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

On September 10, 1993, the FAA issued AD 93–18–04, amendment 39–8689 (58 FR 53853, October 19, 1993), applicable to certain Aerospatiale Model ATR42–300 and ATR42–320 series airplanes, to require an inspection to determine the proper installation of rivets in the key holes of certain fuselage frames; an inspection to detect cracks in area of the key holes where rivets are missing; and correction of discrepancies. That action was prompted by the discovery of cracks around key holes on fuselage frames 25 and 27 where rivets were missing. The requirements of that AD are intended to prevent the loss of strength of the fuselage frames.

### Actions Since Issuance of Previous Rule

Since the issuance of that AD, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, advises that Aerospatiale has continued fatigue testing of Aerospatiale Model ATR42–300 and ATR42–320 series airplanes. The DGAC has determined that, in addition to fuselage frames 25 and 27 there are other areas that require inspection and modification, if applicable, to ensure that fatigue cracks do not progress undetected and reduce the structural integrity of the airplane. These additional areas of concern include cargo door fasteners and hinges; certain standard fuselage frames; forward entry door stops, door stop bolts, friction and plates; and upper corners. Additionally, the DGAC has determined that the subject area on certain Model ATR42–200 series airplanes, which were not affected by AD 93–18–04, is identical to that on the affected Model ATR42–300 and ATR42–320 series airplanes. Therefore, all of these airplanes may be subject to the unsafe condition and should have fuselage frames 25 and 27 inspected.

### Explanation of Relevant Service Information

Aerospatiale has issued Service Bulletin ATR42–53–0070, Revision 2, dated March 22, 1993, which describes procedures for a general visual inspection to determine the proper installation of rivets in the key holes of certain fuselage frames; and corrective action, if necessary. The corrective actions involve performing an eddy current inspection to detect cracks in the area of the key holes where rivets are missing, and installing rivets in uncracked holes.

Aerospatiale has issued Service Bulletin ATR42–52–0058, Revision 1, dated March 1, 1995, which describes procedures for replacement of the hinges on the cargo compartment door and fuselage with new improved hinges. The replacement procedures include inspections for fastener type and tolerances, hole diameters, or cracking, and repair; as applicable.

Aerospatiale has issued Service Bulletin ATR42–53–0076, Revision 2, dated October 15, 1996, which describes procedures for a general visual inspection of certain fuselage frames for proper installation of rivets, and corrective action, if necessary. The corrective actions involve a general visual inspection for cracks in the tooling or key holes, and installation of rivets in uncracked holes.

Aerospatiale also has issued Service Bulletin ATR42–52–0052, Revision 1, dated March 2, 1993, which describes procedures for an eddy current inspection of forward entry door stop holes to detect cracking; a detailed visual inspection of forward entry door friction plates to detect wear; and corrective action, if necessary. The corrective action involves replacement of door stop fittings and friction plates with new parts.

Aerospatiale also has issued Service Bulletin ATR42–52–0059, dated February 16, 1995, which describes procedures for replacement of forward entry door friction plates, upper corner stop fittings, and bolts with parts of an improved design.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as

mandatory and issued French airworthiness directive 92–044–046(B)R2, dated November 5, 1997, in order to assure the continued airworthiness of these airplanes in France.

**FAA's Conclusions**

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 93–18–04 to require accomplishment of the actions specified in the service bulletins described previously. The actions would be required to be accomplished in accordance with the service bulletins described previously, except as discussed below.

**Differences Between Proposed Rule and Service Bulletin**

Operators should note that, although certain service bulletins described previously specify that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair approved by either the FAA or the DGAC would be acceptable for compliance with this proposed AD.

**Cost Impact**

There are approximately 106 airplanes of U.S. registry that would be affected by this proposed AD.

The general visual inspection of fuselage frames 25 and 27 that is proposed in this AD action would take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection proposed by this AD on U.S. operators is estimated to be $180 per airplane.

The cargo door hinge and skin replacement that is proposed in this AD action would take approximately 250 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $9,880 per airplane. Based on these figures, the cost impact of the door structure replacement proposed by this AD on U.S. operators is estimated to be $24,880 per airplane.

The general visual inspection of the key and tooling holes that is proposed in this AD action would take approximately 100 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on this figure, the cost impact of this inspection proposed by this AD on U.S. operators is estimated to be $6,000 per airplane.

The eddy current and detailed visual inspections of the forward entry door stop fitting and friction plate that are proposed in this AD action would take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on this figure, the cost impact of these inspections proposed by this AD on U.S. operators is estimated to be $120 per airplane.

The replacement of the forward entry door stop fitting, friction plate, and upper door corner that is proposed in this AD action would take approximately 50 work hours per airplane to accomplish. The manufacturer has committed previously to its customers that it will bear the cost of replacement parts. As a result, the cost of those parts is not attributable to this proposed AD. Based on this figure, the cost impact of the replacement proposed by this AD on U.S. operators is estimated to be $3,000 per airplane.

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

**Regulatory Impact**

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

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

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

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39–8689 (58 FR 53853, October 19, 1993), and by adding a new airworthiness directive (AD), to read as follows:

**Aerospatiale:** Docket 98–NM–94–AD. Supersedes AD 93–18–04, Amendment 39–8689.

*Applicability:* All Model ATR42–200, ATR42–300, and ATR42–320 series airplanes, certificated in any category.

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

been eliminated, the request should include specific proposed actions to address it.

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

To prevent fatigue cracks of the cargo door skin, certain frames, entry door stop fittings, or friction plates, which could result in reduced structural integrity of the airplane, accomplish the following:

**Frame 25 and 27 Inspection**

(a) For airplanes having serial numbers 005 through 016 inclusive, 018 through 030 inclusive, 032 through 036 inclusive, 038, 040, 042, 043, 048 through 062 inclusive, 064 through 090 inclusive, 092 through 094 inclusive, and 096 through 228 inclusive: Prior to the accumulation of 36,000 total flight cycles, or within 180 days after the effective date of this AD, whichever occurs later, conduct a general visual inspection of fuselage frames 25 and 27 to verify the proper installation of a rivet in each of the key holes, in accordance with Aerospatiale Service Bulletin ATR42–53–0070, Revision 2, dated March 22, 1993.

**Note 2:** For the purposes of this AD, a general visual inspection is defined as ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being check.''

**Note 3:** Inspection of fuselage frames 25 and 27 accomplished prior to the effective date of this AD in accordance with Aerospatiale Service Bulletin ATR42–53–0070, dated June 10, 1991, or Revision 1, dated June 12, 1992, is considered acceptable for compliance with the requirements of paragraph (a) of this AD.

(1) If a rivet is installed in each of the key holes, no further action is required by this paragraph.

(2) If a rivet is not installed in each of the key holes, prior to further flight, perform an eddy current inspection of each open key hole to detect cracks, in accordance with the service bulletin.

(i) If no crack is found during the eddy current inspection, prior to further flight, install a rivet in the open key hole in accordance with the service bulletin. After such installation, no further action is required by this paragraph for that key hole.

(ii) If any crack is found during the eddy current inspection, prior to further flight, repair the crack in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

**Inspection and Modification of Cargo Door Structure**

(b) For airplanes equipped with a cargo compartment door on which Aerospatiale Modification 3191 has not been accomplished: Prior to the accumulation of 27,000 total flight cycles, or within 180 days after the effective date of this AD, whichever occurs later, except as provided by paragraph (c) of this AD, replace the hinges on the cargo compartment door and fuselage (including inspections for fastener type and tolerances, hole diameters, or cracking, and repair; as applicable) with new improved hinges, in accordance with paragraph 2. of the Accomplishment Instructions of Aerospatiale Service Bulletin ATR42–52–0058, Revision 1, dated March 1, 1995.

(c) Where the instructions in Aerospatiale Service Bulletin ATR42–52–0058, Revision 1, dated March 1, 1995, specify that ATR is to be contacted for a repair, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, or the DGAC (or its delegated agent).

**Frame Inspection**

(d) For airplanes having serial numbers 003 through 208 inclusive: Prior to the accumulation of 36,000 total flight cycles, or within 180 days after the effective date of this AD, whichever occurs later, conduct a general visual inspection of the identified fuselage frames for proper installation of a rivet in each of the tooling and key holes, in accordance with Aerospatiale Service Bulletin ATR42–53–0076, Revision 2, dated October 15, 1996.

(1) If a rivet is installed in each of the tooling or key holes, no further action is required by this paragraph.

(2) If a rivet is not installed in each of the tooling and key holes, prior to further flight, perform a detailed visual inspection of each open tooling or key hole to detect cracks, in accordance with the service bulletin.

**Note 4:** For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required.''

(i) If no crack is found during the detailed visual inspection required by paragraph (d)(2) of this AD, prior to further flight, install a rivet in the open hole in accordance with the service bulletin.

(ii) If any crack is found during the visual inspection required by paragraph (d)(2) of this AD, prior to further flight, repair the crack in accordance with a method approved by the Manager, International Branch, ANM–116, or the DGAC (or its delegated agent).

**Inspection and/or Replacement of Entry Door Structure**

(e) For Model ATR42–300 series airplanes having serial numbers listed in Aerospatiale Service Bulletin ATR42–52–0052, Revision 1, dated March 2, 1993: Except as provided by paragraph (f) of this AD, prior to the accumulation of 10,000 total flight cycles, or within 90 days after the effective date of this AD, whichever occurs later, accomplish the requirements of paragraphs (e)(1) and (e)(2) of this AD.

(1) Perform an eddy current inspection of the forward entry door stop holes to detect cracking, in accordance with the service bulletin. If any cracking is detected, prior to further flight, replace any cracked forward entry door stop fitting with a new fitting, in accordance with the service bulletin.

(2) Perform a detailed visual inspection of the forward entry door friction plates for wear, in accordance with the service bulletin. If wear is found on any friction plate, and the wear has a depth equal to or greater than 0.8mm (0.0315 in.), prior to further flight, replace the friction plate with a new or serviceable part in accordance with the service bulletin.

(f) For Model ATR42–300 series airplanes listed in Aerospatiale Service Bulletin ATR42–52–0052, Revision 1, dated March 2, 1993, accomplishment of the requirements of paragraph (g) of this AD at the time specified in paragraph (e) of this AD constitutes terminating action for the requirements of paragraph (e) of this AD.

(g) For Model ATR42–300 series airplanes listed in Aerospatiale Service Bulletin ATR42–52–0059, dated February 16, 1995: Prior to the accumulation of 18,000 total flight cycles, or within 180 days after the effective date of this AD, whichever occurs later, accomplish the requirements of paragraphs (g)(1), (g)(2), and (g)(3) of this AD in accordance with the service bulletin.

(1) Replace the forward entry door friction plates with improved friction plates.

(2) Replace the upper corners of the forward entry door surround structure with improved door surround corners.

(3) Replace the forward entry door stop fittings and bolts with improved fittings and bolts.

**Alternative Methods of Compliance**

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

**Note 5:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

**Special Flight Permits**

(i) 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.

**Note 6:** The subject of this AD is addressed in French airworthiness directive 92–044–046(B)R2, dated November 5, 1997.

Issued in Renton, Washington, on October 19, 1999.

**D.L. Riggin,**

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

[FR Doc. 99–27792 Filed 10–22–99; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF THE TREASURY

## 27 CFR Parts 4, 5, and 7

## Bureau of Alcohol, Tobacco and Firearms

**[Notice No. 884]**

**RIN 1512–AB97**

## Health Claims and Other Health-Related Statements in the Labeling and Advertising of Alcohol Beverages (99R–199P)

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** ATF is proposing to amend the regulations to prohibit the appearance on labels or in advertisements of any statement that makes a substantive claim regarding health benefits associated with the consumption of alcohol beverages unless such claim is properly qualified, balanced, sufficiently detailed and specific, and outlines the categories of individuals for whom any positive health effects would be outweighed by numerous negative health effects. ATF is also proposing to prohibit any advertisements that attribute health benefits to the consumption of alcohol beverages unless such statement is appropriately qualified in a manner that is not likely to result in any consumer confusion or deception. This notice seeks comments on whether the negative consequences of alcohol consumption or abuse disqualify, as misleading, these products entirely from entitlement to any health-related statements. This notice also seeks comments on whether health-related statements on alcohol beverage labels and advertising directing consumers to sources, such as the U.S. Government Dietary Guidelines, of information are misleading and whether ATF should continue to approve such statements.

The proposed regulations are intended to ensure that labels and advertisements do not contain statements or claims that would tend to mislead the consumer about the significant health consequences of alcohol consumption.

**DATES:** Comments must be received on or before February 22, 2000.

**ADDRESSES:** Send written comments to: Chief, Regulations Division; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091–0221; *ATTN: Notice No. 884.* Submit e-mail comments to: nprm.notice.884@atfhq.atf.treas.gov. E-mail comments must contain your name, mailing address, and e-mail address. They must also reference this notice number and be legible when printed on not more than three pages 8½″ × 11″ in size. We will treat e-mail as originals and we will not acknowledge receipt of e-mail.

**FOR FURTHER INFORMATION CONTACT:** James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8230).

**SUPPLEMENTARY INFORMATION:**

### I. Background

Under the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e) and (f), we are authorized to issue regulations on the packaging, labeling, and advertising of alcohol beverages in order to prohibit deception of the consumer and, without regard to their truth or falsity, statements relating to analyses, guarantees, and scientific or irrelevant matters that are likely to mislead the consumer.

Regulations that implement the provisions of section 205(e) and (f), as they relate to the labeling and advertising of wine, distilled spirits, and malt beverages, are set forth in Title 27, Code of Federal Regulations (CFR), parts 4, 5, and 7, respectively. Under these regulations, labels and advertisements are prohibited from containing any statement, design, representation, pictorial representation, or device representing that the use of wine, distilled spirits, or malt beverages has curative or therapeutic effects if such representation is untrue in any particular or tends to create a misleading impression. This prohibition originated more than 60 years ago with the initial labeling and advertising regulations issued under the FAA Act.

ATF and our predecessor agencies have historically taken a very strict view of the regulatory prohibition on curative or therapeutic claims about alcohol beverages. This strict interpretation is based on the view that ''distilled spirits, wines and malt beverages are, in reality, alcoholic beverages and not medicines of any sort, * * *'' (FA–129, dated January 5, 1938).

In view of the undisputed health risks associated with alcohol consumption, it has always been our position that statements attributing positive health effects to the consumption of alcohol beverages are misleading unless such statements are appropriately qualified and properly balanced.

### II. Our Existing Policy Regarding Health Claims and Other Health-Related Statements—Summary

The following is a summary of our existing policy with respect to health claims and other health-related statements in the labeling and advertising of alcohol beverages.

We view statements that make substantive claims regarding health benefits associated with alcohol beverage consumption as making therapeutic or curative claims. Claims which set forth only a partial picture or representation might be as likely to mislead the consumer as those that are actually false. A claim which is supported by scientific evidence may still mislead the consumer without appropriate qualification and detail. Any such claim is considered misleading unless it is properly qualified, balanced, sufficiently detailed and specific, and outlines the categories of individuals for whom any positive health effects would be outweighed by numerous negative health effects.

### III. Negative Consequences of Alcohol Consumption

The risks associated with alcohol consumption are well-documented.

In an article entitled ''Alcohol and Risk of Coronary Events,'' [1] Charles H. Hennekens, M.D. outlines these risks as follows:

> The hazards of heavy alcohol consumption are clear and substantial and have far-reaching health and social consequences. Alcohol is the second leading cause of preventable deaths in the United States as well as most industrialized countries, second only to cigarette smoking. Drinking increases the risk of cancer of the liver, mouth, tongue, and esophagus and has been implicated as a cause of 3 to 5 percent of all cancer deaths. Heavy alcohol consumption is also associated with increased risks of hemorrhagic stroke and cardiomyopathy, and it predisposes to hepatic cirrhosis, the ninth most common cause of death in the United States. In pregnant women, heavy alcohol consumption is associated with fetal alcohol syndrome. Alcohol drinking is also implicated in over 40 percent of all fatal traffic crashes, which are a chief cause of premature deaths in younger people, and it is associated with suicides, industrial accidents, sex crimes, robberies, and murders. It is estimated that 14 million U.S.

* Endnotes to preamble appear at end of article.

residents suffer from alcohol abuse and dependence, and 76 million are affected by its presence in a family member.

It is true that many of these health risks are caused by heavy levels of alcohol consumption. It is also true that there are millions of Americans with alcohol dependency problems who find themselves unable or unwilling to control their consumption of alcohol. Given the serious health risks associated with higher levels of alcohol consumption, and given the fact that most medical studies agree that the effects of moderate consumption differ from individual to individual, any claim associating health benefits with moderate alcohol consumption must be carefully evaluated to ensure that it does not mislead the consumer about the various health consequences related to the consumption of alcohol beverages.

We recognize that there are several scientific studies suggesting a link between moderate alcohol consumption and a lower risk of coronary artery disease (''CAD'').[2] However, at this time, we do not believe there is significant scientific evidence to support an unqualified conclusion that moderate wine (alcohol) consumption has health benefits for all or even most individual consumers. Some studies have suggested that only older drinkers will accrue any health benefits from moderate alcohol consumption.[3] This is because younger individuals have such a low risk for coronary artery disease and are much more likely to be at risk from alcohol consumption even at lower levels. This difference in risk factors has been explained as follows: [4]

> The net contents of all-cause mortality associated with a certain alcohol consumption level therefore also depends on the drinker's absolute risk of dying from these various causes. Accordingly, older people—who are at high absolute risk of coronary heart disease and ischemic stroke and at low risk for injury, cirrhosis, and other alcohol-related diseases—are most likely to benefit from low levels of alcohol consumption. In contrast, for men and women under age 40, who have relatively low absolute risk of dying from strokes, heart disease, and alcohol-related diseases but a high absolute risk of dying from injury, all-cause mortality will increase even at relatively low alcohol-consumption rates * * *. Finally, the absolute risk of death from injury or coronary heart disease is lower in young women than in young men, leading to an increase in all-cause mortality even in young women who are light drinkers (less than two drinks every 3 days) compared with abstainers.

Overall, the available scientific literature suggests that there may be serious health risks associated with heavy as well as moderate alcohol consumption, depending on the individual.[5] In light of the negative health consequences of alcohol consumption or abuse, it is possible that these products may not be entitled to any health-related statement. As noted below in section VII, the Federal Trade Commission has adopted a policy that unqualified health claims on products that pose increased health risks are deceptive. Accordingly, we are soliciting comments on whether alcohol beverages should not be entitled to health-related statements.

## IV. Industry Circular 93–8

On August 2, 1993, we published Industry Circular 93–8. The circular generally restated our existing position regarding misleading curative and therapeutic claims, i.e., we view statements that make substantive claims regarding health benefits associated with alcohol beverage consumption as making therapeutic or curative claims. Any claim that sets forth only a partial picture or representation might be as likely to mislead the consumer as those that are actually false. Thus, a statement which attributes health benefits to the moderate consumption of alcohol beverages, even if supported by medical evidence, might have an overall misleading effect if such statement is not properly qualified, does not give all sides of the issue, and does not outline the categories of individuals for whom any such positive effect would be outweighed by numerous negative health effects.

We also explained that our existing policy regarding health claims on labels had been reinforced by the 1988 enactment of the Alcoholic Beverage Labeling Act (ABLA), 27 U.S.C. 213 *et seq.* The ABLA contains a declaration of policy and purpose that states that the Congress finds that ''the American public should be informed about the health hazards that may result from the consumption or abuse of alcoholic beverages, and has determined that it would be beneficial to provide a clear, nonconfusing reminder of such hazards, and that there is a need for national uniformity in such reminders in order to avoid the promulgation of incorrect or misleading information and to minimize burdens on interstate commerce.'' 27 U.S.C. 213. As a result of this concern, the ABLA requires that any alcohol beverage container held for sale or distribution in the United States must bear the following statement on the label:

> GOVERNMENT WARNING: (1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. (2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems.

It is clear that one of the purposes of the ABLA was to avoid confusing the American public about the health hazards associated with the consumption of alcohol beverages. In order to accomplish this goal, Congress prescribed specific language that must appear on the labels of alcohol beverage products. It is our position that to the extent that the overall message of any health claim is inconsistent with the message of the health warning statement, it may result in label information that is misleading and confusing to the consumer and would be prohibited under the FAA Act.

In Industry Circular 93–8, we further noted that other Federal agencies, such as the Food and Drug Administration and the Federal Trade Commission, may have jurisdiction over certain aspects of labeling and advertising issues involving health claims. We will address this issue further in section VII (*Role of Other Federal Agencies With Respect to Health Claims and Other Health-Related Statements*).

We also stated that the distribution of advertising materials which included the full text of the April 1992 edition of ''Alcohol Alert,'' published by the National Institute on Alcohol Abuse and Alcoholism (NIAAA), would not be in violation of current regulations. This NIAAA publication provides a comprehensive discussion of the health consequences of moderate alcohol consumption. If such advertising materials also contain editorializing, advertising slogans, or exhortations to consume the product, we would evaluate such additional text to determine whether or not the advertisement presents a balanced picture of the risks associated with alcohol consumption. In addition, we stated that the use of buttons, shelf talkers, table tents, and similar items that excerpt any portion of the NIAAA publication, that contain health slogans or other inferential statements drawn from this publication, or that are based upon any other publication or article citing the health benefits of alcohol consumption, will be closely scrutinized to determine if they present a balanced picture of the risks associated with alcohol consumption.

In addition, we reminded industry members in Industry Circular 93–8 that substantive health claims on labels are considered to be misleading unless they are properly qualified, present all sides of the issue, and outline the categories of individuals for whom any positive effects would be outweighed by

numerous negative health effects. We concluded that it would be extremely unlikely that any such balanced claim would fit on a normal alcohol beverage label. Our policy with respect to substantive health claims has not changed since the issuance of the industry circular. Finally, we stated that it was our intent to initiate rulemaking on this issue; however, pending rulemaking, we would continue to evaluate claims in labeling and advertising on a case-by-case basis.

**V. Competitive Enterprise Institute Petition**

On May 9, 1995, the Competitive Enterprise Institute (CEI) submitted a petition asking us to issue a rule allowing alcohol beverage labels and advertisements to carry statements regarding the purported benefits of moderate alcohol consumption of alcohol beverages. More specifically, CEI proposed that the following language be permitted on labels and in advertisements: ''There is significant evidence that moderate consumption of alcoholic beverages may reduce the risk of heart disease.'' We would consider this statement to be an example of a substantive health claim. By letter dated January 13, 1997, we denied this rulemaking petition stating that the specific health claim proposed by CEI was not appropriately qualified, was not balanced regarding the health consequences of alcohol consumption and, as such, its use on labels could mislead consumers.

**VI. Dietary Guidelines**

The Fourth Edition (1995) of the ''Dietary Guidelines for Americans'' was published by the U.S. Department of Agriculture and the U.S. Department of Health and Human Services in 1996. The Guidelines contain a detailed discussion concerning the consequences and effects of alcohol beverage consumption. There have been suggestions that the Federal government itself, in its issuance of the Dietary Guidelines, has officially recognized the health benefits of moderate alcohol consumption. It is true that the Guidelines acknowledge that ''[c]urrent evidence suggests that moderate drinking is associated with a lower risk for coronary heart disease in some individuals.'' However, this is not a statement of a health benefit; it is merely a conclusion that in some individuals, moderate drinking may be associated with a lower risk of coronary heart disease. The Dietary Guidelines then go on to discuss the ''serious health problems'' caused by alcohol consumption as follows:

> However, higher levels of alcohol intake raise the risk for high blood pressure, stroke, heart disease, certain cancers, accidents, violence, suicides, birth defects, and overall mortality (deaths). Too much alcohol may cause cirrhosis of the liver, inflammation of the pancreas, and damage to the brain and heart. Heavy drinkers also are at risk of malnutrition because alcohol contains calories that may substitute for those in more nutritious foods.

The Dietary Guidelines recommend that if adults choose to drink alcohol beverages, they should consume them only in moderation. The term ''moderation'' is defined as no more than one drink per day for women and no more than two drinks per day for men. However, the Dietary Guidelines also conclude that for some people, even moderate drinking is not recommended. Thus, many people should not drink alcohol beverages at all, including children and adolescents, women who are trying to conceive or who are pregnant, individuals who plan to drive or take part in activities that require attention or skill, and individuals using prescription and over-the-counter medications. Finally, the Dietary Guidelines also suggest that individuals of any age who cannot restrict their drinking to moderate levels should not drink at all. This last category is obviously hard to define, and may include many individuals who do not even realize that they fall within this category.

It is clear that the Dietary Guidelines explicitly recognize that moderate alcohol consumption is not an activity that has only beneficial effects to the health of the consumer. Millions of adult consumers fall within the categories of people who should not drink alcohol beverages at all. The Dietary Guidelines do not represent an unqualified endorsement of the health benefits of moderate alcohol consumption. Thus, without appropriate qualifications and explanations, any such statement to that effect would tend to mislead consumers. However, we have no objections to the dissemination of the entire Dietary Guidelines as advertising materials by industry members or to the dissemination of the two pages from the Guidelines dealing with alcohol beverages (pages 40 and 41).

**VII. Role of Other Federal Agencies With Respect to Health Claims and Other Health-Related Statements**

While ATF has primary jurisdiction over the labeling and advertising of alcohol beverages, under certain circumstances the labeling and advertising of alcohol beverages may also be subject to the jurisdiction of the Food and Drug Administration (FDA) or the Federal Trade Commission (FTC). For example, since certain wine products containing less than 7 percent alcohol by volume are not wines subject to the FAA Act, the labeling of such products falls within FDA's jurisdiction. We have always utilized the scientific and public health expertise of FDA in approving ingredients in alcohol beverages, requiring label disclosure of certain substances, and identifying adulterated alcohol beverages that are deemed mislabeled.

FDA has advised us that certain curative, therapeutic, or disease-prevention claims for an alcohol beverage might place the product in the category of a drug under the Federal Food, Drug, and Cosmetic Act (FFD&C Act), 21 U.S.C. 321(g)(1)(B). FDA evaluates health claims on food labels pursuant to its authority under the FFD&C Act, as amended by the Nutrition Labeling and Education Act (NLEA), Public Law 101–535 (1990). The law provides that a food product is misbranded if it bears a claim that characterizes the relationship of a nutrient to a disease or health-related condition, unless the claim is made in accordance with certain procedures mandated by the FDA. See 21 U.S.C. 343(r)(1)(B). FDA's regulations provide that FDA will only approve a health claim when it determines, ''based on the totality of publicly available scientific evidence'' that there is ''significant scientific agreement, among experts qualified by scientific training and experience to evaluate such claims, that the claim is supported by such evidence.'' 21 CFR 101.14(c). ATF would continue to review health-related statements to ensure consistency with FDA's statutory and regulatory authorities.

The FTC's general jurisdiction over advertising extends to alcohol beverages. A problem that is of particular relevance to the area of alcohol beverage advertising is that of the ''qualified'' health claim. In their policy statement, published in the **Federal Register** on June 1, 1994 (59 FR 28394), the FTC stated that it is necessary to examine ''whether qualified claims are presented in a manner that ensures that consumers understand both the extent of the support for the claim and the existence of any significant contrary view within the scientific community.'' We would also note that the FTC policy statement stated that an unqualified health claim in the advertising of a food was likely to be deceptive if the food also contained a nutrient that increased the

risk for another disease or health-related condition, and the risk-increasing nutrient was closely related to the subject health claim.

## VIII. Notice of Proposed Rulemaking

We are proposing to revise the regulations to reflect our current policy and to provide that labels or advertisements may not contain any statement, design, representation, pictorial representation, or device, whether explicit or implicit, representing that consumption of alcohol beverages has curative or therapeutic effects if such statement is untrue in any particular or tends to create a misleading impression. A substantive claim regarding health benefits associated with the use of an alcohol beverage is misleading unless such claim is properly qualified, balanced, sufficiently detailed and specific, and outlines the categories of individuals for whom any positive health effects would be outweighed by numerous negative health effects.

While industry members are not required to submit advertising materials to us for pre-approval, we encourage the use of our voluntary pre-clearance process for any advertisements that refer to the health effects of alcohol consumption.

We believe that the proposed regulations will ensure that labels and advertisements do not contain statements or claims that would tend to mislead the consumer about the significant health consequences of alcohol consumption.

## IX. First Amendment Issues

Various members of the alcohol beverage industry have suggested that under the First Amendment to the United States Constitution, ATF is precluded from preventing the dissemination of truthful information about health benefits from alcohol beverage labels and advertisements. We are prohibiting the use of misleading statements regarding health claims that are by definition not protected by the First Amendment. Commercial speech is protected by the First Amendment only if it is truthful and not misleading. *Central Hudson Gas & Elec. Corp.* v. *Public Serv. Comm'n of New York,* 447 U.S. 557, 566 (1980). This longstanding position has been upheld by the Supreme Court in its most recent commercial speech decision. *See 44 Liquor Mart, Inc.* v. *Rhode Island,* 1996 U.S. LEXIS 3020 (1996).

## X. Footnotes Appearing in Text of Supplementary Information

1. Hennekens, C.H., ''Alcohol and Risk of Coronary Events,'' Research Monograph No. 31, ''Alcohol and the Cardiovascular System'' at 15 (National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Bethesda, MD, 1996).

2. See, *e.g.,* Boffetta, P. & Garfinkel, L., ''Alcohol drinking and mortality among men enrolled in an American Cancer Society prospective study, ''Epidemiology'' 1(5):343–348, 1990; Stampfer, M.J.; Colditz, G.A.; Willett, W.C.; Speizer, F.E. & Hennekens, C.H., ''A prospective study of moderate alcohol consumption and the risk of coronary disease and stroke in women,'' ''New England Journal of Medicine,'' 319(5):267–273, 1988; Klatsky, A.L.; Armstrong, M.A.; and Friedman, G.D., ''Alcohol and Mortality,'' ''Annals of Internal Medicine,'' 117:646–654, 1992. See generally National Institute on Alcohol Abuse and Alcoholism, ''Moderate Drinking,'' ''Alcohol Alert,'' No. 16, April 1992, at 2, and studies cited therein.

3. See, *e.g.,* Criqui, M.H., ''Moderate Drinking: Benefits and Risks,'' ''Alcohol and the Cardiovascular System,'' at 117–118 (''Clearly, younger persons cannot possibly benefit much from alcohol consumption, at least in the short term, because their risk of ischemic CVD events is so low.'').

4. DuFour, M.C., ''Risks and Benefits of Alcohol Use Over the Life Span,'' ''Alcohol Health & Research World,'' Vol. 20, No. 3:145–150 at 147, 1996.

5. See, *e.g.,* Hennekens, C.H., ''Alcohol and risk of coronary events,'' Research Monograph No. 31, ''Alcohol and the Cardiovascular System'' at 20 (National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Bethesda, MD 1996) (''while the health risks of excessive drinking are clear, there may also be hazards associated with moderate intake that must be weighed, on an individual basis, against the apparent protection against CHD.'').

## How This Document Complies With the Federal Administrative Requirements for Rulemaking

### *A. Executive Order 12866*

We have determined that this proposed rule is not a significant regulatory action as defined in E.O. 12866. Therefore, a Regulatory Assessment is not required.

### *B. 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. We have determined that this proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed regulations merely clarify ATF's existing policy concerning the use of health claims in the labeling and advertising of alcohol beverages and impose no burdens on the industry. Accordingly, a regulatory flexibility analysis is not required.

### *C. Paperwork Reduction Act*

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice of proposed rulemaking because no requirement to collect information is imposed.

## Public Participation

We are requesting comments on the proposed regulations from all interested persons. In particular, we are asking for public comment on our existing policy relating to health claims and other health-related statements on alcohol beverage labels and in advertisements (see section II). We also ask whether health-related statements on alcohol beverage labels and advertising directing consumers to balanced sources of information are misleading and whether ATF should continue to approve such statements. We are also asking whether the negative health consequences of alcohol consumption or abuse disqualify, as misleading, these products entirely from entitlement to any health-related statements (see section III). In addition, we are specifically requesting comments on the clarity of this proposed rule and how it may be made easier to understand.

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material that the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing should submit his or her request, in writing, to the Director within the 120-day comment period. The Director, however, reserves the right to determine, in light of all

circumstances, whether a public hearing is necessary.

**Disclosure**

Copies of this notice and the comments received will be available for public inspection during normal business hours at: ATF Public Reading Room, Room 6480, 650 Massachusetts Avenue, NW, Washington, DC.

**Drafting Information**

The author of this document is James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

**List of Subjects**

*27 CFR Part 4*

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, and Wine.

*27 CFR Part 5*

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, and Packaging and containers.

*27 CFR Part 7*

Advertising, Consumer protection, Customs duties and inspection, Imports, and Labeling.

**Authority and Issuance**

For the reasons discussed in the preamble, ATF amends 27 CFR parts 4, 5, and 7 as follows:

## PART 4—LABELING AND ADVERTISING OF WINE

**Paragraph 1.** The authority citation for 27 CFR part 4 continues to read as follows:

**Authority:** 27 U.S.C. 205.

**Par. 2.** Section 4.39(h) is revised to read as follows:

**§ 4.39 Prohibited practices.**

* * * * *

(h) *Curative and therapeutic claims.* Labels may not contain any statement, design, representation, pictorial representation, or device, whether explicit or implicit, that represents that the use of wine has curative or therapeutic effects if such statement is untrue in any particular or tends to create a misleading impression. A substantive claim regarding health benefits associated with the use of wine is misleading unless such claim is properly qualified, balanced, sufficiently detailed and specific, and outlines the categories of individuals for whom any positive health effects would be outweighed by numerous negative health effects.

* * * * *

**Par. 3.** Section 4.64(i) is revised to read as follows:

**§ 4.64 Prohibited practices.**

* * * * *

(i) *Curative and therapeutic claims.* Advertisements may not contain any statement, design, representation, pictorial representation, or device, whether explicit or implicit, that represents that the use of wine has curative or therapeutic effects if such statement is untrue in any particular or tends to create a misleading impression. A substantive claim regarding health benefits associated with the use of wine is misleading unless such claim is properly qualified, balanced, sufficiently detailed and specific, and outlines the categories of individuals for whom any positive health effects would be outweighed by numerous negative health effects.

* * * * *

## PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

**Par. 4.** The authority citation for 27 CFR part 5 continues to read as follows:

**Authority:** 26 U.S.C. 5301, 7805; 27 U.S.C. 205.

**Par. 5.** Section 5.42(b)(8) is revised to read as follows:

**§ 5.42 Prohibited practices.**

* * * * *

(b) * * *

(8) Curative and therapeutic claims. Labels may not contain any statement, design, representation, pictorial representation, or device, whether explicit or implicit, that represents that the use of distilled spirits has curative or therapeutic effects if such statement is untrue in any particular or tends to create a misleading impression. A substantive claim regarding health benefits associated with the use of distilled spirits is misleading unless such claim is properly qualified, balanced, sufficiently detailed and specific, and outlines the categories of individuals for whom any positive health effects would be outweighed by numerous negative health effects.

**Par. 6.** Section 5.65(d) is revised to read as follows:

**§ 5.65 Prohibited practices.**

* * * * *

(d) *Curative and therapeutic claims.* Advertisements may not contain any statement, design, representation, pictorial representation, or device, whether explicit or implicit, that represents that the use of distilled spirits has curative or therapeutic effects if such statement is untrue in any particular, or tends to create a misleading impression. A substantive claim regarding health benefits associated with the use of distilled spirits is misleading unless such claim is properly qualified, balanced, sufficiently detailed and specific, and outlines the categories of individuals for whom any positive health effects would be outweighed by numerous negative health effects.

* * * * *

## PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

**Par. 7.** The authority citation for 27 CFR part 7 continues to read as follows:

**Authority:** 27 U.S.C. 205.

**Par. 8.** Section 7.29(e) is revised to read as follows:

**§ 7.29 Prohibited practices.**

* * * * *

(e) *Curative and therapeutic claims.* Labels may not contain any statement, design, representation, pictorial representation, or device, whether explicit or implicit, that represents that the use of malt beverages has curative or therapeutic effects if such statement is untrue in any particular or tends to create a misleading impression. A substantive claim regarding the health benefits associated with the use of malt beverages is misleading unless such claim is properly qualified, balanced, sufficiently detailed and specific, and outlines the categories of individuals for whom any positive health effects would be outweighed by numerous negative health effects.

* * * * *

**Par. 9.** Section 7.54(e) is revised to read as follows:

**§ 7.54 Prohibited practices.**

* * * * *

(e) *Curative and therapeutic claims.* Advertisements may not contain any statement, design, representation, pictorial representation, or device, whether explicit or implicit, that represents that the use of malt beverages has curative or therapeutic effects if such statement is untrue in any particular or tends to create a misleading impression. A substantive claim regarding health benefits associated with the use of malt beverages is misleading unless such claim is properly qualified, balanced, sufficiently detailed and specific, and outlines the categories of individuals for whom any positive health effects would

be outweighed by numerous negative health effects.

* * * * *

Signed: October 19, 1999.

**John W. Magaw,**

*Director.*

Approved: October 20, 1999.

**John P. Simpson,**

*Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).*

[FR Doc. 99–27774 Filed 10–20–99; 3:28 pm]

**BILLING CODE 4810–31–P**

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 165

**[CGD01–99–179]**

**RIN 2115–AA97**

## Safety Zone: Christmas Party Fireworks, Hudson River, Manhattan, New York

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a temporary safety zone on the Hudson River for the Christmas Party Fireworks display. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic on a portion of the Hudson River.

**DATES:** Comments must reach the Coast Guard on or before November 24, 1999.

**ADDRESSES:** Comments may be mailed to the Waterways Oversight Branch (CGD01–99–179), Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, New York 10305, or deliver them to room 205 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except federal holidays.

The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 205, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–99–179) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Waterways Oversight Branch at the address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

### Background and Purpose

Fireworks by Grucci has submitted an Application for Approval of a Marine Event for a fireworks display on the Hudson River. This proposed regulation establishes a temporary safety zone in all waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°44′49″N 074°01′02″W (NAD 1983), about 500 yards west of Pier 60, Manhattan, New York. The proposed safety zone would be effective from 8:30 p.m. until 10 p.m. on December 14, 1999. If the event is cancelled due to inclement weather, then this event will be held from 8:30 p.m. until 10 p.m. on December 15, 1999. The proposed safety zone prevents vessels from transiting a portion of the Hudson River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the eastern 150 yards of the 850-yard wide Hudson River during the event. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this event. Public notifications will be made prior to the event via local notice to mariners, and marine information broadcasts. The Coast Guard is limiting the comment period for this NPRM to 30 days because the proposed safety zone is only for a one and a half hour long local event and it should have negligible impact on vessel transits. The Coast Guard expects to receive no comments on this NPRM due to the limited duration of the event and the fact that it should not interfere with vessel transits.

### Discussion of Proposed Rule

The proposed safety zone is for a Christmas Party Fireworks display held on the Hudson River at Pier 60, Chelsea Piers, Manhattan, New York. This event will be held on Tuesday, December 14, 1999. If the event is canceled due to inclement weather, then the event will be held on Wednesday, December 15, 1999. This rule is being proposed to provide for the safety of life on navigable waters during the event and to give the marine community the opportunity to comment on this event.

### Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has 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). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Although this regulation prevents traffic from transiting a portion of the Lower Hudson River during the event, the effect of this regulation will not be significant for several reasons: the minimal time that vessels will be restricted from the area, that vessels are not precluded from getting underway, or mooring at, Piers 59–62 and the Piers at Castle Point, New Jersey, that vessels may safely transit to the east of the zone, and advance notifications which will be made to the local maritime community by the Local Notice to Mariners, and marine information broadcasts.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposed rule, if adopted, 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.

For reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

**Collection of Information**

This proposed rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Federalism**

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 12612 and has determined that this proposed 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. 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 proposed rule would not impose Federal mandates on any State, local, or tribal governments, or the private sector.

**Environment**

The Coast Guard has considered the environmental impact of this proposed rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A written Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

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

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

**Proposed Regulation**

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

## PART 165—[AMENDED]

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

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04.6, 160.5; 59 CFR 1.46.

2. Add temporary § 165.T01–179 to read as follows:

**§ 165.T01–179 Safety Zone: Christmas Party Fireworks, Hudson River, Manhattan, New York.**

(a) *Location:* The following area is a safety zone: All waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°44′49″N 074°01′02″W (NAD 1983), about 500 yards west of Pier 60, Manhattan, New York.

(b) *Effective Period.* This section is effective from 8:30 p.m. to 10 p.m. on December 14, 1999. If the event is cancelled due to inclement weather, then this section is effective from 8:30 p.m. until 10 p.m. on December 15, 1999.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: October 18, 1999.

**R.E. Bennis,**

*Captain, U.S. Coast Guard, Captain of the Port, New York.*

[FR Doc. 99–27736 Filed 10–22–99; 8:45 am]

**BILLING CODE 4910–15–M**

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR part 165

**[CGD01–99–130]**

**RIN 2115–AA97**

## Safety Zone: New York Harbor and Hudson River Fireworks

**AGENCY:** Coast Guard, DOT.

**ACTION:** Correction to notice of proposed rulemaking.

**SUMMARY:** This document contains corrections to the NPRM (CGD01–99–130) which was published in the **Federal Register** on October 6, 1999. The corrections change an inaccurate latitude position for the Ellis Island Safety Zone.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

**Correction**

On October 6, 1999, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Safety Zone: New York Harbor and Hudson River Fireworks in the **Federal Register** (64 FR 54252). As published, the NPRM contains an inaccurate Latitude position. Accordingly, the NPRM published on October 6, 1999 (CGD01–99–130), is corrected as follows:

On page 54252, in the third column line 38, and on page 54254 in the second column, line 16, the Latitude position ''40°41′15″N'' should read ''40°41′45″N''.

Dated: October 18, 1999.

**R.E. Bennis,**

*Captain, U.S. Coast Guard, Captain of the Port, New York.*

[FR Doc. 99–27737 Filed 10–22–99; 8:45 am]

**BILLING CODE 4910–15–M**

## POSTAL SERVICE

## 39 CFR Part 111

## Processing Instructions for Nonautomation Mail and Revisions to Letter Tray Labels

**AGENCY:** Postal Service.

**ACTION:** Proposed rule.

**SUMMARY:** The Postal Service proposes revisions to the Domestic Mail Manual that will allow mailers to choose to exclude their letter-size mail from any automated processing involved with initial distribution of mail, including

tabbing and labeling machines, barcode sorters, and optical character readers. The proposal also revises Line 2 of tray labels, replacing ''NON OCR'' with ''NON BC'' for Presorted First-Class Mail letters and Presorted Standard Mail (A) letters. Line 2 of tray labels for Periodicals letters already reflect ''NON BC.''

**DATES:** Comments must be received on or before December 9, 1999.

**ADDRESSES:** Mail or deliver written comments to the Manager, Processing Operations, USPS Headquarters, 475 L'Enfant Plaza SW, Room 7631, Washington DC 20260–2814. Copies of all written comments will be available for inspection and photocopying at USPS Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor N, Washington DC, between 9 a.m. and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Jamie Gallagher, (202) 268–4031.

**SUPPLEMENTARY INFORMATION:** Processing letter-size mail has been revolutionized during the last decade as the Postal Service deployed a network of automated equipment. With the installation of more than 11,500 optical readers and delivery barcode sorters, the Postal Service now processes nearly 95% of letter mail through automated operations. Leading-edge tabbing machines and labeling systems are among the newest additions to the array of automated postal equipment. Today's automation infrastructure increases mail processing efficiency, which holds down postage rates.

There are a growing number of mailers who lower their costs by forgoing envelopes and folding or binding their mailpieces. Typically, these are smaller firms that do not want to invest the time and capital necessary to meet requirements for higher postage discounts. During postal processing, mailpieces with unsealed edges frequently get torn or damaged. Mailpieces with open edges also can jam postal equipment, which reduces processing efficiency. As a result, some postal facilities affix tabs to the open edges of letter-size mail (*e.g.*, self-mailers, booklets, double postcards).

Postal tabbing machines use one or two translucent seals to secure the leading edge of a mailpiece. Typically, the leading edge is the right side of the mailpiece as the address is read. Postal tabbing stabilizes the mailpiece and minimizes damage that occurs with the quick acceleration and high-speed transport of optical character readers and barcode sorters.

The Mailers Technical Advisory Committee (MTAC) and the Postal Service recently discussed mailer concerns about postal tabbing. While the Postal Service will continue to maximize the amount of letter mail processed through automation, alternatives for mailers who do not want mail tabbed or processed through other automated equipment were considered. The final recommendation was for mailers to have the option to use new tray labels to designate the trays of mail that should be excluded from all automated processing. To identify these trays further, the Postal Service is adding four unique content identifier numbers (CINs) for mailers to use with barcoded tray labels. At this time, barcoded tray labels are optional for non-automation rate mailings.

While the new tray label should provide adequate identification of 5-digit letters that fill a 5-digit tray, facing slips printed with ''DO NOT AUTOMATE'' must be applied to required 3-digit, ADC, and mixed ADC packages. Mailer's use of facing slips will ensure proper identification of bundles for manual processing in downstream operations.

The introduction of nonautomation CINs provides the opportunity to restructure and simplify an existing, related series of mailer CIN codes, the ''NON OCR'' series. Initially used to identify nonautomation rate mail, ''NON OCR'' CINs also served as a means for mailers to indicate a preference for nonautomated processing for First-Class Mail letters and Standard Mail (A) letters. Replacing ''NON OCR'' CINs with the more widely used ''NON BC'' CINs will standardize human-readable content lines of tray labels.

The Postal Service proposes to implement these new mailing standards on April 1, 2000.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410 (a), the Postal Service invites comments on the following proposed revisions to the Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

**List of Subjects in 39 CFR Part 111**

Postal Service.

**PART 111—[AMENDED]**

1. The authority citation for 39 CFR part 111 continues to read as follows:

**Authority:** 5 U.S.C. 5552(a): 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the Domestic Mail Manual as set forth below:

**M Mail Preparation and Sortation**

* * * * *

**M032 Barcoded Labels**

* * * * *

**Exhibit 1.3a 3-Digit Content Identifier Numbers**

* * * * *

[Amend Exhibit 1.3a as follows:]

| Class and mailing | CIN | Human-readable content line |
|---|---|---|
| * * * * * * * | | |
| **FIRST-CLASS MAIL** | | |
| FCM Letters—Presorted (Basic Preparation) | | |
| [Revise the following CIN and human-readable content lines:] | | |
| 5-digit trays | 250 | FCM LTRS 5D NON BC |
| 3-digit trays | 253 | FCM LTRS 3D NON BC |
| ADC trays | 256 | FCM LTRS ADC NON BC |
| mixed ADC trays | 259 | FCM LTRS NON BC WKG |
| **[Add a new category:]** | | |
| FCM Letters—Presorted (Nonautomation Processing) | | |
| 5-digit trays | 267 | FCM LTRS 5D MANUAL |
| all other required trays | 268 | FCM LTRS MANUAL ONLY |

| Class and mailing | CIN | Human-readable content line |
|---|---|---|
| * * * * * * * | | |
| **STANDARD MAIL (A)** | | |
| STD Letters—Presorted (Basic Preparation) | | |
| [Revise the following CIN and human-readable content lines:] | | |
| 5-digit trays | 550 | STD LTRS 5D NON BC |
| 3-digit trays | 553 | STD LTRS 3D NON BC |
| ADC trays | 556 | STD LTRS ADC NON BC |
| mixed ADC trays | 559 | STD LTRS NON BC WKG |
| **[Add a new category:]** | | |
| STD Letters—Presorted (Nonautomation Processing) | | |
| 5-digit trays | 604 | STD LTRS 5D MANUAL |
| all other required trays | 605 | STD LTRS MANUAL ONLY |

* * * * *

**M130 Presorted First-Class Mail**

1.0 BASIC STANDARDS

* * * * *

1.5 Processing Instructions

[Revise 1.5 to read as follows:]

If a mailer prefers that the USPS not automate letter-size pieces presented at Presorted rates, then the mailer must use the Line 2 tray label information in 2.4. The mailer must prepare all required trays in 2.2.

* * * * *

2.0 REQUIRED PREPARATION—LETTER-AND CARD-SIZED PIECES

* * * * *

[Revise 2.3 to read as follows:]

**2.3 Tray Line 2**

Line 2:

a. 5-digit: ''FCM LTRS 5D NON BC.''

b. 3-digit: ''FCM LTRS NON BC.''

c. ADC: ''FCM LTRS ADC NON BC.''

d. Mixed ADC: ''FCM LTRS NON BC WKG.''

[Add new 2.4 to read as follows:]

**2.4 Optional Tray Line 2**

For trays that mailers do not want automated under 1.5:

a. 5-digit: ''FCM LTRS 5D MANUAL.''

b. All other required trays: ''FCM LTRS MANUAL ONLY.''

* * * * *

**M610 PRESORTED STANDARD MAIL (A)**

1.0 BASIC STANDARDS

* * * * *

**1.4 Processing Instructions**

[Revise 1.4 to read as follows:]

If a mailer prefers that the USPS not automate letter-size pieces presented at Presorted rates, then the mailer must use the Line 2 tray label information in 2.4. The mailer must prepare all required trays in 2.2.

* * * * *

[Revise 2.3 to read as follows:]

**2.3 Tray Line 2**

Line 2:

a. 5-digit: ''STD LTRS 5D NON BC.''

b. 3-digit: ''STD LTRS NON BC.''

c. ADC: ''STD LTRS ADC NON BC.''

d. Mixed ADC: ''STD LTRS NON BC WKG.''

[Add new 2.4 to read as follows:]

**2.4 Optional Tray Line 2**

For trays that mailers do not want automated under 1.5:

a. 5-digit: ''STD LTRS 5D MANUAL.''

b. All other required trays: ''STD LTRS MANUAL ONLY.''

* * * * *

An amendment to 39 CFR 111.3 will be published to reflect these changes if the proposal is adopted.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 99–27679 Filed 10–22–99; 8:45 am]

BILLING CODE 7710–12–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 2

**[FRL–6463–1]**

## Elimination of Special Treatment for Category of Confidential Business Information

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) proposes to amend its regulations to eliminate the special treatment given to a category of confidential business information (CBI) received by EPA. This category of information includes comments received from businesses to substantiate their claims of confidentiality for previously submitted information (''a substantiation''). Under EPA's existing regulations, EPA automatically regards a substantiation as entitled to confidential treatment if it is not otherwise possessed by EPA and is properly marked as confidential when received by EPA. EPA proposes to eliminate this provision because special treatment of substantiations is no longer necessary to support the original purpose of the regulation, and elimination of this provision will bring EPA into conformity with how substantiations are treated by other federal agencies.

**DATES:** Comments on this proposed rule must be submitted by December 27, 1999. EPA does not intend to hold a public hearing on this proposed rule, unless it receives a request for such a hearing. If a request is submitted by November 24, 1999, EPA will hold a public hearing. If EPA holds such a hearing, comments must be submitted within 30 days of the date of the hearing.

**ADDRESSES:** Written comments on this proposed rule should be addressed to Oscar Morales, Environmental Protection Agency, Office of Environmental Information (2151), 401 M Street, SW., Washington, DC 20460. Documents related to this proposed rule will be available for public inspection and viewing by appointment. If you wish to request a public hearing on this proposed rule, please notify Mr. Morales at the address shown above.

**FOR FURTHER INFORMATION CONTACT:** Oscar Morales, (202) 260–3759.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Currently, when EPA receives a Freedom of Information Act (FOIA) request for information in EPA's control that was originally claimed as confidential by the submitter of the information, EPA follows the procedures in 40 CFR 2.204(e). EPA provides the submitter with notice of the FOIA request and an opportunity to comment and provide a substantiation. Once EPA receives the submitter's substantiation, it evaluates the information and makes a determination as to the confidentiality of the requested information. If EPA determines that the

requested information is not entitled to confidential treatment, EPA notifies the submitter of its right to seek judicial review of EPA's determination prior to the release of the information.

If the submitter claims the substantiation itself to be confidential and marks it in accordance with the requirements of 40 CFR 2.203(b), and if EPA does not already possess the information in the substantiation, under 40 CFR 2.205(c), the substantiation ''will be regarded as entitled to confidential treatment and will not be disclosed by EPA without the [submitter's] consent, unless its disclosure is duly ordered by a Federal court, notwithstanding other provisions of this subpart to the contrary.'' Thus, if EPA were to receive a FOIA request for a substantiation that conforms to the above requirements, EPA would automatically withhold the substantiation without going through the CBI determination procedures of 40 CFR part 2, subpart B.

The original purpose of 40 CFR 2.205(c) was to encourage businesses, which bear the burden of substantiating their claims of confidentiality, to provide sufficient information to support their claims by automatically regarding their substantiations as entitled to confidential treatment if certain specified conditions were met.

## II. Description of Proposed Rule

EPA proposes to amend its regulations to remove 40 CFR 2.205(c). This amendment will eliminate EPA's separate treatment of substantiations. Instead, EPA will treat substantiations in exactly the same manner as all other information requested under FOIA and claimed to be confidential.

EPA believes that there is no continued need for 40 CFR 2.205(c) for two reasons. First, the special treatment of substantiations under 40 CFR 2.205(c) is no longer necessary to support the original purpose of 40 CFR 2.205(c), which was to encourage businesses to provide sufficient information to support their claims. EPA believes that its CBI determination procedures of 40 CFR part 2, subpart B, provide adequate safeguards and protections to prevent the improper release of additional confidential business information contained in a submitter's substantiation.

Second, EPA believes that removing 40 CFR 2.205(c) will bring EPA into conformity with how substantiations are treated by other federal agencies, which do not provide special treatment for substantiations.

## III. Statutory Authority

EPA is proposing this rule under the authority of 5 U.S.C. 301, 552 (as amended), and 553.

## IV. Economic Impact

This proposed rule is expected to have little or no economic impact on parties affected by EPA's regulations at 40 CFR part 2, subpart B. The removal of 40 CFR 2.205(c) will result in EPA's treatment of substantiations in exactly the same manner as all other information requested under FOIA and claimed to be confidential. Businesses will continue to be required to comply with the marking requirements of 40 CFR 2.203(b) when submitting substantiations. Only after EPA receives a FOIA request for a substantiation and notifies the submitter, pursuant to 40 CFR 2.204(e), will the submitter have to provide comments to substantiate its original substantiation.

## V. Paperwork Reduction Act

The information collection requirements in this proposed rule have not been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An amendment to the current Information Collection Request (ICR), (OMB Control No. 2020–0003) will be prepared by EPA. Once it is prepared, it will be announced in the **Federal Register** for public comment.

## VI. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 et seq., 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 proposed rule would not have a significant economic impact on a substantial number of small entities because it is not expected to result in any significant additional costs to entities asserting a claim of confidentiality for their information submitted to EPA. Any cost of providing comments on a substantiation are likely to be incidental, and most often will simply document a basis for confidentiality that has already been developed. Therefore, under 5 U.S.C. 605(b), I certify that this rule will not have a significant economic impact on a substantial number of small entities.

## VII. Environmental Impact

This proposed rule is expected to have no environmental impact. It pertains solely to the collection and dissemination of information.

## VIII. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), EPA must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to interagency review under the Executive Order.

## IX. Executive Orders 12875, 13132, and 12612 on Federalism

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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, 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 proposed rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. This rule applies to businesses, not government entities, submitting comments to substantiate CBI. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132 [64 FR 43255 (August 10, 1999)], which will take effect on November 2, 1999. In the interim, the current executive order on federalism, Executive Order 12612 [52 FR 41685 (October 30, 1987)] still applies. This proposed rule will not have a substantial direct effect on 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, as specified in Executive Order 12612.

### X. Executive Order 13084 on Consultation With Indian Tribal Governments

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 consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials 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 proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. This rule applies to businesses, not government entities, submitting comments to substantiate CBI. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

### XI. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, EPA must prepare a budgetary impact statement to accompany any general notice of proposed rulemaking or final rule that includes a federal mandate which may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, for any rule subject to Section 202, EPA generally must select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Under Section 203, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must take steps to inform and advise small governments of the requirements and enable them to provide input.

EPA has determined that this proposed rule does not include a federal mandate as defined in UMRA. The rule does not include a federal mandate that may result in estimated annual costs to State, local or tribal governments in the aggregate, or to the private sector, of $100 million or more, and does not establish regulatory requirements that may significantly or uniquely affect small governments.

### XII. Executive Order 13045

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR19885, April 23, 1997), applies to any rule that (1) is determined to be ''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, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned rule is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

EPA believes Executive Order 13045 applies only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

### XIII. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 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 EPA decides not to use available and applicable voluntary consensus standards.

This proposed rule does not involve any technical standards, and EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments and specifically invites the public to identify any potentially-applicable voluntary consensus standards and explain why such standards should be used in this rule.

### List of Subjects in 40 CFR Part 2

Environmental protection, Administrative practice and procedure, Confidential business information, Freedom of information, Government employees.

Dated: October 19, 1999.

**Carol M. Browner,**

*Administrator.*

For the reasons set out above, EPA proposes to amend 40 CFR part 2 as follows:

## PART 2—PUBLIC INFORMATION

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

**Authority:** 5 U.S.C. 301, 552 (as amended), 553; secs. 114, 205, 208, 301, and 307, Clean Air Act, as amended (42 U.S.C. 7414, 7525, 7542, 7601, 7607); secs. 308, 501 and 509(a), Clean Water Act, as amended (33 U.S.C. 1318, 1361, 1369(a)); sec. 13, Noise Control Act of 1972 (42 U.S.C. 4912); secs. 1445 and 1450, Safe Drinking Water Act (42 U.S.C. 300j–4, 300j–9); secs. 2002, 3007, and 9005, Solid Waste Disposal Act, as amended (42 U.S.C. 6912, 6927, 6995); secs. 8(c), 11, and 14, Toxic Substances Control Act (15 U.S.C. 2607(c), 2610, 2613); secs. 10, 12, and 25, Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136h, 136j, 136w); sec. 408(f), Federal Food, Drug and Cosmetic Act, as amended (21 U.S.C. 346(f)); secs. 104(f) and 108, Marine Protection Research and Sanctuaries Act of

1972 (33 U.S.C. 1414(f), 1418); secs. 104 and 115, Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9604 and 9615); sec. 505, Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 2005).

2. Section 2.205(c) is removed and reserved.

[FR Doc. 99–27798 Filed 10–22–99; 8:45 am]
**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 50

**[FRL–6463–8]**

## Rescinding Findings That the 1-Hour Ozone Standard No Longer Applies in Certain Areas

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

**ACTION:** Proposed rule.

**SUMMARY:** Today, EPA is proposing to rescind its prior findings that the 1-hour ozone national ambient air quality standard (NAAQS) and its accompanying designations and classifications no longer apply in certain areas. The EPA had previously taken final action regarding the applicability of the 1-hour standard for various areas on June 5, 1998, July 22, 1998, and June 9, 1999. A recent ruling of the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) has undermined the basis for EPA's previous determinations on applicability of the 1-hour ozone standard. In the ruling, the court remanded the 8-hour NAAQS for ozone and curtailed EPA's authority to enforce it. The effectiveness of the 8-hour standard served as the underlying basis for EPA's regulations governing these applicability determinations and thus for EPA's finding that the 1-hour standard no longer applied in areas that EPA determined were attaining the 1-hour standard. Since the court has ruled that EPA cannot fully implement the 8-hour standard, and it may be some time before EPA is able to take steps to secure the public health protection afforded by an 8-hour standard, EPA is today proposing to rescind the findings that the 1-hour standard no longer applies, and thereby reinstate the applicability of the 1-hour standard. Under this proposal, the designations and classifications that previously applied in such areas with respect to the 1-hour standard would be reinstated. Furthermore, in today's action, EPA is proposing to amend 40 CFR 50.9(b) to provide by rule that the 1-hour ozone standard will continue to apply to all areas notwithstanding promulgation of the 8-hour standard.

**DATES:** Your comments must be submitted on or before December 1, 1999 in order to be considered.

**ADDRESSES:** You may comment in various ways:

*On paper.* Send paper comments (in duplicate, if possible) to the Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–99–22, U.S. Environmental Protection Agency, 401 M St., SW, Room M–1500, Washington, DC 20460, telephone (202) 260–7548.

*Electronically.* Send electronic comments to EPA at: A-and-R-Docket@epamail.epa.gov. Avoid sending confidential business information. We accept comments as e-mail attachments or on disk. Either way, they must be in WordPerfect 5.1 or 6.0 or ASCII file format. Avoid the use of special characters and any form of encryption. You may file your comments on this proposed rule online at many Federal Depository Libraries. Be sure to identify all comments and data by Docket number A–99–22.

*Public inspection.* You may read the proposed rule (including paper copies of comments and data submitted electronically, minus anything claimed as confidential business information) at the Docket and Information Center. They are available for public inspection from 8:00 a.m. to 5:30 p.m., Monday through Wednesday, excluding legal holidays. We may charge a reasonable fee for copying.

**FOR FURTHER INFORMATION CONTACT:** Questions about this proposal should be addressed to Annie Nikbakht (policy) or Barry Gilbert (air quality data), Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, Ozone Policy and Strategies Group, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–5246/5238 or e-mail to nikbakht.annie@epamail.epa.gov or gilbert.barry@epamail.epa.gov. To ask about policy matters or monitoring data for a specific geographic area, call one of these contacts:

Region I—Richard P. Burkhart (617) 918–1664,
Region II—Ray Werner (212) 637–3706,
Region III—Marcia Spink (215) 814–2104,
Region IV—Kay Prince (404) 562–9026,
Region V—Todd Nettesheim (312) 353–9153,
Region VI—Lt. Mick Cote (214) 665–7219,
Region VII—Royan Teter (913) 551–7609,
Region VIII—Tim Russ (303) 312–6479,
Region IX—Morris Goldberg (415) 744–1296,
Region X—William Puckett (206) 553–1702

**SUPPLEMENTARY INFORMATION:** The Agency is asking for your comments on whether EPA should rescind findings that the 1-hour standard no longer applies, and on the effects of such a rescission. See section IV of this proposal for specific issues open for comment.

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## I. Background

### *A. What was the basis for EPA's previous rulemaking actions finding that the 1-hour ozone standard no longer applied in certain areas?*

On July 18, 1997 (62 FR 38856), we issued a regulation replacing the 1-hour 0.12 parts per million (ppm) ozone NAAQS with an 8-hour standard at a level of 0.08 ppm. An area's compliance with the 8-hour standard is measured by the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area. The new primary standard, which became effective on September 16, 1997, provides increased protection to the public, especially children, the elderly, and other at-risk populations.

Also, on July 18, 1997, we announced that the 1-hour ozone NAAQS would continue to apply to areas until areas attained the 1-hour NAAQS. We did this to provide continuity in public health protection during the transition to implementation of the new NAAQS. We codified this approach in a regulation providing that the 1-hour standard would no longer apply to an area upon a determination by EPA that the area was attaining the 1-hour standard. 62 FR 38856, codified at 40 CFR 50.9(b). The regulation indicating that the 1-hour standard would no longer apply upon attainment was clearly premised upon the effectiveness of the 8-hour standard and the implementation scheme developed for that standard. See, e.g., 63 FR 31014, 31016 (3rd col.).

Also, on July 16, 1997, President Clinton issued a memorandum (62 FR 38421, July 18, 1997) to the Administrator of EPA indicating that within 90 days of our issuing the new 8-hour standard, we would publish an action identifying ozone areas to which the 1-hour standard would no longer apply. The memorandum recognized that for areas where the air quality did not currently attain the 1-hour standard, the 1-hour standard would continue in effect. The memorandum also recognized that provisions of subpart 2 part D of title I of the Clean Air Act (CAA) would apply to areas that remained subject to the 1-hour standard and that were designated nonattainment until EPA determined that the area was attaining the 1-hour standard.

On June 5, 1998 (63 FR 31014), July 22, 1998 (63 FR 39432), and June 9, 1999 (64 FR 30911), we issued final rules for many areas that were attaining the 1-hour standard, finding that the 1-hour standard no longer applied to these areas and amending the Code of Federal Regulations (CFR) to remove the designations and classifications that had applied to those areas for the 1-hour standard under sections 107, 172 and 181 of the CAA.

*B. What Effect Does the Recent Court Decision Have on Today's Proposed Action?*

On May 14, 1999, the D.C. Circuit issued an opinion questioning the constitutionality of the CAA authority to review and revise the NAAQS, as applied in EPA's revision to the ozone and particulate matter NAAQS. *American Trucking Association* v. *U.S. EPA*, 175 F.3d 1027 (D.C. Cir. 1999). The court stopped short of finding the statutory grant of authority unconstitutional, instead remanding to EPA to identify a determinate principle for promulgating the appropriate level of these NAAQS. The court also addressed other issues, including EPA's authority to designate and set attainment dates for a revised ozone standard. The court found that EPA has authority to designate areas for a revised ozone standard. However, based on the statutory provisions regarding classifications and attainment dates under sections 172(a) and 181(a), the court's ruling curtailed EPA's ability to implement and enforce a more stringent ozone NAAQS. On June 28, 1999, EPA filed a petition for rehearing in *American Trucking* addressing this and other portions of the court's opinion. The EPA believes that unless and until the court's decision is revised or vacated, EPA should not continue implementation efforts with respect to the 8-hour standard that could be construed as inconsistent with the court's ruling. This reservation does not apply to any EPA actions based on the 1-hour standard because the court did not limit EPA's ability to implement the 1-hour standard.

## II. What is the Agency's primary reason for reinstating the 1-hour ozone standard in areas where it no longer applies?

Since EPA is uncertain as to its ability to implement the new 8-hour standard, and will remain unsure until ongoing litigation is completed, EPA believes that it is not appropriate to leave in place the determinations that the 1-hour ozone standard no longer applies to areas that had attained the 1-hour standard. These determinations were premised on the existence of an implementation scheme for the 8-hour ozone standard and the need to transition to the implementation of that standard. Since EPA cannot effectively implement the 8-hour standard, EPA cannot justify keeping the 1-hour standard inapplicable in these areas. In the absence of a 1-hour standard, no ozone standard that could be effectively implemented would be in place in these areas. Therefore, pending resolution of the litigation involving EPA's ability to promulgate and enforce the 8-hour NAAQS, EPA is proposing to rescind the findings that the 1-hour ozone standard no longer applies. The EPA considers this action necessary in order to ensure continued health protection for the public while the issue of EPA's ability to promulgate and enforce a revised ozone standard is resolved. If EPA finalizes today's proposed action, and then EPA prevails in the litigation and retains the ability to promulgate a revised 8-hour ozone standard that can be effectively enforced, EPA believes it would again be appropriate for the 1-hour standard to no longer apply once an area attains that standard, as established in the original promulgation of the 8-hour standard.

The EPA is charged with ensuring that the American public has healthy air to breathe. A fully enforceable 8-hour standard would have provided substantial protection against exposures to ozone over both short- and long-term time periods. Without full authority to enforce the 8-hour standard and with no applicable 1-hour standard nationwide, the public will be at a greater risk of exposure to short-term ozone concentrations and acute effects based on 1- to 3-hour exposures. Such acute effects may be manifested as significant lung function decrements in individuals engaged in heavy exertion, respiratory symptoms (e.g., cough, chest pain), reduced exercise performance, increased airway responsiveness, impaired respiratory defenses, and increased hospital admissions and emergency room visits. New health effects information additionally demonstrates associations between a wide range of health effects and 6- to 8-hour exposures below the level of the 1-hour standard. Thus, insuring the 1-hour standard is met will both address effects related to 1-hour exposures and reduce, though not eliminate, the risk of health effects associated with 6- to 8-hour exposures.

Some of the areas where the 1-hour standard has been found inapplicable are now violating that standard and EPA is not aware of any plans in place in these areas to reduce emissions. Likewise, some areas with maintenance plans are now violating the 1-hour standard without implementing contingency measures to curtail violations. Without either a 1-hour standard in place or an 8-hour standard that can be fully implemented, there is no longer a defined process for improving the air quality in these areas.

## III. What Action Is EPA Proposing To Take Today?

Today, we are proposing to rescind the findings that the 1-hour standard no longer applies in those areas where the Agency had previously determined that the 1-hour standard had been attained. The 1-hour standard would be put back in place in nearly 3,000 counties, all of the areas where the 1-hour standard had been determined inapplicable in previous final actions taken by the Agency. The areas affected are identified by air quality designations in the docket for this rulemaking at Docket No. A–99–22, and will be listed by county in the proposed CFR language to be published subsequently in a later

**Federal Register**. Also, the 40 CFR part 81 ozone table, listing areas of the country where the 1-hour ozone standard currently applies and those for which the 1-hour ozone standard is being proposed for reinstatement, can be viewed at the following internet website address: *http://www.epa.gov/ttn/oarpg.* Where the 1-hour ozone standard again becomes applicable as a result of this rulemaking, the attainment and nonattainment designations and classifications applicable to such areas previously will again apply. See Interim Implementation Policy Statement accompanying the proposed 8-hour NAAQS, 61 FR 65752, 65754 (Dec. 13, 1996)(''the designations would remain in effect so long as the current 1-hour ozone NAAQS remains in effect'').

Given that the previous designations and classifications of these areas were based upon the 1-hour ozone standard, which we are proposing will again apply, EPA proposes that the tables in Part 81 of the CFR be amended by again identifying the designation and classification of the area that applied prior to EPA's determinations that the standard no longer applied.

As discussed above, 40 CFR 50.9(b) presently provides that the 1-hour ozone standard would no longer apply once EPA determined that an area attained that standard. For the reasons described above concerning the need to retain the 1-hour standard while EPA's authority to implement and effectively enforce the 8-hour standard is in question, EPA is proposing to revise section 50.9(b) to indicate that the 1-hour standard remains applicable to all areas notwithstanding the promulgation of the 8-hour standard. Furthermore, because as explained above and in the promulgation of the 8-hour standard, EPA believes it is only appropriate to keep the 1-hour ozone standard in place as a transition mechanism to ensure continued public health protection as areas plan to meet the new 8-hour standard, EPA is proposing that after the 8-hour standard has become fully enforceable under part D of title I of the CAA and subject to no further legal challenge, the 1-hour standards set forth in section 50.9 will no longer apply to an area once EPA determines that the area has air quality meeting the 1-hour standard. EPA believes that by the time the new 8-hour standard becomes fully enforceable under Part D and subject to no further legal challenge, the designations of areas as nonattainment for the 8-hour standard will either have already occurred or will occur very shortly. EPA concludes that at that time if an area is meeting the one-hour standard, it will be most appropriate for areas to concentrate all of their limited resources on planning to meet their obligations under the new 8-hour standard rather than having to simultaneously complete any remaining requirements that are needed to meet the 1-hour standard.

In light of many areas' needs to quickly develop additional State Implementation Plan (SIP) programs in response to the actions EPA is proposing today, EPA intends to provide in any final action on this proposal that the actions proposed today will become effective 90 days after publication of any final action in the **Federal Register**.

## IV. What is the effect of rescinding previous findings that the 1-hour standard no longer applied?

The Agency is asking for your comments on the following aspects of this proposed action rescinding the findings that the 1-hour standard no longer applies. The issues are identified by designation status and current air quality. A list of the areas in each category can be found in the public docket for this proposed action at Docket No. A–99–22.

### *Areas Designated As Attainment with No Violations Since Revocation*

For areas that were designated as attainment (with or without maintenance plans) prior to the determination that the 1-hour standard no longer applied and that have remained in attainment for the 1-hour standard since that determination, EPA proposes that no new subpart 2 programmatic SIP requirements, beyond continued compliance with existing provisions of any applicable maintenance plans, will apply to such areas upon reinstatement of the 1-hour standard.

### *Areas Designated Attainment (Without Maintenance Plans) With Violations Since Revocation*

For areas that were designated as attainment that do not have a maintenance plan but have had one or more violations of the 1-hour standard since the determination that the 1-hour standard no longer applied, EPA believes that such areas should be given a reasonable time frame to plan to bring the areas back into attainment. The EPA has the authority to designate these areas as nonattainment; however, no decision to take such action has been made to date, and EPA is not proposing to take such action at this time.

### *Areas Designated Attainment (With Maintenance Plans) With Violations Since Revocation*

For areas that were designated as attainment that do have a maintenance plan but have had one or more violations of the 1-hour standard since the determination that the 1-hour standard no longer applied, EPA believes that the contingency measures outlined in the maintenance plan must be implemented according to the schedule in the plan. In addition, EPA believes that if during the time since the determination that the 1-hour standard no longer applied any requirements to implement contingency measures based on a violation of the 1-hour standard had been removed from the SIP, States should put such requirements back into place in order to assure the correction of any such violations.

### *Areas Designated Nonattainment With No Violations Since Revocation*

For areas that were designated as nonattainment prior to the determination that the 1-hour standard no longer applied and that have remained in attainment of the 1-hour standard since revocation, EPA proposes that the standard and accompanying nonattainment designation will again apply. However, EPA recommends that such areas follow the redesignation requirements of section 107(d)(3)(E) for submission of maintenance plans and redesignation to attainment. The EPA's Regional Offices will work with the States to expedite this process. Also, EPA proposes to apply its May 10, 1995 ''Clean Data Policy'' as appropriate to these areas, which permits suspension of certain requirements under Subpart 2 as they relate to ozone nonattainment areas meeting the ozone NAAQS, including requirements for reasonable further progress and attainment demonstrations. However, outstanding subpart 2 requirements not covered by this policy that were required prior to revocation would continue to apply until redesignation. The EPA will determine the applicability of this policy on a case-by-case basis to individual areas.

### *Areas Designated Nonattainment With Violations Since Revocation*

For areas that were designated as nonattainment prior to the determination that the 1-hour standard no longer applied and that have had violations of the 1-hour standard since that determination, EPA proposes that all of the applicable nonattainment area planning requirements of subpart 2

must be followed. The EPA believes that the nonattainment requirements in subpart 2 would apply to such areas as a matter of law for purposes of the 1-hour standard once this proposed action becomes final. The EPA also believes that it is appropriate to provide a reasonable schedule for these areas to meet any remaining planning needs with respect to these requirements and will work with each area to establish a submittal schedule.

*Programmatic Effects*

Sanctions

The EPA proposes that any sanctions or Federal implementation plan clocks started under sections 110 or 179 of the CAA and 40 CFR 52.31 with respect to planning requirements in subpart 2 of the CAA would again become applicable to areas. As to the timing of restarting such clocks, EPA proposes that they would start back up where they left off, rather than being considered to have run during the period the standard was no longer in effect. This would be done as a matter of fairness to affected areas, which were not aware that such clocks could have been running during the time that the 1-hour standard was not in effect. The EPA requests comments on this proposed approach.

Conformity

Conformity requirements remained applicable to all areas with maintenance plans upon EPA's determination that the standard was no longer applicable. Rescission of that determination will not affect the continued applicability of conformity. Clean Air Act section 176(c)(5)(B). Conformity does not apply at any time to attainment areas without a maintenance plan. For example, conformity does not apply to the areas designated attainment (without maintenance plans) with violations since revocation, which is discussed above.

The EPA proposes that the conformity requirements of section 176 will apply to all areas previously designated nonattainment at the time the 1-hour standard was revoked. The EPA proposes that conformity requirements will apply immediately upon the effective date of the final action reestablishing the nonattainment designations. We note that the DC Circuit has held that EPA could not provide a one-year grace period for applicability of transportation conformity regulations to newly designated nonattainment areas under the 1-hour standard, but rather that transportation conformity requirements apply as a matter of law immediately upon final designation of any area as nonattainment. *Sierra Club v. EPA*, 129 F.3d 137 (D.C. Cir. 1997). Therefore, EPA believes that the interpretation of the CAA that is most consistent with the case law is that the conformity requirements must apply again to any area designated nonattainment upon the effective date of the designation, for all areas affected by today's proposed action.

The conformity requirements that would apply are included in 40 CFR parts 51 and 93. These requirements were recently modified by EPA's May 14, 1999 guidance entitled, ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision'' and DOT's June 18, 1999 guidance entitled, ''Additional Supplemental Guidance for the Implementation of the Circuit Court Decision Affecting Transportation Conformity.''

When conformity begins applying to affected areas, they must have a currently conforming transportation plan and program in order to receive federal approval or funding for transportation projects. Some areas may have a transportation plan and program that were found to conform before the one-hour standard was revoked. If that conformity determination is still valid, the area would not need to perform a new conformity determination.

The area would need to document that the current transportation plan and program have not changed since the time of the last conformity determination in a manner that would have required a new conformity determination. In addition, the conformity determination must not have expired under the conformity rule's frequency requirements of 40 CFR 93.104.

Many areas may need to complete a new conformity determination, because the transportation plan and program were changed during the time that the one-hour standard was revoked. Areas would demonstrate conformity using the motor vehicle emissions budgets in their one-hour ozone SIP, if we have approved the SIP or found it adequate for conformity purposes. If an area has submitted a SIP with motor vehicle emissions budgets for conformity purposes that we have not approved or affirmatively found adequate, those budgets may not be used for conformity purposes. Any area without a submitted SIP that we have approved or found adequate for conformity purposes would demonstrate conformity using the emission reduction tests (build/no-build) test and/or 1990 test, as described in 40 CFR 93.119.

New Source Review

With respect to new source review (NSR) requirements, EPA believes that, in most cases, the NSR program linked to the section 107 designation and classification that was in effect at the time EPA found that the standard no longer applied will apply automatically under the applicable SIP upon rescission of those findings. Thus, if this action is finalized as proposed, 1-hour attainment and unclassifiable areas will generally be required to continue to implement the prevention of significant deterioration (PSD) permitting program for ozone,[1] whereas 1-hour nonattainment areas will be required to implement the appropriate part D NSR program as necessary to comply with Subpart 2 of the CAA. At a minimum, and only if the applicable SIP specifies no part D NSR program, EPA believes that areas designated nonattainment for the 1-hour standard must issue permits consistent with the Emission Offset Interpretative Ruling in 40 CFR part 51, Appendix S.

The EPA believes that the NSR requirements for most areas will automatically apply under the terms of the applicable SIP. For instance, if an area were previously designated nonattainment and classified as ''serious,'' the applicable SIP would have had to ensure that the area satisfy all of the NSR requirements of a ''serious'' area until we found that the 1-hour standard no longer applied. In most cases, SIPs satisfied this requirement by requiring that all ''serious'' areas in the State meet the applicable NSR requirements (e.g., defining ''major source'' to include any source emitting or having the potential to emit 25 or more tons per year of NOx or VOC). Accordingly, after we found that the standard no longer applied in a given area, the ''serious'' classification and ''nonattainment'' designation for that area were removed, and the SIP's provision applicable to all ''serious'' areas no longer applied to that area. The area was then required to implement whatever NSR program the SIP then specified for attainment areas. If the action proposed today is finalized, EPA believes that the restoration of the designations and classifications will, in most cases, trigger the applicable SIP

[1] Areas previously designated attainment/unclassifiable are required to implement PSD for ozone, even during the period that the 1-hour standard has not applied, because such areas would be attainment for some NAAQS and ozone is a regulated pollutant. See e.g., 40 CFR 52.21 (i)(2). However, such areas would have had to implement moderate area part D NSR during this interim period if located in the ozone transport region. See CAA section 184(b)(2).

requirements for nonattainment areas. This would mean that the hypothetical area described above would be required to implement a ''serious'' area part D NSR program once again.

Although EPA believes that most SIPs will require automatic reinstatement of the NSR requirements that are linked to areas' designations and classifications if today's proposal is finalized, certain SIPs may be worded in a way that does not link the NSR requirements to areas' designations and classifications, and thus such SIPs may present unique circumstances. For example, EPA understands that some SIPs identify specific areas by name and specify the part D NSR requirements for sources in the named areas. Following our prior findings that the standard no longer applied, such an area's requirements would have continued uninterrupted unless and until the State revised its SIP.

If such a SIP were revised since our findings that the designation and classification no longer applied to such an area (so that the SIP now specifies that a given named area must do PSD instead of part D NSR, for instance), the area's SIP would contain no part D NSR obligation for the named area and would not automatically require part D NSR if EPA finalizes this notice. The same issue would arise if the State deleted its part D NSR program entirely from its SIP upon our prior findings that the standard no longer applied. The EPA believes that sources in such areas must be required to obtain permits consistent with the Emission Offset Interpretative Ruling in 40 CFR part 51, Appendix S. The Offset Ruling explains that EPA interprets the CAA to require all major sources and major modifications in nonattainment areas lacking an applicable SIP-approved program to obtain permits meeting certain strict requirements. *See* 40 CFR 52.24(k) (specifying that areas designated nonattainment but lacking approved part D NSR programs must follow the Offset Ruling).

The EPA solicits public comment on whether it is appropriate to apply Appendix S to nonattainment areas where the SIP lacks the applicable nonattainment NSR provisions. In particular, EPA believes that States should act quickly to revise their SIPs to include a part D program for any area that lacks one. The EPA seeks input as to whether, instead of applying Appendix S, States should follow the Agency's prior policy, which specifies that to satisfy the CAA, States must issue permits consistent with subpart 2's additional requirements, even in the absence of an approved SIP. *See* Memorandum from John Seitz, ''New Source Review (NSR) Program Supplemental Transitional Guidance on Applicability of New Part D NSR Permit Requirements'' at page 3 (Sept. 3, 1992).

## V. What administrative requirements are considered in today's proposed rule?

### *A. Executive Order 12866: Regulatory Impact Analysis*

Under Executive Order 12866, (58 FR 51,735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this proposed rule is a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore subject to OMB review.

### *B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604), unless EPA certifies that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. The EPA is proposing that this rule, in its final form, will not have a significant impact on a substantial number of small entities because the determination that the 1-hour standard again applies does not itself directly impose any new requirements on small entities. See *Mid-Tex Electric Cooperative, Inc.* v. *FERC,* 773 F.2d 327 (D.C. Cir. 1985) (agency's certification need only consider the rule's impact on entities subject to the requirements of the rule). Instead, this rule merely establishes that the 1-hour standard again applies in certain areas. For the most part, any requirements applicable to small entities that may indirectly apply as a result of this action would be imposed independently by the State under its SIP, not by EPA through this action. Moreover, to the extent this rule would automatically trigger the applicability of certain SIP requirements to small entities (e.g., new source review), this rule cannot itself be tailored to address small entities that would be subject to those requirements.

One requirement that may apply immediately upon this action to all designated nonattainment areas is the requirement under CAA section 176(c) and associated regulations to demonstrate conformity of Federal actions to SIPs. However, those rules only apply directly to Federal agencies and metropolitan planning organizations (MPOs), which by definition are designated only for metropolitan areas with population of at least 50,000 and thus do not meet the definition of small entities under the RFA. Therefore, I certify that this action will not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

### *C. Unfunded Mandates*

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

Today's action, if finalized, would not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate or to the private sector. This rule would reinstate the applicability of the 1-hour ozone standard and alter the designation status of areas. The consequences of this action may result in some additional costs within the affected areas; however, the Agency believes that these costs

would not exceed $100 million per year in the aggregate.

One mandate that may apply as a consequence of this action to all designated nonattainment areas is the requirement under CAA section 176(c) and associated regulations to demonstrate conformity of Federal actions to SIPs. These rules apply to Federal agencies and MPOs making conformity determinations. EPA concludes that such conformity determinations will not cost $100 million or more in the aggregate annually. In addition, some areas with recent air quality violations will have to take the additional steps specified in their maintenance plans to limit emissions of air pollutants. These measures could, for example, include revising the threshold for new source review, establishing RACT level control for additional sources, establishing or enhancing I/M programs within the area, and requiring the sale of lower volatility gasoline. These measures vary substantially in terms of the expected emission reductions and their potential cost. Because the affected jurisdictions have some flexibility to choose among these measures, it is difficult to estimate the overall cost of these additional controls. EPA believes that the affected areas are already carrying out many of the other obligations associated with this action. For example, most areas have new source review requirements under their existing SIP programs. In addition, many of these areas are located in the OTR and are already carrying out many of the requirements associated with the re-instatement of the 1-hour standard. Therefore, EPA believes that these controls will not cost in the aggregate $100 million or more annually. Thus, this Federal action will not impose mandates that will require expenditures of $100 million or more in the aggregate in any one year.

*D. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''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.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866, and it implements a previously promulgated health or safety-based Federal standard and does not itself involve decisions that affect environmental health or safety risks.

*E. Executive Order 12875: Enhancing the Intergovernmental Partnership*

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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to OMB a description of the extent of EPA's prior consultation with representatives of the 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.''

The Agency did consult with a number of Mayors, State officials, and others to alert them to our consideration of reinstating the 1-hour ozone standard and to learn their reactions to the possibility of reinstatement. The EPA contacted elected officials and other State, regional, and local government representatives from across the nation. These contacts included discussions with Mayors from a large number of cities across the country. Reactions of the Mayors to the possible reinstatement varied. Many were clearly supportive of reinstatement and others were not opposed. A few expressed concerns about potential economic effects and several requested that any action taken by EPA follow usual notice and comment rulemaking procedures.

*F. Executive Order 12612: Federalism*

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, (64 FR 43255 (August 10, 1999),) which will take effect on November 2, 1999. In the interim, the current Executive Order 12612 (52 FR 41685 (October 30, 1987),) on federalism still applies. This rule will not have a substantial direct effect on 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, as specified in Executive Order 12612.

As noted previously, this rule would simply reinstate the applicability of the 1-hour ozone standard and the associated air quality designations for various areas. For the reasons described above, the rule itself will not directly impose significant new requirements on States or alter relationships between States and the Federal government. Therefore, EPA concludes that this rule will not have substantial federalism implications. After the new executive order takes effect, EPA will determine what its responsibilities are under the new order.

*G. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments*

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 consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials 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 proposed rule does not significantly or uniquely affect the communities of Indian tribal

governments. This proposed action does not involve or impose any requirements that directly affect Indian tribes. Under EPA's tribal authority rule, tribes are not required to implement CAA programs but, instead, have the opportunity to do so. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

*H. Paperwork Reduction Act*

This proposal does not contain any information collection requirements which require OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

*I. Executive Order 12898: Environmental Justice*

Under Executive Order 12898, each Federal agency must make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. Today's proposal to reinstate the applicability of the 1-hour standard in certain areas does not adversely affect minorities and low-income populations.

*J. National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing new regulations. To comply with NTTAA, the EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this proposed action. Today's proposed action does not require the public to perform activities conducive to the use of VCS.

**List of Subjects in 40 CFR Part 50**

Environmental protection, Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: October 20, 1999.

**Carol M. Browner,**

*Administrator.*

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

**PART 50—[AMENDED]**

1. The authority citation for part 50 continues to read as follows:

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

2. Section 50.9 is amended by revising paragraph (b) to read as follows:

**§ 50.9 National 1-hour primary and secondary ambient air quality standards for ozone.**

* * * * *

(b) The 1-hour standards set forth in this section will remain applicable to all areas notwithstanding the promulgation of 8-hour ozone standards under § 50.10. In addition, after the 8-hour standard has become fully enforceable under part D of title I of the CAA and subject to no further legal challenge, the 1-hour standards set forth in this section will no longer apply to an area once EPA determines that the area has air quality meeting the 1-hour standard. Area designations and classifications with respect to the 1-hour standards are codified in 40 CFR part 81.

[FR Doc. 99–27878 Filed 10–22–99; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 144 and 146

**[FRL–6462–4]**

### Notice of Availability of Class V Injection Well Study

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

**ACTION:** Notice of availability.

**SUMMARY:** EPA and the Sierra Club entered into a modified consent decree on January 28, 1997. In accordance with the second action required by this decree, EPA has completed a study of all Class V wells not included in the July 29, 1998 proposed rulemaking (63 FR 40586).

**ADDRESSES:** The study is available on the EPA, Office of Ground Water and Drinking Water, Underground Injection Control web site: *http://www.epa.gov/OGWDW/uic/cl5study.html* or in the Water Docket, U.S. Environmental Protection Agency; 401 M Street, SW, East Tower Basement, Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** For general information, contact the Safe Drinking Water Hotline, toll-free 800–426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding federal holidays, from 9:00 a.m. to 5:30 p.m. Eastern Standard Time. For technical inquiries, contact Amber Moreen, Underground Injection Control Program, Office of Ground Water and Drinking Water (mail code 4606), EPA, 401 M Street, SW, Washington, D.C., 20460. Phone: 202–260–4891. E-mail: moreen.amber@epa.gov.

**SUPPLEMENTARY INFORMATION:** The study of Class V underground injection wells required by a 1997 consent decree with the Sierra Club (*Sierra Club* v. *Browner,* D.D.C. No. 93–2644 NHJ) has been completed. The consent decree required EPA to complete a study of all Class V wells not included in an initial rulemaking (63 FR 40586). This initial rulemaking, also required by the consent decree, was proposed on July 29, 1998 and covers Class V wells determined by EPA to be the highest risk and for which additional study was not necessary. The Class V study provides background information for EPA to use in evaluating the risk that approximately 20 types of Class V wells pose to underground sources of drinking water. Information collected for each well type includes: inventory, injectate constituents, contamination incidents, and current State regulations.

EPA coordinated extensive peer and EPA workgroup reviews of each well-specific draft report to ensure technical accuracy and completeness of the documents. Technical experts were located through the Ground Water Protection Council, three **Federal Register** notices seeking peer reviewers (64 FR 1007–1008), the UIC technical workgroup, the Internet, and EPA. More detailed explanations of the well-types and the components of the study can be found in 64 FR 37803.

The information in the Study will be used to aid EPA in determining if additional federal regulations for these well types are warranted. According to the modified consent decree, no later than April 30, 2001, EPA must propose a decision regarding whether further rulemaking for each Class V well not included in the initial rulemaking is necessary and, if so, how each well should be regulated. A final rule or rules must be signed by the Administrator by May 31, 2002. Before these decisions are made, EPA plans to seek comment from the public. EPA plans to consider comments received at that time in deciding the most appropriate manner of ensuring that the remaining Class V wells are not endangering underground sources of drinking water.

Dated: October 12, 1999.

**Cynthia C. Dougherty,**

*Director, Office of Ground Water and Drinking Water.*

[FR Doc. 99–27545 Filed 10–22–99; 8:45 am]

**BILLING CODE 6560–50–U**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

### 42 CFR Part 405

**[HCFA–6003–P]**

**RIN 0938–AI49**

## Medicare Program; Appeals of Carrier Determinations That a Supplier Fails to Meet the Requirements for Medicare Billing Privileges

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would extend appeal rights to all suppliers whose enrollment applications for Medicare billing privileges are disallowed by a carrier or whose Medicare billing privileges are revoked, except for those suppliers covered under other existing appeals provisions of our regulations. In addition, we propose to revise certain appeal provisions to correspond with the existing appeal provisions in those other sections of our regulations. We also would extend appeal rights to all suppliers not covered by existing regulations to ensure they have a full and fair opportunity to be heard. Although we are not required by the Administrative Procedure Act to publish this rule as a proposed rule (see 5 U.S.C. section 553(b)(3)(A), we are doing so in order to allow interested parties the opportunity for prior notice and comment.

**DATES:** Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. Eastern time on December 27, 1999.

**ADDRESSES:** Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–6003–P, P.O. Box 26688, Baltimore, MD 21207–0488.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201–0001, or

Room C5–16–03, Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–6003–P. Written 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. Eastern time (phone: (202) 690–7890).

**FOR FURTHER INFORMATION CONTACT:** Charles Waldhauser, (410) 786–6140.

**SUPPLEMENTARY INFORMATION:**

### I. Background

A Medicare beneficiary generally may obtain covered Medicare services from any person, agency or institution that is qualified to participate in the Medicare program and that undertakes to furnish those services. Various provisions of the statutes and regulations establish conditions of participation or standards that a health care supplier or provider must meet in order to receive Medicare payment. These standards differ depending on the type of provider or supplier involved and whether the services are furnished under parts A, B, or C of the Medicare statute. There are also differences in qualifications between providers and suppliers of services, and differences among the various types of suppliers, in how they are enrolled in the Medicare program. For some classifications of providers and suppliers, an on-site survey is required. For other individuals or entities, a determination can be made based largely on the information provided by the applicant.

The Medicare regulations in Part 498 provide appeal rights for certain suppliers that have been found to not meet certain conditions of participation or established standards. For the purposes of part 498, these suppliers include independent laboratories; suppliers of portable x-ray services; rural health clinics; federally qualified health centers; ambulatory surgical centers; organ procurement organizations; end-stage renal disease treatment facilities; and chiropractors and physical therapists in independent practice.

In addition, our regulations at § 405.874 provide an appeals process for Durable Medical Equipment, Prosthetics and Orthotics and Supplies (DMEPOS) suppliers that wish to contest a disallowance of an application for a billing number or the revocation of an existing billing number. The § 405.874 appeals process afforded DMEPOS suppliers includes the right to a carrier hearing before a carrier official who was not involved in the original determination, and the right to seek a review before a HCFA official designated by the HCFA Administrator.

The purpose of this proposed rule would be to establish an administrative appeals process for certain other suppliers, such as physicians or physician assistants, who have had an application for billing privileges disallowed or existing billing privileges revoked, but who are not specifically included under either the Part 498 or § 405.874 appeals processes. Because the adverse determinations with respect to these other suppliers are similar to those described above for DMEPOS suppliers, we are proposing to amend the existing appeals process at § 405.874 to include appeal rights for these other suppliers.

In December, 1998, we issued HCFA Ruling 98–1, regarding the appeals process Medicare carriers must provide to physicians, non-physician practitioners, and to certain entities that receive reassigned benefits from physicians and non-physician practitioners. HCFA Rulings are decisions of the Administrator that serve as precedent final opinions and orders and statements of policy and interpretation. They provide clarification and interpretation of complex or ambiguous provisions of law or regulations relating to Medicare, Medicaid, Utilization and Quality Control Peer Review, private health insurance, and related matters. HCFA Rulings are binding on all HCFA components, Medicare contractors, the Provider Reimbursement Review Board, the Medicare Geographic Classification Review Board, the Departmental Appeals Board, and Administrative Law Judges (ALJs) who hear Medicare appeals. These Rulings promote consistency in interpretation of policy and adjudication of disputes. This proposed rule is very similar to HCFA Ruling 98–1, but expands the types of suppliers covered.

### II. Provisions of the Proposed Rule

We are proposing to revise the scope of § 405.874 (''Appeals of carrier decisions that supplier standards are not met.'') to extend appeal rights to all

suppliers whose enrollment applications for Medicare billing privileges are disallowed or whose Medicare billing privileges are revoked, except for those suppliers covered under the appeals provisions of Part 498. These administrative appeal rights would now apply to suppliers of durable medical equipment, prosthetics, orthotics, and supplies; ambulance service providers; independent diagnostic testing facilities; physicians; and other entities such as physician assistants.

We would also revise the existing procedures in § 405.874. These procedural changes would be as follows:

*Carrier Time Limit to Process Enrollment Application*

Currently, § 405.874(a) provides that a carrier must accept or reject an entity's enrollment application for a billing number or request additional information within 15 days of the receipt of the enrollment application. We believe the 15-day requirement restricts our ability to properly evaluate enrollment applications. Although the majority of supplier applicants to the Medicare program are legitimate, our mandate to ensure the integrity of the Medicare program requires stringent review of supplier enrollment applications, including verifying information with outside agencies, for example State licensing boards. These application verifications require additional amounts of time, sometimes beyond the current 15-day period, and the amount of time is not always predictable. In addition, such a requirement is not germane to appeals provisions. Therefore, for the proposed revision to § 405.874(a), we would remove the 15-day requirement. In order to ensure that time frames do not become excessively burdensome to suppliers, we monitor the time required by carriers to process enrollment applications as part of our oversight of carrier operations. In addition, we are considering placing a timeliness requirement for processing of applications for supplier billing privileges in another part of our regulations.

*Terminology*

Current § 405.874(b) provides that a carrier can disallow or revoke an entity's request for a billing number but must notify the supplier of its right to appeal. The supplier then has 90 days after the postmark of the notice to request an appeal. For purposes of this section and to parallel language used in other appeals provisions of Part 405, in revised § 405.874(a) and § 405.874(b), we propose to clarify the language concerning when a notice is received by the supplier from ''postmark of the notice'' to ''the date of receipt of the carrier's notice.'' We would specify that ''the date of receipt of the notice'' is presumed to be five days after the date of the notice. The burden would be on the supplier to show that more than five days actually elapsed between the date of the notice and the date it received the notice in order for the supplier to be granted relief from the requirement to file an appeal within 65 days from the date of the notice. In § 405.874(b)(1), we would clarify also that a Medicare billing number is the identification number of a provider or supplier to which we have granted Medicare billing privileges.

*Disallowances and Revocations*

Current § 405.874(b) discusses the procedures that carriers follow in disallowing a request for a Medicare supplier billing number and in revoking an enrolled supplier's Medicare billing number. We would now set forth the procedures to be followed by carriers concerning notifying a supplier of the disallowance of an enrollment application for supplier billing privileges in the proposed revision to § 405.874(a) and the revocation of an already enrolled supplier's billing number in the proposed revision to § 405.874(b). We would separate these procedures because we believe the prior language was not sufficiently clear.

Also, existing § 405.874(b) provides a 90-day time frame under which a supplier may appeal a carrier's determination or a supplier or carrier may appeal a carrier hearing officer's decision. We are proposing the revision of the 90-day appeal period to a 60-day appeal period in new paragraphs (a)(3), (b)(1)(iii), and (c)(3)(iii) in order to expedite the proceedings and to parallel the standard time frames for Medicare appellants who file Part A or Part B claim appeals with administrative law judges. We believe 60 days is a sufficient amount of time in which to file an appeal.

In the proposed revision to § 405.874(b)(2), we would clarify that a revocation of a supplier billing number that is based on a Federal exclusion or debarment is effective with the effective date of the exclusion or debarment, regardless of the date of the notice from the carrier that the billing number is revoked. We would further clarify in the proposed revision to § 405.874(b)(3) that suppliers are not paid for services or supplies furnished during a period in which their supplier billing number has been revoked. With respect to DMEPOS suppliers, section 1834(j)(1) of the Act states that, with the exception of medical equipment and supplies furnished incident to a physician's service, no payment may be made by Medicare for items and supplies unless the supplier has a valid, active Medicare billing number. Therefore, any expenses for items or supplies furnished to a Medicare beneficiary on or after the effective date of the inactivation (or revocation) of a DMEPOS supplier's billing number are the DMEPOS supplier's responsibility. Unless the DMEPOS supplier has proof it notified the beneficiary, in accordance with section 1834(a)(18)(A)(ii) of the Act, that Medicare payment may not be made and that the beneficiary agreed to take financial responsibility, the DMEPOS supplier is responsible for the expenses incurred for the items and services furnished. Without this proof of beneficiary notification and agreement, the DMEPOS supplier is required to refund on a timely basis to the beneficiary (and is liable to the beneficiary for) any amounts collected from the beneficiary for items or services furnished during the period of inactivation or revocation. If the DMEPOS supplier fails to refund as required, sanctions such as civil money penalties, assessments, and exclusions may be imposed. (See section 1879(h)(3) of the Act). In contrast, other, non-DMEPOS suppliers, for example, physicians, currently may bill for services furnished before they are issued a supplier billing number, assuming they meet Medicare requirements. We propose that claims submitted to carriers for services or supplies furnished during a period of supplier ineligibility are to be rejected by the carrier, not denied. Rejections of claims by carriers are not appealable by suppliers.

*Hearing by Carrier*

In the proposed revision to § 405.874(c)(1), we would change the language in current § 405.874(c) that requires a carrier hearing officer to ''schedule a hearing to be held within one week,'' to require that the hearing must be held within ''60 days of receipt of the appeal request.'' The previous ''one week'' language was unclear as to the intent—whether it was the ''scheduling'' or the ''hearing'' that was required within one week. We believe that it is unreasonable to require that a hearing be scheduled or held within 1 week of receiving the request for appeal. The carrier needs time to prepare the case and forward it to the hearing officer. The person or entity seeking review may also need more than one

week to prepare for the case. With respect to the time frame for issuing hearing officer decisions, the new provision would parallel the timeliness requirement in § 405.834.

In addition, current § 405.874(c) also discusses the procedures to be followed in a carrier hearing in consideration of the disallowance or revocation of a supplier billing number. In the proposed revision to § 405.874(c)(2), we would change the language to clarify that the supplier is required to prove that it is in compliance with all Medicare requirements for billing privileges, and that the carrier incorrectly disallowed or revoked the supplier's billing number. The ultimate burden of proof is on the supplier to show that it meets all requirements upon application, and to show at any time that it continues to meet any requirements that may be in place to bill Medicare. It is presumed that the carrier made a reasonable determination to disallow or revoke a supplier's billing number based on information it had at the time of the decision. The supplier would be required to furnish the evidence that clearly shows the determination was in error at the time it was made.

In new § 405.874(c)(3), we would revise the timeliness requirement in current § 405.874(c) for the hearing officer to issue a decision from ''two weeks'' to ''as soon as practicable after the hearing'' because the hearing officer must be allowed sufficient time to adjudicate the facts and make a reasoned decision. In addition, the proposed revision requirement would parallel the timeliness requirement for other hearing officer decisions in part 405.

*Implementation of Reversal of Carrier Determination*

We propose to conclude our revision of current § 405.874(c) by adding paragraphs (5), (6), and (7) to allow carrier discretion in deciding whether to put into effect a carrier hearing officer's reversal of the carrier's determination to disallow or revoke a supplier billing number, pending a possible appeal by the carrier. If the carrier were to decide to appeal the carrier hearing officer's decision to HCFA, the carrier would be permitted to continue to hold the supplier billing number as disallowed or revoked, pending the HCFA official's decision. The carrier would also have the discretion to implement the reversal (that is, grant or reinstate billing privileges) even though it is appealing the carrier hearing officer's decision. A carrier would implement a reversal decision immediately if it decides not to appeal the carrier hearing officer's decision to HCFA.

In the event that a supplier were to decide to appeal a carrier hearing officer's partial reversal to HCFA, and the carrier were to decide not to appeal, the carrier would implement the partial reversal. A partial reversal could be, for example, a decision to reinstate a revoked billing number, but not back to the date of the revocation; thus, there would be a period of non-eligibility for the supplier from the date of revocation to the reinstatement date. If the supplier were to appeal to the HCFA official to be reinstated for full eligibility, and the carrier were to decide not to appeal, the carrier would still implement only the partial reinstatement until the HCFA official would issue a decision on the appeal for full reinstatement.

*Hearing by HCFA*

In the proposed revision to § 405.874(d), we would change the language that currently appears in § 405.874(d) to specify that the HCFA official bases his or her decision on the carrier hearing officer's decision and the case file (record) established by the carrier hearing officer. In other words, this is not a de novo hearing. However, the HCFA official would be permitted to supplement the record as deemed necessary to clarify any issues. The HCFA official would issue a decision as soon as practicable in light of the issues involved and his or her workload. The HCFA official's decision would be the last administrative process available to either the carrier or the supplier.

*Reversal of Carrier Determination*

We would revise current § 405.874(e) to clarify that we will not pay for services furnished by suppliers during a period in which the supplier's billing privileges have been revoked. Therefore, any reversals of carrier decisions must indicate the effective date of the reversal. No appeal rights for suppliers accrue to rejections of claims or parts of claims that were made because the services or items were furnished during a period of supplier ineligibility. Claims for items or services furnished during a period for which the supplier's eligibility is established upon reversal would be adjudicated by the carrier in accordance with normal procedures, and would be denied or approved on their own merits.

*Reinstatement of Supplier Billing Number Following Corrective Action*

Current § 405.874(f) addresses corrective action plans. We would revise this paragraph to clarify that the supplier must be in compliance with all requirements in order to have its billing number reinstated, and that we must be satisfied that the supplier is in compliance and will remain in compliance. The burden of proof again would be on the supplier to demonstrate that it can operate in accordance with Medicare requirements. It would not be enough for the supplier to submit a plan for corrective action. If we were to decide to reinstate a billing number, we would establish the date of reinstatement, and the carrier would be able to pay for services furnished on or after the effective date of reinstatement.

*Reopening of Carrier Determination, Carrier Hearing Officer Decision, or HCFA Decision*

We propose to add new § 405.874(g) to permit the carrier, carrier hearing officer, or HCFA official to reopen and revise its determination or decision in accordance with §§ 405.841 and 405.842. This means, for example, that the carrier would not be permitted to revise a carrier hearing officer's or HCFA official's decision.

*Effective Date for DMEPOS Supplier Billing Number*

We propose to add new § 405.874(h), wherein we would address the situation that a DMEPOS supplier may not be paid for items or services furnished prior to the date its billing number is issued. Any decision to change, either through appeal or reopening, a disallowance of an enrollment application would establish the effective date of the billing number. Any claims for services or items furnished prior to the effective date of the billing number would be rejected and no appeal rights would apply for those claims—see § 405.803. Further, sections 1834(a)(18)(A)(ii) and 1834(j)(4) of the Act apply to those claims and provide that no payment may be made, and that the supplier may not charge the beneficiary, for services furnished prior to the effective date, unless the beneficiary explicitly agreed to pay even though Medicare would not pay.

*Submission of Claims*

Finally, we would add new § 405.874(i) to describe the procedure for submitting claims after a reversal of a supplier enrollment application disallowance or billing number revocation, or after a billing number reinstatement. We would specify that if a supplier is reinstated, any claims for items or services, furnished during the period of supplier ineligibility that became a period of eligibility upon reinstatement, may be submitted for adjudication as long as the period for

filing claims has not elapsed. If the claims previously were filed timely but were rejected, they would be considered filed timely upon resubmission.

**III. Regulatory Impact Statement**

We have examined the impact of this proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Pub. L. 96–354). 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). The RFA requires agencies to analyze options for regulatory relief for small businesses. For purposes of the RFA, most hospitals, and most other providers, physicians, and health care suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually.

According to data submitted to us by carriers in calendar year 1997, 129,000 enrollment applications were submitted to the Medicare carriers by suppliers seeking to receive billing privileges. We believe that a vast majority of these applicants were small businesses. Of those applications, 2,310 were denied. A total of 291 applicants requested an appeal of their denial.

Also, section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. That 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.

We are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this proposed 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. As discussed in detail, under section II., Provisions of the Proposed Rule, the purpose of the proposed changes to our current regulations would be to extend appeal rights to all suppliers whose enrollment applications for Medicare billing privileges are disallowed or whose Medicare billing privileges are revoked, except for those suppliers covered under the appeals provisions of part 498.

We believe that this proposed rule would have no adverse impact on small entities; in fact, it would afford small suppliers a measure of protection against adverse actions by HCFA, and extend protection to a larger group of suppliers beyond the DMEPOS suppliers currently covered under § 405.874. Because this proposed rule would merely clarify, expand, and update our current policy and administrative appeal rights, we anticipate slight, if any, economic impact on small entities. We are, however, inviting comments as to whether this rule would have a significant impact on a substantial number of small rural hospitals or entities.

**IV. Response to Comments**

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we issue the final rule, we will respond to the comments in the preamble to that document.

**V. Collection of Information Requirements**

Under the Paperwork Reduction Act of 1995 (PRA), agencies are required to provide a 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

However, we believe the information collection activities referenced in § 405.874 are exempt under the terms of the PRA for the following reasons:

- As defined in 5 CFR 1320.4, information collections conducted or sponsored during the conduct of criminal or civil action, or during the conduct of an administrative action, investigation, or audit involving an agency against specific individuals or entities are exempt from the PRA;
- As described in 5 CFR 1320.3(h)(9), facts or opinions obtained or solicited through nonstandardized follow-up questions designed to clarify responses to approved collections, are exempt from the PRA; and/or
- Nonstandardized information collections directed to less than ten persons do not constitute information collections as outlined in 5 CFR 1320.3(c).

Since we believe that the collection requirements are either part of the administrative, audit and/or adjudicatory process, collected in a nonstandardized manner, and/or collected from less than ten persons, they fall under these exceptions.

If you comment on any of these information collection and recordkeeping requirements, please mail copies directly to the following:

Health Care Financing Administration, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Room C2–26–17, 7500 Security Boulevard, Baltimore, MD 21244–1850. Attn.: John Burke, HCFA–1907–P

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503. Attn.: Allison Herron Eydt, HCFA Desk Officer

**List of Subjects in 42 CFR Part 405**

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Chapter IV would be amended as set forth below:

## PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

### Subpart H—Appeals Under the Medicare Part B Program

1. The authority citation for part 405, subpart H, continues to read as follows:

**Authority:** Secs. 1102, 1842(b)(3)(C), and 1869(b) of the Social Security Act (42 U.S.C. 1302, 1395u(b)(3)(C), and 1395ff(b)).

2. Section 405.874 is revised to read as follows:

**§ 405.874 Appeals of carrier determinations that a supplier fails to meet the requirements for Medicare billing privileges.**

(a) *Disallowance of supplier enrollment application.* If a carrier disallows a supplier's enrollment application, the carrier must notify the supplier by certified mail. The notice must include the following:

(1) The reason for the disallowance.

(2) The right to appeal.

(3) The date by which the supplier must file the appeal, that is, 60 days after the date of receipt of the carrier's notice. (The date of receipt of the carrier's notice is presumed to be 5 days after the date of the notice.)

(4) The address to which the written appeal must be mailed.

(b) *Revocation of Medicare billing number*—(1) *Notice of revocation.* If a carrier revokes a supplier's Medicare billing number, that is the identification number of a provider or supplier to which HCFA has granted Medicare billing privileges, the carrier must notify the supplier by certified mail. The notice must include the following:

(i) The reason for the revocation.

(ii) The right to appeal.

(iii) The date by which the supplier must file that appeal, that is, 60 days after the date of receipt of the carrier's notice. (The date of receipt of the carrier's notice is presumed to be 5 days after the date of the notice.)

(iv) The address to which the written appeal must be mailed.

(2) *Effective date.* Revocation of a supplier billing number is effective 15 days after the carrier mails the notice of its determination to the supplier. A revocation based on a Federal exclusion or debarment is effective with the date of the exclusion or debarment.

(3) *Payment.* Carriers do not pay for services furnished by the supplier beginning with the effective date of a revocation. Claims for services furnished to Medicare beneficiaries after the effective date of the revocation are rejected. Rejections of claims because a supplier does not have a valid billing number may not be appealed by the supplier. If the supplier is successful in overturning a revocation, rejected claims for services that were furnished during the overturned period of revocation may be resubmitted. (See paragraph (i) of this section).

(c) *Hearing by carrier.* (1) For suppliers, other than those whose appeal rights are defined in part 498 of this chapter, a carrier hearing officer, not involved in the original determination to disallow a supplier's enrollment application, or to revoke a current billing number, must hold a hearing within 60 days of receipt of the appeal request, or later if requested by the supplier.

(2) Both the supplier and the carrier may offer new evidence. The ultimate burden of proof is on the supplier to show that its enrollment application was incorrectly disallowed or that the revocation of its billing number was incorrect.

(3) The hearing officer issues a written decision as soon as practicable after the hearing and forwards the decision by certified mail to HCFA, the carrier, and the supplier. This decision includes the following:

(i) Information about the carrier's and supplier's further right to appeal.

(ii) The address to which the written appeal must be mailed.

(iii) The date by which the appeal must be filed, that is, 60 days after the date of receipt of the notice. (The date of receipt of the carrier's notice is presumed to be 5 days after the date of the notice.)

(4) Either the carrier or supplier may appeal the carrier hearing officer's decision to HCFA.

(5) A carrier hearing officer's partial or complete reversal of a carrier's determination is not implemented pending the carrier's decision to appeal the reversal to HCFA, unless the carrier, in its sole discretion, and without prejudice to its right to appeal, decides to implement the reversal pending an appeal.

(6) The carrier implements a reversal if it decides not to appeal a reversal to HCFA, or the time to appeal expires.

(7) A carrier may implement a carrier hearing officer's partial reversal even if the supplier has appealed the partial reversal to HCFA, or the time for the supplier to file an appeal has not expired.

(d) *Hearing by HCFA.* A HCFA official, designated by the Administrator of HCFA, issues a decision based on the decision and the record established by the carrier hearing officer. The HCFA official may supplement the record by requesting and obtaining any additional information from the carrier or the supplier. The HCFA official's decision—

(1) Is issued in writing as soon as practicable after the HCFA official determines that there is sufficient information to decide the appeal (or that no additional information is forthcoming), unless the party appealing the hearing officer's decision requests a delay;

(2) Is forwarded by certified mail to both the carrier and the supplier; and

(3) Contains information that no further administrative appeals are available.

(e) *Impact of reversal of carrier determination on claims processing.* If a revocation of a supplier billing number is reversed upon appeal, the appeal decision establishes the date the reinstated supplier number is effective. Claims for services furnished to Medicare beneficiaries during a period in which the supplier billing number was not effective are rejected. If a supplier is determined not to have qualified for a billing number in one period but qualified in another, carriers process claims for services furnished to beneficiaries during the period for which the supplier was Medicare-qualified. Subpart C of this part sets forth the requirements for recovery of overpayments.

(f) *Reinstatement of supplier billing number following corrective action.* If a supplier completes a corrective action and provides sufficient evidence to the carrier that it has complied fully with the Medicare requirements, the carrier may reinstate the supplier's billing number. The carrier may pay for services furnished on or after the effective date of the reinstatement. A carrier's refusal to reinstate a billing number is not an initial determination under § 405.803.

(g) *Reopening of carrier determination, carrier hearing officer decision, or HCFA decision.* An initial carrier determination, a decision of a carrier hearing officer, or a decision of a HCFA official may be reopened by the carrier, hearing officer, or HCFA official in accordance with §§ 405.841 and 405.842.

(h) *Effective date for DMEPOS supplier billing number.* If a carrier, carrier hearing officer, or HCFA official determines that a DMEPOS supplier's disallowed enrollment application meets the standards in § 424.57 of this chapter, the determination establishes the effective date of the billing number as not earlier than the date the carrier made the determination to disallow the supplier's enrollment application. Claims are rejected for services furnished before that effective date.

(i) *Submission of claims.* A supplier succeeding in having its enrollment application disallowance or billing number revocation reversed, or in having its billing number reinstated, may submit claims to the carrier for services furnished during periods of Medicare qualification, subject to the limitations in § 424.44 of this chapter regarding the timely filing of claims. If the claims previously were filed timely but were rejected, they will be considered filed timely upon resubmission.

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

Dated: July 7, 1999.

**Nancy-Ann Min DeParle,**

*Administrator, Health Care Financing Administration.*

Dated: July 13, 1999.

**Donna E. Shalala,**

*Secretary.*

[FR Doc. 99–27623 Filed 10–22–99; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 622

**[I.D. 101299F]**

### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources; Public Hearings

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

**ACTION:** Notice of public hearings; request for comments.

**SUMMARY:** The South Atlantic Fishery Management Council (Council) will convene six public hearings on Draft Amendment 12 to the Fishery Management Plan for the Snapper Grouper Fishery of the South Atlantic Region (Draft Amendment 12) and its draft supplemental environmental impact statement (draft SEIS).

**DATES:** Written comments will be accepted until 5 p.m. on November 29, 1999. The hearings will be held from November 3 to November 29, 1999. See SUPPLEMENTARY INFORMATION for specific dates and times.

**ADDRESSES:** Written comments should be sent to Bob Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407-4699. Copies of Draft Amendment 12 and the draft SEIS are available from Kerry O'Malley at 803-571-4366 and will also be available to the public at the hearings.

The hearings will be held in Florida, Georgia, South Carolina, and North Carolina. See SUPPLEMENTARY INFORMATION for locations of the hearings and special accommodations.

**FOR FURTHER INFORMATION CONTACT:** Kerry O'Malley, South Atlantic Fishery Management Council, 803-571-4366; Fax: 803-769-4520; E-mail address: kerry.omalley@noaa.gov.

**SUPPLEMENTARY INFORMATION:** The Council will hold public hearings on Draft Amendment 12 and the associated draft SEIS. Draft Amendment 12 includes management measures that would (1) prohibit the harvest and possession of red porgy; (2) require the Council to review the status of the red porgy resource every 3 years to determine whether the moratorium on harvest should be repealed; (3) establish a maximum sustainable yield of 5,285.4 metric tons (mt) for red porgy; (4) set optimum yield for red porgy at the yield produced by a stock size of 10,000 mt; (5) establish the two components of the overfishing definition for red porgy as: (a) the maximum fishing mortality threshold is the fishing mortality rate (F) in excess of F35% static spawning potential ratio (SPR) which is between 0.58 (F30%) and 0.33 (F40%) based on a 14 inch (35.6 cm) total length minimum size limit and data through 1996, and (b) minimum stock size threshold is the stock size associated with 20% SPR which is estimated at 3,000 mt. Current stock size was estimated to be 685 mt based on data through 1996; (6) set the rebuilding timeframe for red porgy at 18 years; (7) in the snapper grouper limited access system, allow same owner permit transfer regardless of vessel size for individuals harvesting snapper grouper species with a non-transferable 225 pound trip limit permit; and (8) modify the framework procedure for regulatory adjustments of the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region by adding the following list of management options and measures that could be implemented via such framework procedure as: Description, identification, and regulation of fishing activities to protect essential fish habitat (EFH) and EFH-habitat areas of particular concern (EFH-HAPC); management measures to reduce or eliminate the adverse effects of fishing activities or fishing gear on EFH or EFH-HAPCs; and regulation of EFH-HAPCs.

In the following locations the hearings will begin at 6 p.m. and end when all business is completed:

1. Wednesday, November 3, 1999—Sombrero Resort and Marina,19 Sombrero Blvd., Marathon, FL 33050; Phone: 305–743–2250;

2. Wednesday, November 10, 1999—Richmond Hill City Hall, 40 Richard R. Davis Drive, Richmond Hill, GA 31324; Phone: 912–756–3345;

3. Thursday, November 11, 1999—Carteret Community College, 3505 Arendell Street, Morehead City, NC 28557; Phone: 252–247–3093;

4. Monday, November 15, 1999—Ramada Inn Surfside, 3125 S. Atlantic Avenue, Daytona Beach Shores, FL 32118; Phone: 1–800–255–3838;

5. Wednesday, November 17, 1999—Town & Country Inn, 2008 Savannah Highway, Charleston, SC 29407; Phone: 843–571–1000; and

6. Monday, November 29, 1999—Blockade Runner, 275 Waynick Boulevard, Wrightsville Beach, NC 28480, Phone: 910–256–2251.

### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by October 29, 1999.

Dated: October 19, 1999.

**Bruce C. Morehead,**

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

[FR Doc. 99–27769 Filed 10–22–99; 8:45 am]

**BILLING CODE 3510–22–F**

# Notices

**Federal Register**

Vol. 64, No. 205

Monday, October 25, 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

### Commodity Credit Corporation

### Types and Quantities of Agricultural Committee Available for Donation Overseas Under Section 416(b) of the Agricultural Act of 1949, as Amended, for the Period October 1, 1999 Through December 31, 2000

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Notice.

**SUMMARY:** On October 8, 1999 the President, Commodity Credit Corporation, determined that not more than 3.0 million metric tons of surplus wheat and wheat products (grain equivalent) and 100,000 metric tons of surplus barley that may be acquired by CCC would be available for donation overseas under section 416(b) of the Agricultural Act of 1949, as amended, October 1, 1999 through December 31, 2000.

**FOR FURTHER INFORMATION CONTACT:** Merle Brown, Director, CCC Program Support Division, FAS USDA, (202) 720–3573.

Dated: September 22, 1999.

**Timothy J. Galvin,**

*Vice President, Commodity Credit Corporation.*

[FR Doc. 99–27745 Filed 10–22–99; 8:45 am]

**BILLING CODE 3410–10–M**

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

### Great River Energy; Notice of Intent

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice of intent to hold scoping meeting and prepare an environmental assessment.

**SUMMARY:** Notice is hereby given that the Rural Utilities Service (RUS), pursuant to the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) Regulations for implementing NEPA (40 CFR Parts 1500–1508), and RUS Environmental Policies and Procedures (7 CFR Part 1794) proposes to hold a scoping meeting and prepare an Environmental Assessment (EA) for its Federal action related to a project proposed by Great River Energy (GRE) of Elk River, Minnesota. The project consists of constructing a natural gas-fired simple cycle, combustion turbine power generation facility in Pleasant Valley Township in Mower County, Minnesota. Total electrical output from the facility is expected to range from 434 megawatts (MW) to 526 MW depending upon operating conditions.

**MEETING INFORMATION:** RUS will conduct a scoping meeting in open house forum on Tuesday, November 9, 1999, at the Sargeant Community Center, Chestnut Avenue, Sargeant, Minnesota, from 5 p.m. until 8 p.m.

**FOR FURTHER INFORMATION CONTACT:** Nurul Islam, Environmental Protection Specialist, RUS, Engineering and Environmental Staff, 1400 Independence Avenue, SW, Washington, DC 20250–1571, telephone (202) 720–1784, FAX: (202) 720–0820, e-mail: nislam@rus.usda.gov; or Tim Seck, Environmental Project Leader, GRE, 17845 East Highway 10, P.O. Box 800, Elk River, Minnesota 55330–0800, telephone (612) 241–2278, FAX: (612) 241–6078, e-mail: tseck@grenergy.com.

**SUPPLEMENTARY INFORMATION:** GRE proposes to construct the facility in Pleasant Valley Township in Mower County, Minnesota. The primary purpose of the facility is to meet GRE peak electrical load during hot summer weather. Under those conditions the facility's expected output is about 434 MW of power. The proposed project will consist of three simple cycle combustion turbines. Two of the turbines will have a maximum rating of 195.5 MW, with a summertime rating of 155 MW. The third unit will have a maximum rating of 135 MW with a summertime rating of 124 MW. The primary fuel will be natural gas and distillate oil will serve as the back-up fuel. The plant will require approximately 18 acres of land. The following additional facilities will also be constructed. A 161/345 kV substation will be constructed at the plant site. A short transmission line tap (500 feet) will be needed to connect to an existing Byron-Adams 345–kV transmission line. A new 69/161 kV transmission line, between 5 and 7 miles long, will be built from the plant to the Sargeant Substation. A new 161 kV line, approximately 17 miles long, will be constructed from the Sargeant Substation to the Austin North Substation in Austin. Where feasible the new 161 kV line will follow an existing 69 kV transmission line corridor. A total of about three-mile long new high-pressure gas line from the proposed generating station north to an existing gas line will provide gas supply. The total water usage will be approximately 1.8 million gallons per year.

Alternatives to be considered by RUS and GRE include no action, purchased power, upgrade of existing resources, new transmission facilities, alternative sites, alternative routes, fossil fuel technologies, customer-owned generation, energy conservation, renewable resources, and emerging technologies.

GRE has prepared an Alternative Evaluation and Site Selection Study for the project. The Alternative Evaluation and Site Selection Study is available for public review at the RUS or GRE at the addresses provided in this notice or at the following locations:

Austin Public Library, 323 4th Avenue, NE, Austin, Minnesota, (507) 433–2391

Brownsdale Public Library, Brownsdale Community Building, Brownsdale, Minnesota 55918, (507) 567–9951

Rochester Public Library, 101 2nd Street, SE, Rochester, Minnesota 55904, (507) 285–8022

Sargeant Community Center, Chestnut Avenue, Sargeant, Minnesota 55973, (507) 584–6885

Federal, state and local agencies, private organizations, and the public are invited to participate in the planning and analysis of the proposed project. Representatives from RUS and GRE will be available at the scoping meeting to discuss RUS's environmental review process, the proposed project and the alternatives being considered, scope of the environmental issues to be considered, and answer questions. Oral and written comments will be accepted at the scoping meeting. Written comments regarding the proposed project will also be accepted for at least

30 days after the scoping meeting. All written comments should be sent to RUS at the address provided in this notice.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal environmental laws and regulations and completion of environmental review procedures as prescribed by the CEQ Regulations and RUS Environmental Policies and Procedures.

Dated: October 18, 1999.

**Lawrence R. Wolfe,**

*Acting Director, Engineering and Environmental Staff, Rural Utilities Service.*

[FR Doc. 99–27738 Filed 10–22–99; 8:45 am]

**BILLING CODE 3410–15–P**

## COMMISSION ON CIVIL RIGHTS

### Sunshine Act Meeting; Notice

**AGENCY:** U.S. Commission on Civil Rights.

**DATE AND TIME:** Friday, November 5, 1999, 9:30 a.m.

**PLACE:** U.S. Commission on Civil Rights, 624 Ninth Street, N.W., Room 540, Washington, DC 20425.

**STATUS:**

### Agenda

I. Approval of Agenda

II. Approval of Minutes of September 17, and October 1, 1999 Meetings

III. Announcements

IV. Staff Director's Report

V. Radical and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination, Volume II: The Mississippi Delta Report

VI. State Advisory Committee Report

- Employment Opportunities for Minorities in Montgomery County, Ohio (Ohio)

VII. State Advisory Committee Appointments for California and Kentucky

VIII. Future Agenda Items

**CONTACT PERSON FOR FURTHER INFORMATION:** David Aronson, Press and Communications (202) 376–8312.

**Stephanie Y. Moore,**

*General Counsel.*

[FR Doc. 99–27877 Filed 10–21–99; 1:02 pm]

**BILLING CODE 6335–0–M**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Export Trade Certificate of Review

**ACTION:** Notice of Issuance of an amended Export Trade Certificate of Review, Application No. 84–10A12.

**SUMMARY:** The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to Northwest Fruit Exporters (''NFE'') on June 11, 1984. Notice of issuance of the Certificate was published in the **Federal Register** on June 14, 1984 (49 FR 24581).

**FOR FURTHER INFORMATION CONTACT:** Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1998).

The Office of Export Trading Company Affairs (''OETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of the certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

### Description of Amended Certificate

Export Trade Certificate of Review No. 84–00012, was issued to NFE on June 11, 1984 (49 FR 24581, June 14, 1984) and previously amended on May 2, 1988 (53 FR 16306, May 6, 1988); September 21, 1988 (53 FR 37628, September 27, 1988); September 20, 1989 (54 FR 39454, September 26, 1989); November 19, 1992 (57 FR 55510, November 25, 1992); August 16, 1994 (59 FR 43093, August 22, 1994); November 4, 1996 (61 FR 57850, November 8, 1996); October 22, 1997 (62 FR 55783, October 28, 1997); and November 2, 1998 (63 FR 60304, November 9, 1998).

NFE's Export Trade Certificate of Review has been amended to:

1. Add each of the following companies as a new ''Member'' of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): Chief Orchards L.L.C., Yakima, Washington; J.C. Watson Co., Parma, Idaho; Jenks Bro. Cold Storage, Inc., Royal City, Washington; Naumes, Inc., Chelan, Washington; The Apple House, Inc., Brewster, Washington; Valicoff Fruit Company, Inc., Wapato, Washington; and Washington Cherry Growers, Wenatchee, Washington; and

2. Delete the following companies as ''Members'' of the Certificate: Crisp'n Spicy Growers, Inc., Pateros, Washington; D & G Packing Inc., Plymouth, Washington; Fox Orchards, Mattawa, Washington; Nickell Orchards, Pateros, Washington; and Rolling Hills Orchards, Emmett, Idaho.

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Dated: October 20, 1999.

**Morton Schnabel,**

*Director, Office of Export Trading Company Affairs.*

[FR Doc. 99–27775 Filed 10–22–99; 8:45 am]

**BILLING CODE 3510–DR–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 101899A]**

### Gulf of Mexico Fishery Management Council; Public Meetings

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Gulf of Mexico Fishery Management Council will convene public meetings.

**DATES:** The meetings will be held on November 8–12, 1999.

**ADDRESSES:** These meetings will be held at the Caribe Royale Resort Suites, 14300 International Drive, Orlando, FL; telephone: 407–238–8000.

*Council address*: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

**FOR FURTHER INFORMATION CONTACT:** Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

**SUPPLEMENTARY INFORMATION:**

**Council**

*November 10*

*1:30 p.m.*—Convene.

*1:45 p.m. - 2:00 p.m.*—Appointment of Council Committees.

*2:00 p.m. - 5:30 p.m.*—Receive public testimony on the Red Snapper total allowable catch (TAC) and Red Grouper TAC.

*November 11*

*8:30 a.m. - 12:00 p.m.*—Receive the Reef Fish Management Committee Report.

*1:30 p.m. - 2:30 p.m.*—Receive the Habitat Protection Committee Report.

*2:30 p.m. - 2:45 p.m.*—Receive the Joint Reef Fish/Mackerel Management Committee Report.

*2:45 p.m. - 3:45 p.m.*—Receive the Joint Vessel Monitoring Systems (VMS)/ Law Enforcement Committee Report.

*3:45 p.m. - 4:15 p.m.*—Receive the Red Drum Management Committee Report.

*4:15 p.m. - 5:00 p.m.*—Receive the Administrative Policy Committee Report.

*November 12, 1999*

*8:30 a.m. - 8:45 a.m.*—Receive the Joint Marine Reserves/Reef Fish Management Committee Report.

8:45 a.m. - 9:00 a.m.—Receive the Shrimp Management Committee Report.

*9:00 a.m. - 10:30 a.m.*—Receive the Mackerel Management Committee Report.

*10:30 a.m. - 10:45 a.m.*—Receive the South Atlantic Fishery Management Council Liaison Report.

*10:45 a.m. - 11:00 a.m.*—Receive the International Commission for the Conservation of Atlantic Tunas Advisory Committee Report.

*11:00 a.m. - 11:15 a.m.*—Receive Enforcement Reports.

*11:15 a.m. - 11:45 a.m.*—Receive Director's Reports.

*11:45 a.m.- 12:00 p.m.*—Other Business.

**Committees**

*November 8*

8:00 a.m. - 11:00 a.m.—Convene the Habitat Protection Committee to consider revisions to the Council habitat protection policy and the recommendations of the three Habitat Protection Advisory Panels (APs).

*11:00 a.m. - 12:00 p.m.*—Convene the Joint Reef Fish/Mackerel Management Committees to approve the Draft Charter Vessel/Headboat Permit Moratorium Amendment for public hearings.

*1:00 p.m. - 4:30 p.m.*—Convene the Joint VMS/Law Enforcement Committees and the Law Enforcement AP to review the level of fishery violations in the Gulf and consider the recommendations of the AP for regulatory actions.

*4:30 p.m. - 5:30 p.m.*—Convene the Red Drum Management Committee to hear the Red Drum Stock Assessment Panel (SAP) report on the condition of the red drum stock and to consider the recommendations of the Red Drum AP, and Scientific and Statistical Committee (SSC).

*November 9*

*8:00 a.m. - 12:00 p.m. and 1:00 p.m. to 3:30 p.m.*—Convene the Reef Fish Management Committee to hear the Reef Fish SAP Report, consider the recommendations of the Socioeconomic Panel (SEP), APs, and SSC and develop recommendations to the Council on red snapper and red grouper TAC. The full Council will take final action on those recommendations on Thursday morning, November 11. The Reef Fish Management Committee will also consider management recommendations of a panel of red snapper stakeholders convened by NMFS.

*3:30 p.m. - 5:30 p.m.*—Convene the Joint Marine Reserves/Reef Fish Management Committees to consider whether to take action to develop an amendment that would include a proposal for a marine reserve near the Florida Keys.

*November 10*

*8:00 a.m - 9:00 a.m.*—Convene the Administrative Policy Committee to develop a policy on the handling and distribution of written public comment and on review of stock assessments.

*9:00 a.m. - 9:30 a.m.*—Convene the Shrimp Management Committee to hear a summary of the recommendations of stakeholders from a Bycatch Reduction Device (BRD) Workshop convened by NMFS.

*9:30 a.m. - 12:30 p.m.*—Convene the Mackerel Management Committee to to select management alternatives for a Dolphin/Wahoo Draft Fishery Management Plan (FMP) that will be presented at public hearings next year.

A copy of the Committee schedule and agenda can be obtained by calling (813) 228–2815.

Although non-emergency issues not contained in the agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by November 1, 1999.

Dated: October 19, 1999.

**Bruce C. Morehead,**

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

[FR Doc. 99–27768 Filed 10–22–99; 8:45 am]

BILLING CODE 3510–22–F

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 101899B]**

### New England Fishery Management Council; Public Meetings

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of its Experimental Fisheries and Research Steering Committee in November, 1999. Recommendations from this committee will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** The meetings will held between Monday, November 8, 1999.

**ADDRESSES:** The meeting will be held at the Holiday Inn, One Newbury Street (Route 1), Peabody, MA 01960; telephone: (978) 535–4600.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council (781) 231–0422.

**SUPPLEMENTARY INFORMATION:** There will be a report on the Mass Fisheries Recovery Commission's draft strategic science plan and an update on recent and upcoming events followed by a report on initiatives undertaken by the Gulf of Maine groundfish industry to develop research priorities and planning goals for the state of Maine. The committee also will recommend

priorities and potential projects to receive funding consideration under the $5 million dollar Disaster Assistance Program administered by NMFS. Additionally, the committee will review options and recommend changes to the Sea Scallop Plan's Total Allowable Catch 1 percent research set-aside mechanism. Alternatives will be included in draft Sea Scallop Framework Adjustment 12 and forwarded to the Scallop Committee for their consideration.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: October 19, 1999.

**Bruce C. Morehead,**

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

[FR Doc. 99–27766 Filed 10–22–99; 8:45 am]

**BILLING CODE 3510–22–F**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 101899D]**

### South Atlantic Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The South Atlantic Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) and Bycatch Reduction Device (BRD) Advisory Panel hold public meetings in Charleston, SC.

**DATES:** The SSC meeting will be held on November 8, 1999, from 1:30 p.m. to 5:30 p.m. and on November 9, 1999, from 8:30 a.m. to 5:30 p.m.; the joint meeting of SSC and BRD Advisory Panel will be held on November 10, 1999, from 8:30 a.m. to 12:00 noon.

**ADDRESSES:** The meetings will be held at the Sheraton Hotel, 170 Lockwood Drive, Charleston, SC 29403; telephone: 843-720-0835.

**FOR FURTHER INFORMATION CONTACT:** Kerry O'Malley, phone: (843) 571-4366; fax: (843) 769-4520; email: kerry.omalley@noaa.gov

**SUPPLEMENTARY INFORMATION:** The SSC will review and provide comments and guidance on the following: the Shrimp, Calico Scallop, Snapper Grouper and Red Drum Stock Assessment and Fishery Evaluation (SAFE) Reports; maximum sustainable yield (MSY) estimates for species managed by the Council; Snapper Grouper Amendment 12; the Golden Crab Options Paper; the Georgia special management zone (SMZ) request; the Marine Reserves Discussion Paper; the Economic Impact Assessment Guidelines and the Social Impact Assessment Guidelines. The SSC and BRD Advisory Panel will jointly review the Council's BRD Protocol and recommend modifications where appropriate.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by October 29, 1999.

Dated: October 19, 1999.

**Bruce C. Morehead,**

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

[FR Doc. 99–27767 Filed 10–22–99; 8:45 am]

**BILLING CODE 3510–22–F**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau

October 19, 1999.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** October 26, 1999.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 59944, published on November 6, 1998.

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

October 19, 1999.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 3, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man–made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau and exported during the twelve-month period

which began on January 1, 1999 and extends through December 31, 1999.

Effective on October 26, 1999, you are directed to adjust the limits for the categories listed below, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| Levels in Group I | |
| 225 | 6,134,827 square meters. |
| 317 | 4,320,406 square meters. |
| 333/334/335/833/834/835. | 376,912 dozen of which not more than 168,257 dozen shall be in Categories 333/335/833/835. |
| 336/836 | 79,632 dozen. |
| 338 | 420,941 dozen. |
| 339 | 1,758,344 dozen. |
| 340 | 416,442 dozen. |
| 341 | 265,468 dozen. |
| 342 | 134,004 dozen. |
| 345 | 73,749 dozen. |
| 347/348/847 | 988,299 dozen. |
| 350/850 | 89,336 dozen. |
| 351/851 | 92,253 dozen. |
| 359–C/659–C [2] | 486,051 kilograms. |
| 359–V [3] | 171,602 kilograms. |
| 625/626/627/628/629 | 6,332,954 square meters. |
| 633/634/635 | 722,235 dozen. |
| 638/639/838 | 2,217,441 dozen. |
| 640 | 176,717 dozen. |
| 641/840 | 275,416 dozen. |
| 642/842 | 176,955 dozen. |
| 645/646 | 389,667 dozen. |
| 647/648 | 757,748 dozen. |
| 659–S [4] | 177,731 kilograms. |
| Group II | |
| 400–431, 433–438, 440–448, 459pt. [5], 464 and 469pt. [6], as a group. | 1,597,637 square meters equivalent. |
| Sublevel in Group II | |
| 445/446 | 83,625 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010. Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 359–V: only HTS numbers: 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070, and 6211.42.0070.

[4] Category 659–S: only HTS numbers: 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[5] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[6] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 99–27772 Filed 10–22–99; 8:45 am]

BILLING CODE 3510–DR–F

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau

October 19, 1999.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs increasing limits.

**EFFECTIVE DATE:** October 28, 1999.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota reopenings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 59944, published on November 6, 1998.

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

October 19, 1999.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 3, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man–made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on October 28, 1999, you are directed to increase the limits for the categories listed below, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| Levels in Group I | |
| 336/836 | 84,174 dozen. |
| 338 | 445,613 dozen. |
| 339 | 1,861,686 dozen. |
| 340 | 439,794 dozen. |
| 341 | 280,530 dozen. |
| 345 | 77,915 dozen. |
| 347/348/847 | 1,046,697 dozen. |
| 351/851 | 97,704 dozen. |
| 359–C/659–C [2] | 513,306 kilograms. |
| 633/634/635 | 762,818 dozen. |
| 638/639/838 | 2,343,819 dozen. |
| 641/840 | 290,860 dozen. |
| 647/648 | 800,239 dozen. |
| 659–S [3] | 178,674 kilograms. |
| Group II | |
| 400–431, 433–438, 440–448, 459pt. [4], 464 and 469pt. [5], as a group. | 1,690,703 square meters equivalent. |
| Sublevel in Group II | |
| 445/446 | 88,642 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[4] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[5] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 99–27773 Filed 10–22–99; 8:45 am]

**BILLING CODE 3510–DR–F**

## COMMODITY FUTURES TRADING COMMISSION

### Proposed Amendment To Convert the Kansas City Board of Trade's Western Natural Gas ''Flat Price'' Futures Contract to a ''Basis'' Future Contract

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of availability of proposed amendments to contract terms and conditions.

**SUMMARY:** The Kansas City Board of Trade (KCBT or Exchange) has submitted proposed amendments to its western natural gas futures contract related to the pricing of the contract. 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 November 26, 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 November 9, 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 KCBT western natural gas futures contract.

**FOR FURTHER INFORMATION CONTACT:** Please contact Joseph B. Storer of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581, telephone (202) 418–5282. Facsimile number: (202) 418–5527. Electronic mail: jstorer@cftc.gov

**SUPPLEMENTARY INFORMATION:** The existing terms of the western natural gas futures contract provide for prices to be quoted in dollars and cents per MMBtu. The proposed amendments will convert the existing ''flat price'' futures contract to a ''basis'' futures contract, in that prices would be quoted as a differential to the New York Mercantile Exchange's (NYMEX's) Henry Hub delivery natural gas futures contract. An additional amendment would reduce the hub fee charged for physical deliveries by the operator of the WAHA Hub, the delivery point on the contract, from the current two cents per MMBtu ($.02) to one quarter of one cent ($.0025) per MMBtu.

According to the Exchange:

The idea of a basis contract was developed because it represented the way in which the gas commercials and marketers used our gas futures product. Since the inception of natural gas trading at the KCBT, the overwhelming majority of trades done on this exchange were versus offsetting trades at the New York Mercantile Exchange (NYMEX) in order to lock in a basis differential between east and west.

However, over the past 18 months, the natural gas market has experienced lower volatility and the basis between east and west has been for the most part narrower than normal. This has caused basis trade to migrate to the over-the-counter market. Part of the reason for this is because the OPT market can package the basis trade into one transaction. In an east/west futures basis trade, you have two markets in which you must execute transactions, NYMEX and KCBT. With the reduction of volatility and narrow basis differential, business at the KCBT has diminished greatly, creating wider bid/ask spreads and making it more expensive for market participants to do basis trades in the futures market versus the OTC market.

With regard to the proposed change in the hub fee applicable to physical deliveries of natural gas current rules specify that it is the seller's responsibility to pay this fee when physical delivery of gas is made. According to the KCBT, after consultation with the WAHA Hub operator the operator and the Exchange determined that the proposed $.0025 cent fee was more representative of current conditions at the WAHA Hub cash market.

The Division requests comments on the proposed amendments and their effect that the usefulness of the revised contract for hedging.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Center, 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 material submitted by the KCBT 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 (1987)), except to the extent they are entitled to confidential treatment set forth in 17 CFR 145.5 and 145.9. Request for copies of such materials should be made to 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 submitting written data, views, or arguments on the proposed amendments or with respect to other materials submitted by the KCBT, 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 October 19, 1999.

**John Mielke,**

*Acting Director.*

[FR Doc. 99–27734 Filed 10–22–99; 8:45 am]

**BILLING CODE 6351–01–M**

## COMMODITY FUTURES TRADING COMMISSION

### Notice of the Twenty-Seventh Meeting of the Agricultural Advisory Committee

This is to give notice, pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, Section 10(a)(2), and Section 101–6. 1015(b) of the regulations promulgated thereunder, 41 CFR 101–6.1015(b), that the Commodity Futures Trading Commission Agricultural Advisory Committee (''AAC'') will conduct a

public meeting on November 9, 1999, in the first floor hearing room (Room 1000) of the Commission's Washington, D.C. headquarters, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. The meeting will begin at 1:00 p.m. and last until 4:30 p.m. The agenda will consist of the following:

**Agenda**

1. Welcoming Remarks
2. Discussion on Deregulatory Initiatives
   a. Contract Market Designation
   b. Exchange Rule Changes
3. Discussion on CFTC Reauthorization Issues
4. Briefing on Agricultural Trade Options Final Rules
5. Briefing on Exchange Issues
6. Other Business

The AAC was created by the Commodity Futures Trading Commission for the purpose of receiving advice and recommendations on issues affecting agricultural producers, processors, lenders and others interested in or affected by the agricultural commodities markets, and to facilitate communications between the Commission and the diverse agricultural and agriculture-related organizations represented on the Committee. The purposes and objectives of the AAC are more fully set forth in its charter.

The meeting is open to the public. The Chairman of the AAC, Commissioner David D. Spears, is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the AAC should mail a copy of the statement prior to the meeting to the attention of: The Agricultural Advisory Committee, c/o Commissioner David D. Spears, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Members of the public who wish to make oral statements should also inform Commissioner Spears in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

For further information contact Jennifer A. Roe, Administrative Assistant to Commissioner Spears, at 202–418–5043, or Marcia K. Blase, Committee Management Officer, at 202–418–5138.

Issued by the Commission in Washington, D.C. on October 20, 1999.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 99–27824 Filed 10–22–99; 8:45 am]

BILLING CODE 6351–01–M

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**ACTION:** Submission for OMB review; comment request.

**SUMMARY:** The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before November 24, 1999.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 19, 1999.

**William E. Burrow,**

*Leader, Information Management Group, Office of the Chief Information Officer.*

**Office of Educational Research and Improvement**

*Type of Review:* Reinstatement.
*Title:* Designation of Exemplary and Promising Programs.
*Frequency:* Only required when submitting program for review.
*Affected Public:* Businesses or other for-profit; Not-for-profit institutions; Federal Government; State, local or Tribal Gov't, SEAs or LEAs.
*Reporting and Recordkeeping Hour Burden:*
Responses: 200.
Burden Hours: 1,200.
*Abstract:* The purpose of the expert panel system is to oversee a valid and viable process for identifying and designating promising and exemplary educational programs so that practitioners can make better-informed decisions in their ongoing efforts to improve the quality of student learning. The Office of Educational Research and Improvement (OERI) requires that each program submit descriptive information and an abstract in order to be considered for review. The information submitted by the entity will serve as the basis upon which the expert panel will judge the program according to the selection criteria for promising and exemplary.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or should be faxed to 202–708–9346.

Questions regarding burden and/or the collection activity requirements should be directed to Kathy Axt at 703–426–9692. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

**Office of Student Financial Assistance Programs**

*Type of Review:* Extension.
*Title:* Income Contingent Repayment Plan Consent to Disclosure of Tax Information.
*Frequency:* Once every five years.
*Affected Public:* Individuals or households. *Reporting and Recordkeeping Burden:*

Responses: 114,000.
Burden Hours: 22,800.

*Abstract:* This form is the means by which a William D. Ford Federal Direct Loan Program borrower (and, if married, the borrower's spouse) who chooses to repay under the Income Contingent Repayment Plan provides written consent for the Internal Revenue Service to disclose certain tax return information to the Department of Education and its agents for the purpose of calculating the borrower's monthly repayment amount.

Requests for copies of this information collection should be addressed to Vivian Reese, US Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the Internet address *OCIO*__IMG__Issues@ed.gov, or should be faxed to 202–708–9346.

Questions regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at 202–708–9266 or by e-mail at joe__schubart@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.

**Office of Student Financial Assistance Programs**

*Type of Review:* Reinstatement.
*Title:* Income Contingent Repayment Plan Alternative Documentation of Income.
*Frequency:* Annually.
*Affected Public:* Individuals or households.
*Reporting and Recordkeeping Burden*:
Responses: 25,000.
Burden Hours: 8,250.

*Abstract:* A William D. Ford Federal Direct Loan Program borrower (and, if married, the borrower's spouse) who chooses to repay under the Income Contingent Repayment Plan uses this form to submit alternative documentation of income if the borrower's adjusted gross income is not available or does not accurately reflect the borrower's current income.

Requests for copies of this information collection should be addressed to Vivian Reese, US Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the Internet address *OCIO*__IMG__Issues@ed.gov or should be faxed to 202–708–9346.

Questions regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at 202–708–9266 or by e-mail at joe__schubart@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.

**Office of Student Financial Assistance Programs**

*Type of Review:* Reinstatement.
*Title:* William D. Ford Federal Direct Loan Program Statutory Forbearance Forms.
*Frequency:* On occasion.
*Affected Public:* Individuals or households.
*Reporting and Recordkeeping Burden:*
Responses: 2,400
Burden Hours: 480.

*Abstract:* Borrowers who receive loans through the William D. Ford Federal Direct Loan Program will use this form to request statutory forbearance on their loans.

Requests for copies of this information collection should be addressed to Vivian Reese, US Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the Internet address *OCIO*__IMG__Issues@ed.gov or should be faxed to 202–708–9346..

Questions regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at 202–708–9266 or by e-mail at joe__schubart@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.

**Office of Special Education and Rehabilitative Services**

*Type of Review:* Revision.
*Title:* Case Service Report.
*Frequency:* Annually.
*Affected Public:* State, local or Tribal Gov't, SEAs or LEAs.
*Reporting and Recordkeeping Hour Burden*:
Responses: 80.
Burden Hours: 4,240.

*Abstract:* As required by Section 13 of the Rehabilitation Act, the data are submitted by State VR agencies each year. The data contain personal and program-related characteristics, including economic outcomes of persons with disabilities whose case records are closed.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *OCIO*__IMG__Issues@ed.gov, or should be faxed to 202–708–9346.

Written comments or questions regarding burden and/or the collection activity requirements should be directed to Sheila Carey at 202–708–6287 or by e-mail to *sheila carey@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.

**Office of the Under Secretary**

*Type of Review:* New.
*Title:* Evaluation of Effective Adult Basic Education Programs and Practices.
*Frequency:* Three times total for each respondent: 1st month, 9th month, 21st month.
*Affected Public:* Individuals or households; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.
*Reporting and Recordkeeping Hour Burden:*.
Responses: 1,385
Burden Hours: 3,923.

*Abstract:* This study will investigate the following research questions: (1) How much do first-level adult learners who participate in adult basic education programs improve their reading skills and increase the frequency of their reading-related behaviors? (2) What characteristics of first-level learners affect the amount of improvement that they make in their reading skills or reading-related behaviors after participating in adult basic education programs? (3) How are the operational and instructional characteristics of adult basic education programs related to the amount of improvement in reading skills or reading-related behaviors among first-level learners?

Requests for copies of this information collection should be addressed to Vivian Reese, US Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the Internet address *OCIO*__IMG__Issues@ed.gov, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Jacqueline Montague at 202–708–5359 or by e-mail at the internet address jackie__montague@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.

[FR Doc. 99–27718 Filed 10–22–99; 8:45 am]
BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Idaho

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Engineering and Environmental Laboratory (INEEL). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Tuesday, November 16, 1999, 8 a.m.–6 p.m.; Wednesday, November 17, 1999, 8 a.m.–5 p.m.

**ADDRESSES:** The Miles & Virginia Willard Fine Arts Center, 498 A Street, Idaho Falls, Idaho, 83402.

**FOR FURTHER INFORMATION CONTACT:** Ms. Wendy Lowe, INEEL SSAB Facilitator Jason Associates Corporation, 477 Shoup Avenue, Suite 205, Idaho Falls, ID 83402, (208–522–1662) or visit the Board's Internet homepage at *http://www.ida.net/users/cab;* or contact Mr. Charles Rice, INEEL SSAB Chair, c/o Jason Associates Corporation.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the INEEL.

*Tentative Agenda:*

Presentations and discussions on the following:

Alternative evaluated and major findings from the Draft Environmental Impact Statement for a Geologic Repository for Spent Nuclear Fuel and High-Level Waste, Nye County, Nevada;

The DOE Office of Science and Technology and how it contributes to the mission of the Environmental Management office;

The transition to the new INEEL Management and Operations contractor;

The Record of Decision for the Programmatic Environmental Impact Statement for the Storage of High Level Waste;

Worker exposure to plutonium at Paducah Gaseous Diffusion Plant;

Follow-on activities from the October 26–28, 1999 SSAB Seminar on Stewardship.

Status reports on the following:

The DOE—Idaho's use of the SSAB recommendation on the Proposed Plan for Waste Area Group 3 (Idaho Nuclear Technology and Engineering Center);

The results of the Soil Sorter experimental use at the Waste Area Group 5 (Power Burst Facility/Auxiliary Reactor Area) and its appropriateness for use at the INEEL.

Finalization of the following recommendations:

On the selection of an ''indicator species'' for use in ecological risk assessments at the INEEL;

On the INEEL's ''Institutional Plan.''

(Agenda topics may change up to the day of the meeting; please call the **FOR FURTHER INFORMATION CONTACT** in this notice for the current agenda or visit the Internet site.)

*Public Participation:* This meeting is open to the public. Written statements may be filed with the Board facilitator before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact the Board Chair at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Jerry Bowman, Assistant Manager for Laboratory Development, Idaho Operations Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Every individual wishing to make public comment will be provided equal time to present their comments.

*Minutes:* The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Charles M. Rice, INEEL CAB Chair, 477 Shoup Ave., Suite 205, Idaho Falls, Idaho 83402 or by calling the Board's facilitator at (208) 522–1662.

Issued at Washington, DC on October 20, 1999.

**Rachel Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 99–27732 Filed 10–22–99; 8:45 am]
BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Energy.

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

**SUMMARY:** The Department of Energy (DOE) has submitted a proposed information collection request to the Office of Management and Budget (OMB) for the collection of biodiesel purchase data from fleets participating in DOE's Alternative Fuel Transportation Program. The Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35) requires agencies to submit information collection requests for OMB review and approval. OMB is particularly interested in receiving public comments on: (1) Whether the proposed collection of information is necessary, (2) The accuracy of DOE's estimate of the burden of the proposed information collection, (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 those who choose to respond.

**DATES:** Comments regarding this collection of information should be sent on or before November 24, 1999.

**ADDRESSES:** Comments should be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: OMB Desk Officer for DOE, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington DC 20503. Written comments (5 copies) should also be sent to: Paul McArdle, US Department of Energy, EE–34, Docket No. EE–RM–99–BIOD, 1000 Independence Avenue, SW, Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** A copy of the information collection request may be obtained from: Paul McArdle, Office of Energy Efficiency and Renewable Energy, US Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585; (202) 586–9171; or e-mail to paul.mcardle@ee.doe.gov.

**SUPPLEMENTARY INFORMATION:** The following proposed collection of information has been sent to OMB for clearance:

*Title:* U.S. Department of Energy/ Annual Alternative Fueled Vehicle Acquisition Report for State Government and Alternative Fuel Provider Fleets.

*OMB Control Number:* 1910–5101.

*Type of request:* Revised collection.

*Frequency of response:* Annual.

*Respondents:* States and alternative fuel provider firms.

*Estimated number of respondents:* 1,000.

*Total annual burden hours:* 12,000 hours.

*Summary/description of need:* On May 19, 1999, DOE published an interim final rule to implement provisions of the Energy Conservation Reauthorization Act of 1998 that permit State and alternative fuel provider fleets to meet statutory alternative fueled vehicle acquisition requirements through use of biodiesel fuel use credits (64 FR 27169). DOE received public comments from 10 persons in response to the interim final rule, which invited public comment on this proposed collection, and has replied to these comments in its submission to OMB. To obtain documentation of use of such credits to meet the acquisition requirements, DOE plans to revise the annual reporting form for the program, DOE/OTT/101, Annual Alternative Fueled Vehicle Acquisition Report for State Government and Alternative Fuel Provider Fleets. Fleets claiming biodiesel fuel use credits must, for the model year in which the biodiesel fuel is purchased, report the quantity of biodiesel purchased for use in vehicles weighing more than 8,500 lbs. gross vehicle weight rating.

Issued in Washington, DC, on October 19, 1999.

**Dan W. Reicher,**

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

[FR Doc. 99–27731 Filed 10–22–99; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

### Agency Information Collection Under Review by the Office of Management and Budget

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

**ACTION:** Notice of submission for the Office of Management and Budget's review and request for comment.

**SUMMARY:** The Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE), has submitted the information collection entitled ''Study of Central Air Conditioner Life Cycle Costs'' to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act of 1995 (Public Law 104–13). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3507(d)(1)(A) of the Paperwork Reduction Act.

The following information is provided: (1) Collection title; (2) summary of the collection of information (includes sponsor (the DOE component)), current OMB document number (if applicable), type of request (new, revision, extension, or reinstatement); response obligation (mandatory, voluntary, or required to obtain or retain benefits); (3) a description of the need and proposed use of the information; (4) a description of the likely respondents; and (5) an estimate of the total annual reporting burden (estimated number of respondents times the proposed frequency of response per year times the estimated average hours per response.)

**DATES:** Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB/DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3087. (Also, please notify the Office of Energy Efficiency and Renewable Energy's point of contact, Michael E. McCabe, listed below.)

**ADDRESSES:** Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW, Washington, DC 20503. (Comments should also be addressed to Dr. Michael E. McCabe at the address in the **FOR FURTHER INFORMATION CONTACT** section.)

**FOR FURTHER INFORMATION CONTACT:** Copies of the proposed collection of information and requests for additional information should be directed to Dr. Michael E. McCabe, Mail Station EE–41, Room 1J–018, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0121. Dr. McCabe may be telephoned at (202) 586–0854 or e-mail at michael.e.mccabe@ee.doe.gov

**SUPPLEMENTARY INFORMATION:** The information collection submitted to OMB for review was:

1. Collection title: Study of Central Air Conditioner Life Cycle Costs

2. The collection is a new request and is sponsored by the Office of Building Research and Standards, Office of Building Technology, State and Community Programs, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy. Response is voluntary.

3. The Study of Central Air Conditioner Life Cycle Costs will survey participants in central air conditioner and heat pump markets to determine current retail unitary equipment prices and installation costs by equipment efficiency level. The information collection will include contractors participating in the residential unitary equipment market. Consumers will not be surveyed. Questions will attempt to gather data related to equipment costs, sales volumes, and other information pertinent to the determination of retail prices.

4. The respondents are likely to be businesses or other for-profit organizations.

5. The total reporting burden is estimated to be 375 hours (250 respondents reporting with an average estimated burden of 1.5 hours per response).

Issued in Washington, DC, on October 19, 1999.

**Dan W. Reicher,**

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

[FR Doc. 99–27733 Filed 10–22–99; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Information Collection Submitted for Review and Request for Comments

October 19, 1999.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the

Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of June 23, 1999 (64 FR 33473) and has made this notation in its submission to OMB.

**DATES:** Comments regarding this collection of information are best assured of having their full effect if received on or before November 24, 1999.

**ADDRESSES:** Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, 726 Jackson Place, NW, Washington, DC 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Office of the Chief Information Officer, Attention: Mr. Michael Miller, 888 First Street, NE, Washington, DC 20426.

**FOR FURTHER INFORMATION CONTACT:** Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 208–2425, and by e-mail at mike.miller@ferc.fed.us.

**SUPPLEMENTARY INFORMATION:**

### Description

The energy information collection submitted to OMB for review contains:

*1. Collection of Information:* FERC–598 ''Determination for Entities Seeking Exempt Wholesale Generator Status.''

*2. Sponsor:* Federal Energy Regulatory Commission.

*3. Control No.:* OMB No. 1902–0166. The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no changes to the existing collection. There is a change to the reporting burden as a result of a decline in the number of applications submitted to the Commission. These are mandatory collection requirements.

*4. Necessity of Collection of Information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the provisions of Section 32 of the Public Utility Holding Company Act of 1935 (PUHCA) as added and redesignated by Section 711 of the Energy Policy Act of 1992. Section 32(a) of PUHCA defines an Exempt Wholesale Generator (EWG) as an individual determined by the Commission to be engaged directly or indirectly through one or more affiliates, and exclusively in the business of owning and/or operating all or part of eligible facilities and selling electric energy at the wholesale. An eligible facility may include interconnecting transmission facilities necessary to effect wholesale power sales. Persons granted EWG status to be exempt from regulation under PUHCA. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 365.

*Respondent Description:* The respondent universe currently comprises on average, 112 respondents.

*6. Estimated Burden:* 672 total burden hours, 112 respondents, 1 response annually, 6 hours per response (average).

*7. Estimated Cost Burden to Respondents:* 672 hours ÷ 2,088 hours per year × $109,889 per year = $35,503, average cost per respondent = $317.00.

**Statutory Authority:** Sections 32(a), of the Public Utility Holding Company Act, 15 U.S.C. Sections 79z–5a.

**David P. Boegers,**

*Secretary.*

[FR Doc. 99–27709 Filed 10–22–99; 8:45 am]

**BILLING CODE 6717–01–M**

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP00–4–000]**

## Florida Gas Transmission Company; Notice of Application

October 19, 1999.

Take notice that on October 12, 1999, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP00–4–000 an application pursuant to Section 7(c) of the Natural Gas Act (NGA) for a certificate of public convenience and necessity for permission and authorization to: (i) Upgrade two compressor engines at Compressor Station 11A by increasing the horsepower by approximately 4,800 horsepower, and (ii) install the necessary auxiliary facilities at Compressor Station 11A, hereinafter referred to as ''Expansion Facilities'', all as more fully set forth in the application which 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 (call 202–208–2222 for assistance).

Any questions regarding the application should be directed to Mr. Stephen T. Veatch, Director of Certificates and Regulatory Reporting, Suite 3997, 1400 Smith Street, Houston, TX 77002 or call (713) 853–6549.

The purpose of the proposed Expansion Facilities is to build facilities which enables FGT to transport 80,000 MMMBtu per day from the Destin Pipeline interconnect in Mississippi, to provide additional firm Western Division transportation service to Alabama Electric Cooperative, Inc. (AEC) under FGT's Rate Schedule FTS–WD pursuant to Subpart B of Part 284 of the Commission's Regulations. FGT and AEC have executed a September 22, 1999 Firm Transportation Service Agreement, for a primary term of twelve years, with a ten year rollover option. FGT is proposing to charge negotiated rates for the service. The estimated construction cost is $6.9 million and will be 100% reimbursable, with a required in-service date of December 2001.

FGT requests that the Commission issue a final order granting the authorizations requested herein by November 1, 2000 in order to complete construction prior to FGT's Peak Spring and Summer Periods starting April 1, 2001.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before November 9, 1999, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. 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.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing

it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure provided for, unless otherwise advised, it will be unnecessary for FGT to appear or be represented at the hearing.

**David P. Boergers,**

*Secretary.*

[FR Doc. 99–27710 Filed 10–22–99; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP98–40–024]**

## Panhandle Eastern Pipe Line Company; Notice of Offer of Settlement

October 19, 1999.

Take notice that on October 13, 1999, the Missouri Public Service Commission (MoPSC), Panhandle Eastern Pipe Line Company (Panhandle) and Missouri Gas Energy, a division of Southern Union Company (collectively called Sponsoring Parties) filed an Offer of Settlement under Rule 602 of the Commission's Rules of Practice and Procedure in the captioned docket. Sponsoring Parties filed the Offer of Settlement to facilitate and expedite the Commission's implementation of the decision of the United States Court of Appeals for the District of Columbia Circuit in *Public Service Company of Colorado.*[1] The Sponsoring Parties state the Offer of Settlement is intend to provide relief to small producers from their *ad valorem* tax refund liability and to reduce the administrative burdens on the Commission, its staff, first sellers and numerous interest owners and intervenors associated with the various proceedings pending at the Commission relating to such tax liability. A copy of the Offer of Settlement is on file with the Commission and is available for public inspection in the Public Reference Room. The Offer of Settlement may be viewed on the web at *http://www/ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

To achieve these objectives, the Offer of Settlement provides a $50,000 credit towards the *ad valorem* tax refund liability of the first sellers listed in the Statement of Refunds Due filed by Panhandle on November 10, 1997, as adjusted in Exhibit A to the Offer of Settlement to reflect subsequent corrections. Any first seller with a refund obligation of $50,000 or less for principal and interest will have its *ad valorem* tax refund waived in its entirety. First sellers with refund liabilities of $50,000 or less are not required to give up any rights or provide any other consideration as a condition to receiving the benefits. Sponsoring Parties state the Offer of Settlement would eliminate the entire refund obligation of 56 of the 105 first sellers on the Panhandle system.

Any first seller with a refund liability in excess of $50,000 as listed in the Statement of Refunds Due filed by Panhandle on November 10, 1997, as adjusted in Exhibit A to reflect subsequent corrections, is eligible to have its refund obligation reduced by $50,000. In order to be eligible for the $50,000 credits, such first sellers must pay the remaining refund liability (after deducting the $50,000), plus additional accrued interest through date of payment, and agree to withdraw all interventions, protests and court appeals related to the *ad valorem* tax refund. First sellers who accept the terms for partial waivers under the Offer of Settlement will be responsible for negotiating with their underlying interest owners the amount of the waiver relief applicable to their interest owners.

The Offer of Settlement also provides that any first seller listed in Panhandle's Statement of Refunds Due with a refund liability of $50,000 or less for principal and interest who has refunded to Panhandle amounts which would be waived under Article II will receive a refund from Panhandle of such amounts, plus additional accrued interest through date of payment by Panhandle. In addition, Article III provides that if Panhandle has previously received refunds directly from an interest owner whose obligation was incurred under a first seller whose entire refund obligation is waived pursuant to the agreement, Panhandle will refund such payments to the interest owner within 60 days of the effective date of the settlement. If jurisdictional refunds exceed the amount of undisbursed Kansas *ad valorem* tax refunds held by Panhandle, Panhandle will maintain a credit balance for the jurisdictional refunds. Any subsequent Kansas *ad valorem* tax refunds received by Panhandle will be used to reduce any credit balance before any disbursement is made to customers. One hundred twenty days (120) after the effective date of the Offer of Settlement, Panhandle shall be permitted to direct bill any remaining credit amounts.

In accordance with § 385.602(f), initial comments on the Offer of Settlement are due on November 2, 1999 and any reply comments are due November 12, 1999.

**David P. Boergers,**

*Secretary.*

[FR Doc. 99–27711 Filed 10–22–99; 8:45 am]

**BILLING CODE 6717–01–M**

[1] *Public Service Co. of Colorado, et al.*, 80 FERC ¶ 61,264 (1997), *reh'g denied,* 82 FERC ¶ 61,058 (1998). Appeal pending. *Anadarko Petroleum Corporation* v. *FERC,* Case No. 98–1227 *et al.*

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Sunshine Act Meeting

October 20, 1999.

The following notice of meeting is published pursuant to section 3(a) of the goverment in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

**AGENCY HOLDING MEETING:** Federal Energy Regulatory Commission.

**DATE AND TIME:** October 27, 1999, 10:00 a.m.

**PLACE:** Room 2C, 888 First Street, N.E., Washington, D.C. 20426.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda.

**Note**—Items listed on the agenda may be deleted without further notice.

**CONTACT PERSON FOR MORE INFORMATION:** David P. Boergers, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information center.

**Consent Agenda—Hydro, 728th—Meeting October 27, 1999, Regular Meeting (10:00 a.m.)**

CAH–1.
DOCKET# P–2113, 119, WISCONSIN VALLEY IMPROVEMEMT COMPANY
CAH–2.
DOCKET# P–6879, 022, SOUTHEASTERN HYDRO-POWER, INC.
CAH–3.
DOCKET# EL96–47, 000, NIAGARA MOHAWK POWER CORPORATION AND NORTHERN ELECTRIC POWER COMPANY, L.P.
OTHERS# P–5276, 054, NIAGARA MOHAWK POWER CORPORATION AND NORTHERN ELECTRIC POWER COMPANY, L.P.
CAH–4.
DOCKET# P–1494, 160, GRAND RIVER DAM AUTHORITY
CONSENT AGENDA—ELECTRIC
CAE–1.
DOCKET# ER99–4318, 000, ENTERGY SERVICES, INC.
CAE–2.
DOCKET# ER99–4308, 000, GEORGIA POWER COMPANY
CAE–3.
DOCKET# ER99–4323, 000, PACIFIC GAS AND ELECTRIC COMPANY
CAE–4.
DOCKET# ER99–4378, 000, CENTRAL ILLINOIS LIGHT COMPANY
CAE–5.
DOCKET# ER99–4327, 000, SOUTHWEST POWER POOL, INC.
CAE–6.
DOCKET# ER99–4371, 000 PJM INTERCONNECTION L.L.C.
CAE–7.
DOCKET# ER99–4400, 000, SOUTHERN COMPANY SERVICES, INC.
CAE–8.
DOCKET# ER99–3531, 000, SOUTHERN COMPANY SERVICES, INC.
OTHER#S ER99–4384, 000, SOUTHERN COMPANY SERVICES, INC.
CAE–9.
DOCKET# ER99–4415, 000, ILLINOIS POWER COMPANY
OTHER# EL00–7, 000, ILLINOIS POWER COMANY
CAE–10.
DOCKET# ER99–3804, 000, NIAGARA MOHAWK POWER CORPORATION AND NEW YORK STATE ELECTRIC & GAS CORPORATION
OTHER#S EL99–84, 000, AMERGEN ENERGY COMPANY, LLC
EC99–98, 000, NIAGARA MOHAWK POWER CORPORATION AND NEW YORK STATE ELECTRIC & GAS CORPORATION
ER99–754, 002, AMERGEN ENERGY COMPANY, LLC
CAE–11. OMITTED
CAE–12.
DOCKET# ER99–2647, 000, AMERICAN TRANSMISSION SYSTEMS, INC.
OTHER#S EL99–71, 000, FIRSTENERGY OPERATING COMPANIES
ER99–2609, 000, FIRSTENERGY OPERATING COMPANIES
EC99–53, 000, FIRSTENERGY OPERATING COMPANIES, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, TOLEDO EDISON COMPANY, OHIO EDISON COMPANY, PENNSYLVANIA POWER COMPANY AND AMERICAN TRANSMISSION SYSTEMS INC.
CAE–13.
DOCKET# ER99–2332, 000, SIERRA PACIFIC POWER COMPANY
OTHER#S ER99–2338, 000, NEVADA POWER COMPANY
CAE–14.
DOCKET# ER99–2021, 001, CALIFORNIA POWER EXCHANGE CORPORATION
CAE–15.
DOCKET# ER97–1523, 015, CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., NEW YORK STATE ELECTRIC & GAS CORPORATION, NIAGARA MOHAWK POWER CORPORATION, ORANGE AND ROCKLAND UTILITIES, INC. AND ROCHESTER GAS AND ELECTRIC CORPORATION
OTHER#S OA97–470, 014, CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., NEW YORK STATE ELECTRIC & GAS CORPORATION, NIAGARA MOHAWK POWER CORPORATION, ORANGE AND ROCKLAND UTILITIES, INC. AND ROCHESTER GAS AND ELECTRIC CORPORATION
ER97–4234, 012, CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., NEW YORK STATE ELECTRIC & GAS CORPORATION, NIAGARA MOHAWK POWER CORPORATION, ORANGE AND ROCKLAND UTILITIES, INC. AND ROCHESTER GAS AND ELECTRIC CORPORATION
CAE–16.
DOCKET# ER97–697, 003, ALLEGHENY POWER SERVICE CORPORATION
CAE–17.
DOCKET# ER97–1523, 012, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC., CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., NEW YORK STATE ELECTRIC & GAS CORPORATION, NIAGARA MOHAWK POWER CORPORATION, ORANGE AND ROCKLAND UTILITIES, INC. AND ROCHESTER GAS AND ELECTRIC CORPORATION
OTHER#S ER97–4234, 009, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC., CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., NEW YORK STATE ELECTRIC & GAS CORPORATION, NIAGARA MOHAWK POWER CORPORATION, ORANGE AND ROCKLAND UTILITIES, INC. AND ROCHESTER GAS AND ELECTRIC CORPORATION
OA97–470, 011, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC., CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., NEW YORK STATE ELECTRIC & GAS CORPORATION, NIAGARA MOHAWK POWER CORPORATION, ORANGE AND ROCKLAND UTILITIES, INC. AND ROCHESTER GAS AND ELECTRIC CORPORATION
CAE–18.
DOCKET# EC99–53, 000, FIRSTENERGY OPERATING COMPANIES, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, TOLEDO EDISON COMPANY, OHIO EDISON COMPANY, PENNSYLVANIA POWER COMPANY AND AMERICAN TRANSMISSION SYSTEMS, INC.
CAE–19.
DOCKET# ER92–331, 006, CONSUMERS ENERGY COMPANY
OTHER#S ER92–332, 006, CONSUMERS ENERGY COMPANY
CAE–20.
OMITTED
CAE–21.
DOCKET# EL99–75, 001, CALIFORNIA ELECTRICITY OVERSIGHT BOARD
CAE–22.
DOCKET# ER99–55, 001, AVISTA CORPORATION
OTHER#S ER99–55, 002, AVISTA CORPORATION
CAE–23.
DOCKET# EL98–71, 001, PJM INTERCONNECTION, L.L.C.
CAE–24.
DOCKET# OA97–163, 002, MID-CONTINENT AREA POWER POOL

OTHER#S ER96–1447, 002, MID-CONTINENT AREA POWER POOL
EL97–53, 001, ENRON POWER MARKETING, INC. V. MID-CONTINENT AREA POWER POOL
OA97–163, 007, MID-CONTINENT AREA POWER POOL
OA97–658, 001, MID-CONTINENT AREA POWER POOL
OA97–658, 007, MID-CONTINENT AREA POWER POOL
ER97–1162, 001, MID-CONTINENT AREA POWER POOL
ER97–1162, 006 MID-CONTINENT AREA POWER POOL
EL98–76, 001 WESTERN RESOURCES, INC. V. MID-CONTINENT AREA POWER POOL

CAE–25.
DOCKET# OA97–130, 004, MINNESOTA POWER, INC.
CAE–26.
DOCKET# RM99–12, 000, DESIGNATION OF ELECTRIC RATE SCHEDULE SHEETS
CAE–27.
OMITTED
CAE–28.
DOCKET# RM00–1, 000, ELECTRONIC FILING OF FERC FORM NOS. 423, 714 AND 715
CAE–29.
DOCKET# ER99–417, 000, VIRGINIA ELECTRIC AND POWER COMPANY

**Consent agenda—GAS AND OIL**

CAG–1.
DOCKET# RP99–513, 000, QUESTAR PIPELINE COMPANY
CAG–2.
OMITTED
CAG–3.
DOCKET# RP99–512, 000, TRUNKLINE GAS CORPORATION
CAG–4.
DOCKET# RP99–514, 000, DESTIN PIPELINE COMPANY, L.L.C.
CAG–5.
DOCKET# RP99–484, 000, NATIONAL FUEL GAS SUPPLY CORPORATION
CAG–6.
DOCKET# RP99–176, 007, NATURAL GAS PIPELINE COMPANY OF AMERICA
OTHER# RP99–176, 008, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–7.
OMITTED
CAG–8.
OMITTED
CAG–9.
DOCKET# RP96–312, 024, TENNESSEE GAS PIPELINE COMPANY
CAG–10.
DOCKET# RP99–475, 000, TEXAS GAS TRANSMISSION CORPORATION
CAG–11.
DOCKET# TM00–1–22, 000, CNG TRANSMISSION CORPORATION
CAG–12.
DOCKET# RP00–5, 000, COLORADO INTERSTATE GAS COMPANY
CAG–13.
DOCKET# RP99–515, 000, FLORIDA GAS TRANSMISSION COMPANY
CAG–14.
DOCKET# RP00–3, 000, GARDEN BANKS GAS PIPELINE, LLC
CAG–15.
OMITTED
CAG–16.
DOCKET# TO00–1–25, 000, MISSISSIPPI RIVER TRANSMISSION CORPORATION
CAG–17.
DOCKET# RP00–13, 000, NORTHWEST PIPELINE CORPORATION
CAG–18.
DOCKET# RP00–2, 000, OVERTHRUST PIPELINE COMPANY
CAG–19.
OMITTED
CAG–20.
DOCKET# RP99–518, 000, PG&E GAS TRANSMISSION, NORTHWEST CORPORATION
OTHER# RP99–518, 001, PG&E GAS TRANSMISSION, NORTHWEST CORPORATION
CAG–21.
DOCKET# RP00–8, 000, RELIANT ENERGY GAS TRANSMISSION COMPANY
CAG–22.
OMITTED
CAG–23.
DOCKET# RP00–7, 000, TEXAS EASTERN TRANSMISSION CORPORATION
CAG–24.
OMITTED
CAG–25.
OMITTED
CAG–26.
DOCKET# TM00–1–30, 000, TRUNKLINE GAS COMPANY
CAG–27.
OMITTED
CAG–28.
DOCKET# PR99–16, 000, DOW INTRASTATE GAS COMPANY
OTHER#S PR99–16, 001, DOW INTRASTATE GAS COMPANY
CAG–29.
DOCKET# RP98–256, 002, COLUMBIA GULF TRANSMISSION COMPANY
CAG–30.
DOCKET# RP96–312, 023, TENNESSEE GAS PIPELINE COMPANY
CAG–31.
DOCKET# PR99–6, 000, PG&E GAS TRANSMISSION TECO, INC.
OTHER#S PR99–6, 001, PG&E GAS TRANSMISSION TECO, INC.
PR99–6, 002, PG&E GAS TRANSMISSION TECO, INC.
CAG–32.
DOCKET# OR99–14, 000, EQUILON PIPELINE COMPANY LLC
CAG–33.
OMITTED
CAG–34.
OMITTED
CAG–35.
OMITTED
CAG–36.
DOCKET# RP99–355, 001, BALTIMORE GAS AND ELECTRIC COMPANY
CAG–37.
DOCKET# TM99–1–22, 003, CNG TRANSMISSION CORPORATION
OTHER#S TM98–2–22, 000, CNG TRANSMISSION CORPORATION
TM99–1–22, 004, CNG TRANSMISSION CORPORATION
TM99–1–22, 005, CNG TRANSMISSION CORPORATION
TM99–1–22, 006, CNG TRANSMISSION CORPORATION
TM99–1–22, 007, CNG TRANSMISSION CORPORATION
CAG–38.
DOCKET# RP96–290, 003, MICHIGAN GAS STORAGE COMPANY
OTHER#S RP96–290, 002, MICHIGAN GAS STORAGE COMPANY
CAG–39.
DOCKET# MG99–19, 001, PINE NEEDLE LNG COMPANY, L.L.C.
CAG–40.
DOCKET# OR99–16, 000, COLONIAL PIPELINE COMPANY
CAG–41.
DOCKET# CP99–211, 000, USG PIPELINE COMPANY
CAG–42.
DOCKET# CP99–262, 000, TENNESSEE GAS PIPELINE COMPANY
CAG–43.
DOCKET# CP99–563, 000, EASTERN SHORE NATURAL GAS COMPANY
CAG–44.
OMITTED
CAG–45.
DOCKET# CP96–152, 020, KANSAS PIPELINE COMPANY
CAG–46.
DOCKET# CP96–178, 011, MARITIMES & NORTHEAST PIPELINE, L.L.C.
OTHER#S CP96–809, 009, MARITIMES & NORTHEAST PIPELINE, L.L.C.
CP96–810, 004, MARITIMES & NORTHEAST PIPELINE, L.L.C.
CP97–238, 010, MARITIMES & NORTHEAST PIPELINE, L.L.C.
CP98–724, 001, MARITIMES & NORTHEAST PIPELINE, L.L.C.
CP98–797, 001, MARITIMES & NORTHEAST PIPELINE, L.L.C.
CAG–47.
OMITTED
CAG–48.
OMITTED
CAG–49.
OMITTED
CAG–50.
DOCKET# RP00–9, 000, COLUMBIA GAS TRANSMISSION CORPORATION
CAG–51.
DOCKET# RP00–10, 000, COLUMBIA GAS TRANSMISSION CORPORATION

**Hydro Agenda**

H–1.
RESERVED

**Electric Agenda**

E–1.
RESERVED

**Oil and Gas Agenda**

*I. Pipeline Rate Matters*

PR–1.
RESERVED

*II. Pipeline Certificate Matters*

PC–1.
RESERVED

**David P. Boergers,**

*Secretary.*

[FR Doc. 99–27860 Filed 10–21–99; 11:53 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6247–2]**

### Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564–7167.

Weekly receipt of Environmental Impact Statements

Filed October 12, 1999 Through October 15, 1999

Pursuant to 40 CFR 1506.9.

*EIS No. 990372, Draft Supplement, AFS, ID,* Frank Church—River of No Return Wilderness (FC–RONRW), Implementation for the Future Management of Land and Water Resource, Bitterroot, Boise, Nez Perce, Payette and Salmon-Challis National Forests, ID, Due: February 01, 2000, Contact: Ken Wotring (208) 756–5100.

*EIS No. 990373, Final EIS, BOP, MS,* Yazoo City, Mississippi Federal Correctional Complex, Construction and Operation, Possibly Consisting of a High Security U. S. Penitentiary, Medium Security Federal Correctional Institution and Minimum Security Federal Prison, Site Selection and Possible COE Section 404 Permit, Yazoo City, Yazoo County, MS, Due: November 22, 1999, Contact: David J. Dorworth (202) 514–6470.

*EIS No. 990374, Draft EIS, SFW, CA,* Trinity River Mainstem Fishery Restoration, To Restore and Maintain the Natural Production of Anadromous Fish, Trinity and Humboldt Counties, CA, Due: December 06, 1999, Contact: Joe Polos (707) 822–7201.

*EIS No. 990375, Draft EIS, IBR, NB, KS,* Republican River Basin Long-Term Water Supply Contract Renewals for Five Irrigation Districts, Frenchman-Cambridge, Frenchman Valley and Bostwick Irrigation District in Nebraska and Bostwick No.2 and Almena Irrigation Districts on Kansas, NB and KS, Due: December 17, 1999, Contact: Jill Manring (308) 389–4622.

*EIS No. 990376, Final EIS, COE, FL,* Alligator Chain of Lakes and Lake Gentry Extreme Drawdown and Habitat Enhancement Project, Implement Aquatic Habitat Enhancement, Osceola County, FL, Due: November 22, 1999, Contact: Elmar Kurzbach (904) 232–2325.

*EIS No. 990377, Draft EIS, FHW, TX,* Loop 1 Extension Project, From Farm-to-Market (FM–734 (Palmer Lander) to TX–45 Highway, Funding, Travis and Williamson Counties, TX, Due: December 06, 1999, Contact: Walter Waidelich (512) 916–5988.

*EIS No. 990378, Draft EIS, FHW, TX,* TX–45 Highway Project, Extending from Anderson Mill Road (FM Road 2769) to Farm-to-Market Road 685 east of IH–35), Funding, Williamson and Travis Counties, TX, Due: December 06, 1999, Contact: Walter Waidelich (512) 916–5938.

*EIS No. 990379, Draft EIS, SFW, WA,* Simpson Washington Timberlands, Proposed Issuing of a Multiple Species Incidental Take Permit, Forest Management and Timber Harvesting, Thurston, Mason and Gray Harbor Counties, WA, Due: December 21, 1999, Contact: Jon Hale (360) 753–4371.

*EIS No. 990380, Draft EIS, SFW, WA,* Crown Pacific Project, Issuance of a Multiple Species Permit for Incidental Take, Hamilton Tree Farm, Habitat Conservation Plan, Whatcom and Skagit County, WA, Due: December 21, 1999, Contact: Jon Hale (360) 753–4371.

*EIS No. 990381, Final EIS, COE, WA,* Programmatic EIS—Puget Sound Confined Disposal Site Study, Implementation, WA, Due: November 22, 1999, Contact: Stephen Martin (206) 764–3631.

*EIS No. 990382, Final EIS, NPS, AK,* Lower Sheehjek River Wild and Scenic River Study, Designation, Tributary of the Porcupine River, ALASKA, Due: November 22, 1999, Contact: Jack Mosby (907) 256–2650.

*EIS No. 990383, Draft EIS, FHW,* Interstate 215 (I–215) Transportation Improvements, From the short segments of CA–60 and CA–91 in the Cities of Riverside and Moreno Valley, Funding, Riverside County, CA, Due: December 12, 1999, Contact: C. Glenn Clinton (916) 498–5037.

*EIS No. 990384, Final Supplement, UAF, NY,* Griffiss Air Force Base (AFB) Disposal and Reuse, Implementation, Oneida County, NY, Due: November 22, 1999, Contact: Jonathan D. Farthing (210) 536–2787.

*EIS No. 990385, Final EIS, FAA, CA,* San Jose International Airport Master Plan Update, Improvements include Extension of Runway 12R/30L from 10,200 ft to 11,000 ft; Extension of Runway 12L/30R, Airport Layout Plan, City of San Jose, Santa Clara County, CA, Due: November 22, 1999, Contact: John Pfeifer (650) 876–2894.

*EIS No. 990386, Draft EIS, FHW, ME,* Augusta River Crossing Study, To Reduce Traffic Deficiences within the Transportation System Serving the City of Augusta, Funding, Kennebec River, Kennebec County, ME, Due: November 15, 1999, Contact: Paul Lariviere (207) 622–8487.

The above FHW EIS should have appeared in the 10/01/99 **Federal Register**. The 45-day Comment Period is Calculated from 10/01/99.

*EIS No. 990387, Final Supplement, AFS, ID,* St. Joe Noxious Weed Control Project, Implementation, St. Maries River, St. Joe River and Little North Fork Clearwater River, Benewah, Shoshone and Latah Counties, ID, Due: November 22, 1999, Contact: Dennis Griffith (208) 245–2531.

### Amended Notices

*EIS No. 990274, Draft EIS, BLM, NV,* South Pipeline Mine Project, Proposal to Extend Gold Mining Operations, Implementation, Lander County, NV, Due: November 19, 1999, Contact: Gary; Published FR 08–06–99—Review Period extended from 10–05–99 to 11–19–99.

*EIS No. 990277, Draft EIS, AFS, CO,* White River National Forest, Revised Land and Resource Management Plan, Implementation, Eagle, Garfield, Gunnison, Mesa, Moffat and Pitkin Counties, CO, Due: February 09, 2000, Contact: Martha Ketelle (970) 945–2521. Published FR 08–13–99 Review Period Extended. from 11–05–99 to 02–09–2000.

*EIS No. 990311, Draft EIS, AFS, OR,* Ashland Creek Watershed Protection Project, Proposal to Manage Vegetation, Rogue River National Forest, Ashland Ranger District, City of Ashland, Jackson County, OR, Due: November 19, 1999, Contact: Kristi Mastrafini (541) 482–3333. Published FR 09–03–99—Review Period Extended from 10–18–99 to 11–19–99.

*EIS No. 990347, Draft EIS, SFW, CA,* San Joaquin County Multi-Species Habitat Conservation and Open Space Plan, Issuance of Incidental Take Permit, San Joaquin County, CA , Due: January 07, 2000, Contact: Ben Harrison (503) 231–2068. Published FR—10–01–99—Review Period Extended from 11–15–99 to 01–07–2000.

Dated: October 19, 1999.

**William D. Dickerson,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 99–27690 Filed 10–21–99; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6247–3]**

### Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared October 4, 1999 Through October 8, 1999 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 10, 1999 (63 FR 17856).

**Draft EISs**

*ERP No. D–APH–A82125–00 Rating EC2,* Fruit Fly Cooperative Control Program, Eradication Program, Implementation.

*Summary:* EPA had environmental concerns with the control program. To address these concerns EPA suggested that the integrated approach be updated, that the risk assessment be more comprehensive, and that mitigation measures be developed for non-target species and sensitive resources.

*ERP No. D–DOE–A08031–00 Rating EC1,* Transmission System Vegetation Management Program, Implementation, Managing Vegetation, Site Specific, Right-of-Way Grant, CA, ID, MT, OR, UT, WA and WY.

*Summary:* EPA supported the management approach, but expressed concerns with its application. EPA requested that DOE take steps to minimize adverse ecological impacts from the use of herbicides to control vegetation beneath transmission lines and at electric substations.

*ERP No. D–JUS–E81038–AL Rating EC2,* Center for Domestic Preparedness (CDP), Expand Training for State and Local Emergency First Responders, Located at Fort McClellan, Calhoun, Cleburne, Randolph, Clay, Talladega, St. Clair, Etowah and Cherokee Counties, AL.

*Summary:* EPA expressed concern regarding potential air quality and hazardous waste disposal impacts and requested that these issues be further discussed in the Final EIS.

**Final EISs**

*ERP No. F–FHW–F40353–WI,* US 12 Highway Improvement, Sauk City to Middleton, Funding and COE Section 404 Permits Issuance, Sauk and Dane Counties, WI.

*Summary:* EPA has expressed concerns based on the project's potential impacts to Baraboo Hills National Natural Landmark Area. EPA was also concerned with the methodology used to analyze secondary impacts.

*ERP No. RF–NOA–B91025–00,* American Lobster Fishery Management Plan, Implementation, To Prevent Overfishing of American Lobster and to Rebuild Lobster Stocks, Exclusive Economic Zone (EEZ) off the New England and Mid-Atlantic.

*Summary:* EPA had no comment on the project.

Dated: October 19, 1999.

**William D. Dickerson,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 99–27691 Filed 10–22–99; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6463–3]**

### Science Advisory Board; Notification of Public Advisory Committee Meeting: Environmental Economics Advisory Committee

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that several committees of the USEPA Science Advisory Board (SAB) will meet on the dates and times noted below. All times noted are Eastern Time. All meetings are open to the public, however, seating is limited and available on a first come basis. Important Notice: Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included below.

**1—Environmental Economics Advisory Committee (EEAC)**

The Environmental Economics Advisory Committee (EEAC) of the Science Advisory Board (SAB) will meet on Friday, November 12, 1999, at the U.S. Environmental Protection Agency, Ariel Rios Building—North, Room 6013, 1200 Pennsylvania Avenue, NW, Washington, DC (the entrance to the building is adjacent to the Federal Triangle Metro stop on 12th Street). The SAB main telephone number is (202) 564–4533. The meeting will begin at 9:00 a.m. and end no later than 3:00 p.m.

*Purpose of the Meeting*

The EEAC is meeting to consider and to provide advice and comment to EPA on its report Induced Travel: A Review of Recent Literature with a Discussion of Policy Issues. The EEAC will also receive a briefing by Agency personnel on the status of its efforts to develop an Economic Research Strategy and the committee will discuss its plans for additional meetings during Fiscal Year 2000.

*Background Information*

(a) *Induced Travel:* The Environmental Economics Advisory Committee has been asked to conduct an advisory review of the EPA report, Induced Travel: A Review of Recent Literature with a Discussion of Policy Issues. This follows a briefing on the subject at its April 20, 1999 meeting (see 64 FR 14232–14233). The theory of induced growth in vehicle travel hypothesizes that increases in the carrying capacity of a specific highway corridor or road network will result in an increased level of vehicle traffic. The increase in road capacity results in a decrease in the generalized cost of travel (especially the time costs of travel) and hence an increase in the demand for travel. This issue is a contentious issue among traffic engineers, transportation planners, and the environmental community. A common engineering approach assumes that demand for travel is derived from exogenous growth in economic activities, generally neglecting the inter-relationships between highway capacity, relative travel times, and overall regional accessibility.

The background document developed on this issue by EPA outlines the behavioral relationships underlying the theory of induced travel and reviews recent research that documents and empirically measures induced travel effects. The Agency believes that this research provides a strong case for the existence of induced travel effects, and in some cases suggests that a large fraction of growth in vehicle miles of travel (VMT) is directly attributable to increases in road capacity. The paper concludes with a discussion of the relevant research needs in this area and the implications for EPA policies and regulations.

(b) *Economic Research Plan:* The EEAC was asked at its April 9, 1998 meeting to provide the Agency with its advice on a list of topics proposed for inclusion in the EPA economic research program (see 63 FR 14112). The committee sent an Advisory to the EPA Administrator on September 22, 1998

(EPA–SAB–EEAC–ADV–98–005) to satisfy this request. Since that time, the Agency has continued to develop a draft Economics Research Strategy. The Agency will brief the EEAC on the status of its efforts to complete this strategy.

*Charge to the Committee*

The principal questions for the Science Advisory Board are:

(1) Is the theory of induced travel from the provision of highway capacity consistent with economic theory?

(2) Does the analytical methodology used in recent research—specifically the use of the econometric fixed effects statistical models—test the hypothesis of induced travel over the highway networks during the time periods studied?

(3) Do the empirical results of the recent research support a conclusion that induced travel has historically occurred over the national and state highway networks during the time periods studied?

*For Further Information*

Single copies of the background document on ''Induced Travel'' can be obtained by contacting Dr. Lewison Lem, U.S. Environmental Protection Agency, Office of Policy and Reinvention, Energy and Transportation Sectors Division (2126), 401 M Street, SW, Washington, DC, 20460, (202) 260–5447, FAX (202) 260–0512, or via email at: *lem.lewison@epa.gov*. No background material is to be provided on the economics research strategy.

Anyone wishing to make an oral presentation at the meeting must contact Mr. Thomas Miller, Designated Federal Officer for the Environmental Economics Advisory Committee, *in writing* no later than 4:00 pm, November, 8, 1999, at the above address, via fax (202) 501–0582, or via email at: *miller.tom@epa.gov*. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 35 copies of any written comments to the Committee are to be given to Mr. Miller no later than the time of the presentation for distribution to the Committee and the interested public. To discuss technical aspects of the meeting, please contact Mr. Miller by telephone at (202) 564–4558. A copy of the draft agenda will be available on the SAB Website (*http://www.epa.gov/sab*) or upon request from Ms. Dorothy Clark at (202) 564–4537, or by FAX at (202) 501–0582 or via e-mail at *clark.dorothy@epa.gov* no later than November 2, 1999.

**2—Radiation Advisory Committee (RAC)**

The Radiation Advisory Committee (RAC) will meet on Tuesday, November 16 through Thursday, November 18, 1999. The meeting will convene at 9 a.m. each day in the Science Advisory Board Conference Room 6013 Ariel Rios Building (North Entrance—adjacent to the entrance to the Federal Triangle Metro Stop on 12th Street), 1200 Pennsylvania Avenue, NW, Washington, DC and adjourn no later than 5:30 pm the first and second day, and no later than 2:30 pm the third day.

At this meeting, the RAC will: (a) Conduct a review of the risk assessment of radon in homes in light of the National Academy of Sciences (NAS) Biological Effects of Ionizing Radiation (BEIR VI) report. The Office of Radiation and Indoor Air (ORIA) draft document being reviewed is entitled ''Assessment of Risks from Radon in Homes,'' dated October, 1999; (b) discuss and plan for the next RAC review meeting; and (c) briefly discuss additional projects planned for review in the balance of Fiscal Year 2000 and other projects as time permits.

During this meeting, the RAC intends to draft its report in review of the ORIA draft document. This was originally reviewed by the RAC as an advisory of a white paper (see EPA-SAB-RAC-ADV–99–010, dated July 14, 1999. Also 64 FR 10294–10295, dated Wednesday, March 4, 1999) focusing on the technical aspects of the Agency's methodology for estimating cancer risks from exposure to indoor radon in light of the NAS BEIR VI committee report entitled ''Proposed EPA Methodology for Assessing Risks from Indoor Radon Based on BEIR VI,'' dated February 1999. The charge questions to be answered will include, but are not limited to areas of adequacy of the methodology and overall approach; appropriateness of assumptions behind the calculations; and the adequacy in describing and characterizing the limitations and uncertainties.

Regarding planning for upcoming reviews, the RAC will discuss with ORIA the proposed projects for Fiscal Year 2000. Among the proposed projects to be discussed are Review of an Updated Computer Model for Evaluating Atmospheric Releases of Radionuclides; Review of a Draft Uranium Mining Technologically Enhanced Naturally Occurring Radioactive Materials (TENORM ) Technical Report; Review of the Multi-Agency Radiation Laboratory Analytical Protocols (MARLAP) Manual; and proposed project sheets on self-initiated topics that are being explored by the RAC, namely Orphan Source Contamination of Metals, and Border Detectors.

*For Further Information*

Members of the public wishing further information concerning the meeting, such as copies of the proposed meeting agenda, or who wish to submit written comments should contact Mrs. Diana L. Pozun at (202) 564–4544; fax (202) 501–0582, or via E-Mail at: *pozun.diana@epa.gov*. Members of the public who wish to make a brief oral presentation to the Committee must contact Dr. K. Jack Kooyoomjian *in writing* (by letter, fax, or by e-mail—see contact information below) no later than 12 noon Eastern Time, Tuesday, November 9, 1999 in order to be included on the Agenda. For further information, contact Dr. K. Jack Kooyoomjian, Designated Federal Officer for the Radiation Advisory Committee, Science Advisory Board (1400A), U.S. EPA, Washington, DC 20004, phone (202)-564–4557; fax (202)-501–0582; or via E-Mail at: *kooyoomjian.jack@epa.gov*.

For questions pertaining to the Review of the Assessment of Risks from Radon in Homes, please contact Dr. Jerome S. Puskin, ORIA (Mail Code 6603J), U.S. EPA, 401 M Street, SW, Washington, DC 20460; tel. (2020 564-9212, or Fax (202) 565–2065, or E-mail: *puskin.jerome@epa.gov*. For questions on any other topics discussed between the SAB's RAC and the ORIA staff, please contact Dr. Mary E. Clark, (6601J), ORIA, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, tel. (202) 564–9348; Fax (202) 565–2043; or E-mail: *clark.marye@epa.gov*. Documents pertaining to BEIR VI may also be obtained on the world wide web at the following address: *http://www4.nas.edu/cls/brerhome.nsf* and then click on ''Publication List.'' The documents are in ascending chronological order, with BEIR VI being published in February, 1998 (near the end of the list). The documents pertaining to BEIR VI may also be obtained on the world wide web at the following address: *http://www.nap.edu/reading room* and search on ''radon.''

**3—Clean Air Scientific Advisory Committee (CASAC)**

The Clean Air Scientific Advisory Committee (CASAC) of the Science Advisory Board (SAB) will meet on Thursday, November 18, 1999 at the Hawthorne Suites, 300 Meredith Drive Durham, NC 27713, tel. (919) 361–1234.

The meeting will begin at 8:30 a.m. and end no later than 5 p.m.

*Purpose of the Meeting*

The Committee will continue its review of the carbon monoxide (CO) national ambient air quality standards (NAAQS) with a review of the National Center for Environmental Assessment's (NCEA) revised draft *Air Quality Criteria for Carbon Monoxide* (Second External Review Draft) October 1999, EPA/600/P–99/001B. At this meeting (the second in a series of meetings—see EPA–SAB–CASAC–LTR–99–003 for results of that first review), EPA is seeking advice and comment from CASAC with regard to the scientific soundness of the draft CO Criteria Document for its subsequent use in providing scientific basis for Agency decisions on retention or the possible need for revision to the existing CO NAAQS. The CASAC review will focus on the extent to which the draft document: (1) Adequately identifies and poses pertinent issues that need to be addressed in the document; (2) accurately and concisely summarizes relevant key findings from previous CO criteria review(s); (3) accurately and concisely summarizes and assesses important newly available pertinent information (or have any important new studies been omitted?); (4) appropriately interprets and synthesizes the assessed information; and (5) arrives at sound conclusions and findings, taking into account the newly available data assessed. The CASAC will also conduct a Consultation with the Office of Air Quality Planning and Standards (EXPOS) (of the Office of Air and Radiation) on its plans for the draft Carbon Monoxide Staff Paper and related analyses. CASAC will receive a briefing from ORD concerning the review process and schedule for the upcoming CASAC review of the Particulate Matter NAAQS (which begins on December 2, 1999—this meeting will be the subject of a subsequent **Federal Register** notice).

For information on obtaining copies of the second external review draft of the Air Quality Criteria for Carbon Monoxide, or to obtain information concerning contact individuals, please see 64 FR 55923, October 15, 1999. (For information concerning the *first* external review draft of the Air Quality Criteria for Carbon Monoxide, please see 64 FR 13198–13199, March 17, 1999.)

*For Further Information Concerning the Meeting*

Members of the public desiring additional information about the meeting should contact Mr. Robert Flaak, Designated Federal Officer, Clean Air Scientific Advisory Committee, Science Advisory Board (1400A), U.S. EPA, 401 M Street, SW, Washington, DC 20460; telephone/voice mail at (202) 564–4546; fax at (202) 501–0582; or via e-mail at *flaak.robert@epa.gov*. A copy of the draft agenda will be available approximately two weeks prior to the meeting on the SAB website (*http://www.epa.gov/sab*) or from Ms. Diana Pozun at (202) 564–4544; FAX: (202) 501–0582; or e-mail at: *pozun.diana@epa.gov*.

Members of the public who wish to make a brief oral presentation to the CASAC must contact Mr. Flaak *in writing* (by letter, fax or e-mail—see previously stated information) no later than 12 noon Eastern Time, Wednesday, November 10, 1999 in order to be included on the Agenda.

**4—Data From Testing on Human Subjects Subcommittee (DTHSS)**

The Joint Science Advisory Board/Scientific Advisory Panel (SAB/SAP) Data from Testing on Human Subjects Subcommittee (DTHSS) will meet on November 30, 1999 at the Sheraton Crystal Hotel, 1800 Jefferson Davis Highway, Arlington VA 22202. The hotel telephone number is 703–486–1111. The meeting will begin at 8:30 am and end no later than 7:30 pm.

*Purpose of the Meeting:* The DTHSS is meeting to discuss issues on which the Subcommittee could not reach consensus following its initial meeting on December 10–11, 1998 (That meeting was announced in the **Federal Register** at 63 FR 64714–64715, November 23, 1998). The complete draft Charge identifying and addressing these issues will be posted on the SAB Website (*http://www.epa.gov/sab*) by October 30, 1999.

*Availability of Review Materials:* There are *no new review materials for this meeting,* however, hard copies of the EPA primary background documents for the *previous meeting* may be obtained by contacting: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; Office location: Room 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202; telephone: (703) 305–5805.

*For Further Information:* Members of the public desiring additional information about the conduct of the meeting should contact Mr. Samuel Rondberg, (1400a), Co-Designated Federal Officer, DTHSS, Science Advisory Board, U.S. EPA, 401 M Street, SW, Washington, DC 20460; telephone/voice mail at (301) 812–2560; fax at (410) 286–2689; or via e-mail at *samuelr717@aol.com* or Dr. Stephanie R. Irene, Co-Designated Federal Officer, U.S. EPA, Office of Pesticide Programs, Environmental Fate and Effects Division (7505C), 401 M St., SW, Washington, DC 20460, telephone/voice mail 703–305–5024, fax 703–305–6309, email to *Irene.Stephanie@epa.gov*. A copy of the draft agenda will be available on the SAB Website (*http://www.epa.gov/sab*) or upon request from Ms. Wanda Fields (202) 564–4539, or by FAX at (202) 501–0582 or via e-mail at *fields.wanda@epa.gov* no later than November 15, 1999.

*Providing Oral or Written Comments:* Members of the public who wish to make a brief oral presentation to the Committee must contact Mr. Rondberg in writing (by letter, or by e-mail—see previously stated information) no later than 12 noon Eastern Time, November 19, 1999 in order to be included on the Agenda. Written comments may be sent by mail to: The Public Information and Records Integrity Branch (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by delivery service, bring comments to: Room 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, Virginia 22202. Comments and data also may be submitted electronically by sending electronic mail (E-Mail) to: *opt-docket@epamail.epa.gov*. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data also will be accepted on disks in WordPerfect 8.0 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number OPP–98–31247. No Confidential Business Information (CBI) should be submitted through E-Mail. Electronic comments may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under **SUPPLEMENTARY INFORMATION** below.

*Supplementary Information:* The Agency encourages that written statements be submitted before the meeting to provide Panel Members time to consider and review the comments. Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information marked CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. An edited copy of the comment that

does not contain the CBI material must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket. All comments and materials received will be made part of the public record and will be considered by the Panel.

A public record has been established for this notice (including comments and data submitted electronically) under docket number OPP–98–31247. A public version of this record, including printed versions of electronic comments, which does not include information claimed as CBI, will be available for inspection from 8:30 am to 4 pm, Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, Virginia 22202.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in Availability of Review Materials earlier in this Notice.

### Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date (usually one week before the meeting), may be mailed to the relevant SAB committee or subcommittee; comments received too close to the meeting date will normally be provided to the committee at its meeting, or mailed soon after receipt by the Agency. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in the Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256.

### Meeting Access

Individuals requiring special accommodation at this meeting, including wheelchair access, should contact the appropriate DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: October 19, 1999.

**John R. Fowle III,**

*Acting Staff Director, Science Advisory Board.*

[FR Doc. 99–27795 Filed 10–22–99; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

**[Report No. 2365]**

### Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

October 14, 1999.

Petitions for Reconsideration and Clarification has been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents is available for viewing and copying in Room CY–A257, 445 12th Street, SW, Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by November 9, 1999. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

*Subject:* 1998 Biennial Regulatory Review—Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms (CC Docket No. 98–171).

*Number of Petitions Filed:* 1.

*Subject:* Policy and Rules Concerning the Interstate Interexchange Marketplace (CC Docket No. 96–61).

*Number of Petitions Filed:* 1.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 99–27528 Filed 10–22–99; 8:45 am]

BILLING CODE 6712–01–M

## FEDERAL COMMUNICATIONS COMMISSION

**[Report No. 2367]**

### Petitions for Reconsideration of Action in Rulemaking Proceeding

October 18, 1999.

Petition for Reconsideration has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A247, 445 12th Street, SW, Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to this petition must be filed by November 9, 1999. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

*Subject:* Petition of Ameritech Corporation for Forbearance from Enforcement of Section 275(a) (CC Docket No. 98–65).

*Number of Petitions Filed:* 1.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 99–27771 Filed 10–22–99; 8:45 am]

BILLING CODE 6712–01–M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–3140–EM]**

### California; Amendment No. 3 to Notice of an Emergency Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of an emergency declaration for the State of California (FEMA–3140–EM), dated September 1, 1999, and related determinations.

**EFFECTIVE DATE:** October 13, 1999.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this disaster is closed effective October 13, 1999.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis

Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Lacy E. Suiter,**

*Executive Associate Director, Response and Recovery Directorate.*

[FR Doc. 99–27755 Filed 10–22–99; 8:45 am]

**BILLING CODE 6718–02–P**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1302–DR]**

### Connecticut; Amendment No. 3 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Connecticut (FEMA–1302–DR), dated September 23, 1999, and related determinations.

**EFFECTIVE DATE:** October 18, 1999.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Connecticut is hereby amended to include the Public Assistance program among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 23, 1999:

The counties of Fairfield and Hartford for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Lacy E. Suiter,**

*Executive Associate Director, Response and Recovery Directorate.*

[FR Doc. 99–27749 Filed 10–22–99; 8:45 am]

**BILLING CODE 6718–02–P**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1302–DR]**

### Connecticut; Amendment No. 2 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Connecticut (FEMA–1302–DR), dated September 23, 1999, and related determinations.

**EFFECTIVE DATE:** October 13, 1999.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Connecticut is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 23, 1999:

Litchfield County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Robert J. Adamcik,**

*Deputy Associate Director, Response and Recovery Directorate.*

[FR Doc. 99–27754 Filed 10–22–99; 8:45 am]

**BILLING CODE 6718–02–P**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1300–DR]**

### Florida; Amendment No. 3 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Florida, (FEMA–1300–DR), dated September 22, 1999, and related determinations.

**EFFECTIVE DATE:** October 18, 1999.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Florida is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 22, 1999:

Palm Beach County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Lacy E. Suiter,**

*Executive Associate Director, Response and Recovery Directorate.*

[FR Doc. 99–27748 Filed 10–22–99; 8:45 am]

**BILLING CODE 6718–02–P**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–3150–EM]**

### Florida; Amendment No. 1 to Notice of an Emergency Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of an emergency for the State of Florida, (FEMA–3150–EM), dated October 15, 1999, and related determinations.

**EFFECTIVE DATE:** October 16, 1999.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** The notice of an emergency for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of October 15, 1999, 1999:

The counties of Brevard, Broward, Charlotte, Collier, Dade, DeSoto, Glades, Hardee, Hendry, Highlands, Hillsborough, Indian River, Lake, Lee, Manatee, Martin, Monroe, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, St. Lucie,

Sarasota, Seminole, and Volusia for Categories A and B (debris removal and emergency protective measures) under the Public Assistance program (already designated for direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Lacy E. Suiter,**

*Executive Associate Director, Response and Recovery Directorate.*

[FR Doc. 99–27751 Filed 10–22–99; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1303–DR]**

### Maryland; Amendment No. 3 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Maryland, (FEMA–1303–DR), dated September 24, 1999, and related determinations.

**EFFECTIVE DATE:** October 18, 1999.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Maryland is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 24, 1999:

Anne Arundel County for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Lacy E. Suiter,**

*Executive Associate Director, Response and Recovery Directorate.*

[FR Doc. 99–27750 Filed 10–22–99; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1294–DR]**

### Commonwealth of Pennsylvania; Amendment No. 3 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the Commonwealth of Pennsylvania, (FEMA–1294–DR), dated September 18, 1999, and related determinations.

**EFFECTIVE DATE:** October 13, 1999.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the Commonwealth of Pennsylvania is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 18, 1999:

Berks County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Robert J. Adamcik,**

*Deputy Associate Director, Response and Recovery Directorate.*

[FR Doc. 99–27753 Filed 10–22–99; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1293–DR]**

### Virginia; Amendment No. 6 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the Commonwealth of Virginia, (FEMA–1293-DR), dated September 18, 1999, and related determinations.

**EFFECTIVE DATE:** October 12, 1999.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the Commonwealth of Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 18, 1999:

The counties of Brunswick, Charles City, Essex, New Kent, Northampton, Richmond and Westmoreland for Individual Assistance (already designated for Public Assistance).

The independent city of Poquoson, and the counties of Fairfax, Hanover and Henrico for Individual Assistance.

The independent city of Hopewell for Individual Assistance and Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Lacy E. Suiter,**

*Executive Associate Director, Response and Recovery Directorate.*

[FR Doc. 99–27752 Filed 10–22–99; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part

225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (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 November 18, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1413:

1. JD Financial Group, Inc., Evanston, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Pan American Bank, Chicago, Illinois. Comment regarding this application must be received not later than November 5, 1999.

2. Merchants Merger Corp., New Berlin, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Pyramid Bancorp. Inc., Grafton, Wisconsin, and thereby indirectly acquire Grafton State Bank, Grafton, Wisconsin.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480–0291:

1. Truman Bancshares, Inc., Truman, Minnesota, and its wholly owned subsidiary, Martin County Fidelity Bancshares Company, Fairmont, Minnesota; to acquire 87.65 percent of the voting shares of Martin County National Bank, Fairmont, Minnesota. Martin Couty Fidelity Bancshares Company has also applied to become a bank holding company.

Board of Governors of the Federal Reserve System, October 19, 1999.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 99–27725 Filed 10–22–99; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a notice (FR Doc. 99–27116) published on page 56210 of the issue for Monday, October 18, 1999.

Under the Federal Reserve Bank of Philadelphia heading, the entry for Patriot Bank Corp., Inc., Pottstown, Pennsylvania, is revised to read as follows:

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. Patriot Bank Corp., Inc., Pottstown, Pennsylvania; to acquire ZipFinancial.com, Inc., and thereby engage *de novo* in providing data processing and data transmission services via the Internet, pursuant to section 225.28(b)(14) of Regulation Y, and in providing management consulting advice to unaffiliated depository institutions, pursuant to section 225.18(b)(9) of Regulation Y.

Comments on this application must be received by November 2, 1999.

Board of Governors of the Federal Reserve System, October 19, 1999.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 99–27726 Filed 10–22–99; 8:45 am]

BILLING CODE 6210–01–P

## 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 November 8, 1999.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. UBS AG, Zurich, Switzerland; to acquire Allegis Realty Investors, LLC, Hartford, Connecticut, and thereby indirectly acquire AgriVest LLC, Boston, Massachusetts, and Allegis Capital LLC, Hartford, Connecticut, and thereby engage in financial and investment advisory activities, pursuant to section 225.28(b)(6) of Regulation Y; and securities brokerage services, pursuant to section 225.28(b)(7)(i) of Regulation Y. These activities will be conducted worldwide.

Board of Governors of the Federal Reserve System, October 19, 1999.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 99–27727 Filed 10–22–99; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL TRADE COMMISSION

### Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting

period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

| Trans No. | Acquiring | Acquired | Entities |
|---|---|---|---|
| **TRANSACTIONS GRANTED EARLY TERMINATION—09/13/1999** | | | |
| 19994182 ... | Gilbert Global Equity Partners, L.P ..... | OneCoast Network Corporation ..... | OneCoast Network Corporation. |
| 19994202 ... | CGW Southeast Partners III, L.P ..... | Chatwins Group, Inc ..... | Chatwins Group, Inc. |
| 19994234 ... | ACE Limited ..... | Capital Re Corporation ..... | Capital Re Corporation. |
| 19994287 ... | E-Loan, Inc ..... | Bank of America Corporation ..... | Electronic Vehicle Remarketing, Inc. |
| 19994288 ... | Bank of America Corporation ..... | E-Loan, Inc ..... | E-Loan, Inc |
| 19994306 ... | Reunion Industries, Inc. ..... | Chatwins, Group, Inc ..... | Chatwins Group, Inc. |
| 19994313 ... | Aurora Equity Partners II L.P ..... | Glenn R. Hanson ..... | The Hanson Group, Ltd. |
| 19994335 ... | Fabrica de Ropa Nazareno S.A. de C.V .. | Ben O. Spickard ..... | Kentucky Apparel LLP. |
| 19994336 ... | Fabrica de Ropa Nazareno S.A. de C.V .. | Guy D. Waggoner ..... | Kentucky Apparel LLP. |
| **TRANSACTIONS GRANTED EARLY TERMINATION—09/14/1999** | | | |
| 19994162 ... | SPX Corporation ..... | Rockwell International Corporation ..... | North American Transformer, Inc. |
| 19994233 ... | Diageo plc ..... | Nestle S.A ..... | Nestle USA—Food Group, Inc. |
| 19994305 ... | Astec Industries, Inc ..... | Neil E. & Linda M. Schmidgall ..... | Superior Industries of Morris, Inc. |
| 19994315 ... | HMK Enterprises, Inc ..... | Design Space, Inc ..... | Design Space, Inc. |
| 19994320 ... | Unit Corporation ..... | Parker Drilling Company ..... | Parker Drilling Company North America, Inc. |
| 19994324 ... | VS&A Communications Partners III, L.P .. | HCIA, Inc ..... | HCIA, Inc. |
| 19994325 ... | DBT Online, Inc ..... | Kenneth R. Thomson ..... | Information America Inc. |
| 19994343 ... | Lend Lease Corporation Limited ..... | Boston Financial Group Limited Partnership (The). | Boston Financial Group Limited Partnership (The). |
| 19994347 ... | Gerald W. Schwartz ..... | Hewlett-Packard Company ..... | Hewlett-Packard Company. |
| 19994348 ... | Phoenix Children's Hospital, Inc ..... | Triad Hospitals, Inc ..... | Triad Hospitals, Inc. |
| 19994349 ... | Kolin Holding AG ..... | Daniel L. Mcllhon ..... | Iowa Industrial Products, Inc. |
| 19994350 ... | The Christina Karen H. Durham Trust ..... | Robert S. Stolmeier ..... | KCL Corporation. |
| 19994354 ... | Southern Company (The) ..... | ORIX Corporation ..... | ORIX USA Corporation. |
| 19994360 ... | Daisytek International Corporation ..... | Craig W. Funk ..... | Arlington Industries, Inc. |
| 19994362 ... | Praxair, Inc ..... | The Hugues Trust ..... | Eutectic + Castolin Technology Holdings, Inc. |
| 19994363 ... | The Reader's Digest Association, Inc ..... | Earl P. Kaplan ..... | Books Are Fun, Ltd. |
| 19994364 ... | The Reader's Digest Association, Inc ..... | SZ Investments, L.L.C ..... | Books Are Fun, Ltd |
| 19994366 ... | Dynegy Inc ..... | Dynegy Inc ..... | McKittrick Limited. |
| 19994367 ... | Akzo Nobel NV ..... | Textron Inc ..... | Textron Inc. |
| 19994368 ... | Solution 6 Holdings Limited ..... | Hummingbird Communications Ltd ..... | CMS/Data Corporation. |
| | | | CMS/Data Corporation IP Corporation |
| 19994370 ... | The 1818 Fund III, L.P ..... | Unwired Holding Company ..... | US Unwired Inc. |
| 19994376 ... | Jean-Pierre Savare ..... | De La Rue plc ..... | De La Rue Card Systems, Inc. |
| 19994377 ... | Eurobike AG ..... | Denis S. LaBonge ..... | Intersport Fashions West, Inc. |
| 19994378 ... | Eurobike AG ..... | Richard D. Miller ..... | Intersport Fashions West, Inc. |
| 19994379 ... | Swifty Serve, LLC ..... | William Frederick Lindsey ..... | Dixie Gas & Oil Co., Inc. |
| | | | Gas Marts, Inc. |
| 19994382 ... | The Lyden Company, an Ohio corporation. | Royal Dutch Petroleum Company ..... | N.V. Koninklike Nederlandshe Petroleum Maatschappij |
| 19994383 ... | Royal Dutch Petroleum Company ..... | The Lyden Company, an Ohio corporation. | Lyden Oil Company. |
| 19994386 ... | TPG Partners II, L.P ..... | NextWave Telecom Inc ..... | NextWave Telecom Inc. |
| 19994387 ... | Oak Investment Partners VIII, L.P ..... | NextWave Telecom Inc ..... | NextWave Telecom Inc. |
| 19994393 ... | Cisco Systems, Inc ..... | Monterey Networks Inc ..... | Monetery Networks, Inc. |
| 19994399 ... | O. Bruton Smith ..... | Thomas Saitta ..... | Integrity Dodge, Inc. (a Nevada Corporation). |
| 19994401 ... | Martha Stewart ..... | Martha Stewart ..... | Martha Stewart Living Omnimedia, Inc. |
| 19994402 ... | Time Warner Inc ..... | Martha Stewart ..... | Martha Stewart Living Omnimedia, Inc. |
| 19994404 ... | AT&T Corp ..... | AT&T Corp ..... | Metroplex Telephone Company. |
| 19994409 ... | Jerry Zucker ..... | Hoechst Aktiengesellchaft ..... | Celgard LLC. |
| 19994410 ... | Edison International ..... | Unicom Corporation ..... | Commonwealth Edision Company. |
| 19994413 ... | Morgan Stanley Venture Partners III, L.P | Allscripts, Inc ..... | Allscript, Inc. |
| 19994414 ... | PAG Partners, L.P ..... | Drury Development Corporation ..... | Drury Development Corporation. |
| 19994421 ... | Pearson plc ..... | Avery Publishing Group Inc ..... | Avery Publishing Group Inc. |
| 19994449 ... | PNE Media Holdings, LLC ..... | Reilly Family Limited Partnership ..... | The Lamar Corporation. |
| **TRANSACTIONS GRANTED EARLY TERMINATION—09/15/1999** | | | |
| 19993154 ... | Reilly Family Limited Partnership ..... | Chancellor Media Corporation ..... | Chancellor Media Corporation. |
| 19993155 ... | Chancellor Media Corporation ..... | Reilly Family Limited Partnership ..... | Lamar Advertising Company. |
| 19994433 ... | ABRY Broadcast Partners III, L.O ..... | PNV.net, Inc ..... | PNV.net, Inc. |

| Trans No. | Acquiring | Acquired | Entities |
|---|---|---|---|
| **TRANSACTIONS GRANTED EARLY TERMINATION—09/16/1999** | | | |
| 19994230 ... | Rolls-Royce plc | Cooper Cameron Corporation | Cooper Cameron Corporation. |
| 19994280 ... | PECO Energy Company | Extant, Inc | Extant, Inc. |
| 19994384 ... | Joseph Littlejohn & Levy Fund II, L.P | Paty Lumber Company | Paty Lumber Company |
| 19994406 ... | Iowa Health System | Trinity Regional Health System | Trinity Regional Health System. |
| 19994407 ... | Chesapeake Corporation | Michael A. De Gennaro | Consumer Promotions International, Inc. |
| 19994415 ... | AT&T Corp. | AT&T Corp | Peak Cablevision, LLC. |
| 19994417 ... | Green Equity Investors III, L.P | White Cap Industries, Inc | White Cap Industries, Inc. |
| 19994418 ... | Duane R. Roberts | Don Tyson | Tyson Foods, Inc. |
| 19994424 ... | Synagro Technologies, Inc | Compost America Holding Company, Inc | Environmental Protection & Improvement Co., Inc. |
| 19994426 ... | Textron Inc | Conseco, Inc | Green Tree Financial Servicing Corporation. |
| 19994427 ... | Meditrust Corporation | Debra Lee Herman | TeleMatrix, Inc. |
| 19994428 ... | Bruce K. Anderson | Quorum Health Group, Inc | Quorum Health Group, Inc. |
| 19994429 ... | MLC Holdings Inc | Centura Banks, Inc | CLG, Inc. |
| 19994430 ... | GKN plc | Dana Corporation | Dana Corporation. |
| 19994432 ... | Associated Milk Producers, Inc | Glencoe Butter and Produce Association | Glencoe Butter and Produce Association. |
| 19994437 ... | Sun Microsystems, Inc | Forte Software, Inc | Forte Software, Inc. |
| 19994439 ... | Textron Inc | Robert and Iris Rickenbach | Rifcos Corp. |
| 19994440 ... | Caritas Christi | Good Samaritan Medical Center | Good Samaratan Medical Center. |
| 19994442 ... | Metropolitan Life Insurance Company | General American Mutual Holding Company. | GenAmerica Corporation. |
| 19994444 ... | Aavid Thermal Technologies, Inc | Bowthorpe plc | Bowthorpe plc (Subsidiaries). |
| 19994447 ... | Dyckerhoff AG | Lone Star Industries, Inc | Lone Star Industries, Inc. |
| 19994452 ... | Thomas H. Lee Foreign Fund IV-B, L.P | Big Flower Holdings, Inc | Big Flower Holdings, Inc |
| 19994453 ... | Thomas H. Lee Equity Fund IV, L.P | Big Flower Holdings, Inc | Big Flower Holdings, Inc. |
| 19994454 ... | EBF Group L.L.C | Big Flower Holdings, Inc | Big Flower Holdings, Inc. |
| 19994456 ... | Evercore Capital Partners L.P | Big Flower Holdings, Inc | Big Flower Holdings, Inc. |
| 19994457 ... | TPG Partners II, L.P | Oerlikon-Buhrle | Bally International AG. |
| 19994459 ... | PECO Energy Company | American International Group, Inc | Fischbach and Moore Electric LLC.<br>Fischbach and Moore, Inc. |
| 19994464 ... | The Hub Group Limited | Mack and Parker, Inc | Mack and Parker, Inc. |
| 19994484 ... | PECO Energy Company | OSP Consultants, Inc | OSP Consultants, Inc. |
| **TRANSACTIONS GRANTED EARLY TERMINATION—09/17/1999** | | | |
| 19994474 ... | Acetex Corporation | L'Air Liquide, S.A. | Air Liquide America Corporation. |
| 19994502 ... | The Source Information Management Company. | Dennis M. Prock | Huck Store Fixture Company. |
| 19994512 ... | State Street Corporation | Wachovia Corporation | Wachovia Bank, N.A. |
| 19994552 ... | Morgan Stanley Dean Witter & Co | InterNAP Network Services Corporation | InterNAP Network Services Corporation. |
| **TRANSACTIONS GRANTED EARLY TERMINATION—09/20/1999** | | | |
| 19994292 ... | Russell L. Carson | Quorum Health Group, Inc | Quorum Health Group, Inc. |
| 19994394 ... | The Veritas Capital Fund, L.P | North American Fund II, L.P | AMTEC Precision Products, Inc. |
| 19994438 ... | Safeguard Scientifics, Inc | Extant, Inc | Extant, Inc. |
| 19994460 ... | SW Acquisition, L.P | TNP Enterprises, Inc | TNP Enterprises, Inc. |
| 19994461 ... | Fiserv, Inc | American International Group, Inc | Resource Trust Company |
| 19994466 ... | Consolidated Electrical Distributors, Inc | All-Phase Electric Supply Co | All-Phase Electric Supply Co. |
| 19994467 ... | Appollo Investment Fund, L.P | Samsonite Corporation | Samsonite Corporation. |
| 19994468 ... | Phoenix Home Life Mutual Insurance Company. | The Guarantee Life Companies, Inc | AGL Life Assurance Company.<br>PFG Distribution Company.<br>Philadelphia Financial Group Agency.<br>Philadelphia Financial Group, Inc.<br>Philadelphia Financial Insurance Agency of Mass, Inc. |
| 19994476 ... | Koninklijke Pakhoed N.V | Koninklijke Van Ommeren N.V. | Koninklijke Van Ommeren N.V. |
| 19994488 ... | BASF Akiengesellschaft | VEBA AG | Ultraform Company. |
| 19994492 ... | InfoSpace.com,Inc | OpenSite Technologies, Inc | OpenSite Technologies, Inc. |
| 19994494 ... | Harris Corpration | AirNet Communications Corporation | AirNet Communications Corporation. |
| 19994540 ... | Associates First Capital Corporation | Lawrence Lewis | Fleetmark, Inc. |
| 19994541 ... | HEICO Corporation | Edward C. Blanchet | Santa Barbara Infrared, Inc. |
| 19994542 ... | HEICO Corporation | Stephen W. McHugh | Santa Barbara Infrared, Inc. |
| 19994544 ... | Fortune Brands, Inc | Michael K. Boone | Boone International, Inc. |
| 19994545 ... | CFM Majestic, Inc | Monessen Hearth Systems Company | Monessen Hearth Systems Company. |
| 19994557 ... | Akzo Nobel NV | Hoechst AG | Hoechst AG. |
| **TRANSACTIONS GRANTED EARLY TERMINATION—09/21/1999** | | | |
| 19994312 ... | CSK Auto, Inc | PACCAR, Inc | PACCAR Automotive, Inc. |
| 19994381 ... | Dan Shaw | Harrah's Entertainment, Inc | Showboat, Inc. |

| Trans No. | Acquiring | Acquired | Entities |
|---|---|---|---|
| 19994495 ... | NationsRent, Inc | Ellicott and Lynn Prigozen | Sylvan Equipment Corporation. |
| 19994496 ... | NationsRent, Inc | Gary A. Runyon | Jack's Tool Rental, Inc. |
| 19994498 ... | Xomed Surgical Products, Inc | Mentor Corporation | Mentor Ophthalmics, Inc., Mentor Medical, Inc. |
| 19994499 ... | Motorola, Inc | Metrowerks Inc | Metrowerks Inc. |
| 19994500 ... | Geac Computer Corporation Limited | Clarus Corporation | Clarus Corporation. |
| 19994503 ... | Heinz C. Prechter | JPE, Inc | JPE, Inc. |
| 19994504 ... | Biomet, Inc | Implant Innovations International Corporation. | Implant Innovations International Corporation. |
| 19994505 ... | Medtronic, Inc | Xomed Surgical Products, Inc | Xomed Surgical Products, Inc. |
| 19994506 ... | Markel Corporation | Terra Nova (Bermuda) Holdings, Ltd | Terra Nova (Bermuda) Holdings, Ltd. |
| 19994507 ... | Harte-Hanks, Inc | SOFTBANK Corp | Ziff Davis, Inc. |
| 19994517 ... | Leucadia National Corporation | Jeffrey Congdon | Tranex Credit Corp., Tranex Auto Securitization, L.L.C. |
| 19994518 ... | Leucadia National Corporation | Gary L. Levine | Tranex Credit Corp., Tranex Auto Securitization, L.L.C. |
| 19994519 ... | Cisco Systems, Inc | Cerent Corporation | Cerent Corporation. |
| 19994522 ... | Clear Channel Communications, Inc | Thomas E. Ingstad | Iowa City Broadcasting Company, Inc.<br>T&J Broadcasting, Inc. |
| 19994523 ... | Henlys Group, plc | Blue Bird Corporation | Blue Bird Corporation. |
| 19994525 ... | Red Man Pipe & Supply Co | R. J. Gallagher Company | R. J. Gallagher Company. |
| 19994527 ... | ARCADIS N.V | Giffels Associates, Inc | Giffels Associates, Inc. |
| 19994529 ... | Matthew Schoenberg | Murry J. Evans | Midtown Restaurants Corporation and Affiliated Companies. |
| 19994554 ... | Greenwich Street Capital Partners, L.P | Vincent Von Zwehl | JV TEX Realty Corp.<br>Varnco Products, Inc., Varnco Holdings, Inc. |
| 19994556 ... | ALLTEL Corporation | Lawrence Tew | Southern Data, Inc. |
| 19994559 ... | Alex Meruelo | East Los Angeles Community Union | Herman Weissker, Inc. |
| 19994567 ... | McCown De Leeuw & Co. IV, L.P | Fitness Holdings, Inc | Fitness Holdings, Inc. |
| 19994568 ... | Tyco International Ltd. | Bank of America Corporation | Advanced Quick Circuits, L.P. |
| 19994571 ... | Deere & Company | Juilfs Legacy Limited Partnership | Senstar Capital Corporation. |
| 19994579 ... | United Technologies Corporation | Gregory Van Boxel | Great Lakes Turbines Corp./Great Lakes Engines Sales, Inc. |
| 19994582 ... | Voting Trust dated December 4, 1968 of v/s of Hallmark Cards. | Marcel & Margrit Schurman | Schurman Fine Papers, Inc. |

**TRANSACTIONS GRANTED EARLY TERMINATION—09/22/1999**

| | | | |
|---|---|---|---|
| 19994169 ... | World Wide Parts and Accessories Corporation. | Patrick W. A. Handreke | Metrix Holdings, Inc. |
| 19994284 ... | Kelso Investment Associates VI, L.P | Citation Corporation | Citation Corporation. |
| 19994285 ... | KEP VI, LLC | Citation Corporation | Citation Corporation. |
| 19994355 ... | Lucent Technologies Inc | Mr. Robert Madonna | Excel Switching Corporation. |
| 19994356 ... | Mr. Robert Madonna | Lucent Technologies Inc | Lucent Technologies Inc. |
| 19994396 ... | Douglas G. Smith | VoiceStream Wireless Corporation | VoiceStream Wireless Holding Corporation. |
| 19994434 ... | Cox Enterprises, Inc | AMFM Inc | Capstar Radio Operating Company.<br>Chancellor Media Corporation of Miami.<br>Chancellor Media/Shamrock Broadcasting, Inc. |
| 19994435 ... | AMFM Inc | Cox Enterprises, Inc | Cox Radio, Inc. |
| 19994486 ... | Rhone Capital LLC | Bjorne Hanson | Hanson Machine Corporation. |
| 19994515 ... | Thomson-CSF, S.A | Thomson-CSF, S.A | Sextant In-Flight Systems LLC. |
| 19994538 ... | The Washington Post Company | Tribune Company | Tribune Career Events, Inc., ASI, Business Tech. Spec. Inc. |
| 19994539 ... | Tribune Company | The Washington Post Company | HireSystems, Inc. |

**TRANSACTIONS GRANTED EARLY TERMINATION—09/23/1999**

| | | | |
|---|---|---|---|
| 19994478 ... | Castle Harlan Partners III, L.P | John Rutledge Partners II, L.P | H&C Purchase Corporation. |
| 19994546 ... | Loews Corporation | NextWave Telecom Inc., Debtor-in-Possession. | NextWave Telecom Inc., Debtor-in-Possession. |
| 19994548 ... | The Walt Disney Company | Infoseek Corporation | Infoseek Corporation. |
| 19994555 ... | Samuel J. Heyman | Monsanto Company | Monsanto Company. |
| 19994562 ... | The Reader's Digest Association, Inc. | BrandDirect Marketing, Inc | BrandDirect Marketing, Inc. |
| 19994569 ... | Crescent Operating, Inc | Marubeni Corp | Trax, Inc. |
| 19994575 ... | Stephen J. Luczo | Seagate Technology, Inc | Seagate Technology, Inc. |

**TRANSACTIONS GRANTED EARLY TERMINATION—09/24/1999**

| | | | |
|---|---|---|---|
| 19994027 ... | Grapevine Television, LLC | Gocom Communications, L.L.C | Gocom Communications, L.L.C. |
| 19994487 ... | Rhone Capital LLC | Michael Hansen | Hanson Machine Corporation. |

| Trans No. | Acquiring | Acquired | Entities |
|---|---|---|---|
| 19994563 ... | Phelps Dodge Corporation ..... | ASARCO Incorporated ..... | ASARCO Incorporated. |
| 19994564 ... | Phelps Dodge Corporation ..... | Cyprus Amax Minerals Company ..... | Cyprus Amax Minerals Company. |
| 19994573 ... | AutoNation, Inc ..... | Paul and Mary Nori ..... | Ontario Dodge, Inc. |
| 19994592 ... | AutoNation, Inc ..... | Kenneth L. Schnitzer, Jr ..... | Park Place Motorcars of Houston, Ltd. |
| 19994593 ... | AutoNation, Inc ..... | Douglas W. Schnitzer ..... | Park Place Motorcars of Houston, Ltd. |
| 19994594 ... | AutoNation, Inc ..... | SAL Auto Finance Co., Ltd ..... | Park Place Motorcars of Houston, Ltd. |

**FOR FURTHER INFORMATION CONTACT:** Sandra M. Peay, or, Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 99–27785 Filed 10–22–99; 8:45 am]

**BILLING CODE 6750–01–M**

## FEDERAL TRADE COMMISSION

### Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and required that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

| Trans No. | Acquiring | Acquired | Entities |
|---|---|---|---|
| **TRANSACTIONS GRANTED EARLY TERMINATION—09/27/1999** | | | |
| 19994405 ... | Nycomed Amersham plc ..... | Sonus Pharmaceuticals, Inc ..... | Sonus Pharmaceuticals, Inc. |
| 19994513 ... | The Hain Food Group, Inc ..... | H.J. Heinz Company ..... | H.J. Heinz Company. |
| 19994514 ... | H.J. Heinz Company ..... | The Hain Food Group, Inc ..... | The Hain Food Group, Inc. |
| 19994604 ... | Michael J. Cantanucci ..... | Malcolm S. Pray, Jr ..... | Pray Automobile Corp. |
| 19994644 ... | Vedior NV ..... | Select Appointments (Holdings) PLC ..... | Select Appointments (Holdings) PLC. |
| 19994664 ... | Hellman & Friedman Capital Partners, III, L.P. | Anthony E. Bakker ..... | Blackbaud, Inc. |
| 19994665 ... | ING Groep N.V ..... | BHF Bank Aktiengesellschaft ..... | BHF Bank Aktiengesellschaft. |
| **TRANSACTIONS GRANTED EARLY TERMINATION—09/27/1999** | | | |
| 19994372 ... | PECO Energy Company ..... | Illinova Corporation ..... | Illinois Power Company. |
| 19994373 ... | British Energy plc ..... | Illinova Corporation ..... | Illinois Power Company. |
| 19994375 ... | Green Equity Investors, II, L.P ..... | Lee Enterprises, Incorporated ..... | Lee Enterprises, Incorporated. |
| 19994391 ... | FirstEnergy Corp ..... | The Williams Companies, Inc ..... | Volunteer Energy, L.L.C. |
| 19994420 ... | RoweCom Inc ..... | Dawson Holdings PLC ..... | Dawson, Inc. |
| 19994425 ... | Waste Management, Inc ..... | Andrew A. Schweizer ..... | Aagard Sanitation, Inc |
| 19994445 ... | Carlisle Companies Incorporated ..... | Titan International, Inc ..... | Titan International, Inc. |
| 19994446 ... | Maurice M. Taylor, Jr ..... | Carlisle Companies Incorporated ..... | Carlisle Companies Incorporated. |
| 19994463 ... | Datatec Limited ..... | Marion Wilson ..... | AllTech Data Systems, Inc. |
| 19994483 ... | AutoNation, Inc ..... | Gerald M. Gleason ..... | Golf Mill Ford, Inc.<br>Jerry Gleason Chevrolet, Inc.<br>Jerry Gleason Dodge, Inc. |
| 19994509 ... | Morgenthaler Venture Partners IV, L.P .... | William Kuchera ..... | C.O.A. Management Company, Inc.<br>Kuchera Defense Industries, Inc.<br>Kuchera Industries, Inc. |
| 19994537 ... | Hutchison Whampoa Limited ..... | VoiceStream Wireless Corporation ..... | VoiceStream Wireless Corporation. |
| 19994549 ... | Harry T. Rose ..... | Applebee's International, Inc ..... | Applebee's of Pennsylvania, Inc. |
| 19994553 ... | RailWorks Corporation ..... | William Troy Byler ..... | W.T. Byler Co., Inc. |
| 19994565 ... | AT&T Corp ..... | UnitedGlobalCom, Inc ..... | UnitedGlobalCom, Inc. |
| 19994566 ... | AT&T Corp ..... | Tickets.com, Inc ..... | Tickets.com, Inc. |
| 19994570 ... | IWKA Akiengesellschaft ..... | Norman G. Ulmer ..... | Key Welder Corp. |
| 19994576 ... | Alan L. Levy ..... | Viatel, Inc ..... | Viatel, Inc. |
| 19994577 ... | Asahi Organic Chemicals Industry Co., Ltd. | Asahi/America, Inc ..... | Asahi/America, Inc. |
| 19994578 ... | Cordant Technologies Inc ..... | Robert Kanminski Revocable Trust 6/17/88. | Continental/Midland, Inc.<br>KORE II, Inc.<br>KORE, Inc. |
| 19994580 ... | Quantum Industrial Holdings, Ltd ..... | Onvoy, Inc ..... | Onvoy, Inc. |
| 19994581 ... | Hughes Supply, Inc ..... | James G. Doyle ..... | Reaction Supply Corporation. |
| 19994586 ... | Sunrise Capital Partners, L.P ..... | SubMicron Systems Corporation ..... | SubMicron Systems Corporation. |
| 19994587 ... | Group 1 Automotive, Inc ..... | Don Bohn Ford, Inc ..... | Don Bohn Ford, Inc. |

| Trans No. | Acquiring | Acquired | Entities |
|---|---|---|---|
| 19994599 ... | Kevin J. Laughlin | Lucent Technologies, Inc | Lucent Technologies, Inc. |
| 19994600 ... | John L. Drew | Lucent Technologies, Inc | Lucent Technologies, Inc. |
| 19994601 ... | Vernon R. Anderson | Lucent Technologies, Inc | Lucent Technologies, Inc. |
| 19994602 ... | Alfred West | Viatel, Inc | Viatel, Inc. |
| 19994605 ... | Gerald W. Schwartz | John Humphrey and James Humphrey, Voting Trustees. | Nelson Metal Products Corporation. |
| 19994607 ... | AT&T Corp | AT&T Corp | District Cablevision Limited Partnership. |
| 19994608 ... | GTCR Fund VI, L.P | Metamor Worldwide, Inc | Metamor Information Technology Service Inc. |
| 19994611 ... | Prodigy Communications Corporation | Joseph D. Fail | U.S. Republic Communications, Inc. |
| 19994615 ... | Bain Capital Fund VI, L.P | Stolberg Partners, L.P | Advanced Telecommunications, Inc. |
| 19994622 ... | Joseph Littlejohn & Levy Fund III, L.P | Tenet Healthcare Corporation | Tenet Healthcare Corporation. |
| 19994623 ... | Watonwan Farm Service Company | Truman Farmers Elevator Company | Truman Farmers Elevator Company. |
| 19994624 ... | Power Packaging Inc | Jeffrey D. Hettinger | PBP Secialty Beverage, Inc. |
| 19994629 ... | The Western and Southern Life Insurance Company. | Countrywide Credit Industries, Inc | Countrywide Financial Services, Inc. |
| 19994630 ... | The Reynolds and Reynolds Company | William G. Ziercher | Sterling Direct, Inc. |
| 19994632 ... | Advance America, Cash Advance Centers, Inc. | Steve A. and Brenda G. McKenzie | McKenzie Check Advance.<br>National Cash Advance and Union Cash Advance. |
| 19994633 ... | Steve A. and Brenda G. McKenzie | Advance America, Cash Advance Centers, Inc. | Advance America, Cash Advance Centers, Inc. |
| 19994636 ... | Cox Enterprises, Inc | Pengo, L.L.C | Smith Management, LLC. |
| 19994638 ... | Carlton Communications Pic | Norddeutscher Rundfunk | Hamdon Entertainment, a general partnership. |
| 19994640 ... | AT&T Corp | Media/Communications Partners II Limited Partnership. | Triad Holdings I, LLC. |
| 19994642 ... | Summit Ventures V, L.P | Somera Communications, Inc | Somera Communications, Inc. |
| 19994645 ... | American Plumbing & Mechanical, Inc | Stephen F. Turner | Atlas Plumbing & Mechanical, Inc. |
| 19994646 ... | MBNA Corporation | Hancock Holding Corporation | Hancock Bank of Louisiana, Baton Rouge, Louisiana. |
| 19994647 ... | Banca Intesa S.p.A | Banca Commerciale Italiana S.p.A | Banca Commerciale Italiana S.p.A. |
| 19994650 ... | Bracknell Corporation | Nationwide Electric, Inc | Nationwide Electric, Inc. |
| 19994659 ... | AT&T Corp | Newco | Newco. |
| 19994663 ... | William P. and Patricia R. Carlton (husband and wife). | NCH Corporation | Resource Electronics, Inc. |
| **TRANSACTIONS GRANTED EARLY TERMINATION—09/29/1999** | | | |
| 19994408 ... | Engineered Support Systems, Inc | ESCO Electronics Corporation | Systems & Electronics Inc. |
| 19994471 ... | Michael D. Garvey | Hawaiian Electric Industries, Inc | Hawaiian Tug & Barge.<br>Young Brothers, Limited |
| 19994497 ... | General Electric Company | John V. Saeman, Jr | Camp Systems International, LLC. |
| 19994561 ... | Hooper Holmes, Inc | Pediatric Services of America, Inc | Paramedical Services of America, Inc. |
| 19994590 ... | AutoNation, Inc | DKK Holding Company, Ltd | DKK Holding Company, Ltd. |
| 19994595 ... | AutoNation, Inc | Kenneth Nichols | Nichols Ford, Inc. |
| 19994603 ... | Bank of America Corporation | The Allstate Corporation | Hollinee, L.L.C. |
| 19994610 ... | Rolls-Royce plc | First Aviation Services Inc | National Airmotive Corporation. |
| 19994613 ... | Harrah's Entertainment, Inc | Players International, Inc | Players International, Inc. |
| 19994635 ... | National Equipment Services, Inc. | Keith Griggs | Safety Lights Sales and Leasing, Inc. of Texas. |
| 19994657 ... | Autoweb. com, Inc | Kenneth R. Thomason (a Canadian citizen). | The Gale Group, Inc. |
| **TRANSACTIONS GRANTED EARLY TERMINATION—09/30/1999** | | | |
| 19992563 ... | General Electric Company | Advanced Lighting Technologies, Inc | Advanced Lighting Technologies, Inc. |
| 19994128 ... | Plains Cooperative Oil Mill, Inc | Yazoo Valley Oil Mill, Inc | Yazoo Valley Oil Mill, Inc. |
| 19994340 ... | Brooks Automation, Inc | Jenoptik AG | Jenoptik Infab, Inc. |
| 19994341 ... | Jenoptik AG | Brooks Automation, Inc | Brooks Automation, Inc. |
| 19994398 ... | Affiliated Computer Services, Inc | General American Life Insurance Company. | Consultec, LLC. |
| 19994422 ... | Land O' Lakes, Inc | Swiss Valley Farms, Co | Swiss Valley Farms, Co. |
| 19994423 ... | Richard W. Couch | Patrick M. Byrne | Centricut Automation, LLC, Haverford Industries, LLC.<br>Centricut, LLC, Centricut Manufacturing, LLC. |
| 19994475 ... | New York Life Insurance Company | PlanetRx.com, Inc | PlanetRx.com, Inc. |
| 19994511 ... | GKN plc | Borg-Warner Automotive, Inc | Borg-Warner Automotive Automatic Transmission Systems Corp. |
| 19994572 ... | Integrated Electrical Services, Inc | Britt Rice | Britt Rice Electric, Inc. |
| 19994583 ... | Wastequip, Inc | Galbreath Inc | Galbreath Inc. |
| 19994621 ... | Northern States Power Company | Northeast Utilities | Northeast Utilities. |

| Trans No. | Acquiring | Acquired | Entities |
|---|---|---|---|
| 19994631 ... | Dyno ASA | Kamilche Company | Simpson Timber Company. |
| 19994643 ... | Carousel Capital Partners, L.P | Fresh Foods, Inc | Claremont Restaurant Group, LLC.<br>Fresh Foods Sales, LLC |
| 19994648 ... | Golder, Thoma, Cressey, Rauner Fund V, L.P. | APL Healthcare Group, Inc | APL Healthcare Group, Inc.<br>APL Properties, LLC.<br>Associated Pathologists, Chartered. |
| 19994651 ... | Reed International P.L.C | National Soft Drink Association | National Soft Drink Association. |
| 19994652 ... | Elsevier NV | National Soft Drink Association | National Soft Drink Association. |
| **TRANSACTIONS GRANTED EARLY TERMINATION—10/04/1999** | | | |
| 19994330 ... | Nortel Networks Corporation | Periphonics Corporation | Periphonics Corporation. |
| 19994436 ... | Telefonaktiebolaget L M Ericsson | Dr. Rajendra Singh | LLC Europe, AS.<br>LLC International Inc |
| 19994532 ... | Behrman Capital II L.P | ICG Communications, Inc | ICG Fiber Optic Technologies, Inc. |
| 19994591 ... | Industrial & Financial Systems | Effective Management Systems, Inc | Effective Management Systems, Inc. |
| 19994654 ... | Terex Corporation | Allegheny Teledyne Incorporated | Teledyne Specialty Equipment; Teledyne B.V. |
| 19994656 ... | Flextronics International Ltd | Thomas C. Albright and Susie C. Albright | Circuit Board Assemblers, Inc.<br>EMC International, Inc. |
| 19994667 ... | Madaus Aktiengesellschaft | MMS Holding Company | MMS Holding Company. |
| 19994668 ... | International Multifoods Corporation | Allen Kruh | Better Brands, Inc.<br>Windsor Circle, LLC. |
| 19994670 ... | G.T.C. Transcontinental Group Ltd | Laurence N. Weiss | Forms Inc.<br>Newton Business Forms Corp.<br>Spectra Mail, Inc. |
| 19994674 ... | W. Marvin Rush | Edward Donahue, Sr | New Mexico Peterbilt, Inc.<br>Southwest Peterbilt, Inc.<br>Southwest Truck Center, Inc. |
| 19994675 ... | American Express Company | GetThere.com, Inc | GetThere.com, Inc. |
| 19994676 ... | Softbank Corp | Scott A. Blum Separate Property Trust U/D/T 8/2/95. | Buy.Com, Inc. |
| 19994679 ... | Citadel Communications Corporation | CAT Communications, Inc | Caribou Communications Co. |
| 19994684 ... | United Rentals, Inc | Burch Family Investments, L.P | Burch-Lowe, Inc. |
| 19994689 ... | JAKKS Pacific, Inc | Colorbok Paper Products, Inc | Colorbok Paper Products, Inc. |
| 19994692 ... | Quantum Industrial Holdings, Ltd | Greenwich Street Capital Partners, L.P | Day International Group, Inc. |
| 19994693 ... | Vodafone AirTouch Plc | Blackstone CCI Capital Partners L.P | CommNet Cellular, Inc. |
| 19994698 ... | Station Casinos Inc | Hilton Hotels Corp | Flamingo Hilton Riverboat Casino, L.P. |
| 19994700 ... | Freedom Securities Corporation | The Hill Thompson Group, Ltd | The Hill Thompson Group, Ltd. |
| 19994701 ... | Netopia, Inc | WBL Corporation Ltd | StarNet Technologies, Inc. |
| 19994703 ... | Florida Progress Corporation | EARTHCO | ECO Synfuel Group, LLC |
| 19994705 ... | Burlington Resources Inc | Poco Petroleums Ltd | Poco Petroleums Ltd. |
| 19994706 ... | Kenneth L. Schnitzer, Jr | Beck Imports Limited Partnership | Beck Imports Limited Partnership. |
| 19994707 ... | Douglas W. Schnitzer | Beck Imports Limited Partnership | Beck Imports Limited Partnership. |
| 19994709 ... | Bain Capital Fund VI, L.P | Buhrmann NV | Buhrmann NV. |
| 19994711 ... | Bain Capital VI Coinvestment Fund, L.P | Buhrmann NV | Buhrmann NV. |
| 19994712 ... | Bayer AG | Berwind Group Partners | Elastochem, Inc. |
| 19994713 ... | Apollo Investment Fund IV, LP | Buhrmann NV | Buhrmann NV. |
| 19994726 ... | Warburg, Pincus, Equity Partners, L.P. | Kidd Kamm Equity Partners, L.P | Wright Medical Technology, Inc. |
| 19994732 ... | RSTW Partners III, L.P | National Paper & Packaging, Co | National Paper & Packaging, Co. |
| 19994735 ... | Summit Ventures V, L.P | E-Commerce Exchange, Inc | E-Commerce Exchange, Inc. |
| 19994741 ... | The News Corporation Limited | Mr. Lawrence J. Ellison | Knowledge Enterprises, Inc. |
| **TRANSACTIONS GRANTED EARLY TERMINATION—10/05/1999** | | | |
| 19994574 ... | Leucadia National Corporation | MK Gold Company | MK Gold Company. |
| 19994653 ... | Amazon.com, Inc | Della & James, Inc | Della & James, Inc. |
| 19994669 ... | Brentwood Associates Private Equity III, L.P. | The Sports Club Company, Inc | Spectrum Club Holding Company. |
| 19994691 ... | TenFold Corporation | Barclays PLC | The LongView Group, Inc. |
| 19994716 ... | Seneca Foods Corporation | Pro-Fac Cooperative, Inc | Agrilink Foods, Inc. |
| 19994717 ... | Allen Holdings Inc | VoiceStream Wireless Corporation | VoiceStream Wireless Corporation. |
| 19994719 ... | Trident II, L.P | Marsh & McLennan Companies, Inc. | Sedgwick CMS Holdings, Inc. |
| 19994724 ... | Albert Bonnier AB | ING Groep N.V | De Ster Holding B.V. |
| 19994725 ... | EQT Scandinavia Limited | ING Groep N.V | De Ster Holding B.V. |
| 19994736 ... | Lennox International Inc | The Ducane Company, Inc | The Ducane Company, Inc. |
| 19994738 ... | J.W. Childs Equity Partners II, L.P | Morrell M. Avram, M.D | AFMSM, Inc. |
| **TRANSACTIONS GRANTED EARLY TERMINATION—10/06/1999** | | | |
| 19994625 ... | Tyco International Ltd | General Surgical Innovations, Inc | General Surgical Innovations, Inc. |
| 19994682 ... | Bestfoods | Case Swayne Holdings, Inc | Case Swayne Holdings, Inc. |
| 19994745 ... | Grupo Mexico, S. A. de C.V | Asarco Incorporated | Asarco Incorporated. |

| Trans No. | Acquiring | Acquired | Entities |
|---|---|---|---|
| **TRANSACTIONS GRANTED EARLY TERMINATION—10/07/1999** | | | |
| 19994133 ... | EMC Corporation | Data General Corporation | Data General Corporation. |
| 19994655 ... | Tyco International Ltd | Vincent W. Foglia | Foglia Hills Building Partnership. |
| 19994685 ... | Severn Trent Plc | Arthur G. Burton | Del Mar Analytical Lab., Inc., North Creek Analytical, Inc., Great Lakes Analytical, Inc., Star Analytical Lab., Inc., Oceanic Analytical Lab., Inc. Sequoia Analytical Laboratory, Inc. |
| 19994694 ... | Cendant Corporation | Apollo Investment Fund III, L.P | NRT Incorporated. |
| 19994697 ... | Info-quest SA, a corporation under the laws of Greece. | AremisSoft Corporation, a Delaware corporation. | AremisSoft Corporation, a Delaware corporation. |
| **TRANSACTIONS GRANTED EARLY TERMINATION—10/08/1999** | | | |
| 19994598 ... | Hudson United Bank | Credit Lyonnais Group | Lyon Credit Corporation. |
| 19994686 ... | Astec Industries, Inc | Phil Jenkins | American Augers, Inc. |
| 19994695 ... | Premiere Technologies, Inc | Healtheon Corporatioin | Healtheon Corporation. |
| 19994729 ... | American Industrial Partners Capital Fund II, L.P.. | Big Sky Trust | Consoltex Group Inc. |
| 19994739 ... | Primedia, Inc | Games & Fish Publications, Inc | Games & Fish Publications, Inc. |
| 19994742 ... | The Pantry, Inc | Michael F. Mansfield | Kangaroo, Inc. |
| 19994743 ... | KKR 1996 Fund, L.P | Apollo Investment Fund III, L.P | Alliance Imaging Inc. |
| 19994751 ... | Textron Inc | Litchfield Financial Corporation | Litchfield Financial Corporation. |
| 19994755 ... | Ushio, Inc | John A. Pollock | Electrohome Limited. |
| 19994759 ... | U. Bertram Ellis, Jr | Healtheon Corporation | Healtheon Corporation. |
| 19994763 ... | SZ Investments, L.L.C | Transmedia Network, Inc | Transmedia Network, Inc. |
| 19994767 ... | Cortec Group Fund II, L.P | Conxall Corporation | Conxall Corporation. |
| 19994788 ... | Madison Dearborn Capital Partners III, L.P. | Stericycle, Inc | Stericycle, Inc. |
| 19994789 ... | Bain Capital Fund VI, L.P | Stericycle, Inc | Stericycle, Inc. |
| 19994801 ... | Foxworth-Galbraith Lumber Company | Tom W. and Elizabeth J. Watt | Apex Building Components, Inc. Brookhart's Inc. |
| 19994809 ... | H&R Block, Inc | B. Ross Angel | A.J. & R. Co. Ten Forty, Inc. |
| 20000026 ... | Odyssey Investment Partners Fund, LP | Koch Industries, Inc | PF.Net Holdings, Limited. |

**FOR FURTHER INFORMATION CONTACT:** Sandra M. Peay, or, Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 99–27786 Filed 10–22–99; 8:45 am]

**BILLING CODE 6750–01–M**

## FEDERAL TRADE COMMISSION

**[File No. 982–3040]**

## New England Tractor Trailer Training School of Massachusetts, Inc., et al.; Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before December 27, 1999.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, D.C. 20580.

**FOR FURTHER INFORMATION CONTACT:** Carol Jennings or Elaine Kolish, FTC/S–4631, 600 Pennsylvania Ave., NW, Washington, D.C. 20580, (202) 326–3010 or 326–3042.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for October 1, 1999), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

**Analysis of Proposed Consent Order To Aid Public Comment**

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from respondents New England Tractor Trailer Training School of Massachusetts, Inc., New England Tractor Trailer Training School of Connecticut, Inc., and Mark Greenberg, individually and as president of the corporate respondents.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns practices related to the advertising, promotion, and sale of vocational training programs, including driver training for tractor trailer and heavy straight trucks. The Commission's complaint charges that respondents violated the Federal Trade Commission Act, 15 U.S.C. § 41 *et seq.*, by making numerous representations that were false and for which they lacked a reasonable basis of substantiation. These representations concerned: employment and/or placement rates for graduates of respondents' program; the availability of local truck driving jobs; the rate of passing the CDL test by graduates of respondents' program; the number of graduates of the program who pass the CDL test the first time they take it; the adequacy of training to prepare students for the Commercial Drivers License (CDL) test; the extent to which future employers will reimburse the cost of tuition; and the admissions criteria for respondents' program.

Part I of the proposed consent order prohibits future misrepresentations concerning the above, as well as other results or benefits of respondents' training programs or career services.

Part II of the proposed order requires a disclosure of respondents' placement rates. This disclosure is triggered by any representations about the rate of employment or placement of graduates of respondents' program. In addition, this disclosure is required to be given to prospective students, in writing, prior to the time that students are presented with the enrollment agreement and other enrollment forms. Appendices A and B to the proposed order set forth the prescribed manner of calculation of placement rates and the form in which the information will be given to prospective students.

Part III of the proposed order requires disclosure of the licensing test pass rates for graduates of respondents' program. This disclosure is triggered by any representations about the rate of passing any test, including but not limited to the CDL test, by graduates of respondents' program. In addition, this disclosure is required to be given to prospective students, in writing, prior to the time that students are presented with the enrollment agreement and other enrollment forms. Appendices C and D to the proposed order set forth the prescribed manner of calculation of test pass rates and the form in which the information will be given to prospective students.

Part IV of the proposed order is a record keeping provision that requires the respondents to maintain certain records for five (5) years after the last date of dissemination of any representation covered by the consent order. These records include: (1) All advertisements and promotional materials, sales or admissions interview scripts or training manuals, catalogs, and other marketing materials; (2) all materials relied upon in making any representation covered by the order; and (3) all evidence in respondents' possession or control that contradicts, qualifies, or calls into question the representation or the basis relied upon for it.

Part V of the proposed order requires distribution of the order, for five (5) years from the date of issuance, to officers and directors of the corporations; managers who have responsibilities with respect to the subject matter of the order; and personnel involved in sales, admissions, recruitment, or responding to consumer complaints and inquiries.

Part VI of the proposed order requires that the Commission notified of any changes in the corporations that might affect compliance obligations under the order.

Part VII of the proposed order requires that, for a period of five (5) years, the individual respondent notify the Commission of any new business affiliation or employment that involves the advertising, promotion, or sale of vocational training programs.

Part VIII of the proposed order requires that for a period of five (5) years, respondents undertake a monitoring program to ensure that all employees or independent contractors engaged in admissions, recruiting, sales, or other customer service, comply with Parts I, II, and III of the order.

Part IX of the proposed order requires the respondents to file compliance reports with the Commission.

Part X of the proposed order states that the Commission, without prior notice, may use investigators to pose as prospective consumers of respondents.

Finally, Part XI of the proposed order states that, absent certain circumstance, the order will terminate twenty (20) years from the date it is issued.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify their terms in any way.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 99–27784 Filed 10–22–99; 8:45 am]

BILLING CODE 6750–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Toxic Substance and Disease Registry

### Public meeting of the Inter-tribal Council on Hanford Health Projects (ICHHP) in Association With the Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Hanford Health Effects Subcommittee

**NAME:** Public meeting of the Inter-tribal Council on Hanford Health Projects (ICHHP) in association with the Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Hanford Health Effects Subcommittee (HHES).

**TIME AND DATE:** 9 a.m.–4:30 p.m., November 17, 1999.

**PLACE:** Cavanaughs at Columbia Center, 1101 North Columbia Center Boulevard, Kennewick, Washington 99336, telephone: 509/783–0611.

**STATUS:** Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

**BACKGROUND:** Under a Memorandum of Understanding (MOU) signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations

and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

In addition, under an MOU signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS has delegated program responsibility to CDC. Community Involvement is a critical part of ATSDR's and CDC's energy-related research and activities and input from members of the ICHHP is part of these efforts. The ICHHP will work with the HHES to provide input on American Indian health effects at the Hanford, Washington site.

**PURPOSE:** The purpose of this meeting is to address issues that are unique to tribal involvement with the HHES, including a presentation and discussion on the DOE Richland Indian Office, update on tribal cooperative agreements, and agency updates.

**MATTERS TO BE DISCUSSED:** Agenda items will include a dialogue on issues that are unique to tribal involvement with the HHES. This will include updating tribal members of the cooperative agreement activities in environmental health capacity building and providing support for tribal involvement in and representation on the HHES.

Agenda items are subject to change as priorities dictate.

**CONTACT PERSONS FOR MORE INFORMATION:** Leslie C. Campbell, Executive Secretary HHES, or Marilyn Palmer, Committee Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE; M/S E–56, Atlanta, Georgia 30333, telephone 1–888/42–ATSDR (28737), fax 404/639–6075.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 19, 1999.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 99–27722 Filed 10–22–99; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Toxic Substance and Disease Registry

### Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Hanford Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

*Name:* Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Hanford Health Effects Subcommittee (HHES).

*Times and Dates:* 8:30 a.m.–5 p.m., November 18, 1999; 8 a.m.–4 p.m., November 19, 1999.

*Place:* Cavanaughs at Columbia Center, 1101 North Columbia Center Boulevard, Kennewick, Washington 99336. Telephone: 509/783–0611.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

*Background:* Under a Memorandum of Understanding (MOU) signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

In addition, under an MOU signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS has delegated program responsibility to CDC.

*Purpose:* This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to receive an update from the Inter-tribal Council on Hanford Health Projects; to review and approve the Minutes of the previous meeting; to receive updates from ATSDR/NCEH and NIOSH; to receive reports from the Outreach, Public Health Assessment, Public Health Activities, and the Studies Workgroups; and to address other issues and topics, as necessary.

*Matters To Be Discussed:* Agenda items include a presentation and discussion on the health effects subcommittee evaluations, Health of Hanford November 3 & 4 meeting update, issues related to combining doses from multiple environmental exposures, and a presentation and discussion on current activities with Consortium for Risk Evaluation and Stakeholder participation (CRESP).

Agenda items are subject to change as priorities dictate.

*Contact Persons for More Information:* Leslie C. Campbell, Executive Secretary, HHES, or Marilyn Palmer, Committee Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE, M/S E–56, Atlanta, Georgia 30333, telephone 1–888/42–ATSDR(28737), fax 404/639–6075.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 19, 1999.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 99–27723 Filed 10–22–99; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 99N–4329]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Filing Objections and Requests for a Hearing on a Regulation or Order

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements for filing objections and requests for a hearing on a regulation or order.

**DATES:** Submit written comments on the collection of information by December 27, 1999.

**ADDRESSES:** Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

**SUPPLEMENTARY INFORMATION:** Under the PRA (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. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506 (c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (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, when appropriate, and other forms of information technology.

**Filing Objections and Requests for a Hearing on a Regulation or Order—21 CFR Part 12 (OMB Control Number 0910–0184—Extension)**

Under section 701(e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 371(e)(2)), within 30 days after publication of a regulation or order, any person adversely affected by such regulations or order may file objections and request a public hearing. The implementing regulations for these statutory requirements are found at 21 CFR 12.22, which sets forth the format and instructions for filing objections and requests for a hearing. Each objection for which a hearing has been requested must be separately numbered and specify with particularity the provision of the regulation or the proposed order objected to. In addition, each objection must include a detailed description and analysis of the factual information to be presented in support of the objection as well as any report or other document relied on, with some exceptions. Failure to include this information constitutes a waiver of the right to a hearing on that objection. FDA uses the description and analysis only for the purpose of determining whether a hearing request is justified. The description and analysis do not limit the evidence that may be presented if a hearing is granted.

Respondents to this information collection are those parties that may be adversely affected by an order or regulation.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

| 21 CFR Section | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 12.22 | 60 | 1 | 60 | 20 | 1,200 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimate for this collection of information is based on agency data received on this administrative procedure for the past 3 years. Agency personnel responsible for processing the filing of objections and requests for a public hearing on a specific regulation or order, estimate approximately 60 requests are received by the agency annually, with each requiring approximately 20 hours of preparation time.

Dated: October 18, 1999.

**William K. Hubbard,**

*Senior Associate Commissioner for Policy, Planning and Legislation.*

[FR Doc. 99–27698 Filed 10–22–99; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 99N–2097]**

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Medical Devices; Humanitarian Use Devices

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing

that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Submit written comments on the collection of information by November 24, 1999.

**ADDRESSES:** Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

**FOR FURTHER INFORMATION CONTACT:** Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

**Medical Devices; Humanitarian Use Devices—21 CFR Part 814—Subpart H (OMB Control Number 0910–0332)—Extension**

This collection implements the humanitarian use device (HUD) provision under section 520(m) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(m)) and part 814 (21 CFR part 814) subpart H. Under section 520(m) of the act, FDA is authorized to exempt an HUD from the effectiveness requirements of sections 514 and 515 of the act (21 U.S.C. 360d and 360e) provided that the device: (1) Is used to treat or diagnosis a disease or condition that affects fewer than 4,000 individuals in the United States; (2) would not be available to a person with such a disease or condition unless the exemption is granted, and there is no comparable device, other than another HUD approved under this exemption, available to treat or diagnosis the disease or condition; and (3) the device will not expose patients to an unreasonable or significant risk of illness or injury, and the probable benefit to health from using the device outweighs the risk of injury or illness from its use, taking into account the probable risks and benefits of currently available devices or alternative forms of treatment.

The information collection herein will allow FDA to determine whether to: (1) Grant HUD designation of a medical device, (2) exempt an HUD from the effectiveness requirements in sections 514 and 515 of the act provided that the device meets requirements set forth in section 520(m) of the act, and (3) grant marketing approval(s) for the HUD. Failure to collect this information would prevent FDA from making these determinations. Also, this information enables FDA to determine whether the holder of a humanitarian device exemption (HDE) is in compliance with the HDE requirements.

*Description of Respondents*: Businesses or others for-profit.

In the **Federal Register** of July 19, 1999 (64 FR 38673), the agency requested comments on the proposed collections of information. No significant comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| 21 CFR Section | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 814.102 | 20 | 1 | 20 | 40 | 800 |
| 814.104(b) and (c) | 15 | 1 | 15 | 320 | 4,800 |
| 814.106 | 15 | 4 | 60 | 50 | 3,000 |
| 814.108 | 12 | 1 | 12 | 80 | 960 |
| 814.116(d)(3) | 1 | 1 | 1 | 1 | 1 |
| 814.124(a) | 5 | 1 | 5 | 1 | 5 |
| 814.126(b) | 1 | 1 | 1 | 2 | 2 |
| 814.126(b)(1) | 15 | 1 | 15 | 120 | 1,800 |
| Total | | | | | 11,368 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

| 21 CFR Section | No. of Recordkeepers | Annual Frequency per Recordkeeping | Total Annual Records | Hours per Recordkeeper | Total Hours |
|---|---|---|---|---|---|
| 814.126(b)(2) | 15 | 1 | 15 | 2 | 30 |
| Total | | | | | 30 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

**I. Explanation of Reporting Burden Estimate**

Generally, the information requested from respondents represents an accounting of information already in the possession of the applicant.

In the **Federal Register** of June 26, 1996 (61 FR 33232), the agency issued a final rule for HUD's. FDA based its estimates on comments received on the proposed rule, industry contact, and internal FDA benchmark factors (such as the number of premarket approval applications processed). The numbers generated in the current estimate as shown in Tables 1 and 2 of this document and described in the following paragraphs, are based upon those prior estimates, and they have only been modified if actual numbers over the past 3 years have indicated a significantly different trend.

The first HUD rule became effective in fiscal year (FY) 1997, and FDA has only a few years of actual data to compare to original estimated numbers. Although actual numbers are less than the estimated numbers for this information collection, FDA believes that as manufacturers become more familiar with the program, FDA will experience

a larger number of submissions under the provisions discussed as follows:

Section 814.102 estimate assumes that 20 sponsors per year will submit a request for HUD designation. It is estimated to require 40 staff hours to complete each HUD designation request.

Section 814.104 estimate assumes that 15 sponsors per year will submit an HDE application after receiving HUD designation. FDA estimates that it will require an average of 320 staff hours to complete each HDE application.

Section 814.110(a) requires that a new indication for use of an HUD approved under this part be submitted as a new HDE application complying with § 814.104. All burden under this section is included under the estimate for § 814.104.

Section 814.106 estimate assumes that 4 times per year FDA will request or the sponsor will submit additional information or resubmit an HDE or HDE supplement for approximately 15 of the submitted HDE applications. FDA estimates that it will require the respondents to take an average of 50 staff hours to complete each amendment or resubmitted application. If FDA refuses to file the HDE application, requests for an informal conference (under § 814.112(b)) will be processed as an HDE amendment. Responses to approvable and not approvable letters (§ 814.116(b), (c), and (d)) will be processed as HDE amendments. A request for an opportunity for an informal hearing, prior to FDA issuing an order withdrawing approval, under § 814.118(d), will be processed as an HDE amendment. Because FDA only tracks amendments, and not the reasons for the amendment, the burden estimates for the sections listed in Tables 1 and 2 of this document are included in the burden estimate for § 814.106.

Section 814.108 estimate assumes that it will receive approximately 12 supplements for the submitted HDE applications. It is estimated that it will take approximately 80 staff hours to complete each supplemental application.

Section 814.116(d)(3) estimate assumes that it will receive approximately one request to withdraw an HDE application per year, based on withdrawals submitted in FY 1997 and FY 1998. FDA estimates it will take no longer than 1 staff hour to complete each written withdrawal notice.

Section 814.124(a) estimate assumes that five physicians will use HUD's in emergency situations before obtaining institute and review board (IRB) approval. FDA estimates that notification under this section will take an average of 1 hour per response.

Section 814.124(b) estimate assumes that one holder of an approved HDE will notify FDA of IRB withdrawal of approval. FDA estimates that it will take an average of 2 staff hours to notify FDA of IRB withdrawal.

Section 814.126(b)(1), following the implementation of the FDA Modernization Act, was amended to incorporate section 520(m)(5) of the act, which provides FDA the authority to require an HDE applicant to demonstrate continued compliance with the HDE requirements, if the agency believes that such a demonstration is necessary to protect the public health or has reason to believe that the criteria for the HDE exemption are no longer met. FDA amended this section to delete the requirement of an annual report and to include instead a periodic reporting requirement that will be established by the approval order for the HDE. This provision permits the agency to obtain sufficient information for it to determine whether there is reason to question the continued exemption of the device from the act's effectiveness requirements.

FDA anticipates that because of this amendment, the 15 HDE holders will remain active and therefore, estimates that 15 periodic reports will be received. FDA also estimates that it will take an average of 120 staff hours to complete a periodic report as a result of this amendment.

### II. Explanation of Recordkeeping Burden Estimate

Section 814.126(b)(2) estimate assumes that 15 HDE holders per year will maintain records of certain required information. It is estimated that it will take an average of 2 staff hours to maintain this information.

Dated: October 18, 1999.

**William K. Hubbard,**

*Senior Associate Commissioner for Policy, Planning and Legislation.*

[FR Doc. 99–27756 Filed 10–22–99; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 99N–4282]**

### Biotechnology in the Year 2000 and Beyond; Public Meetings

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing three public meetings on issues within FDA's jurisdiction related to foods (both human and animal) derived from plants developed using bioengineering techniques. The purpose of these public meetings is for the agency to share its current approach and experience over the past 5 years regarding safety evaluation and labeling of food products derived from bioengineered plant varieties, to solicit views on whether FDA's policies or procedures should be modified, and to gather information to be used to assess the most appropriate means of providing information to the public about bioengineered products in the food supply. These meetings will afford consumers, industry, and academia an opportunity to provide focused comment on these issues in a manner that will assist FDA in evaluating and refining its existing policies and procedures.

**DATES:** The meetings are scheduled as follows:

1. Thursday, November 18, 1999, 9 a.m. to 6 p.m., Chicago, IL.
2. Tuesday, November 30, 1999, 10 a.m. to 7 p.m., Washington, DC.
3. Monday, December 13, 1999, 9 a.m. to 6 p.m., Oakland, CA.

Submit written comments by January 13, 2000.

**ADDRESSES:** The meetings will be held at the following locations:

1. Chicago—One Prudential Plaza, Plaza Club, 40th floor,130 East Randolph St., Chicago, IL 60601.
2. Washington, DC— Grand Hyatt Washington, 1000 H St. NW., Washington, DC 20001.
3. Oakland—Elihu Harris State Office Building, 1515 Clay St., Oakland, CA 94612.

Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, or via e-mail to www.fda.gov/ohrms/dockets. Comments are to be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:**

*For general information*:

Nega Beru, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3090, FAX 202–418–3131, e-mail nberu@bangate.fda.gov.

*For information about and registration for the public meeting in Chicago, IL*:

Darlene Bailey, Chicago District (HFR–CE 645), Food and Drug Administration, 300 S. Riverside

Plaza, Suite 550–South, Chicago, IL 60606, 312–353–7126, FAX 312–886–3280, e-mail dbailey@ora.fda.gov.

*For information about and registration for the public meeting in Washington, DC*:

Patricia Alexander, Office of Consumer Affairs (HFE–40), Food and Drug Administration, Rockville, MD 20857, 301–827–5006, FAX 301–827–3052, e-mail palexand@oc.fda.gov.

*For information about and registration for the public meeting in Oakland, CA*:

Janet McDonald, San Francisco District (HFR–PA100), Food and Drug Administration, 1431 Harbor Bay Pkwy., Alameda, CA 94502–7070, 510–337–6845, FAX 510–337–6708, e-mail jmcdonal@ora.fda.gov.

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

FDA published a notice in the **Federal Register** of May 29, 1992 (57 FR 22984), entitled ''Statement of Policy: Foods Derived from New Plant Varieties'' (the 1992 policy) that clarified the agency's interpretation of the Federal Food, Drug, and Cosmetic Act (the act) with respect to foods derived from new plant varieties, including foods derived from plants developed through recombinant DNA techniques. The 1992 policy was issued in response to inquiries from developers and the public regarding food safety and labeling issues related to foods derived from bioengineered plants. The 1992 policy discussed how such foods would be regulated within the existing legal framework of the act and provided comprehensive guidance to developers for the safety and nutritional assessment of such foods. The agency's guidance, based on the agency's understanding of bioengineering advances in food and agriculture research then current, was intended to assist developers in meeting their legal duty under the act to ensure that relevant scientific, safety, and regulatory issues are resolved prior to commercial distribution of such foods. A basic principle of the 1992 policy is that the critical consideration in evaluating the safety of such foods should be the objective characteristics of the food product or its components rather than the fact that new development methods were used. Consistent with the 1992 policy, FDA believes that it is in the best interests of the public, the regulated industry, and the agency for developers to inform FDA about foods derived from new plant varieties developed through bioengineering prior to commercial distribution. Thus, FDA established procedures through which developers can consult with the agency, and through which these consultations can be brought to closure. FDA prepared guidance on the consultation procedures and made it available on its home page on the World Wide Web (http://www.fda.gov/cfsan under ''Biotechnology'').

FDA considers a consultation to be completed when all safety and regulatory issues have been resolved. Since 1994, when FDA completed its evaluation of the first food product developed using bioengineering (the Flavr Savr™ tomato), private firms have completed consultations with FDA on food safety, nutritional, and labeling issues for foods derived from over 40 different bioengineered plants.

The 1992 policy also addressed the labeling of foods derived from new plant varieties, including plants developed by genetic engineering. Under this policy and applicable law, FDA requires special labeling if the composition of a food developed through genetic engineering or any other method differs significantly from its conventional counterpart. For example, if a new food contains a protein derived from a food that commonly causes allergic reactions (and the developer cannot demonstrate that the protein is not an allergen), labeling would be necessary to alert sensitive consumers because they would not expect to be allergic to that food. Likewise, a new food that has a decrease in nutrients from the food's traditional counterpart would be required to contain that additional information on its label. In addition, the agency requires that the name of a new food be revised when that food is derived from a bioengineered plant that differs from its traditional counterpart such that the customary common or usual name no longer applies to the new food. FDA is not aware of information that would distinguish genetically engineered foods as a class from foods developed through other methods of plant breeding and, thus, the agency does not require that such foods be specially labeled to disclose the method of development. FDA believes that it would be useful to the public, the regulated industry, and the agency to conduct a series of public meetings to share the agency's current approach and experience over the past 5 years regarding its oversight of food products developed through bioengineering, to solicit views on whether FDA's process should be modified, and to gather information to be used to assess the most appropriate means of providing information to the public about bioengineered products in the food supply.

As part of the meetings, FDA will describe its current approach to regulating foods from bioengineered plants as well as the agency's experience over the past 5 years regarding safety testing and labeling of these products. FDA also intends to invite representatives from consumer groups, industry, and academia to make presentations on scientific and safety issues and to invite representatives of these same groups to make presentations on public information and labeling. Finally, there will be opportunities for oral presentations by preregistered members of the public.

## II. Scope of Discussion

The scope of these three public meetings will be limited to the issues discussed in this document. A brief discussion on each of the issues with specific questions on which FDA seeks comment follows.

### *A. Scientific/Safety Issues*

1. Has FDA's consultation process achieved its intended purpose? Based on experience to date, should this regulatory approach ''sunset,'' continue in its current state, be made mandatory, or otherwise be revised?

2. What newly emerging scientific information related to the safety of foods derived from bioengineered plants is there, if any? Are there specific tests which, if conducted on such foods, would provide increased assurance of safety for man or animals consuming these foods?

3. What types of food products derived from bioengineered plants are planned for the future? Will these foods raise food safety issues that would require different approaches to safety testing and agency oversight? If so, what are those approaches?

### *B. Public Information Issues*

1. Should FDA's policy requiring labeling for significant changes, including changes in nutrients or the introduction of allergens, be maintained or modified? Should FDA maintain or revise its policy that the name of the new food be changed when the common or usual name for the traditional counterpart no longer applies? Have these policies regarding the labeling of these foods served the public?

2. Should additional information be made available to the public about foods derived from bioengineered plants? If so, what information? Who should be responsible for communicating such information?

3. How should additional information be made available to the public: e.g., on the Internet, through food information phone lines, on food labels, or by other means?

### III. Registration and Requests to Make Oral Presentations

If you would like to attend the meetings, you must register with the appropriate contact person (addresses above) 15 days prior to the meeting you wish to attend by providing your name, title, business affiliation, address, telephone, and fax number. To expedite processing, this registration information also may be faxed to the appropriate contact person (fax number above). If you need special accommodations due to disability, please inform the contact person when you register. If, in addition to attending, you wish to make an oral presentation during the meeting, you must so inform the contact person when you register and submit: (1) A brief written statement of the general nature of the views you wish to present; (2) the names and addresses of all persons who will participate in the presentation; and (3) an indication of the approximate time that you request to make your presentation. Depending upon the number of people who register to make presentations, FDA may have to limit the time allotted for each presentation.

### IV. Comments

Interested persons may, on or before January 13, 2000, submit written comments to the Dockets Management Branch (address above). You may also send comments to the Dockets Management Branch via e-mail to www.fda.gov/ohrms/dockets. You should annotate and organize your comments to identify the specific issues to which they refer. You must submit two copies of comments, identified with the docket number found in brackets in the heading of this document, except that you may submit one copy if you are an individual. You may review received comments in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

### V. Transcripts

A transcript of each meeting will be made. You may request a copy of any transcript 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. You may also examine the transcripts of the meetings at the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday, as well as on the FDA web site, http://www.fda.gov.

Dated: October 18, 1999.

**William K. Hubbard,**

*Senior Associate Commissioner for Policy, Planning and Legislation.*

[FR Doc. 99–27694 Filed 10–20–99; 8:49 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Opthalmic Drugs Subcommittee of the Dermatologic and Ophthalmic Drugs Advisory Committee; Notice of Meeting

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

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee*: Opthalmic Drugs Subcommittee of the Dermatologic and Ophthalmic Drugs Advisory Committee.

*General Function of the Committee*: To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time*: The meeting will be held on November 17, 1999, 8:30 a.m. to 5 p.m.

*Location*: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

*Contact*: Tracy Riley or Angie Whitacre, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12534. Please call the Information Line for up-to-date information on this meeting. Current information may also be accessed on the Internet at FDA's website at www.fda.gov.

*Agenda*: The subcommittee will discuss new drug application 21–119 Visudyne™ (verteporfin for injection, QLT Therapeutics, Inc.), for treatment of age-related macular degeneration in patients with predominantly classic subfoveal choroidal neovascularization.

*Procedure*: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 12, 1999. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 9:30 a.m. Time allotted for each presentation may be limited. Those desiring to make formal presentations should notify the contact person before November 12, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 14, 1999.

**Linda A. Suydam,**

*Senior Associate Commissioner.*

[FR Doc. 99–27757 Filed 10–22–99; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Gastrointestinal Drugs Advisory Committee; Notice of Meeting

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

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee*: Gastrointestinal Drugs Advisory Committee

*General Function of the Committee*: To provide advice and recommendations to the agency on FDA regulatory issues.

*Date and Time*: The meeting will be held on November 16, 1999, 9 a.m. to 5 p.m.

*Location*: Holiday Inn, The Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

*Contact Person*: Joan C. Standaert, Center for Drug Evaluation and Research (HFD–180), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 419–259–6211, or John M. Treacy (HFD–21), 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12538. Please call the Information Line for up-to-date information on this meeting.

*Agenda*: The committee will discuss new drug application 21–107, Lotronex™ (alosteron HCI), Glaxo-Wellcome Pharmaceuticals, to be indicated for treatment of irritable bowel in female patients with diarrhea predominance.

*Procedure*: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 9, 1999. Oral presentations from the public will be scheduled between approximately 9 a.m. and 10 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 9, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 12, 1999.

**Linda A. Suydam,**

*Senior Associate Commissioner.*

[FR Doc. 99–27758 Filed 10–22–99; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 98N–0222]**

### Notice of Appeal of Order Granting Summary Judgment and Permanent Injunction

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration is issuing this notice to inform interested parties that the United States is appealing the Order of the United States District Court for the District of Columbia, in *Washington Legal Foundation* v. *Henney*, Civ. No. 94–1306 (D.D.C. July 28, 1999). This order, entitled ''Final Amended Order Granting Summary Judgment and Permanent Injunction,'' was previously published in the **Federal Register** at the court's direction (August 12, 1999, 64 FR 44025).

**FOR FURTHER INFORMATION CONTACT:** Bradford W. Stone, Office of Public Affairs (HFI–2), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6250.

Dated: October 13, 1999.

**Margaret M. Dotzel,**

*Acting Associate Commissioner for Policy.*

[FR Doc. 99–27697 Filed 10–22–99; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[HCFA–1105–N]**

### Medicare Program; November 9, 1999, Meeting of the Competitive Pricing Demonstration Area Advisory Committee, Maricopa County, AZ

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

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Competitive Pricing Demonstration Area Advisory Committee (AAC), Maricopa County, AZ on November 9, 1999.

The Balanced Budget Act of 1997 (BBA) requires the Secretary of the Department of Health and Human Services (the Secretary) to establish a demonstration project under which payments to Medicare+Choice organizations in designated areas are determined in accordance with a competitive pricing methodology. The BBA requires the Secretary to appoint an AAC in each designated demonstration area to advise on implementation of the project, including the marketing and pricing of the plan and other factors. The AAC meetings are open to the public.

**DATES:** The meeting is scheduled for November 9, 1999, from 9:30 a.m. until 5 p.m., m.s.t.

**ADDRESSES:** The meeting will be held at the YWCA of the USA, Leadership Development Conference Center, 9440 North 25th Avenue, Phoenix, AZ 85021, (602) 944–0569.

**FOR FURTHER INFORMATION CONTACT:** Joseph Tilghman, Acting Regional Administrator, Health Care Financing Administration, 75 Hawthorne Street, 4th Floor, San Francisco, CA 94105, (415) 744–3501.

**SUPPLEMENTARY INFORMATION:** Section 4011 of the Balanced Budget Act of 1997 (BBA) requires the Secretary of the Department of Health and Human Services (the Secretary) to establish a demonstration project under which payments to Medicare+Choice organizations in designated areas are determined in accordance with a competitive pricing methodology.

Section 4012(a) of the BBA requires the Secretary to appoint a Competitive Pricing Advisory Committee (the CPAC) to make recommendations to the Secretary concerning the designation of areas for inclusion in the project and appropriate research designs for implementing the project. Once an area is designated as a demonstration site, section 4012(b) of the BBA requires the Secretary to appoint an Area Advisory Committee (AAC) to advise on the marketing and pricing of the plan in the area and other factors. Thus far, the Kansas City, MO Metropolitan Area and Maricopa County, AZ have been designated as demonstration sites.

The Maricopa County AAC has previously met on March 31, 1999, April 20, 1999, May 18 and 19, 1999, June 7 and 8, 1999, and June 30 and July 1, 1999, and September 23, 1999. The Maricopa County AAC is composed of representatives of health plans, providers, employers, and Medicare beneficiaries in the area. The members are: Joseph Anderson, Schaller Anderson Inc.; Rick Badger, Pacificare of Arizona; Reginald Ballantyne III, PMH Health Resources, Inc.; Donna Buelow, Arizona State Retirement System; Charles Cohen, Arizona Department of Insurance; John Hensing, M.D., Samaritan Health Systems; Mary Lynn Kasunic, Area Agency on Aging; Anne Lindeman, Governor's Advisory Council on Aging; Ben Lopez, Honeywell Corp.; Thomas Marreel, William M. Mercer Associates; Anthony Mitten, Maricopa County Medical Society; Edward Munno, Jr., Intergroup of Arizona; Erik Olsen, D.D.S., American Association of Retired Persons; Leland Peterson, Sun Health Corp.; Donna Redford, Arizona Bridge to Independent Living; Herb Rigberg, M.D., Health Services Advisory Group; Martha Taylor, Arizona SHIP; Clyde Wright, M.D., Cigna of Arizona; Arthur Pelberg, M.D., Schaller Anderson Inc.; Joseph Hanss, M.D., Physician; and Phyllis Biedess, Director, AHCCCS. Susan Navran of Blue Cross Blue Shield of Arizona has resigned from the Committee. In accordance with section 4012(b) of the BBA, the AAC will exist for the duration of the project in the area.

This notice announces the November 9, 1999, meeting of the Maricopa County AAC. This meeting will be held from 9:30 a.m. to 5 p.m., m.s.t. at the YWCA of the USA, Leadership Development Conference Center in Phoenix, AZ.

The agenda for the November 9, 1999, meeting will include the following:

- A discussion of the draft bid package for the competitive pricing demonstration.
- A discussion of a proposed plan for beneficiary education and outreach.
- Reports from the AAC subcommittees.
- A discussion of any outstanding issues.

Individuals or organizations that wish to make 5-minute oral presentations on the agenda issues should contact the Acting San Francisco Regional Administrator, by 12 noon, November 2, 1999. Anyone who is not scheduled to speak may submit written comments to the Acting San Francisco Regional Administrator, by COB, November 4, 1999.

These meetings are open to the public, but attendance is limited to space available.

**Authority:** Section 4012 of the Balanced Budget Act of 1997, Public Law 105–33 (42 U.S.C.1395w–23 note) and section 10(a) of Public Law 92–463 (5 U.S.C. App.2, Section 10(a))

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

Dated: October 20, 1999.

**Michael M. Hash,**

*Deputy Administrator, Health Care Financing Administration.*

[FR Doc. 99–27821 Filed 10–22–99; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer 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 the meeting of the President's Cancer Panel.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended because the premature disclosure of information from discussions would likely to significantly frustrate implementation of recommendations.

*Name of Committee:* President's Cancer Panel.

*Date:* November 2, 1999

*Time:* 9:00 a.m. to 4:30 p.m.

*Agenda:* To review agency perspectives on the National Cancer Panel and develop questions and agendas for future meetings in 1999 and 2000.

*Place:* NOVA Research Company, 4600 East-West Highway, Suite 700, Bethesda, MD 20814.

*Contact Person:* Maureen O. Wilson, Ph.D., Executive Secretary, National Cancer Institute, NIH, 31 Center Drive, Building 31, Room 4A48, Bethesda, MD 20892, (301) 496–1148.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 18, 1999.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 99–27806 Filed 10–22–99; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Research Resources; 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 Center for Research Special Emphasis Panel, Comparative Medicine Review Committee.

*Date:* October 26, 1999.

*Time:* 8 a.m. to Adjournment.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Bethesda, Delaware Room, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Camille M. King, Phd., Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0815.

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; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS).

Dated: October 14, 1999.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 99–27808 Filed 10–22–99; 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 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 552(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 Institute Special Emphasis Panel, Family Blood Pressure Program.

*Date:* November 3–4, 1999.

*Time:* November 3, 1999, 7 p.m. to 9 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

*Time:* November 4, 1999, 8:00 am to 4:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

*Contact Person:* Valerie L. Prenger, PhD, Health Science Administrator, NIH, NHLBI, DEA, Review Branch, Rockledge Center II, 6701 Rockledge Drive, Suite 7198, Bethesda, MD 20892–7924, (301) 435–0297.

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. 93.233, 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 October 18, 1999.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 99–27807 Filed 10–22–99; 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 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 Heart, Lung, and Blood Institute Special Emphasis Panel, Midcareer Investigator Award in Patient-Oriented Research.

*Date:* October 25, 1999.

*Time:* 10 a.m. to 11 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Rockledge Bldg. II, 6701 Rockledge Dr., Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Diane M. Reid, M.D., Scientific Review Administrator, NIH, NHLBI, DEA, Two Rockledge Center, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892–7924, (301) 435–0277.

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. 93.233, 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: October 18, 1999.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 99–27815 Filed 10–22–99; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Human Genome Research Institute; 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 Human Genome Research Institute Special Emphasis Panel.

*Date:* November 18–19, 1999.

*Time:* November 18, 1999, 8 p.m. to Recess.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Time:* November 19, 1999, 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Rudy O. Pozzatti, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301 402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: October 15, 1999.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 99–27809 Filed 10–22–99; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Human Genome Research Institute; 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 Human Genome Research Institute Special Emphasis Panel.

*Date:* December 20, 1999.

*Time:* 2:00 pm to 3:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* National Human Genome Research Institute, National Institutes of Health, Building 31, Room B2B32, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Rudy O. Pozzatti, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301–402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: October 15, 1999.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 99–27810 Filed 10–22–99; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Human Genome Research Institute; 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 Human Genome Research Institute Initial Review Group, Genome Research Review Committee.

*Date:* November 3, 1999.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Bethesda, 8120 Wisconsin, Bethesda, MD 20814.

*Contact Person:* Ken D. Nakamura, Ph.D., Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301 402–0838.

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. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: October 18, 1999.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 99–27816 Filed 10–22–99; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets of commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel T32 Conference Call.

*Date:* October 27, 1999.

*Time:* 10 am to 1 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* 7201 Wisconsin Ave., Suite 502C, MD 20891 (Telephone Conference Call).

*Contact Person:* Ramesh Vemuri, Phd, Scientific Review Administrator, Office of Scientific Review, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892 (301) 496–9666.

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 on Aging Special Emphasis Panel, T32 Training Grants.

*Date:* October 29, 1999.

*Time:* 8:00 am to 5:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Pooks Hill Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* Ramesh Vemuri, Phd, Scientific Review Administrator, Office of Scientific Review, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892 (301) 496–9666.

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 on Aging Special Emphasis Panel to Review Contract Proposal RFP NIH AG 99 11.

*Date:* November 5, 1999.

*Time:* 1 pm to 6 pm.

*Agenda:* To review and evaluate contract proposals.

*Place:* Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Arthur Schaerdel, DVM, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

*Name of Committee:* National Institute on Aging Special Emphasis Panel, ADRC Review Meeting.

*Date:* November 15–17, 1999.

*Time:* 6:30 p.m. to 2 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Pooks Hill Marriott, 1515 Pooks Hill Road, Bethesda, MD 20814, (Virtual Meeting).

*Contact Person:* Ramesh Vemuri, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

*Name of Committee:* National Institute on Aging Special Emphasis Panel, Oxidative and Excitatory Toxicity in Neurodegeneration.

*Date:* November 22–23, 1999.

*Time:* 6 pm to 4 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Double Tree Guest Suites, 400 Soldiers Field Road, Boston, MA 02134.

*Contact Person:* Arthur D. Schaerdel, DVM, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

*Name of Committee:* National Institute on Aging Special Emphasis Panel, Aging Brain and Behavior.

*Date:* November 23, 1999.

*Time:* 10 am to 12:30 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* 7201 Wisconsin Avenue, Bethesda, MD 20814, (Telephone Conference Call).

*Contact Person:* William A. Kachadorian, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: October 15, 1999.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 99–27811 Filed 10–22–99; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; 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:* Acquired Immunodeficiency Syndrome Research Review Committee.

*Date*: November 5, 1999.

*Time*: 8 a.m. to 4:30 p.m.

*Agenda*: Grant applications.

*Place*: Crowne Plaza Hotel, Meetings Rooms 2 and 3, 14th and K Street, NW., Washington, DC 20005.

*Contact Person:* :Paula S. Strickland, Ph.D., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2156, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 15, 1999.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy, NIH.*

[FR Doc. 99–27813 Filed 10–22–99; 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 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 Dental Research Special Emphasis Panel, 00–01, Review of RFA for R21 grants.
*Date:* December 5–6, 1999.
*Time:* 8:30 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications and/or proposals.
*Place:* Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.
*Contact Person:* H. George Hausch, PhD, Chief, 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, 00–05, Review of R01 grant.
*Date:* December 10, 1999.
*Time:* 10 a.m. to 11:30 a.m.
*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, 00–15, Review of P01.
*Date:* December 13–14, 1999.
*Time:* 8:30 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.
*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: October 15, 1999.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 99–27814 Filed 10–22–99; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following 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 Library of Medicine Special Emphasis Panel SITE VISIT Ledley-''Protein Info. Resource for the Next Millennium.''
*Date:* November 2–3, 1999.
*Time:* November 2, 1999, 7:30 p.m. to 9:30 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Bethesda Hyatt Regency, One Bethesda Metro, Bethesda, MD 20814.
*Time:* November 3, 1999, 8:30 a.m. to 12:00 p.m.
*Agenda:* To review and evaluate the site.
*Place:* Georgetown University, Martin-Marietta, Conference Room, 3900 Reservoir Road, NW., Washington, DC 20007.
*Time:* November 3, 1999, 2:00 p.m. to 4:30 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Bethesda Hyatt Regency, One Bethesda Metro, Bethesda, MD 20814.
*Contact Person:* Sharee Pepper, PhD, Scientific Review Administrator, Health Scientist Administrator, Office of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892, (301) 594–4933.

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. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: October 19, 1999.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 99–27805 Filed 10–22–99; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The 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:* Center for Scientific Review Special Emphasis Panel.
*Date:* October 25, 1999.
*Time:* 3 p.m. to 4 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* River Inn, 924 25th Street, NW, Washington, DC 20037.
*Contact Person:* Gloria B. Levin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, (301) 435–1017, leving@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:* November 1, 1999.
*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
*Contact Person:* Eugene Vigil, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, (301) 435–1025.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* November 1–2, 1999.
*Time:* 8 a.m. to 6 p.m.
*Agenda:* To review and evaluate grant applications.

*Place:* One Washington Circle Hotel, Conference Center, One Washington Circle, Washington, DC 20037.

*Contact Person:* Jay Cinque, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* November 1–2, 1999.

*Time:* 8 a.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

*Contact Person:* Houston Baker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7854, Bethesda, MD 20892, 301–435–1175, baker@drg.nih.gov.

*Name of Committee:* Oncological Sciences Initial Review Group, Metabolic Pathology Study Section.

*Date:* November 1–3, 1999.

*Time:* 8 a.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Latham Hotel, 3000 M Street, NW, Washington, DC 20007–3701.

*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.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* November 1–2, 1999.

*Time:* 8:30 a.m. to 11:30 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Wyndham Bristol Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

*Contact Person:* Nabeeh Mourad, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, (301) 435–1222.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* November 1, 1999.

*Time:* 8:30 a.m. to 6:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency, One Metro Center, Bethesda, MD 20814.

*Contact Person:* Mohindar Poonian, Phd., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, 301–435–1168, poonianm@csr.nih.gov.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* November 1–2, 1999.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* St. James Hotel, 950 24th Street, NW., Washington, DC 20037.

*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.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* November 2–3, 1999.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Clarion Hampshire Hotel, 1310 New Hampshire Ave, NW., Washington, DC 20036.

*Contact Person:* Jay Joshi, Phd., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7846, Bethesda, MD 20892, (301) 435–1184.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* November 2, 1999.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency, One Metro Center, Bethesda, MD 20814.

*Contact Person:* Mohindar Poonian, Phd., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, 301–435–1168, poonianm@csr.nih.gov.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Hyperaccelerated Award/Mechanisms in Immune Disease Trials.

*Date:* November 2, 1999.

*Time:* 1 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Calbert Laing, Phd., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, (301) 435–1221.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* November 2, 1999.

*Time:* 4 p.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Garrett V. Keefer, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7808, Bethesda, MD 20892, (301) 435–1152.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* November 3–4, 1999.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Angela M. Pattatucci, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, (301) 435–1775.

*Name of Committee:* Health Promotion and Disease Prevention Initial Review Group, Nursing Research Study Section.

*Date:* November 3–5, 1999.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

*Contact Person:* Gertrude McFarland, DNSC, FAAN, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7816, Bethesda, MD 20892, (301) 435–1784.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* November 3–4, 1999.

*Time:* 9 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Double Tree Hotel, 1750 Rockville, Pike, Rockville, MD 20852.

*Contact Person:* Richard Marcus, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, 301–435–1245, richard.marcus@nih.gov.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* November 3, 1999.

*Time:* 3:30 p.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Nancy Lamontagne, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892, (301) 435–1726.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, BBCB2.

*Date:* November 3, 1999.

*Time:* 12 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Donald Schneider, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, (301) 435–1727.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, SSS–6–01.

*Date:* November 4–5, 1999.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Grand Westin Hotel, 2350 M Street, NW., Washington, DC 20037–1417.

*Contact Person:* Marjam G. Behar, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4178, MSC 7806, Bethesda, MD 20892, (301) 435–1180.

*Name of Committee:* Cardiovascular Sciences Initial Review Group. Pharmacology Study Section.

*Date:* November 4–5, 1999.

*Time:* 8 a.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* American Inn of Bethesda, 8130 Wisconsin Ave, Bethesda, MD 20814.

*Contact Person:* Jeanne N. Ketley, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, (301) 435–1789.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* November 4–5, 1999.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn—Chevy Chase, Palladian East and Center Rooms, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*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.

*Name of Committee:* Cell Development and Function Initial Review Group. Cell Development and Function 6.

*Date:* November 4–5, 1999.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Georgetown Holiday Inn, 2101 Wisconsin Ave, NW., Washington, DC 20007.

*Contact Person:* Anthony D. Carter, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, (301) 435–1024.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* November 4–5, 1999.

*Time:* 8:30 a.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* River Inn, 924 25th Street, NW., Washington, DC 20037.

*Contact Person:* Gloria B. Levin, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, (301) 435–1017, leving@csr.nih.gov.

*Name of Committee:* Genetic Sciences Initial Review Group, Genome Study Section.

*Date:* November 4–5, 1999.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Fair Lakes, 12777 Fair Lakes Circle, Fairfax, VA 22033.

*Contact Person:* Cheryl M. Corsaro, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6172, MSC 7890, Bethesda, MD 20892, (301) 435–1045, corsaroc@csr.nih.gov.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* November 4–5, 1999.

*Time:* 8:30 a.m. to 2:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Julian L. Azorlosa, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848, Bethesda, MD 20892, (301) 435–1507.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* November 4, 1999.

*Time:* 11 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Cheri Wiggs, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–8367.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* November 4–5, 1999.

*Time:* 6 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

*Contact Person:* J. Terrell Hoffeld, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 15, 1999.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 99–27812 Filed 10–22–99; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 26, 1999, 1:30 p.m. to October 26, 1999, 3 p.m., NIH Rockledge 2, Bethesda, MD, 20892 which was published in the **Federal Register** on October 15, 1999, 64 FR 55954.

The meeting will be held on October 27, 1999, starting at 1 p.m. The end time and location remain the same.

The meeting is closed to the public.

Dated: October 19, 1999.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 99–27817 Filed 10–22–99; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[OR–130–1020–XU; GP0–0015]**

### Notice of Meeting of the Eastern Washington Resource Advisory Council

**AGENCY:** Bureau of Land Management, Spokane District.

**ACTION:** Meeting of the Eastern Washington Resource Advisory Council; November 18, 1999, in Spokane, Washington.

**SUMMARY:** A meeting of the Eastern Washington Resource Advisory Council will be held on November 18, 1999. The meeting will convene at 9:00 a.m., at the Spokane District Office of the Bureau of Land Management, 1103 N. Fancher Road, Spokane, Washington, 99212–1275. The meeting will adjourn upon conclusion of business, but no later than 4:00 p.m. Public comments will be heard from 10:00 a.m. until 10:30 a.m. If necessary to accommodate all wishing to make public comments, a time limit may be placed upon each speaker. At an appropriate time, the meeting will adjourn for approximately one hour for lunch. Topics to be discussed include: current status of the Interior Columbia Basin Ecosystem Management Project, Rangeland Standards and Guidelines implementation, Fiscal Year 1999 Accomplishments, Fiscal Year 2000 Issues, and schedule of meetings for 2000.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, Spokane District Office, 1103 N. Fancher Road, Spokane, Washington 99212; or call 509–536–1200.

Dated: October 19, 1999.

**Joseph K. Buesing,**

*District Manager.*

[FR Doc. 99–27724 Filed 10–22–99; 8:45 am]

BILLING CODE 4310–33–U

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[ID–990–1020–XQ]**

### Resource Advisory Council Meetings

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Resource Advisory Council meeting locations and times.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM) council meeting of the Upper Snake River Districts Resource Advisory Council (RAC) will be held as indicated below. The agenda for the first meeting of the fiscal year will be largely a training session for new members and will also include a brainstorming session for the entire RAC on issues they would like to discuss during the upcoming year. All meetings are open to the public. The public may present written comments to the council. Each formal council meeting will have a time allocated for hearing public comments. The public comment period for the council meetings is listed below. Depending on the number of persons wishing to comment, and the time available, the time for individual oral comments may be limited. Individuals who plan to attend and need further information about the meetings, or need special assistance such as sign language interpretation or Page 1 of 2 other reasonable accommodations should contact David Howell at the Upper Snake River District Office, 1405 Hollipark Dr., Idaho Falls, Idaho 83401, or telephone (208) 524–7559.

**DATE AND TIME:** The next meeting will be held December 2, 1999 at the BLM's Pocatello Field Office, 1111 North 8th Avenue in Pocatello, Idaho. The meeting will start at 8:30 a.m., with public comments scheduled from 8:40–9:10 a.m.

**SUPPLEMENTARY INFORMATION:** The purpose of the council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of the of the public lands.

**FOR FURTHER INFORMATION CONTACT:** David Howell, Upper Snake River District Office, 1405 Hollipark Dr., Idaho Falls, ID 83401, (208) 524–7559.

Dated: October 13, 1999.

**James E. May,**

*District Manager.*

[FR Doc. 99–27770 Filed 10–22–99; 8:45 am]

**BILLING CODE 4310–GG–P**

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[CO–700–00–0777–XQ–1784]**

## Southwest Resource Advisory Council Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Amendment to Notice of Southwest Resource Advisory Council meeting.

**SUMMARY:** Notice is hereby given that the Southwest Resource Advisory Council (Southwest RAC) meeting scheduled for November 18, 1999 in Durango, Colorado, has been rescheduled. The new meeting date and location is Wednesday, November 17, 1999 in Montrose, Colorado.

**DATES:** The meeting will be held on Wednesday, November 17, 1999.

**ADDRESSES:** For additional information, contact Roger Alexander, Bureau of Land Management (BLM), Southwest Center, 2465 South Townsend Avenue, Montrose, Colorado 81401; telephone 970–240–5335; TDD 970–240–5366; e-mail Roger__Alexander@co.blm.gov.

**SUPPLEMENTARY INFORMATION:** The Southwest RAC meeting scheduled for Thursday, November 18, 1999 in Durango Colorado has been rescheduled to Wednesday, November 17, 1999 at the BLM Southwest Center conference room at 2465 South Townsend, Montrose, Colorado. The meeting will begin at 9:00 a.m. and end at 4:30 p.m. The agenda will focus on the draft recreation guidelines developed by BLM Colorado's three RAC's, but may include other issues/topics to be determined. Public comment is scheduled for 1:00 p.m.

Summary minutes for Council meetings are maintained in the Southwest Center Office and on the World Wide Web at http://www.co.blm.gov/mdo/mdo__sw__rac.htm and are available for public inspection and reproduction within thirty (30) days following each meeting.

Dated: October 19, 1999.

**Roger Alexander,**

*Public Affairs Specialist.*

[FR Doc. 99–27787 Filed 10–22–99; 8:45 am]

**BILLING CODE 4310–JB–P**

## DEPARTMENT OF THE INTERIOR

## Minerals Management Service

## Outer Continental Shelf (OCS) Science Committee (SC) of the Minerals Management Advisory Board; Announcement of Plenary Session

**AGENCY:** Minerals Management Service, Interior.

**SUMMARY:** The Minerals Management Advisory Board OCS SC will meet at the Sheraton Inner Harber Hotel in Baltimore, Maryland, on November 16–18, 1999.

The OCS SC is an outside group of scientists which advises the Director, MMS, on the feasibility, appropriateness, and scientific merit of the MMS OCS Environmental Studies Program as it relates to information needed for informed OCS decisonmaking.

The Committee will meet in plenary session on Tuesday, November 16, from 8:30 a.m. to 4:30 p.m., and reconvene on Wednesday, November 17, from 8:30 a.m. to 5:30 p.m. The session will end at noon on November 18. Discussion will focus on the following:

- Deepwater Research
- Environmental Monitoring for the Arctic OCS
- MMS's Coastal Marine Institutes

The meetings are open to the public. Approximately 30 visitors can be accommodated on a first-come first-served basis at the plenary session.

A copy of the agenda may be requested from the MMS by calling Julie Reynolds at (703) 787–1211. Other inquiries concerning the OCS SC meeting should be addressed to Mr. Robert LaBelle, Executive Secretary to the OCS Scientific Committee, Minerals Management Service, 381 Elden Street, Mail Stop 4040, Herndon, Virginia 20170–4817. He may be reached by telephone at (703) 787–1756, and by electronic mail at Robert.LaBelle@mms.gov.

**DATES:** November 16–18, 1999.

**ADDRESSES:** Sheraton Inner Harbor Hotel, 300 South Charles Street, Baltimore, Maryland 21201, telephone (410) 962–8300.

**FOR FURTHER INFORMATION CONTACT:** Julie Reynolds or Robert LaBelle at the address or phone numbers listed above.

**Authority:** Federal Advisory Committee Act, P.L. 92–463, 5 U.S.C., Appendix I, and the Office of Management and Budget's Circular A-63, Revised.

Dated: October 15, 1999.

**Donald W. Hill,**

*Associate Director for Offshore Minerals Management.*

[FR Doc. 99–27473 Filed 10–22–99; 8:45 am]

**BILLING CODE 4043–MR–M**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Environmental Impact Statement; Notice of intent; Big Cypress National, Florida

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of intent to prepare a draft environmental impact statement for the general management plan addendum for the Big Cypress National Preserve Addition, Florida.

**SUMMARY:** Big Cypress National Preserve, located in south central Florida, was established in 1974. The preserve's boundary was expanded in 1988 by PL 100–301 (Big Cypress National Preserve Addition Act) to include 147,280 acres of land northeast of the original preserve and a strip of land along the western boundary. Known as the Addition, these lands increased the area of the original preserve by approximately 30 per cent. The current General Management Plan (GMP) for the preserve, which was already under preparation when PL 100–301 was approved, does not address the management of the addition lands. Consequently, an Addendum to the GMP will be prepared for the Addition.

Under the provisions of the National Environmental Policy Act, the National Park Service (NPS) will prepare an Environmental Impact Statement (EIS) to assess the impacts of alternative management concepts for a General Management Plan Addendum for the Addition to Big Cypress National Preserve.

The purpose of a General Management Plan Addendum is to set forth a clearly defined direction for resource preservation and visitor use for the addition lands. The General Management Plan Addendum/ Environmental Impact Statement will evaluate the environmental impacts of a range of alternatives to address distinct management issues for the Addition, such as resource protection, visitor use, and development.

Participation throughout the planning process will be encouraged and facilitated by various means, such as public meetings and newsletters. The NPS will conduct 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. This notice will also serve as an additional scoping method. Persons who may be interested in or affected by the GMP/EIS are invited to participate in the scoping process by responding to this notice with written or e-mail comments.

**DATES:** Written comments concerning the GMP Addendum/EIS should be received no later than December 27, 1999.

**ADDRESSES:** Written comments concerning the GMP/EIS or requests to be added to the project mailing list should be sent to: Mr. Wally Hibbard, Superintendent, Big Cypress National Preserve, HCR 61, Box 110, Ochopee, FL 34141.

**FOR FURTHER INFORMATION CONTACT:** Ellen Hand, GMP Planning Coordinator, at the above address or at telephone number (941) 695–2000 ext. 318, or *Bicygmp@nps.gov.*

**SUPPLEMENTARY INFORMATION:** Commenters should be aware that National Park Service practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual commenters may request that we withhold their home address from the planning record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the planning record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: October 15, 1999.

**W. Thomas Brown,**

*Regional Director, Southeast Region.*

[FR Doc. 99–27702 Filed 10–22–99; 8:45 am]

**BILLING CODE 4310–70–M**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Environmental Statements; Notice of Intent: Selma to Montgomery National Historic Trail, Alabama

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of intent to prepare an environmental impact statement for a comprehensive management plan for the Selma to Montgomery National Historic Trail in Alabama.

**SUMMARY:** In 1990, Congress directed the National Park Service (NPS) to study the route and events associated with the 1965 Voting Rights March from Selma to Montgomery, Alabama, for potential designation as a National Historic Trail. Completed in 1993, the feasibility study recommended that the march route be designated as the Selma to Montgomery National Historic Trail, and be administered by NPS. ON November 12, 1996, Congress amended Section 5(a) of the National Trail System Act (16 U.S.C. 1244 (a) to establish the Selma to Montgomery NHT, and to designate 54 miles of city streets and U.S. Highway 80 from Brown Chapel A.M.E. Church in Selma to the State Capital building in Montgomery as the official trail corridor.

In August 1995, at the request of Alabama Department of Transportation (ALDOT), Governor Fob James designated the U.S. Highway 80 corridor between Selma and Montgomery as a state scenic highway. The Federal Highway Administration approved the route as part of the National Scenic Byways Program in December of the same year. In 1996 the route was also designated as an All-American Road by the U.S. Department of Transportation.

The ALDOT conducted a series of public meetings in 1997 and 1998 and prepared a draft master plan for the National Scenic Byway/All-American Road. This plan provides an overview of possibilities. The National Park Service is seeking to further coordinate the efforts of both agencies by preparing a Comprehensive Management Plan that will build upon the information and options presented in the ALDOT master plan. The Comprehensive Management Plan will provide strategies for the management, visitor use, and development of the National Historic Trail. Key management concerns will include preservation of significant cultural and natural resources including historic sites, structures and the march route. Other issues involve the story of the march and facilities and programs needed to convey this story to the visitor.

The Comprehensive Management Plan shall identify a resource-based framework for the trail and describe future conditions, preferred alternative, and general strategies, consistent with the trail's significance and mandates. The alternatives and general strategies required to achieve desired future

conditions would then be assessed for their environmental effects.

**DATES:** A public meeting(s) will be held in the surrounding community during this process. Please consult with local newspapers for the times and locations or call the park for this information. Comments provided during this process should be received within 45 days from the date of this notice.

**FOR FURTHER INFORMATION CONTACT:** Superintendent, Selma to Montgomery NHT, P.O. Drawer 10, Tuskegee Institute, AL 36087, Telephone: 334–727–6390.

**SUPPLEMENTARY INFORMATION:** The National Park Service is beginning this planning process and invites your comments. You may provide your comments in person at the public meeting or by mail to the Superintendent at the above address. Issues for evaluation may be suggested as well as alternatives for addressing the issues. A draft of the plan and environment impact statement is expected to be available for public review by mid–2000. Your input is appreciated.

Dated: October 15, 1999.

**W. Thomas Brown,**

*Regional Director, Southeast Region.*

[FR Doc. 99–27700 Filed 10–22–99; 8:45 am]

**BILLING CODE 4310–70–M**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Manzanar National Historic Site Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Manzanar National Historic Site Advisory Commission will be held at 1:00 p.m. on Saturday, November 6, 1999, at the Western Archeological and Conservation Center, 1415 North 6th Avenue, Tucson, Arizona, to hear presentations on issues related to the planning, development, and management of Manzanar National Historic Site.

The Advisory Commission was established by Public Law 102–248, to meet and consult with the Secretary of the Interior or his designee, with respect to the development, management, and interpretation of the site, including preparation of a general management plan for the Manzanar National Historic Site.

Members of the Commission are as follows:

Rose Ochi, Chairperson
William Michael, Vice Chairperson
Keith Bright
Martha Davis
Sue Kunitomi Embrey
Gann Matsuda
Vernon Miller
Mas Okui
Glenn Singley
Richard Stewart

The main agenda items at this meeting of the Commission will include the following:

(1) Status report on the development of Manzanar National Historic Site by Superintendent Ross R. Hopkins.

(2) General discussion of miscellaneous matters pertaining to future Commission activities and Manzanar National Historic Site development issues.

(3) Public comment period.

This meeting is open to the public. It will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Commission. A transcript will be available after January 31, 2000. For a copy of the minutes, contact the Superintendent, Manzanar National Historic Site, PO Box 426, Independence, CA 93526.

Dated: October 12, 1999.

**Marian O'Dea,**

*Acting Superintendent, Manzanar National Historic Site.*

[FR Doc. 99–27818 Filed 10–22–99; 8:45 am]

**BILLING CODE 4310–70–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### National Capital Memorial Commission Notice of Public Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Capital Memorial Commission (the Commission) will be held at 2 p.m. on Tuesday, November 16, 1999, at the National Building Museum, Room 312, 5th and F Streets, NW., Washington, DC.

The purpose of the meeting will be to discuss currently authorized and proposed memorials in the District of Columbia and environs.

In addition to discussing general matters and routine business, the Commission will continue deliberations of its review of the Commemorative Works Act of 1986. This review was requested by the Subcommittee on National Parks, Historic Preservation, and Recreation, United States Senate Committee on Energy and Natural Resources. The Commission's review is in conjunction with the National Capital Planning Commission/National Capital Memorial Commission/Commission of Fine Arts Joint Task Force on Memorials which convened, in part, to assist in an evaluation of that Act.

The Commission was established by Public Law 99–652, the Commemorative Works Act, to advise the Secretary and the Administrator, General Services Administration, (the Administrator) on policy and procedures for establishment of (and proposals to establish) commemorative works in the District of Columbia and its environs, as well as such other matters as it may deem appropriate concerning commemorative works.

The Commission examines each memorial proposal for conformance to the Commemorative Works Act, and makes recommendations to the Secretary and the Administrator and to Members and Committees of Congress. The Commission also serves as a source of information for persons seeking to establish memorials in Washington, DC, and its environs.

The members of the Commission are as follows:

Director, National Park Service

Chairman, National Capital Planning Commission

Architect of the Capitol

Chairman, American Battle Monuments Commission

Chairman, Commission of Fine Arts

Mayor of the District of Columbia

Administrator, General Services Administration

Secretary of Defense

The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed. Persons who wish to file a written statement or testify at the meeting or who want further information concerning the meeting may contact Ms. Nancy Young, Executive Secretary to the Commission, at (202) 619–7097.

Dated: October 6, 1999.

**Joseph M. Lawler,**

*Acting Regional Director, National Capital Region.*

[FR Doc. 99–27701 Filed 10–22–99; 8:45 am]

**BILLING CODE 4310–70–M**

## INTERNATIONAL TRADE COMMISSION

**[Investigations Nos. 731–TA–96 and 439–445 (Review)]**

### Industrial Nitrocellulose from Brazil, China, France, germany, Japan, Korea, The United Kingdom, and Yugoslavia

**AGENCY:** United States International Trade Commission.

**ACTION:** Scheduling of full five-year reviews concerning the antidumping duty orders on industrial nitrocellulose from Brazil, China, France, Germany, Japan, Korea, the United Kingdom, and Yugoslavia.

**SUMMARY:** The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty orders on industrial nitrocellulose from Brazil, China, France, Germany, Japan, Korea, the United Kingdom, and Yugoslavia would be likely to lead to continuation or recurrence of material injury. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

**EFFECTIVE DATE:** October 15, 1999.

**FOR FURTHER INFORMATION CONTACT:** John Fry (202–708–4157), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

**SUPPLEMENTARY INFORMATION:**

#### Background

On September 3, 1999, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (64 FR 50107, September 15, 1999). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's web site.

#### Participation in the Reviews and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of these reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

#### Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Staff report.*—The prehearing staff report in the reviews will be placed in the nonpublic record on March 17, 2000, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

*Hearing.*—The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on April 6, 2000, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before March 29, 2000. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on April 3, 2000, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

*Written submissions.*—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is March 28, 2000. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is April 17, 2000; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before April 17, 2000. On May 10, 2000, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before May 12, 2000, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a

document for filing without a certificate of service.

**Authority:** These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: October 18, 1999.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 99–27819 Filed 10–22–99; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigations Nos. 701–TA–297 (Review) and 731–TA–422 (Review)]**

### Steel Rails From Canada

**AGENCY:** United States International Trade Commission.

**ACTION:** Revised schedule for the subject five-year reviews.

**EFFECTIVE DATE:** October 13, 1999.

**FOR FURTHER INFORMATION CONTACT:** Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

**SUPPLEMENTARY INFORMATION:** On September 3, 1999, the Commission established a schedule for the conduct of these expedited five-year reviews (64 FR 50108, September 15, 1999). Subsequently, the Department of Commerce extended the date for its final results in the expedited reviews from September 29, 1999 to December 28, 1999 (64 FR 55233, October 12, 1999). In order to have the benefit of the Department of Commerce's findings, the Commission, therefore, is revising its schedule to conform with Commerce's new schedule.

The Commission's new schedule for the five-year reviews is as follows: the staff report will be placed in the nonpublic record on November 8, 1999; the deadline for interested party comments (which may not contain new factual information) on the staff report is November 12, 1999; the deadline for interested party comments (which may not contain new factual information) on Commerce's final results is January 3, 2000; and the deadline for brief written statements (which shall not contain new factual information) pertinent to the reviews by any person that is neither a party to the five-year reviews nor an interested party is January 3, 2000.

For further information concerning these five-year reviews, see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

**Authority:** These five-year reviews are being conducted under authority of title VII of the Tariff Act of 1930; the Commission is using its authority under 19 U.S.C. 1675(c)(5)(B) to extend the deadline for these reviews. Further, this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: October 19, 1999.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 99–27820 Filed 10–22–99; 8:45 am]

**BILLING CODE 7020–02–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 99–135]**

### Centennial of Flight Commission: Appointment of Executive Director

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of Centennial of Flight Commission executive director.

**SUMMARY:** NASA hereby gives notice that the Centennial of Flight Commission (PL 105–389)—on which the NASA Administrator serves—has established November 15, 1999, as the date by which interested Federal employees must submit applications to serve as executive director.

**FOR FURTHER INFORMATION CONTACT:** Code ZH, NASA Headquarters, Washington, DC 20546, telephone (202) 358–0384, fax (202) 358–2866, e-mail histinfo@hq.nasa.gov.

**SUPPLEMENTARY INFORMATION:** PL 105–389 directs the establishment of a Centennial of Flight Commission. The Centennial of Flight Commission is charged by the Congress of the United States with playing a leading role in coordinating and publicizing public activities celebrating the achievements of Wilbur and Orville Wright and commemorating a century of powered flight. The Commission encourages the broadest national and international support for and participation in the commemoration, publicizing and encouraging programs, projects and events that will involve, educate, enrich and inspire the maximum number of people. Detailed personnel from Federal agencies shall staff it for the period between November 25, 1999 and through the termination of the Commission, on or about June 30, 2004.

An Executive Director is required to oversee the day-to-day effort of the Commission, as stated in PL 105–389: ''There shall be an Executive Director appointed by the Commission and chosen from among detailees from the agencies and organizations represented on the Commission. The Executive Director may be paid at a rate not to exceed the maximum rate of basic pay payable for the Senior Executive Service'' (Sec. 7(a)).

The organizations from which candidates may be detailed to this position include:

- Department of the Air Force
- Federal Aviation Administration
- First Flight Centennial Foundation of North Carolina
- Department of the Interior
- Library of Congress
- National Aeronautics and Space Administration
- Department of the Navy
- Smithsonian Institution
- Department of Transportation
- 2003 Committee of Ohio

The detailee in this position shall:

- Be responsible to the Commission for all aspects of the operation.
- Work with Commission Chair, or executive committee, to plan and organize CFC meetings.
- Assist the Commission in the creation of the statutory Advisory Board, and manage the activities of that group.
- Be responsible for developing, coordinating and administering, in cooperation with the First Flight Centennial Commission of North Carolina, the 2003 Committee of Ohio, and others, programs, activities and events that are appropriate to the commemoration of the centennial of powered flight.
- Be responsible for encouraging and coordinating broad national and international participation and sponsorship of the commemoration.
- Oversee the creation, maintenance, and distribution of a calendar or register of international programs, projects and events relating to the history of aviation in general and the commemoration of the centennial of powered flight in particular.
- Work to achieve maximum visibility for the commemoration.

• Oversee staff in the preparation of an annual report to the Congress on the activities and status of the Commission, as per the statutory requirement.

• Coordinate CFC commemorative activities with the approved programs and plans of other local, state and federal agencies, private organizations and individuals.

• Develop and oversee the licensing of the Commission's logo and other publicly available materials.

All candidates must be civil service employees of the agencies named above and must submit a copy of their SF 50 showing career, career-conditional, or reinstatement eligibility.

Please submit the following documents to the address provided in this announcement:

• A letter of intent to be a candidate for this position.

• A written application for detail. You may use Optional Form (OF)-612, a resume, or a vita for this application.

• A narrative assessment of your qualifications for this position.

• A written statement acknowledging your Agency's willingness to detail you to this position through June 30, 2004.

**DATES:** Responses to this Notice must be received by November 15, 1999.

Dated: October 15, 1999.

**Roger D. Launius,**

*NASA Senior Historian.*

[FR Doc. 99–27460 Filed 10–22–99; 8:45 am]

**BILLING CODE 7510–01–U**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 99–136]**

### Centennial of Flight Commission: Criteria for Selection of Sixth Commissioner

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of Centennial of Flight Commission criteria for selection of sixth Commissioner.

**SUMMARY:** NASA hereby gives notice that the Centennial of Flight Commission (PL 105–389)—on which the NASA Administrator serves—has established November 15, 1999, as the date by which interested organizations must submit applications to serve as the sixth commissioner.

**FOR FURTHER INFORMATION CONTACT:** Code ZH, NASA Headquarters, Washington, DC 20546, telephone (202) 358–0384, fax (202) 358–2866, e-mail histinfo@hq.nasa.gov.

**SUPPLEMENTARY INFORMATION:** PL 105–389 directs the establishment of a Centennial of Flight Commission. The Centennial of Flight Commission is charged by the Congress of the United States with playing a leading role in coordinating and publicizing public activities celebrating the achievements of Wilbur and Orville Wright and commemorating a century of powered flight. The Commission encourages the broadest national and international support for and participation in the commemoration, publicizing and encouraging programs, projects and events that will involve, educate, enrich and inspire the maximum number of people.

The Act establishes a Commission of six members to plan and assist in the commemoration. These include the following five named positions:

• Director, National Air and Space Museum of the Smithsonian Institution.

• Administrator, National Aeronautics and Space Administration.

• Administrator, Federal Aviation Administration.

• Chairman, First Flight Centennial Foundation of North Carolina.

• Chairman, 2003 Committee of Ohio.

PL 105–389 states, Sec. 4(5), that a sixth Commissioner shall also be appointed as follows: ''As chosen by the Commission, the president or head of a United States aeronautical society, foundation, or organization of national stature or prominence who will be a person from a State other than Ohio or North Carolina.''

All organizations fitting these criteria are invited to submit, not later than November 15, 1999, a proposal indicating an interest in serving on this Commission. The proposal should contain the following elements, but should not exceed 10 pages in length:

• A statement explaining why your organization should be chosen.

• The name and resume of the individual from your organization who will actually serve as Commissioner.

• A set of detailed initiatives that should be pursued by the Commission.

• Any indication of financial or organizational conflict of interest.

Please submit these documents to the address provided in this announcement.

**DATES:** Responses to this Notice must be received by November 15, 1999.

Dated: October 15, 1999.

**Roger D. Launius,**

*NASA Senior Historian.*

[FR Doc. 99–27462 Filed 10–22–99; 8:45 am]

**BILLING CODE 7510–01–U**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (99–138)]**

### Notice of Prospective Patent License

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of prospective patent license.

**SUMMARY:** NASA hereby gives notice that Microelectronics and Computer Technology Corporation of Austin, TX, 78759–5398, has applied for an exclusive license to practice the invention disclosed in U.S. Patent No. 4,902,769 entitled, ''LOW DIELECTRIC FLUORINATED POLY (PHENYLENE ETHER KETONE) FILM AND COATING'' for which a United States Patent was issued to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Langley Research Center.

**DATES:** Responses to this notice must be received by December 27, 1999.

**FOR FURTHER INFORMATION CONTACT:** Hillary W. Hawkins, Patent Attorney, NASA Langley Research Center, Mail Code 212, Hampton, VA, 23681–2199; telephone 757–864–8882; facsimile 757–864–9190.

Dated: October 19, 1999.

**Edward A. Frankle,**

*General Counsel.*

[FR Doc. 99–27721 Filed 10–22–99; 8:45 am]

**BILLING CODE 7510–01–U**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–423–LA–3; ASLBP No. 00–771–01–LA]**

### Northeast Nuclear Energy Company; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding.

Northeast Nuclear Energy Company, Millstone Nuclear Power Station, Unit No. 3

This Board is being established pursuant to the request for hearing submitted by the Connecticut Coalition

Against Millstone and the Long Island Coalition Against Millstone. The petition for leave to intervene was filed in response to issuance by the NRC staff of a proposed no significant hazards consideration notice with respect to a license amendment request of the Northeast Nuclear Energy Company to amend the operating license for the Millstone Nuclear Power Station, Unit No. 3. The proposed amendment would modify the license to allow an increase in the capacity of the spent fuel storage pools. A notice of the proposed amendment was published in the **Federal Register** at 64 FR 48672 (Sept. 7, 1999).

The Board is comprised of the following administrative judges:

Charles Bechhoefer, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001

Dr. Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001

Dr. Charles N. Kelber, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001

All correspondence, documents, and other materials shall be filed with the Judges in accordance with 10 CFR 2.701.

Issued at Rockville, Maryland, this 19th day of October 1999.

**G. Paul Bollwerk, III,**

*Chief Administrative Judge, Atomic Safety and Licensing Board Panel.*

[FR Doc. 99–27759 Filed 10–22–99; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 72–29]**

## PECO Energy Company; Issuance of Environmental Assessment and Finding of No Significant Impact Regarding the Proposed Exemption From Certain Requirements of 10 CFR Part 72

By letter dated May 27, 1999, PECO Energy Company (PECO) requested an exemption, pursuant to 10 CFR 72.7 from the requirements of 10 CFR 72.72(d) for the Peach Bottom Atomic Power Station (Peach Bottom) Independent Spent Fuel Storage Installation (ISFSI). PECO is seeking US Nuclear Regulatory Commission (NRC or Commission) approval to maintain a single set of spent fuel records at a records storage facility qualified to American National Standards Institute (ANSI) N45.2.9–1979.

### Environmental Assessment (EA)

*Identification of Proposed Action:* PECO is seeking Commission approval to maintain its Peach Bottom ISFSI records by keeping them in an ANSI N45.2.9–1979 qualified records storage facility. The requirements of 10 CFR 72.72(d) state in part that ''Records of spent fuel and high-level radioactive waste in storage must be kept in duplicate. The duplicate set of records must be kept at a separate location sufficiently remote from the original records that a single event would not destroy both sets of records.'' The proposed action before the Commission is whether to grant this exemption under 10 CFR 72.7.

*Need for the Proposed Action:* The applicant states that, pursuant to 10 CFR 72.140(d), the Peach Bottom Quality Assurance (QA) Program has been applied to the ISFSI activities. In that program, quality assurance records are maintained in accordance with the commitments to ANSI N45.2.9–1979. PECO requests the exemption from 10 CFR 72.72(d) to allow ISFSI records of spent fuel in storage to be stored in the same manner as Peach Bottom Atomic Power Station records; *i.e.*, as a single set of records stored in accordance with ANSI N45.2.9–1979.

ANSI N45.2.9–1979 provides standards for the protection of nuclear power plant QA records against degradation. It specifies design standards for use in the construction of record storage facilities when use of a single storage facility is desired. It includes specific standards for protection against degradation mechanisms such as fire, humidity, and condensation. The requirements in ANSI N45.2.9–1979 have been endorsed by NRC in Regulatory Guide 1.88, ''Collection, Storage, and Maintenance of Nuclear Power Plant Quality Assurance Records,'' as adequate for satisfying the recordkeeping requirements of 10 CFR Part 50, Appendix B. ANSI N45.2.9–1979 also satisfies the requirements of 10 CFR 72.72 by providing for adequate maintenance of records regarding the identity and history of the spent fuel in storage. Such records would be subject to and need to be protected from the same types of degradation mechanisms as nuclear power plant QA records.

*Environmental Impacts of the Proposed Action:* Elimination of the requirement to store ISFSI records at a duplicate facility has no impact on the environment. Storage of records does not change the methods by which spent fuel will be handled and stored at Peach Bottom and the Peach Bottom ISFSI and does not change the amount of any effluents, radiological or non-radiological, associated with the ISFSI.

*Alternative to the Proposed Action:* Since there is no environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact are not evaluated. The alternative to the proposed action would be to deny approval of the exemption and, therefore, not allow Peach Bottom to store ISFSI records in an ANSI N45.2.9 qualified facility. This alternative would have no environmental impact as well.

*Agencies and Persons Consulted:* On September 7, 1999, David Ney from the Pennsylvania Department of Environmental Protection, Bureau of Radiation Protection, was contacted about the Environmental Assessment for the proposed action and had no comments.

### Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the foregoing EA, the Commission finds that the proposed action of granting an exemption from 10 CFR 72.72(d), so that PECO may store records of spent fuel stored at the ISFSI in a single record storage facility which meets the standards of ANSI N45.2.9–1979, will not significantly impact the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this exemption request, see the PECO exemption request dated May 27, 1999, which is docketed under 10 CFR Part 72, Docket 72–29. The exemption request is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20555 and the Local Public Document Room located at the State Library of Pennsylvania, Harrisburg, PA.

Dated at Rockville, Maryland, this 14th day of October 1999.

For the Nuclear Regulatory Commission.

**E. William Brach,**

*Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 99–27762 Filed 10–22–99; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards Meeting of the Subcommittee on Plant License Renewal; Notice of Meeting

The ACRS Subcommittee on Plant License Renewal will hold a meeting on November 18, 1999, in Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

*Thursday, November 18, 1999—1 p.m. Until the Conclusion of Business*

The Subcommittee will review the staff's resolution of the open and confirmatory items identified in the Safety Evaluation Report related to the license renewal of Calvert Cliffs Nuclear Power Plant Units 1 and 2 and related license renewal activities. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Noel F. Dudley (telephone 301/415–6888) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, *etc.*, that may have occurred.

Dated: October 18, 1999.

**Richard P. Savio,**

*Associate Director for Technical Support, ACRS/ACNW.*

[FR Doc. 99–27760 Filed 10–22–99; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Addendum to Subagreement Pertaining to State Resident Engineers Between the Nuclear Regulatory Commission and the State of Illinois

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Publication of Addendum No. 1 to Subagreement No. 3 Between NRC and the State of Illinois.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) and the State of Illinois entered into Subagreement No. 3 on December 18, 1990 (55 FR 51973). The Subagreement defined the way in which the NRC and the State, with the assistance of State Resident Engineers, cooperate in planning and conducting inspections of nuclear power plants in Illinois to ensure compliance with NRC regulations. The purpose of Addendum No. 1 is to modify Subagreement No. 3 to address inspections at permanently shut down nuclear power plants in Illinois that remain under license by the NRC. The text of Addendum No. 1 between the NRC and the State of Illinois follows.

**FOR FURTHER INFORMATION CONTACT:** Spiros C. Droggitis, Office of State Programs, telephone (301) 415–2367, e-mail scd@nrc.gov.

Dated at Rockville, Maryland this 19th day of October, 1999.

For the Nuclear Regulatory Commission.

**Paul H. Lohaus,**

*Director Office of State Programs.*

### Addendum No. 1 to Subagreement No. 3 Pertaining to State Resident Engineers Between the U.S. Nuclear Regulatory Commission and the State of Illinois

*I. Purpose*

The purpose of this Addendum is to modify Subagreement No. 3 pertaining to State Resident Engineers between the U.S. Nuclear Regulatory Commission (NRC) and the State of Illinois (State), hereafter referred to as Subagreement No. 3, to address State inspections at permanently shut down nuclear power plants in Illinois that remain under license by the NRC.

*II. Background*

A. The NRC and the State entered into Subagreement No. 3 to define the way in which NRC and the State, with the assistance of State Resident Engineers will cooperate in planning and conducting inspections at operating nuclear power plants in Illinois. Subagreement No. 3 provided, among other things, for interaction and cooperation between State Resident Engineers and NRC Resident Inspectors. Since the entry into Subagreement No. 3, ''State Resident Engineers'' as referred to in Subagreement No. 3, have become known as ''State Resident Inspectors.''

B. Since the entry into Subagreement No. 3, NRC has received notice that a licensed nuclear power plant in Illinois has permanently ceased operations and has begun decommissioning.

C. It is NRC's practice to, approximately one year after shut down, withdraw its resident inspectors from licensed nuclear power plants that have permanently ceased operations and are undergoing decommissioning and to conduct inspections of such power plants with staff from its Regional offices.

D. The NRC has requested and the State of Illinois has agreed, in accordance with Section X. of Subagreement 3, to modify the Subagreement to recognize the changed circumstances for licensed power plants that are permanently shut down, are undergoing decommissioning, and are no longer inspected by NRC resident inspectors, and to provide for continued cooperation and coordination with the State of Illinois with regard to inspections at such plants.

*III. Modifications*

A. Subagreement No. 3 is modified as provided in this Addendum. Subagreement No. 3 shall remain in full and complete effect except as specifically modified in this Addendum. Insofar as any provisions in Subagreement No. 3 are inconsistent with this Addendum, this Addendum shall control for the purposes of decommissioning inspections at permanently shut down commercial nuclear power reactors.

B. The title to Subagreement No. 3 is modified to read ''SUBAGREEMENT NO. 3 BETWEEN THE U.S. NUCLEAR REGULATORY COMMISSION AND THE STATE OF ILLINOIS PERTAINING TO STATE RESIDENT INSPECTORS AND STATE INSPECTORS FOR DECOMMISSIONING PLANTS.''

C. Section VI.C.13 of Subagreement No. 3 is modified to read as follows: All written communications with the licensee will be made through NRC. After completing its portion of a safety inspection, the State will document to NRC its inspection's scope, details, and results in a report written in the format described in the NRC Inspection Manual. The NRC will use the information, as appropriate, in preparation of the NRC's final report. The State is responsible for the technical adequacy of State Resident Inspector's or State Inspector's inspection reports.

D. ''State Resident Engineer'' is modified in Subagreement No. 3 to read ''State Resident Inspector.''

E. State personnel who conduct decommissioning inspections pursuant to this Addendum and who need not be resident at nuclear power plants shall be referred to as ''State Inspectors.''

F. After NRC's withdrawal of its resident inspectors from licensed nuclear power plants in Illinois that have permanently ceased operations, State participation in NRC decommissioning inspections at these facilities will be governed by Subagreement 3 and this Addendum. This Addendum will not apply to State inspections conducted pursuant to any authority other than Subagreement No. 3.

G. State Inspectors will be State Resident Inspectors qualified and certified by the State in accordance with the NRC Inspection Manual, or its equivalent, for the specific inspection function they are to perform.

H. The State will utilize the NRC's Master Inspection Plan as the basis for proposing State Inspectors' participation in NRC scheduled decommissioning inspections. The State will submit inspection recommendations to the NRC Regional Administrator, Region III (or designee), at least one month prior to the scheduled inspection to allow sufficient time for NRC review and approval.

I. The State will perform decommissioning safety inspections only in accordance with the inspection plans using applicable procedures in the NRC Inspection Manual.

J. To facilitate cooperation and efficient use of resources, NRC and State Inspectors will conduct joint team decommissioning inspections under this Addendum. An NRC inspector will lead the team and be in charge of the inspection.

K. The principal senior management contacts for this Addendum will be the Director, Division of Nuclear Materials Safety, Region III, and the Manager, Office of Nuclear Facility Safety, Illinois Department of Nuclear Safety.

Dated: September 28, 1999.

For the U.S. Nuclear Regulatory Commission.

**Frank J. Miraglia,**

*Acting Executive Director for Operations.*

Dated: October 4, 1999.

For the State of Illinois.

**Thomas W. Ortciger,**

*Director, Illinois Department of Nuclear Safety.*

[FR Doc. 99–27761 Filed 10–22–99; 8:45 am]

**BILLING CODE 7590–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 22–28212]**

## Application and Opportunity for Hearing: Altos Hornos De Mexico, S.A., DE C.V.

October 18, 1999.

Notice is hereby given that Altos Hornos De Mexico, S.A., De C.V. (''Applicant''), has filed an application (''Application'') under Section 310(b)(1)(ii) of the Trust Indenture Act of 1939 (''Act'') for a finding by the Securities and Exchange Commission (''Commission'') that the trusteeship of Norwest Bank of Minnesota, N.A. (''Norwest'') as successor trustee under (i) an Indenture dated as of May 6, 1997 (''1997 Indenture''), by and between the Applicant and the Chase Manhattan Bank (''Chase''), the predecessor trustee, with respect to 11⅜% Series A Senior Notes due April 30, 2002 (''Series A Notes''), and 11⅞% Series B Senior Notes due April 30, 2004 (''Series B Notes,'' together with the Series A Notes, the ''1997 Notes''), and (ii) an Indenture dated as of December 16, 1996 (''1996 Indenture,'' together with the 1997 Indenture, ''Indentures'') by and between the Applicant and Chase, the predecessor trustee, with respect to the issuance of 5½% Senior Discounted Convertible Notes (''1996 Notes,'' together with 1997 Notes, ''Notes'') due 2001, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Norwest from acting as trustee under either of the Indentures. Section 310(b) provides that if a trustee under an indenture qualified under the Act has or acquires any conflicting interest, it shall, within ninety days after ascertaining such a conflicting interest, either eliminate such conflicting interest or resign. Section 310(b)(1) of the Act provides that with certain exceptions, a trustee shall be deemed to have a conflicting interest if such trustee is a trustee under another indenture in which any other securities of the same issuer are outstanding. However, under Section 310(b)(1)(ii) of the Act, certain situations are exempt from the deemed conflict of interest under Section 310(b)(1). Section 310(b)(1)(ii) provides in pertinent part that an indenture to be qualified shall be deemed exempt from Section 310(b)(1) if:

> the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under the indenture * * * is not likely to involve a *material conflict of interest* as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as such under one of such indentures * * *

Section 310(b)(1)(ii) (emphasis supplied). In other words, dual trusteeship by Norwest under the Indentures may be excluded from the operation of Section 310(b)(1) if the Applicant sustains the burden of proving, on application to the Commission that a material conflict of interest is no so likely as to make it necessary in the public interest or for the protection of investors to disqualify Norwest from acting under either of the Indentures.

The Applicant alleges that:

1. The 1996 Notes and the 1997 Notes were issued in registered public offerings in the United States (Registration Statement No. 333–6094 and No. 333–7252), and both Indentures are qualified under the Act. The Notes under the Indenture rank *pari passu* with each other and are wholly unsecured. However, neither Indenture references the other Indenture.

2. Pursuant to the Instrument of Resignation, Appointment and Acceptance, dated July 27, 1999 (the ''Succession Agreement''), effective as of July 27, 1999, Norwest succeeded to Chase as trustee under the Indentures.

3. As of the date of this Application, the Applicant is in default under the 1997 Indenture for failing to pay interest that was due on May 1, 1999. This default has continued for more than 30 days, thus constituting an Event of Default under Section 501(1) of the 1997 Indenture. Based on this default, the Applicant is also in default under the 1996 Indenture. Section 501(5) of the 1996 Indenture provides that an event of default includes:

> a default under * * * any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidence any indebtedness for money borrowed by the Company * * * in an amount exceeding $10,000,000 * * *

which default shall constitute a failure to pay * * * any interest or additional amounts on such indebtedness when due and payable after the expiration of any applicable grace period with respect thereto.

*See* 1996 Indenture, § 501(5). Thus, the Applicant is in default under both of its Indentures.

4. On May 25, 1999, the Applicant obtained from a Mexican court a declaration of suspension of payments (''Suspension of Payments''). Suspension of Payments is a form of protection from creditors under Mexican law afforded to a company to enable it to (i) seek a restructuring agreement with its creditors (ii) continue the operation of its business, and (iii) prevent liquidation. A description of certain effects of the Suspension of Payments is contained in the Applicant's form 20–F for the fiscal year ended December 31, 1998.

5. The Application asserts that had the 1997 Indenture simply contained a descriptive reference to the 1996 Indenture, no conflict of interest would be deemed to exist under Section 310(b)(1)(i) of the Act, and the Application would not be required. Section 310(b)(i) exempts an indenture from the provisions of Section 310(b) ''if the indenture to be qualified and any such other indenture * * * or indentures * * * are wholly unsecured and rank equally and such other indenture or indentures * * * *are specifically described in the indenture to be qualified or are thereafter qualified*.'' The Section 310(b)(1) issue arises only because the 1997 Indenture does not refer to the 1996 Indenture. The Application asserts that this technical omission does not create a risk of material conflict between the two Indentures where none otherwise exists.

6. The Application asserts that because all of the Notes rank equally with one another in right of payment and are wholly unsecured, it is highly unlikely that Norwest would ever be subject to a conflict of interest with respect to issues relating to the priority of payment. Norwest would neither be in a position to, nor be required by the terms of either Indenture to, assert that the Notes outstanding under one Indenture are entitled to payment prior to payment of claims under the other Indenture.

7. Further, both Indentures contain almost identical default and remedy provisions *See* 1996 Indenture, § 501 *et. seq.*, 1997 Indenture, § 501 *et seq.* The Application asserts that due to the similarity of these provisions (including the cross-default provisions), it is unlikely as a practical matter that Norwest would find itself in a position of proceeding against the Applicant for a default under one Indenture, but not the other Indenture.

8. The Application also asserts that it is in the best interest of the Applicant and the holders of the Notes that Norwest serve simultaneously under both Indentures. Given the existence of a default, Chase was required to resign as trustee under both Indentures due to Chase's concurrent status as a creditor of the Applicant. By succeeding to Chase as trustee under both Indentures, rather than just one, Norwest relieved Chase of an actual conflict and prevented the risk of an ''orphan indenture'' where the predecessor trustee has submitted its resignation but no successor has been appointed. Norwest is not a creditor of the Applicant and has no business relationship with the Applicant other than under the Indentures. Norwest's dual trusteeship also will allow the Applicant to avoid the significant duplicative costs associated with having two separate trustees and their separate professionals review, understand, and administer two similar Indentures, and interact with the Applicant and other parties in interest as the Applicant works to address its present financial circumstances.

Apart from granting relief under Section 301(b)(1)(ii) of the Act, the Commission may invoke its power to exempt Norwest under Section 304(d). On application by any interested person, Section 304(d) empowers the Commission to ''exempt conditionally or unconditionally any person, registration statement, indenture, security or transaction * * * from any one or more of the provisions of this title, if and to the extent that such exemption is necessary or appropriate in the *public interest* and consistent with the *protection of investors* and purposes fairly intended by this title.'' Section 304(d) (emphasis supplied).

The Applicant waives notice and hearing with respect to the Application.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said Application, which is a public document (File Number 22–28212) on file in the offices of the Commission at the Public Reference Section, 450 Fifth Street, NW, Washington, DC.

Notice is hereby given that any interested person may, not later than November 8, 1999, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by such Application which he desires to controvert, or he may request that he be notified if the Commission would order a hearing thereon. Any such request should be addressed: Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, Washington, DC 20549–0609. At any time after said date, the Commission may issue an order granting the Application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99–27712 Filed 10–22–99; 8:45 am]

**BILLING CODE 8010–61–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. IC–24088; File No. 821–11380]**

## Great-West Life & Annuity Insurance Company, et al.; Notice of Application

October 18, 1999.

**AGENCY:** Securities and Exchange Commission (''SEC. or ''Commission'').

**ACTION:** Noice of Application for approval under Section 26(b) of the Investment Company Act of 1940, as amended (the ''1940 Act'').

**SUMMARY OF APPLICATION:** Applicants seek an order approving the substitution of shares of the Maxim INVESCO Balanced Portfolio of the Maxim Series Fund for shares of the Fidelity VIP II Asset Manager Portfolio of the Fidelity Variable Insurance Products Fund II, and the substitution of shares of Maxim Stock Index Portfolio of the Maxim Series Fund for shares of the American Century VP Capital Appreciation Portfolio of American Century Variable Portfolios, Inc.

**APPLICANTS:** Great-West Life & Annuity Insurance Company (''GWL&A''), FutureFunds Series Account of GWL&A (the ''FutureFunds Account'') and Maxim Series Account of GWL&A (the ''Maxim Account'') (together, with the FutureFunds Account, the ''Separate Accounts'') and BenefitCorp Equities, Inc. (''BCE'') (hereinafter all parties are collectively referred to as the ''Applicants'').

**FILING DATE:** The application was filed on October 29, 1998, and amended and restated on April 14, 1999, and July 15, 1999.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the Application will be issued unless the commission orders a

hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 12, 1999, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, c/o Jorden Burt Boros Cicchetti Berenson & Johnson, LLP, 1025 Thomas Jefferson Street, NW, Suite 400 East, Washington, DC 20007–0805; Attention: Christopher Menconi, Esq.

**FOR FURTHER INFORMATION CONTACT:** Michael Pappas, Senior Counsel, or Susan Olson, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the Application; the complete Application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth St. NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

### Applicant's Representations

1. GWL&A is a stock life insurance company organized under the laws of the State of Colorado. GWL&A is wholly owned by The Great-West Life Assurance Company, which is a subsidiary of Great-West Lifeco, Inc., an insurance holding company ultimately controlled by Power Corporation of Canada. GWL&A is principally engaged in offering life insurance, annuity contracts, and accident and health insurance and is admitted to do business in the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and Guam and in all states of the United States, except New York.

2. The FutureFunds Account is a distinct investment account of GWL&A which acts as a funding vehicle for certain group variable flexible premium deferred annuity contracts (the ''FutureFunds Contracts'') designed and offered to provide retirement programs that qualify for special federal income tax treatment for employees of certain organizations. The FutureFunds Account is a unit investment trust (''UIT'') and has filed a registration statement on Form N–4 (Registration No 2–89550), as amended) for the purpose of registering the FutureFunds Account under the 1940 Act and the FutureFunds Contracts as securities under the Securities Act of 1933, as amended (the ''1933 Act'').

3. The FutureFunds Contracts have twenty-eight investment divisions available for allocations of contributions, each of which invest exclusively in one of the corresponding portfolios of six open-end management investment companies. Twenty-three of the investment divisions invest solely in corresponding portfolios of Maxim Series fund, Inc. (''Maxim Series Fund''); one other investment division invests solely in a corresponding portfolio of American Century Variable Portfolios, Inc. (''American Century''); two other investment divisions invest solely in corresponding portfolios of Fidelity Variable Insurance Products Fund and Fidelity Variable Insurance Products Fund II; one other investment division invests solely in a corresponding portfolio of Janus Aspen Series; and one other investment division invests solely in a corresponding portfolio of the Stein Roe Variable Investment Trust.

4. The assets of the FutureFunds Account are kept separate from the other assets of GWL&A. The income, gains, and losses of the FutureFunds Account, whether or not realized, are credited to or charged against the FutureFunds Account without regard to other income, gains, or losses of any other separate account or arising out of any other business GWL&A may conduct.

5. The Maxim Account is a distinct investment account of GWL&A which acts as a funding vehicle for certain flexible premium variable deferred annuity contracts (the ''Maxim Contracts''). Currently there are four different Maxim Contracts issued under the Maxim Account. Only two Maxim Contracts, however, are subject to this Application. Of these two Maxim Contracts, one is no longer sold, has less than 5,000 participants, and no longer files post-effective amendments in reliance upon certain precedent (hereinafter the ''MSA–2 Contract''). The MSA–2 Contract has only five investment divisions, each of which invests exclusively in one of the corresponding portfolios of two open-end management investment companies. The other Maxim Contract at issue is the Maximum Value Plan (the ''MVP Contract''). The MVP Contract has twenty-two investment divisions, each of which invests exclusively in one of the corresponding portfolios of two open-end management investment companies.

6. The Maxim Account is a UIT and has filed a registration statement on Form N–4 (Registration Nos. 811–3249 and 2–73879 for the MSA–2 Contract and 33–82610 for the MVP Contract) for the purpose of registering the Maxim Account under the 1940 Act and the Maxim Contracts as securities under the 1933 Act. The assets of the Maxim Account are kept separate from the other assets of GWL&A. The income, gains, and losses of the Maxim Account, whether or not realized, are credited to or charged against the Maxim Account without regard to other income, gains, or losses of any other separate account or arising out of any other business GWL&A may conduct.

7. With respect to the MSA–2 Contract, four of the available investment divisions invest solely in corresponding portfolios of Maxim Series Fund and the remaining investment division invests in a corresponding portfolio of American Century. In the MVP Contract, twenty-one of the available investment divisions invest solely in corresponding portfolios of Maxim Series Fund and the remaining investment division invests solely in a corresponding portfolio of American Century.

8. BCE is registered with the Commission under the Securities Exchange Act of 1934, as amended, as a broker/dealer and is a member of the National Association of Securities Dealers, Inc. BCE is the principal underwriter and distributor of the FutureFunds Contracts and the MVP Contracts. The MSA–2 Contracts are no longer sold and there is no need for an underwriter. The Maxim Contracts and the FutureFunds Contracts may collectively be referred to, where appropriate, as the ''Contracts.''

9. Of the underlying investment companies, only Maxim Series Fund is affiliated with GWL&A or the Separate Accounts. The investment adviser for Maxim Series Fund is GW Capital Management, Inc., which is also affiliated with GWL&A, the Separate Accounts, and BCE. No other underlying investment company or portfolio used in connection with the Contracts or investment adviser or underwriter for those underlying investment companies and portfolios is affiliated with GWL&A, the Separate Accounts, or BCE.

10. The FutureFunds Contracts may be issued in connection with contributions made by the following organizations: (1) Employers or employee organizations (such as non-profit entities defined in Section 501(c)

of the Internal Revenue Code of 1986, as amended, (the ''Code'') and governmental entities defined in Section 414(d)) to purchase annuities for their employees under pension or profit sharing plans described in Section 401(a) of the Code; (2) employers or employee organizations to purchase annuities for their employees under cash or deferred profit-sharing plans described in Section 401(k) of the Code, and state educational organizations and certain tax-exempt organizations to purchase annuities for their employees under Section 403(b) of the Code; and (3) certain state and local governmental entities and, for years beginning after 1986, other tax-exempt organizations to purchase annuities for their employees under deferred compensation plans described in Section 457 of the Code.

11. The MVP Contracts are flexible premium annuity contracts which may be issued under retirement plans which qualify for federal tax benefits under Sections 401 and 408 of the Code as individual retirement accounts and under other retirement plans which do not qualify under the Code. The MSA–2 Contracts are no longer sold.

12. The FutureFunds Contracts have no front-end sales load. The FutureFunds Contracts have a maximum contingent deferred sales charge of 6% that applies to surrenders or partial withdrawals during the first 72 months after a contribution. The Maxim Contracts do not have front-end sales loads. The MVP Contracts have a maximum contingent deferred sales charge of 7% that applies to surrenders of partial withdrawals within the first seven contract years. The MSA–2 Contracts had a flat contingent deferred sales charge of 5% that applied to surrenders or withdrawals in the first five contract years after contribution. The FutureFunds Contracts have an annual contract fee of $30.00. This charge may vary by group policyholder. The MVP Contracts have an annual contract fee of $27.00 and the MSA–2 Contracts have an annual contract fee of $35.00. These charges will not be affected by the proposed substitution.

13. There are no transfer charges for transfers among investment divisions offered in any of the Contracts and there are no limits on the number of transfers a Contract owner/participant can make.

14. All of the Contracts expressly reserve GWL&A's right, both on its own behalf and on behalf of the Separate Accounts, to eliminate investment divisions, combine two or more investment divisions, or substitute one or more underlying portfolios for others in which its investment divisions are invested or for a new underlying portfolio.

15. GWL&A, on its own behalf and on behalf of the Separate Accounts, proposes to exercise its contractual right to eliminate the American Century VP Capital Appreciation Portfolio (the ''Capital Appreciation Portfolio'') as a funding option under all the Contracts. GWL&A also proposes, on its behalf and on behalf of the FutureFunds account, to exercise its contractual right to eliminate the Fidelity VIP II Asset Manager Portfolio (the ''Asset Manager Portfolio'') as a funding option under the FutureFunds Contracts. Collectively, the portfolios being eliminated will hereinafter be referred to as the ''Eliminated Portfolios.'' In all Contracts, GWL&A proposes to substitute shares of the Maxim Stock Index Portfolio (''Stock index Portfolio''), an existing investment option under the Contracts, for shares of the Capital Appreciation Portfolio. In the FutureFunds Contract, GWL&A also proposes to substitute shares of Maxim INVESCO Balanced Portfolio (''Balanced Portfolio'' or ''Maxim Balanced Portfolio''), an existing investment option, for the Asset Manager Portfolio.

16. When discussed separately or together, the transaction will be referred to as the ''Substitution.'' Applicants believe the Substitution will benefit the Contract owners/participants by eliminating portfolios which, in Applicants' view, have had poor historical performance returns and replacing them with portfolios having comparable investment objectives and policies and better historical performance returns, and which Applicants believe are more likely to provide Contract owners/participants with favorable investment performance in the future.

17. The Substitution would result in a reduction in variable investment options and corresponding portfolios available under all Contracts. The number of investment divisions in the FutureFunds Contracts would be reduced from twenty-eight to twenty-six; the number of investment divisions in the MVP Contracts would be reduced from twenty-two to twenty-one; and the number of investment divisions in the MSA–2 Contracts would be reduced from five to four.

18. Applicants represent that each replacement portfolio was the most comparable to the corresponding eliminated Portfolio as compared to all other portfolios available under the affected Contracts in that the replacement portfolios have the investment objectives and policies that are similar to, and consistent with, those of the eliminated Portfolios.

19. The Capital Appreciation Portfolio's investment objective is to seek capital growth by investing in common stocks that, in the opinion of American Century's management, will increase in value over time. The Stock Index Portfolio's investment objective is to provide investment results, before fees, that correspond to the total return of the S&P 500 Index and the S&P Mid-Cap Index, weighted according to their respective pro-rata shares of the market. Applicants assert that, after the Substitution, Contract owners/participants who have allocated value to an investment division which invests in the Capital Appreciation Portfolio will continue to have their value allocated to an investment division which invests in an underlying portfolio that seeks capital growth primarily through investments in common stocks. Applicants point out that under the MSA–2 Contracts there is no other underlying portfolio whose investment objective requires that it invest primarily in common stocks.

20. Applicants represent that the Stock Index Portfolio has substantially outperformed the Capital Appreciation Portfolio while assessing lower overall fees. The total expenses of the Stock Index Portfolio currently are .60%, which is below the 1.00% total expenses of the Capital Appreciation Portfolio. The average annual total returns for the one year, three year, five year, ten year, and since inception periods ending December 31, 1998, for the Stock Index Portfolio were: 26.79%, 26.86%, 22.62%, 16.37% and 15.55% respectively, compared to the Capital Appreciation Portfolio which had returns of (2.15)%, (3.24)%, 3.25%, 8.70% and 8.24% for the same periods.[1]

21. Applicants represent that they have considered the fact that, with respect to the MSA–2 Contracts, the proposed substitution would reduce the number of available variable investment options from five to four, and that a previous substitution effected in 1998 had reduced those options from seven to five. Applicants do not believe MSA–2 Contact owners benefit merely from having an additional investment option which has historically provided them with poor performance and have made a determination that MSA–2 Contract owners will be better off without this option. Applicants believe that the remaining four investment alternatives

[1] The Stock Index Portfolio commenced operations on July 1, 1982. The Capital Appreciation Portfolio commenced operations on November 20, 1987.

provide a sufficient range of choices along with sufficient diversification. Applicants believe, therefore, that the proposed substitution will be in the best interest of MSA–2 contract owners and is otherwise consistent with the standards for the granting of an order under Section 26(b).

22. The Asset Manager Portfolio's investment objective is to seek high total return with reduced risk over the long-term by allocating its assets among stocks, bonds, and short-term debt instruments. The Balanced Portfolio invests in a combination of common stocks and fixed income securities and seeks, as its investment objective, to achieve high total return on investment through capital appreciation and current income. Applicants have concluded that the Balanced Portfolio offers Contract owners/participants an underlying portfolio with investment objectives and policies that are the most comparable to those of the Eliminated Portfolio as compared with all other underlying portfolios available under the affected Contracts.

23. Applicants represent that the total expenses of the Balanced Portfolio are 1.00%, while the total expenses of the Asset Manager Portfolio are .65%. Applicants represent that, notwithstanding its higher fees, the Balanced Portfolio presents a better investment option for Contract owners/participants than the Asset Manager Portfolio based on the similarity of investment objectives and policies, comparative performance information, and other data. Applicants state that they carefully examined certain data in considering whether to replace the Asset Manager Portfolio with the Balanced Portfolio, including the performance history of the portfolios, as well as the performance of a similar fund and other information they deemed relevant.

24. GWL&A states that it has been concerned with the relatively poor performance of the Asset Manager Portfolio. Prior to the inception of the Balanced Portfolio in October 1996, however, there was no other (and there continues to be no other) underlying portfolio available under the affected Contracts whose principal investment strategy requires that it invest in a mix of debt and equity securities. For the periods for which the Balanced Portfolio and the Eliminated Portfolio both have standardized performance returns, namely average annual total returns for the one year period ended December 31, 1998, and the period from October 1, 1996 to December 31, 1998, the Balanced Portfolio outperformed the Eliminated Portfolio by over 3% and over 4%, respectively. Applicants state that the performance history of the Balanced Portfolio is somewhat limited, however, they state that the performance history of the INVESCO Balanced Portfolio, after which the Maxim Balanced Portfolio was modeled, has additional performance history. The Maxim Balanced Portfolio and the INVESCO Balanced Portfolio have the same investment objective, principal investment strategy, investment adviser (or sub-adviser, as applicable), and portfolio manager and, therefore, Applicants argue it was appropriate to consider its performance. The average annual total returns for the one year, three year, five year, and since inception periods ending December 31, 1998 were: Maxim Balanced Portfolio—18.42%, N/A, N/A, 22.85%; and Asset Manager Portfolio—15.05%, 16.74%, 11.81%, 12.98%.[2] The total returns for the INVESCO Balanced Portfolio for all of the preceding periods were higher than the total returns for the Asset Manager Portfolio during the same periods. For the period October 1, 1996 (commencement of the Maxim Balanced Portfolio) to December 31, 1998, the average annual total return for the Maxim Balanced Portfolio was 22.85% as compared with 18.77% for the eliminated portfolio.

25. Based on the other information reviewed by Applicants, Applicants also concluded that the Substituted Portfolio will not represent an unreasonable risk to investors.

26. As of December 31, 1998, the Maxim Balanced Portfolio had total assets of $152.83 million and the Asset Manager Portfolio had total assets of approximately $4,793 million. Applicants represent that the smaller asset base of the Maxim Balanced Portfolio as compared with the Asset Manager Portfolio will not disadvantage affected Contract owners/participants. First, the Maxim Balanced Portfolio assesses an all-inclusive annual fee of 1.00% under its advisory agreement and, therefore, the expense ratio cannot be affected by the size of the asset base. Moreover, Applicants represent that the Maxim Balanced Portfolio is sufficiently large so as to be capable of being managed efficiently and effectively in accordance with its investment objectives and policies. Additionally, if the proposed substitution is carried out, an additional $31.29 million (as of December 31, 1998) would be added to the Maxim Balanced Portfolio's asset base.

27. In sum, based on comparative investment objectives and policies, historical performance information, and other factors deemed relevant by Applicants, the Applicants believe that the Maxim Balanced Portfolio will provide Contract owners/participants with an investment option that (1) has a proven track record of outperforming the Eliminated Portfolio, (2) has investment objectives and policies which are comparable to the Eliminated Portfolio, and (3) is not believed to expose Contract owners/participants to a materially greater risk than is presented by the Eliminated Portfolio.

28. GWL&A will schedule the Substitution to occur on a date as soon as practicable following the issuance of an order by the Commission granting the relief requested in the Application (the ''Automatic Selection Date''). By way of sticker, the FutureFunds Contract and MVP Contract prospectuses have disclosed the proposed Substitution for several months. The stickers also disclose that the investment divisions relating to the Eliminated Portfolios will not accept additional contributions (*i.e.*, new money or transfers) on or after February 5, 1999, and that FutureFunds Contract and MVP Contract values allocated to the Eliminated Portfolios can be transferred without assessment of any charges at any time prior to the Automatic Selection Date. Notifications similar to the stickers were mailed to all current Contract owners/participants shortly after the initial filing of the Application. MSA–2 Contract owners also were mailed a similar notification of the proposed Substitution and the Automatic Selection Date. After the order is issued, a second notification will be provided to all Contract owners/participants who have amounts allocated to the Eliminated Portfolios, again advising them of the pending Substitution and of their ability to transfer free of charge to the remaining investment division(s) of their choice (or remain in the Eliminated Portfolios until the automatic substitution on the Automatic Selection Date).

29. Affected Contract owners/participants also will receive confirmation of the Substitution transaction that will be mailed within five days of the Automatic Selection Date. The confirmation will contain a reminder that the Contract owners/participants may effect transfers from the investment divisions corresponding to the Stock Index Portfolio or Balanced Portfolio, as applicable, to any other

[2] The Maxim Balanced Portfolio commenced operations on October 1, 1996; the INVESCO Balanced Portfolio commenced operations in December 1993; the Asset Manager Portfolio commenced operations in September 1989.

investment division without incurring any charges.

30. Applicants argue that the Substitution provides Contract owners/participants investment divisions which are currently available under the respective Contracts, and which are sufficiently similar so as to continue to fulfill the Contract owners/participants' objectives and risk expectations. If a Contract owner/participant with current allocations in the Eliminated Portfolios determines that another investment option is more appropriate for his or her needs, he or she may always transfer his or her assets to any remaining investment division available under the respective Contracts without incurring any charges.

31. Applicants represent that the proposed Substitution will be effected by redeeming shares of the Eliminated Portfolios on the Automatic Selection Date at net asset value and using the proceeds to purchase shares of the Stock Index Portfolio and/or the Balanced Portfolio, as applicable, at net asset value on the same date. Contract owners/participants will not incur any fees or charges as a result of the transfer of account values from the Eliminated Portfolios. All contract values will remain unchanged and fully invested. The Substitution will not increase Contract or Separate Account fees and charges after the Substitution and will not alter Contract owners/participants' rights and GWL&A's obligations under the Contracts. In addition, Applicants represent that, as of the date of filing the second amended Application, the Substitution will not result in any adverse federal income tax consequences for Contract owners/participants. Following the Substitution, the investment divisions which invest in the Eliminated Portfolios will be terminated.

### Applicant's Legal Analysis and Conditions

1. Applicants request an order pursuant to Section 26(b) of the 1940 Act approving the substitutions of securities. Section 26(b) of the 1940 Act makes it unlawful for any depositor or trustee of a registered UIT holding the security of a single issuer to substitute another security for such security unless the Commission approves the substitution. The Commission will issue an order approving such a substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

2. Applicants represent that the purposes, terms, and conditions of the Substitution are consistent with the protection for which Section 26(b) was designed and will not result in any of the harms which Section 26(b) was designed to prevent. Applicants believe the substitution will benefit Contract owners/participants by eliminating portfolios with below average historical returns and replacing them with portfolios that have demonstrated superior performance histories.

3. Any Contract owner/participant who does not want his or her assets allocated to the Stock Index Portfolio or the Balanced Portfolio, as applicable, would be able to transfer assets to any one of the other investment divisions available under their respective Contracts without charge. Such transfers could be made prior to or after the Automatic Selection Date.

4. The Substitution will be effected at net asset value in conformity with Section 22 of the 1940 Act and Rule 22c–1 thereunder. Contract owners/participants will not incur any fees or charges as a result of the transfer of account values from any investment division. There will be no increase in the Contract or Separate Account fees and charges after the Substitution. All Contract values will remain unchanged and fully invested. In addition, Applicants represent that, as of the date of filing the second amended Application, the Substitution will not result in any adverse federal income tax consequences for Contract owners/participants.

### Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the Substitution should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99–27713 Filed 10–22–99; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. IC–24089; File No. 812–11722]**

## SEI Insurance Products Trust, et al.; Notice of Application

October 18, 1999.

**AGENCY:** Securities and Exchange Commission (the ''Commission'').

**ACTION:** Notice of application for an order under Section 6(c) of the Investment Company Act of 1940 (''1940 Act'') granting exemptive relief from Sections 9(a), 13(a), 15(a) and 15(b) of the Act and Rules 6e–2(b)(15) and 6e-3(T)(b)(15) thereunder.

**SUMMARY OF APPLICATION:** Applicants seek exemptive relief to the extent necessary to permit shares of the SEI Insurance Products Trust (the ''Trust'') and shares of any other investment company or portfolio that is designed to fund insurance products and for which SEI Investments Management Corporation (''SIMC''), or any of its affiliates, may serve in the future, as investment adviser, administrator, manager, principal underwriter, or sponsor (''Future Trusts'', together with Trust, ''Trust'') to be sold to and held by (i) separate accounts funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies, (ii) qualified pension and retirement plans outside of the separate account context, (iii) separate accounts that are not registered as investment companies under the 1940 Act pursuant to exemptions from registration under Section 3(c) of the 1940 Act, and (iv) SIMC or any of its affiliates (representing seed money in any of the Trusts).

**APPLICANTS:** The Trust and SIMC.

**FILING DATE:** The application was filed on July 26, 1999, and amended and restated on October 7, 1999. Applicants represent that they will file an amended and restated application during the notice period to conform to the representations set forth herein.

**HEARING OF NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request hearing by writing to the Secretary of the Commission and serving Applicants with copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on November 12, 1999, and must be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants c/o Todd B. Cipperman, Esq., SEI Investments Management Corporation, Oaks, Pennsylvania 19546.

**FOR FURTHER INFORMATION CONTACT:** Keith E. Carpenter, Senior Counsel, or Kevin M. Kirchoff, Branch Chief, Office

of Insurance Products, Division of Investment Management, at (202) 942–0670.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW Washington, DC (tel (202) 942–8090).

**Applicants' Representations**

1. The Trust is a Massachusetts business trust and is registered under the 1940 Act as an open-end management investment company. The Trust currently consists of 13 separate portfolio (''Funds''). Each Fund has its own investment objective or objectives, and policies.

2. SIMC serves as the investment manager to the Trust, and operates as a ''manager of managers.'' SIMC is registered as an investment adviser under the Investment Advisers Act of 1940, and is a wholly owned subsidiary of SEI Investments Company.

3. Applicants state that, upon the granting of the exemptive relief requested by the Application, the Trust intends to offer shares representing interests in each Fund, and any other portfolio established by the Trust (''Future Portfolio'') (Fund, together with Future Portfolios, ''Portfolios'' or each a ''Portfolio''), to separate accounts of both affiliated and unaffiliated insurance companies to serve as the investment vehicle for variable annuity contracts and variable life insurance contracts (collectively referred to herein as ''Variable Contracts''). The Insurance Companies that elect to purchase shares of one or more Portfolios are collectively referred to herein as ''Participating Insurance Companies.'' The Participating Insurance Companies will establish their own separate accounts (''Separate Accounts'') and design their own variable contracts. Applicants also propose that the Trust offer and sell shares representing interests in its Portfolios directly to qualified pension and retirement plans (''Qualified Plans'' or ''Plans'') outside of the separate account context.

**Applicants' Legal Analysis**

1. Applicants request an order pursuant to Section 6(c) of the 1940 Act exempting them from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Trusts to be offered and sold to, and held by: (1) Both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company (''mixed funding''); (2) Separate accounts of unaffiliated life insurance companies (including both variable annuity separate accounts and variable life insurance separate accounts) (''shared funding''); (3) trustees of Qualified Plans; (4) separate accounts that are not registered as investment companies under the 1940 Act pursuant to exemptions from registration under Section 3(c) of the 1940 Act, and (5) SIMC or any of its affiliates (representing seed money in any of the Trusts).

2. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–2(b)(15) provides partial exemptions form Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. These exemptions are available only if the separate account is organized as a unit investment trust, all the assets of which consist of the shares of one or more registered management investment companies which offer their shares exclusively to variable life insurance separate accounts of the life insurer or of any affiliated life insurer. Thus, the exemptions provided by Rule 6e–2 are not available if a scheduled premium variable life insurance separate account owns shares of an underlying fund that also offers its shares (i) to a variable annuity separate account or a flexible premium variable life insurance separate account of the same insurance company, (ii) to an unaffiliated life insurance company, or (iii) to an investment manager that is unaffiliated with a Participating Insurance Company (representing seed money shares). In addition, the relief granted by Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of an underlying fund that also offers its shares to Qualified Plans.

3. Rule 6e–3(T)(b)(15) provides similar partial exemptions in connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust. These exemptions, however, are available only if all the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares ''exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled premium variable life insurance contacts or flexible premium variable life insurance contracts or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company.'' Thus, the exemptions provided by Rule 6e–3(T)(b)(15) are available if the underlying fund is engaged in mixed funding, but are not available if the fund is engaged in shared funding, sells seed money shares to an unaffiliated person of a Participating Insurance Company or sells shares to Qualified Plans.

4. Applicants state that current tax law permits the Trust to increase its asset base through the sale of its shares to Qualified Plans. Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code''), imposes certain diversification standards on the assets underlying Variable Contracts, such as those in each Fund. The Code provides that Variable Contracts will not be treated as annuity contracts or life insurance contracts, as the case may be, for any period (or any subsequent period) for which the underlying assets are not, in accordance with regulations issued by the Treasury Department (the ''Regulations''), adequately diversified. On March 2, 1989, the Treasury Department issued regulations (Treas. Reg. 1.817–5) which established specific diversification requirements for investment portfolios underlying Variable Contracts. The Regulations generally provide that, to meet these diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more life insurance companies. Notwithstanding this, the Regulations also contain an exception to this requirement that permits trustees of a qualified pension or retirement plan to hold shares of an investment company, the shares of which are also held by insurance company segregated asset accounts, without adversely affecting the status of the investment company as an adequately diversified underlying investment for Variable Contracts issued through such segregated asset accounts (Treas. Reg. 1.817–5(f)(3)(iii)).

5. The promulgation of Rules 6e–2 and 6e–3(T) preceded the issuance of these Regulations. Applicants state that, given the then-current tax law, the sale of shares of the same investment company to both the separate accounts of insurers and to Qualified Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(5) and 6e–3(T)(b)(15).

6. Section 9(a)(3) of the 1940 Act provides, among other things, that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated

person of that company is subject to a disqualification enumerated in Sections 9(a)(1) or (2) of the 1940 Act. Rules 6e–2(b)(15)(i) and (ii) and Rules 6e–3(T)(b)(15)(i) and (ii) under the 1940 Act provide exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding imposed by the 1940 Act and the rules thereunder. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying management company.

7. Applicants state that the partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of Section 9 of the 1940 Act, in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants state that those 1940 Act rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies in that organization. Applicants state that it is unnecessary to apply Section 9(a) to individuals in various unaffiliated Participating Insurance Companies (or affiliated companies of Participating Insurance Companies) that may utilize the Trusts as the funding medium for Variable Contracts. According to Applicants, there is no regulatory purpose in extending the Section 9(a) monitoring requirements because of mixed or shared funding. The Participating Insurance Companies and Qualified Plans are not expected to play any role in the management or administration of the Trusts. Moreover, those individuals who participate in the management or administration of the Trusts will remain the same regardless of which Separate Accounts, or Qualified Plans use the Trusts. Applicants argue that applying the monitoring requirements of Section 9(a) because of investment by other insurers' separate accounts would be unjustified and would not serve any regulatory purpose. Further, the increased monitoring costs would reduce the net rates of return realized by contract owners.

8. Applicants also state that in the case of Qualified Plans, the Plans, unlike the Separate Accounts, are not themselves investment companies, and therefore are not subject to Section 9 of the 1940 Act. Furthermore, it is not anticipated that a Qualified Plan would be an affiliated person of any of the Trusts by virtue of its shareholders.

9. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(iii) under the 1940 Act provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming that the limitations on mixed and shared funding imposed by the 1940 Act and the rules promulgated thereunder are observed.

10. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act give the Participating Insurance Companies the right to disregard voting instructions of contract owners. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) each provide that the insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of Rules 6e–2 and 6e–3(T) under the 1940 Act). Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(*2*) each provide that the insurance company may disregard voting instructions of contract owners if the contract owners initiate any change in the underlying investment company's investment policies, principal underwriter, or any investment adviser (subject to the provisions of paragraphs (b)(5)(ii), (b)(7)(ii)(B), and (b)(7)(ii)(C) of Rules 6e–2 and 6e–3(T) under the 1940 Act). Applicants represent that these rights do not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer can disregard voting instructions of contract owners only with respect to certain specified items. Applicants also note that the potential for disagreement among Separate Accounts is limited by the requirements in Rules 6e–2 and 6e–3(T) that a Participating Insurance Company's disregard of voting instructions be reasonable and based on specific good faith determinations.

11. Applicants further represent that the offer and sale of Portfolio shares to Qualified Plans will not have any impact on the relief requested in this regard. With respect to the Qualified Plans, which are not registered as investment companies under the 1940 Act, there is no requirement to pass through voting rights to Plan participants. Indeed, to the contrary, applicable law expressly reserves voting rights associated with Plan assets to certain specified persons. Under Section 403(a) of ERISA, shares of a portfolio of a fund sold to a Qualified Plan must be held by the trustees of the Plan. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Plan with two exceptions: (1) When the Plan expressly provides that the trustee(s) are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA, and (2) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the above two exceptions stated in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies.

Where a named fiduciary to a Qualified Plan appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. The Qualified Plans may have their trustee(s) or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plans in their discretion. Some of the Qualified Plans, however, may provide for the trustee(s), an investment adviser (or advisers) or another named fiduciary to exercise voting rights in accordance with instructions from participants.

Where a Qualified Plan does not provide participants with the right to give voting instructions, Applicants do not see any potential for material irreconcilable conflicts of interest between or among variable contract owners and Plan investors with respect to voting of the respective Portfolio's shares. Accordingly, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to such Qualified Plans since the Qualified Plans are not entitled to pass-through voting privileges.

12. Some Qualified Plans, however, may provide participants with the right to give voting instructions. Applicants note that there is no reason to believe that participants in Qualified Plans generally or those in a particular Plan, either as a single group or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage variable contract owners. Applicants, therefore, submit that the purchase of shares of the Portfolios by Qualified Plans that provide voting rights does not present

any complications not otherwise occasioned by mixed or shared funding.

13. Applicants state that no increased conflicts of interest would be presented by the granting of the requested relief. Shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. A particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. The fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

14. Applicants submit that shared funding by unaffiliated insurers, in this respect, is no different that the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act permit. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Affiliated does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, Applicants state that the conditions set forth below are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, then the affected insurer will be required to withdraw its Separate Account's investment in the Portfolios. This requirement will be provided for in agreements that will be entered into by Participating Insurance Companies with respect to their participation in the relevant Portfolio.

15. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act give the insurance company the right to disregard the voting instructions of the contract owners. This right does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer can disregard contract owner voting instructions only with respect to certain specified items. Affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) under the 1940 Act that the insurance company's disregard of voting instructions be reasonable and based on specific good-faith determinations.

16. A particular insurer's disregard of voting instructions, nevertheless, could conflict with the majority of contract owners' voting instructions. The insurer's action possibly could be different than the determination of all or some of the other insurers (including affiliated insurers) that the voting instructions of contract owners should prevail, and either could preclude a majority vote approving the change or could represent a minority view. If the insurer's judgment represents a minority position or would preclude a majority vote, then the insurer may be required, at the relevant Trust's election, to withdraw its Separate Account's investment in such Portfolio, and no charge or penalty will be imposed as a result of such withdrawal. This requirement will be provided for in the agreements entered into with respect to participation by the Participating Insurance Companies in the Portfolios.

17. Applicants submit that there is no reason why the investment policies of the Portfolios would or should be materially different from what these policies would or should be if the Portfolios funded only variable annuity contracts or variable life insurance policies, whether flexible premium or scheduled premium policies. Each type of insurance product is designed as a long-term investment program. Each Portfolio will be managed to attempt to achieve the investment objective or objectives of such Portfolio, and not to favor or disfavor any particular Participating Insurance Company or type of insurance product.

18. Furthermore, Applicants assert that no one investment strategy can be identified as appropriate to a particular insurance period. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance, and investment goals. A Portfolio supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers. Permitting mixed and shared funding will provide economic justification for the continuation of the relevant Portfolio. Mixed and shared funding will broaden the base of contract owners which will facilitate the establishment of additional portfolios serving diverse goals.

19. Applicants do not believe that the sale of the shares of the Portfolios to Qualified Plans will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. In particular, Applicants see very little potential for such conflicts beyond that which would otherwise exist between variable annuity and variable life insurance contract owners.

20. As noted above, Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance contracts held in the portfolios of management investment companies. The Code provides that a variable contract shall not be treated as an annuity contract or life insurance, as applicable, for any period (and any subsequent period) for which the investments are not, in accordance with Regulations, adequately diversified.

21. Regulations issued under Section 817(h) provide that, to meet the statutory diversification requirements, all of the beneficial investment company must be held by the segregated asset accounts of one or more insurance companies. The Regulations, however, contain certain exceptions to this requirement, one of which allows shares in an underlying mutual fund to be held by the trustees of a qualified pension or retirement plan without adversely affecting the ability of shares in the underlying fund also to be held by separate accounts of insurance companies in connection with their variable contracts. (Treas. Reg. 1.817-5(f)(3)(iii)). Thus, the Regulations specifically permit ''qualified pension or retirement plans'' and separate accounts to invest in the same portfolio of an underlying fund. For this reason, Applicants assert that neither the Code, nor the Regulations, nor the Revenue Rulings thereunder, present any inherent conflicts of interest.

22. Applicants note that while there are differences in the manner in which distributions from Variable Contracts and Qualified Plans are taxed, these differences will have no impact on the Trusts. When distributions are to be made, and a Separate Account or a Qualified Plan is unable to net purchase payments to make the distributions, the Separate Account and Qualified Plan will redeem shares of the relevant Portfolio at their respective net asset value in conformity with Rule 22c-1 under the 1940 Act (without the imposition of any sales charge) to provide proceeds to meet distribution needs. A Participating Insurance Company then will make distributions in accordance with the terms of its Variable Contract, and a Qualified Plan then will make distributions in accordance with the terms of the Plan.

23. Applicants state that it is possible to provide an equitable means of giving

voting rights to contract owners in the Separate Accounts and to Qualified Plans. In connection with any meeting of shareholders, the Trusts will inform each shareholder, including each Separate Account and Qualified Plan, of information necessary for the meeting, including their respective share of ownership in the relevant Portfolio. Each Participating Insurance Company then will solicit voting instructions in accordance with Rule 6e-2 and 6e-3(T), as applicable, and its participation agreement with the relevant Trust. Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights provided to Qualified Plans with respect to shares of the Trusts would be no different from the voting rights that are provided to Qualified Plans with respect to shares of funds sold to the general public.

24. Applicants submit that the ability of the Portfolios to sell their shares directly to Qualified Plans does not create a ''senior security'' as such term is defined under Section 18(g) of the 1940 Act. ''Senior security'' is defined under Section 18(g) of the 1940 Act to include ''any stock of a class having priority over any other class as to distribution of assets or payment of dividends.'' As noted above, regardless of the rights and benefits of participants under Qualified Plans, or contract owners under Variable Contracts, the Qualified Plans and the Separate Accounts only have rights with respect to their respective shares of the Portfolios. They only can redeem such shares at net asset value. No shareholder of the Portfolios has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

25. Applicants assert that there are no conflicts between the contract owners of the Separate Accounts and participants under the Qualified Plans with respect to the state insurance commissioners' veto powers over investment objectives. Applications note that the basic premise of corporate democracy and shareholder voting is that not all shareholders may agree with a particular proposal. Although the interests and opinions of shareholders may differ, this does not mean that inherent conflicts of interest exist between or among such shareholders. State insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another . Generally, time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers.

26. Conversely, the trustees of Qualified Plans or the participants in participant-directed Qualified Plans can make the decision quickly and redeem their interest in the Portfolios and reinvest in another funding vehicle without the same regulatory impediments faced by separate accounts or, as is the case with most Qualified Plans, even hold cash pending suitable investment.

27. Applicants also assert that there is no greater potential for material irreconcilable conflict arising between the interest of participants in the Qualified Plans and contract owners of the Separate Accounts from future changes in the federal tax laws than that which already exist between variable annuity contract owners and variable life insurance contract owners.

28. Applicants state that various factors have kept more insurance companies from offering variable annuity and variable life insurance contracts than currently offer such contracts. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments), and the lack of name recognition by the public of certain insurers as investment experts with whom the public feels comfortable entrusting their investment dollars. Use of a Portfolio as a common investment media for variable contracts would reduce or eliminate these concerns. Mixed and shared funding also should provide several benefits to variable contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Participating Insurance Companies will benefit not only from the investment and administrative expertise of SIMC, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Mixed and shared funding also would permit a greater amount of assets available for investment by a Portfolio, thereby promoting economics of scale, by permitting increased safety through greater diversification, or by making the addition of new Portfolios more feasible. Therefore, making the Portfolios available for mixed and shared funding will encourage more insurance companies to offer variable contracts, and this should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges. Applicants also assert that the sale of shares of the Portfolios to Qualified Plans in addition to the Separate Accounts will result in an increased amount of assets available for investment by such Portfolios. This may benefit variable contract owners by promoting economies of scale, by permitting increased safety of investments through greater diversification, and by making the addition of new Portfolios more feasible.

29. Applicants see no significant legal impediment to permitting mixed and shared funding. Separate accounts organized as unit investment trusts historically have been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account. As noted above, Applicants assert that mixed and shared funding will have any adverse Federal income tax consequences.

**Applicants' Conditions**

Applicants have consented to the following conditions:[1]

1. A majority of the Board of each Trust will consist of persons who are not ''interested persons'' of such Trust, as defined by Section 2(a)(19) of the 1940 Act, and the rules thereunder, and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona-fide resignation of any trustee or trustees, then the operation of this condition will be suspended: (a) For a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. Each Board will monitor its respective Trust for the existence of any material irreconcilable conflict between the interests of the contract owners of all Separate Accounts and participants of all Qualified Plans investing in such Trust, and determine what action, if any should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable Federal or state insurance tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or

[1] Applicants agree that in the event SEI Insurance Products Trust, or any other Trust, operates as a ''feeder'' in a ''master/feeder'' structure, such Trust shall insure that, to the extent necessary, the ''master,'' as well as such Trust, will comply with the conditions hereof.

judicial decision in any relevant proceeding; (d) the manner in which the investments of such Trust are being managed; (e) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners, and trustees of the Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Plan participants.

3. Participating Insurance Companies, SIMC or an affiliate, and any Qualified Plan that executes a participation agreement upon becoming an owner of 10 percent or more of the assets of any Portfolio (collectively, the ''Participants'') will report any potential or existing conflicts to the relevant Board. Participants will be responsible for assisting the relevant Board in carrying out the Board's responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each Participating Insurance Company to inform the relevant Board whenever contract owner voting instructions are disregarded, and, if pass-through voting is applicable, an obligation by each Qualified Plan to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts, and to assist the Board, will be a contractual obligation of all Participating Insurance Companies under their participation agreements with the Trusts, and these responsibilities will be carried out with a view only to the interests of the contract owners. The responsibility to report such information and conflicts, and to assist the Board, also will be contractual obligations of all Qualified Plans with participation agreements, and such agreements will provide that these responsibilities will be carried out with a view only to the interests of Plan participants.

4. If it is determined by a majority of a Board, or a majority of the disinterested trustees of such Board, that a material irreconcilable conflict exists, then the relevant Participant will, at its expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (a) Withdrawing the assets allocable to some or all of the Separate Accounts from the relevant Portfolio and reinvesting such assets in a different investment medium, including another Portfolio, or in the case of insurance company participants submitting the question as to whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, annuity contract owners or life insurance contract owners of one or more Participating Insurance Company) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard contract owner voting instructions, and that decision represents a minority position or would preclude a majority vote, then the insurer may be required, at the election of the relevant Trust, to withdraw such insurer's Separate Account's investment in such Trust, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Plan may be required, at the election of the relevant Trust, to withdraw its investment in such Trust, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all Participants under their agreements governing participation in the Trusts, and these responsibilities will be carried out with a view only to the interests of contract owners and Plan participants.

For purposes of this Condition 4, a majority of the disinterested members of a Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but, in no event, will any Trust, SIMC, or SIMC's affiliate, as relevant, be required to establish a new funding medium for any variable contract. No Participating Insurance Company will be required by this Condition 4 to establish a new funding medium for any variable contract if any offer to do so has been declined by vote of a majority of the contract owners materially and adversely affected by the material irreconcilable conflict. Further, no Qualified Plan will be required by this Condition 4 to establish a new funding medium for the Plan if (a) a majority of the Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (b) pursuant to documents governing the Qualified Plan, the Plan makes such decision without a Plan participant vote.

5. A Board's determination of the existence of a material irreconcilable conflict and its implications will be made known in writing promptly to all Participants.

6. As to Variable Contracts issued by Separate Accounts registered under the 1940 Act, Participating Insurance Companies will provide pass-through voting privileges to all contract owners as required by the 1940 Act. However, as to Variable Contracts issued by unregistered Separate Accounts, pass-through voting privileges will be extended to contract owners to the extent granted by the issuing insurance company. Accordingly, such Participants, where applicable, will vote shares of the applicable Portfolio held in its Separate Accounts in a manner consistent with voting instructions timely received from contract owners. Participating Insurance Companies will be responsible for assuring that each Separate Account investing in a Portfolio calculates voting privileges in a manner consistent with other Participants. The obligation to calculate voting privileges as provided in this Application will be a contractual obligation of all Participating Insurance Companies under their agreement with the Trusts governing participation in a Portfolio. Each Participating Insurance Company will vote shares for which it has not received timely voting instructions as well as shares it owns in the same proportion as it votes those shares for which it has received voting instructions. Each Qualified Plan will vote as required by applicable law and governing Plan documents.

7. As long as the 1940 Act requires pass-through voting privileges to be provided to variable contract owners, SIMC or any of its affiliates will vote its shares of any Fund in the same proportion of all variable contract owners having voting rights with respect to that Fund; provided, however, that SIMC or any of its affiliates shall vote its shares in such other manner as may be required by the Commission or its staff.

8. Each Trust will comply with all provisions of the 1940 Act requiring voting by shareholders, and, in particular, each Trust will either provide for annual meetings (except to

the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Trusts are not one of the trusts described in the Section 16(c) of the 1940 Act), as well as with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, each Trust will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of trustees and with whatever rules the Commission may promulgate with respect thereto.

9. The Trusts will notify all Participants that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Trust will disclose in its prospectus that (a) Shares of such Trust may be offered to insurance company separate accounts of both variable annuity and variable life insurance contracts and to Qualified Plans, (b) due to differences in tax treatment and other considerations, the interests of various contract owners participating in such Trust and the interests of Qualified Plans investing in such Trust may conflict, and (c) the Trust's Board of Trustees will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflict.

10. If and to the extent that Rule 6e–2 and rule 6e–3(T) under the 1940 Act are amended, or proposed Rule 6e–3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act, or the rules promulgated thereunder, with respect to mixed or shared funding, on terms and conditions materially different from any exemptions granted in the Order requested in this Application, then the Trusts and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), or Rule 6e–3, as such rules are applicable.

11. The Participants, at least annually, will submit to the Board of each Trust such reports, materials, or data as a Board reasonably may request so that the trustees of the Board may fully carry out the obligations imposed upon a Board by the conditions contained in this Application, and said reports, materials, and data will be submitted more frequently if deemed appropriate by a Board. The obligations of the Participants to provide these reports, materials, and data to a Board, when it so reasonably requests, will be a contractual obligation of all Participants under their agreements governing participation in the Portfolios.

12. All reports of potential or existing conflicts received by a Board, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the relevant Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

13. The Trusts will not accept a purchase order from a Qualified Plan if such purchase would make the Plan shareholder an owner of 10 percent or more of the assets of such Portfolio unless such Plan executes an agreement with the relevant Trust governing participation in such Portfolio that includes the conditions set forth herein to the extent applicable. A Plan will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of any Portfolio.

### Conclusion

For the reasons stated above, Applicants believe that the requested exemptions, in accordance with the standards of Section 6(c), are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99–27730 Filed 10–22–99; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of October 25, 1999.

Open meetings will be held on Wednesday, October 27, 1999 at 10 a.m., and at 2 p.m.

Commissioner Unger, as duty officer, determined that no earlier notice thereof was possible.

The subject matter of the open meeting scheduled for Wednesday, October 27, 1999, at 10 a.m., will be:

The Commission will hear oral argument on an appeal by the Division of Enforcement from an administrative law judge's initial decision. The law judge dismissed an administrative proceeding against Russell Ponce. For further information, contact Sara P. Crovitz at (202) 942–0950.

The subject matter of the open meeting scheduled for Wednesday, October 27, 1999, at 2 p.m., will be:

Consideration of whether to issue a release requesting comments regarding when or under what conditions the Commission should accept financial statements of foreign private issuers that are prepared using standards promulgated by the International Accounting Standards Committee. For further information, contact Donald J. Gannon at (202) 942–4400.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: October 20, 1999.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 99–27861 Filed 10–21–99; 11:54 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–4206; File No. SR–CBOE–99–43]**

### Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Notice of Filing and Accelerated Approval of Amendment Nos. 1, 2, and 3 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc. To amend Its Constitution Pertaining to Corporate Governance

October 18, 1999.

### I. Introduction

On August 6, 1999, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''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 amend certain provisions of its constitution pertaining to the governance of the Exchange. The proposed rule change was published in the **Federal Register** on September 7,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

1999.[3] On September 24, 1999, the Exchange submitted an amendment to the proposed rule change.[4] On September 28, 1999, the Exchange submitted a second amendment to the proposed rule change.[5] The Exchange also submitted an amendment on October 15, 1999.[6] The Commission did not receive any comments on the proposed rule change. This order approves the proposed rule change and approves on an accelerated basis and solicits comment on Amendment Nos. 1, 2, and 3 to the proposed rule change.

## II. Description of the Proposed Rule Change

### *A. Board of Directors*

The proposed rule change would alter the composition of the Exchange's Board of Directors (''Board''). For example, CBOE proposes to increase the number of public representatives on the Board from four to eight. In addition, CBOE proposes to add a seat on the Board to represent owner/lessor members.[7]

To accommodate these new Board members, CBOE proposes other changes to the composition of the Board. For example, the proposal would increase the total size of the Board from 21 to 23 directors. In addition, the number of floor directors on the Board would be reduced from six to four and the president of the Exchange, who is currently a member of the Board, will no longer be a Board member.

The number of off-floor firm directors and at-large directors will remain unchanged at six and three, respectively. In addition, the Chairman of the Exchange will continue to serve as a director.

Directors will continue to be elected for three-year terms, with all categories of directors to be elected by the members of the Exchange.[8] During the transition, each director currently serving on the Board will be permitted to complete their current terms of office.

### *B. Qualifications of Directors and Officers*

The proposed rule change also clarifies certain requirements applicable to specific categories of directors and officers. For example, in addition to the current requirement that floor directors be primarily engaged in business on the floor of the Exchange, the proposal specifies floor directors must be ''on a seat'' (*i.e.*, acting in the capacity of a member by actively trading securities) in connection with their floor activity. In addition, the proposal clarifies the current requirement that a floor director must own or control a membership by specifying that a floor director may own a membership indirectly through an interest in a corporation, partnership, limited liability company, trust, or other entity that owns one or more memberships directly. A floor director with such indirect control, however, must have the sole and exclusive right to vote the membership and control its sale, and must possess all of the risks and rewards of a direct owner of at least 50% interest in a membership.

The proposed rule change also specifies an additional requirement for the Vice-Chairman of the Exchange, who is also the Chairman of the Executive Committee.[9] The proposal would require the Vice-Chairman of the Exchange to be primarily engaged in business on the floor of the Exchange. The current constitution requires only that the Vice-Chairman own a CBOE membership.

### *C. Nominating Committee*

The proposed rule change would increase the size of the Nominating Committee from seven to ten members to accommodate adding representatives of retail firms, lessors and the public. The Nominating Committee is the Exchange committee that determines which candidates are qualified for election to the Board and other Exchange committees. As proposed, the Nominating Committee will consist of four floor members (except during the transition years, when the number of floor directors will first be six and then five), two members who represent firms that primarily conduct a public customer business, two members who are lessors of their memberships (at least one of whom must be a ''passive'' lessor),[10] and two public members.

All members of the Nominating Committee will be elected by the membership and will serve three-year terms.[11] The Nominating Committee that will serve with respect to the 1999 annual election meeting shall include two lessor members, two firm members, and two public members. The Chairman of the Executive Committee, with the approval of the Board, shall appoint these new committee members for the 1999 annual election meeting. Thereafter, the new committee members shall be elected in the same process as other Nominating Committee members.

The Nominating Committee will judge the qualifications of all candidates for election to the Board or the Nominating Committee that are nominated by that Committee. The Executive Committee will judge the qualifications of candidates who are nominated by petition.

### *D. Other Changes*

The proposed rule change also would modify the timetable for various election matters that are specified in the constitution. For example, the Exchange proposes to advance the time by which the Chairman of the Executive Committee (the Vice-Chairman of the Exchange) is selected by a few weeks to enable the Vice-Chairman to complete the process of selecting chairpersons of various Exchange committees by the end of the year. In addition, CBOE proposes to move the annual meeting of members from the second Monday in December to the third Friday in November. Finally, petitions for nominations of candidates for the Board or the Nominating Committee would be required to be submitted by the Monday preceding the first Friday in November, instead of the current November 15 deadline.

The proposed rule change also would delete those provisions that refer to ''special members'' because there are no longer members in this category. Finally, the proposal contains conforming amendments made necessary by the proposal's substantive changes.

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[3] Securities Exchange Act Release No. 41791 (August 25, 1999), 64 FR 48682.

[4] Letter from Debora Barnes, Senior Attorney, CBOE, to Richard Strasser, Division of Market Regulation (''Division''), SEC, dated September 23, 1999 (''Amendment No. 1''). Amendment No. 1 contained grammatical changes to the proposed rule language and contained a chart describing the composition of CBOE's Board of Directors during the transition period when the proposed changes are implemented.

[5] Letter from Debora Barnes, Senior Attorney, CBOE, to Richard Strasser, Division, SEC, dated September 24, 1999 (''Amendment No. 2''). Amendment No. 2 made further grammatical corrections to the proposed rule language.

[6] Letter from Arthur B. Reinstein, Assistant General Counsel, CBOE, to Richard Strasser, Assistant Director, Division, SEC, dated October 14, 1999 (''Amendment No. 3''). In Amendment No. 3, the Exchange proposes to amend CBOE Rule 8.80(b)(1), which provides for the composition and election of the MTS Appointments Committee (''MTS Committee''). Amendment No. 3 reflects changes proposed by the Exchange in an earlier filing submitted to the Commission for approval. *See* Securities Exchange Act Release No. 41325 (April 22, 1999), 64 FR 23691 (May 3, 1999) (File No. SR–CBOE–98–54).

[7] An owner/lessor member includes those members that own a CBOE membership but are not actively engaged in business as a broker-dealer. These owner/lessors are also referred to as ''passive lessors.''

[8] Currently, public directors are appointed by the Chairman of the Exchange.

[9] The Exchange Committee is responsible for managing the business and affairs of the Exchange.

[10] *See supra* note 6.

[11] During the transition period, some members may be elected for shorter terms.

*E. CBOE Rule 8.80(b)(1)*

In Amendment No. 3, the Exchange proposes to amend CBOE Rule 8.80, which, among other things, governs the composition and election of the Modified Trading System (''MTS'') Committee.[12] The MTS Committee governs the Exchange's designated primary market maker (''DPM'') program. The changes proposed in Amendment No. 3 were originally submitted by the CBOE in File No. SR–CBOE–98–54.[13]

The proposed changes to Rule 8.80(b)(1) provide for the election of MTS Committee members, which are currently appointed by the Nominating Committee with the approval of the Board. The election procedures proposed would be the same as those used for the election of the Exchange's directors. Accordingly, the election process would begin in October of each year when the Nominating Committee selects nominees to fill expiring terms and vacancies. The proposal also provides that MTS Committee members will serve three-year terms, which is an increase from the current two-year terms requirement. The Exchange proposes to add Amendment No. 3 to this proposal because of the election process time-line.

**III. Discussion**

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchange.[14] In particular, the Commission believes that the proposal is consistent with Section 6(b)(3) of the Act.[15]

One of the requirements of Section 6(b)(3) of the Act provides that one or more directors of an exchange shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer. The Commission has consistently stated its belief that representation of the public on exchange oversight committees that have decision-making authority is critical to ensuring that the exchange works to protect the public interest.[16] Further, public representation helps to ensure that no single group of investors has the ability to systematically disadvantage other market participants through the exchange governance process.

The proposed rule change amends the composition of the Board by increasing the number of public directors from four to eight. As a result, public directors will compromise nearly 35 percent of the Board, compared to the current 19 percent public representation. The Commission believes that this increase should substantially increase the public's voice on CBOE's Board, which is consistent with Section 6(b)(3) of the Act.[17] Public directors should bring knowledge of the interests of investors to the governance of the Exchange and provide a balance to the composition of the Board. They should possess a unique perspective, which should enhance the ability of the Board to address exchange issues in a non-discriminatory fashion.

In addition to increasing the number of public directors on the Board, the proposal adds two public members to the Nominating Committee. By adding public members to the Nominating Committee, the proposal should help to ensure that a fair and broad cross-section of members and the public are represented in the administration of the affairs of the Exchange.

The second requirement of Section 6(b)(3) of the Act[18] states that the rules of an exchange must assure a fair representation of its members in the selection of its directors and administration of its affairs This requirement seeks to ensure that an exchange is administered in a way that is equitable to all market members and participants. A registered exchange is not solely a commercial enterprise. It has significant regulatory responsibilities with respect to its members, such as the responsibility to act fairly in adjudicating disciplinary proceedings against members. Therefore, the statute seeks to ensure that members' interests are adequately represented and protected.

The proposed rule change provides for the election for public directors. Currently, public directors are appointed by the Chairman of the Board and approved by the full Board. Public directors will now go through the full nominating and election process. This amendment provides members with agreater role in the administration of the Exchange and allows them to have a greater impact on the composition of their governing body.

The composition of the Board was further amended by the proposal to include the owner/lessor member community. Currently, approximately 85 percent of CBOE's memberships are leased.[19] By including lessor directors on the Board, the CBOE recognizes this large segment of its member population and provides it with a greater voice in the administration of the Exchange's affairs.

To accommodate the new owner/lessor director and the additional public directors, the proposal decreases the number of floor directors on the Board from six to four. The Commission finds that in light of the amount of lessor members and the public interest served by adding public directors this reduction is reasonable.[20]

The qualifications of floor directors also were amended by the proposed rule change. Floor directors will be required to be ''on a seat'' (*i.e.*, acting in the capacity of a member by actively trading securities) to be qualified for a director position. This new requirement, in addition to the current requirement that floor directors be primarily engaged in business on the floor of the Exchange, should ensure that floor members' interests are adequately supported. This new requirement should ensure that floor directors have a full appreciation and understanding of the issues that are of concern to floor members.[21]

The qualifications of the Vice-Chairman of the Board were also clarified to explicitly require that the Vice-Chairman be primarily engaged in business on the floor of the Exchange. By adding this requirement, the Vice-Chairman should be equipped with an in-depth knowledge of the business of the Exchange, which will enable him or her to make decisions and implement

[12] *See* Amendment No. 3, *supra* note 6.

[13] *See* Securities Exchange Act Release No. 41325 (April 22, 1999), 64 FR 23691 (May 3, 1999).

[14] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f)

[15] 15 U.S.C. 78f(b)(3).

[16] *See, e.g.*, Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998).

[17] The Commission notes that currently the American Stock Exchange, National Association of Securities Dealers and its subsidiaries, and the Chicago Stock Exchange each have composed their boards so that industry directors do not out number the remaining directors. In addition, the Pacific Exchange, PCX Equities and the International Securities Exchange (''ISE'') have each filed proposals that provide for the composition of their boards to include at least 50 percent public representation. *See* File No. SR–PCX–99–33 (proposing to amend the constitution of the Pacific Exchange); SR–PCX–99–39 (proposing to establish PCX Equities); and Securities Exchange Act Release No. 41439 (May 24, 1999), 64 FR 29867 (June 1, 1999) (the ISE application for exchange status).

[18] 15 U.S.C. 78f(b)(3).

[19] Telephone call between Debra Barnes, Senior Attorney, CBOE and Kelly Riley, Attorney, SEC, on October 7, 1999. As of September 30, 1999, CBOE and 931 memberships of which 794 are leased.

[20] Upon approval of this proposal and the subsequent elections to implement these changes, the Board will consist of eight public directors, six off-floor firm directors, four floor directors, three at-large directors, one owner/lessor director, and the Chairman of the Board.

[21] The Commission notes that an owner/lessor of multiple seats might qualify under more than one category of director.

policies that are in the best interest of the Exchange and its members.

The proposal also amended the composition of the Nominating Committee to include representatives of retail firms, lessors and the public. Floor members will continue to be represented. The new composition should provide the differing member communities with a voice in the candidates presented for election to the Board and other Exchange committees, which should ensure that a fair cross-section of qualified candidates are presented to members for election. By providing a balanced committee that is composed of the diverse member constituencies of the Exchange, the proposal should prevent the discriminatory exclusion of qualified candidates.

Finally, the Commission finds good cause to accelerate approval of Amendment Nos. 1, 2, and 3 to the proposed rule change prior to the thirtieth day after publication in the **Federal Register.** Amendment Nos. 1 and 2 proposed grammatical changes to the original filing. As Amendment Nos. 1 and 2 were merely technical in nature and do not raise any novel issues of regulatory concern, the Commission finds good cause to accelerate their approval.

Amendment No. 2 provides for the election of MTS Committee members, which are currently appointed by the Nominating Committee. The MTS Committee is charged with governing the DPM program on the floor of the Exchange. By allowing members to elect the members of this committee, the amendment enables Exchange members to be more actively involved in the administration of the Exchange. Moreover, the Commission finds that extending the MTS Committee members' terms of office to three years should enhance continuity in the application of Exchange rules and policies and should increase the expertise of the MTS Committee in addressing issues related to the DPM program. The Commission finds good cause to accelerate Amendment No. 3 because the election process for the Exchange is scheduled to begin in October and the Commission believes that it would be beneficial for members to elect the new MTS Committee members in the 1999 election. Further, the Commission notes that the proposed changes were published for public comment in the **Federal Register** and that no comments were received on the proposed changes.[22] Therefore, the Commission believes that good cause exists, consistent with Section 6(b)(3) of the Act[23] and Section 19(b)[24] of the Act, to approve Amendment Nos. 1, 2, and 3 on an accelerated basis.

[22] *See supra* note 6.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1, 2, and 3, including whether Amendment Nos. 1, 2, and 3 are 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 those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–99–43 and should be submitted by November 15, 1999.

## V. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[25] that the amended proposed rule change (SR–CBOE–99–43) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99–27715 Filed 10–22–99; 8:45 am]

**BILLING CODE 8010–01–M**

[23] 15 U.S.C. 78f(b)(3).

[24] 15 U.S.C. 78s(b).

[25] 15 U.S.C. 78s(b)(2).

[26] 17 CFR 200.40–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42012; File No. SR–CBOE–99–56]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Operation of the Retail Automatic Execution System

October 15, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and rule 19b–4 thereunder,[2] notice is hereby given that on October 6, 1999, the Chicago Board Options Exchange Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to adopt a new policy concerning the administration of its rules governing the operation of its Retail Automatic Execution System (''RAES''). The new policy concerns the handling of orders on RAES in cases where the CBOE's best bid or offer is inferior to the best bid or offer in another market. The policy will be reflected in new Interpretation .08 to rule 6.8. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

Interpretation .02 to CBOE Rule 6.8 governs the handling of orders for multiply-traded options on RAES in cases where the CBOE's best bid or offer is inferior to the current best bid or offer in any other market. When RAES receives an order for a multiply-traded option at a time when a better bid or offer for that option (the National Best Bid or Offer, or ''NBBO'') is displayed on another exchange, the order will either be rejected for manual handling (so that the order is not automatically executed at an inferior price to the NBBO), or the order will be executed at the NBBO if the NBBO is better than the CBOE bid or offer by no more than the designated number of minimum trading variations (''step-up amount''). Pursuant to Interpretation .02 to rule 6.8, the appropriate Floor Procedure Committee (''FPC'') determines which option classes will be entitled to be executed automatically at the better bid or offer and also determines the step-up amount at which the order still will be executed automatically on RAES.[3] In situations where the NBBO is better than the CBOE bid or offer by more than the number of ticks represented by the designated step-up amount, the order will be rerouted for manual handling.

The application of a step-up amount (pursuant to Interpretation .02 to rule 6.8), particularly a step-up amount two ''ticks'' or more, could result in a crossed market on the Exchange (i.e., a market where a stepped-up bid would be higher than the best offer, or a stepped-down offer would be lower than the best bid). The Exchange believes that it is inconsistent with a fair and orderly market for an automatic step-up to result in a crossed market. Moreover, by forcing market makers to buy options contracts at higher prices than they can sell those contracts, a crossed market subjects market makers to potentially significant losses.[4] The proposed new policy will prevent these occurrences as further described below.

Under proposed new Interpretation .08 to Rule 6.8, orders will not be automatically executed on RAES at stepped-up prices in situations where, after applying the step-up amount, there would be a crossed market on the Exchange. Any orders prevented from being automatically executed by operation of this policy will be rerouted to the Public Automated Routing (''PAR'') machine of the Designated Primary Market Maker (''DPM'') for manual handling.[5] Upon receipt of that order, in accordance with CBOE Rule 6.73, the floor broker or DPM will be obligated to use due diligence in the handling of the order to execute the order at the best price or prices available to him.

In addition, pursuant to the Exchange's firm quote rule, Rule 8.51, any order that is rerouted will be entitled to be executed at the Exchange's displayed bid or offer when that order is represented in trading crowd. Of course, depending on the circumstances, that order may be filed at a price better than the DBOE's displayed bid or offer.

By preventing the automatic execution of orders at prices that reflect crossed markets on the Exchange, the Exchange represents that the proposed policy is consistent with and in furtherance of the objectives of Section 6(b)(5) of the Act to promote just and equitable principles of trade and to remove impediments to the perfect the mechanism of a free and open market.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The CBOE does not believe that the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participant or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become immediately effective pursuant to Section 19(b)(3)(A) and Rule 19b–4(f)(6) under the Act because:

(i) It does not significantly affect the protection of investors or the public interest;

(ii) It does not impose any significant burden on competition; and

(iii) By its terms, it does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

In this regard the CBOE has agreed that the proposal need not become operative for 30 days, but has requested that the operative date be accelerated. In addition, the CBOE provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, more than five business days prior to the date of filing of the proposed rule change.

The Commission finds that it is appropriate to designate the proposal to become operative today because such designation is consistent with the protection of investors and the public interest. Specifically, the Commission finds that it is appropriate to accelerate the operative date of the proposed rule change because the proposal will allow the CBOE to provide the benefits of a larger ''step-up amount'' for a greater number of customers, promoting prompt executions of these customer order at the NBBO. In addition, the proposal is similar to a rule of the Pacific Exchange, Inc. (''PCX'') that was approved by the Commission in September 1998.[6] For these reasons the Commission finds that designation of the proposal to become operative today is consistent with the protection of investors and the public interest.[7]

The Commission requests, however, that the CBOE provide it with information regarding the occasions in which the new Interpretation is applied and the promptness of the manual execution of orders that are prevented from automatic execution by operation of the new Interpretation. This data should cover, at a minimum, the period commencing as of the proposed Interpretation's operative date and concluding six months thereafter.

[3] In this regard, the Commission recently approved an amendment to Interpretation .02 that authorizes the appropriate FPC to establish a step-up amount greater than the one-tick increment established pursuant to CBOE rule 6.42. *See* Securities Exchange Act Release No. 41821 (September 1, 1999), 64 FR 50313 (September 16, 1999) (SR–CBOE–99–17).

[4] Telephone conversation between Timothy Thompson, Director, Regulatory Affairs, CBOE and Gordon Fuller, Special Counsel, Division of Market Regulation, SEC (October 6, 1999).

[5] The PAR screen is a dynamic touch-screen terminal designed to allow electronic representation of crowd-routed orders. The PAR screen enables a broker to trade, cancel, print or electronically book an order or bundle of orders. When the order is filled or canceled, the execution or cancel report is sent from the trading pit to the branch. Telephone conversation between Timothy Thompson, Director, Regulatory Affairs, CBOE and Gordon Fuller, Special Counsel, Division of Market Regulation, SEC (October 12, 1999).

[6] Securities Exchange Act Release No. 40412 (September 8, 1998), 63 FR 49626 (September 16, 1998) (SR–PCX–98–27).

[7] In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation consistent with Section 3(f) of the Act, 15 U.S.C. 78c(f).

At any time within 60 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 or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**VI. Solicitation of Commission**

Interested persons are invited to submit data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–99–56 and should be submitted by November 15, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99–27716 Filed 10–22–99; 8:45 am]

**BILLING CODE 8010–01–M**

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## SECURITIES AND EXCHANGE COMMISSION

**[(Release No. 34–42025; File No. SR–CHX–99–12)]**

## Self-Regulatory Organizations; Notice of Filing Proposed Rule Change by the Chicago Stock Exchange, Inc. To Modify the Recommended Fine Schedule for the Submission of Late Financial and Operational Reports

October 18, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 30, 1999, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CHX. On October 5, 1999, the CHX submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to eliminate the fixed fine schedule in Exchange Article XI, Rule 4,

Interpretation and Policy .02 (''IP.02''), regarding the submission of late financial and operational reports and subject violations under the rule to the CHX Minor Rule Violation Plan's standard recommended fine schedule. The text of the proposed rule change is available at the Office of the Secretary, the CHX and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the CHX 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 plates specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

On May 30, 1996 the Commission approved a proposed rule change that established a CHX minor rule violation plan (''MRVP'' or ''Plan'').[4] Under the Plan, the failure to file required financial and operational reports in a timely manner subjects members to a sanction. However, for such violations, the Plan's recommended fine schedule mirrors the fine schedule contained in IP .02. That fine schedule subjects members to late filing charges as follows:

*Days Late/Amount*

1–30—$100

31–60—$200

61–90—$400

The Exchange is now proposing to eliminate the fixed fine schedule in IP .02, and to subject violations under the rule to the recommended fine schedule applicable to most other violations handled under the Plan. The recommended fine schedule provides that a $100 fine be imposed for the first violation within a rolling twelve month period and a $500 fine and $1000 fine be imposed for the second and third such violations. The Exchange believes that the proposed change would allow the MRVP panel to levy higher fines for the late submission of financial and operational reports.[5]

2. Statutory Basis

The proposed rule change is consistent with the requirements of the Act and the rules and regulations under that Act which are applicable to a national securities exchange, and, in particular, with the requirements of Sections 6(b)(1), 6(b)(6), 6(b)(7), 6(d)(1) and 19(d) of the Act. The proposal is consistent with the Section 6(b)(6) requirement that the rules of an exchange provide that its members and persons associated with its members shall be disciplined appropriately for violations of the rules of the exchange.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition.

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[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Angelo Evangelo, Senior Attorney, Market Regulation, CHX, to John Roeser, Attorney, Division of Market Regulation, Commission, dated October 1, 1999 (''Amendment No. 1'').

[4] Rule 19d–1(c)(2) under the Act authorizes national securities exchanges to adopt minor rule violation plans for the summary discipline and abbreviated reporting of minor rule violations by exchange members and member organizations. *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984) (approving amendments to paragraph (c)(2) of Rule 19d–1 under the Act). The CHX's Plan was approved by the Commission in 1996. *See* Securities Exchange Act Release No. 37255 (May 30, 1996), 61 FR 28918 (June 6, 1996) (approving File No. SR–CHX–95–25).

[5] With respect to the issue of how the MRVP panel would handle violations that differ in terms of the length of time submissions are overdue, the Exchange believes that the MRVP panel, in such instances, would use its discretion in determining appropriate fine amounts. Although the proposed new fine schedule would not expressly state that higher fine amounts are appropriate for overly late submissions, the Exchange indicates that the MRVP panel likely would exercise its discretion to sanction members in accordance with the number of days a report was late. *See* Amendment No. 1, *supra* note 3.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. 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 those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–99–12 and should be submitted November 15, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99–27714 Filed 10–22–99; 8:45 am]

**BILLING CODE 8010–01–M**

[6] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42019; File No. SR–MSRB–99–7]**

## Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval to Proposed Rule Change Relating to an Amendment to Rule G–16 on Periodic Compliance Examinations

October 15, 1999.

**I. Introduction**

On August 13, 1999, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') submitted to the Securities and Exchange Commission (''SEC'' or ''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 relating to Rule G–16 on periodic compliance examinations. The proposed rule change was published for comment in the **Federal Register** on August 20, 1999.[3] No comments were received on the proposed rule change. This order approves the proposed rule change.

**II. Description of the Proposal**

Section 15B(c)(7)(A)[4] of the Act provides that periodic examinations of dealers for compliance with MSRB rules are to be conducted by the National Association of Securities Dealers, Inc. (''NASD'') with respect to securities firms and by the appropriate federal bank regulatory agencies with respect to bank dealers. Rule G–16 permits periodic examinations of dealers for compliance with MSRB rules to be combined with other periodic examinations of securities firms and bank dealers to avoid unnecessary regulatory duplication and undue regulatory burdens for such firms and bank dealers. Rule G–16 currently requires that compliance examinations for dealers be conducted at least once every 24 months.

By letter dated April 28, 1999, NASD Regulation, Inc. (''NASDR'') requested that the Board revise Rule G–16. The letter stated that because of NASDR's efforts to coordinate examination schedules, NASDR believes that the Board should change the 24-month requirement in Rule G–16 to a two calendar year requirement.

NASDR stated that the requirement in Rule G–16 that municipal securities examinations commence within 24 months of the previous examination takes precedence over all examinations when coordinating examination schedules. NASDR uses the ''field work start date'' of a firm's prior municipal securities examination to calculate the 24-month period for the purposes of Rule G–16. Applying this methodology, NASDR identifies all municipal securities examinations required in a given calendar year. A determination is then made as to whether the identified firms are also scheduled for a routine cycle examination during the same year.

If a routine cycle examination is required of a firm that is subject to a municipal inspection, the routine and municipal examinations are combined. If a routine cycle examination is not required, a separate ''off-cycle'' municipal examination may have to be conducted on-site. Whenever a municipal securities examination is accelerated, the due date for commencement of a subsequent examination is moved to an earlier period; increasingly the first quarter. NASDR stated that this hampers both current and future examination planning and coordination. NASDR stated that without the rule change it may be necessary to remove municipal securities examinations from the coordinated examination programs.

The proposed rule change alters Rule G–16's requirement that compliance examinations be conducted once every 24 months to once every two calendar years. The rule change is intended to facilitate coordination of on-site examinations to eliminate unnecessary regulatory duplication without negatively affecting investor protection. A formal Memorandum of Understanding among the North American Securities Administrators Association, Inc., Commission, NASDR and other securities industry self-regulatory organizations reflect the joint commitment to coordinated examinations.

**III. Discussion**

The Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.[5] In particular, the Commission finds that the proposed rule change is consistent

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 41773 (Aug. 20, 1999), 64 FR 47209 (Aug. 30, 1999).

[4] 15 U.S.C. 78o–4(c)(7)(A).

[5] In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. The proposed rule change should improve efficiency and competition because it permits flexibility for scheduling periodic compliance examinations. 15 U.S.C. 78c(f).

with Section 15B(b)(2(C)[6] of the Act. Section 15B(b)(2)(C) of the Act requires, among other things, that the rules of the Board be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. Specifically, the Commission believes that the proposed rule change will prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade by enabling the NASD to better coordinate periodic examination schedules.

The rule change will extend the maximum period between compliance examinations to three years. For example, if a dealer is examined in January, the two calendar year clock would not start running for the next compliance examination under Rule G–16 until the following January. While this could lengthen the time between compliance examinations, the Commission believes that enhancing the NASD's ability to coordinate examinations should reduce unnecessary regulatory duplication and regulatory burdens for dealers as well as permit the NASD to better allocate its examination resources. The Commission believes that the proposed rule change will ease the burdens for both the examiners and the dealers. By permitted more flexibility in arranging examination schedules, the change to Rule G–16 should result in scheduling examinations based on efficiency and methodology rather than the calendar.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2)[7] of the Act, that the proposed rule change (SR–MSRB–99–7) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99–27717 Filed 10–22–99; 8:45 am]

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## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3222]**

### State of Connecticut (Amendment #2)

In accordance with a notice received from the Federal Emergency Management Agency dated October 13, 1999, the above-numbered Declaration is hereby amended to include Litchfield County, Connecticut as a disaster area due to damages caused by high winds, heavy rain, and flooding associated with Tropical Storm Floyd beginning on September 16, 1999 and continuing through September 21, 1999.

In addition, applications for economic injury loans from small businesses located in the contiguous County of Berkshire in the State of Connecticut may be filed until the specified date at the previously designated location. Any counties contiguous to the above-named primary county and not listed herein have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is November 21, 1999 and for economic injury the deadline is June 23, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 15, 1999.

**Bernard Kulik,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 99–27803 Filed 10–22–99; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3214]**

### Commonwealth of Pennsylvania (Amendment #2)

In accordance with a notice received from the Federal Emergency Management Agency dated October 13, 1999, the above-numbered Declaration is hereby amended to include Berks County, Pennsylvania as a disaster area due to damages caused by Hurricane Floyd beginning on September 16, 1999 and continuing through September 29, 1999.

In addition, applications for economic injury loans from small businesses located in the contiguous County of Schuylkill in the Commonwealth of Pennsylvania may be filed until the specified date at the previously designated location. Any counties contiguous to the above-named primary county and not listed herein have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 16, 1999 and for economic injury the deadline is June 19, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 15, 1999.

**Bernard Kulik,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 99–27802 Filed 10–22–99; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3213]**

### Commonwealth of Virginia (Amendment #2)

In accordance with a notice received from the Federal Emergency Management Agency dated October 12, 1999, the above-numbered Declaration is hereby amended to include the following areas in the Commonwealth of Virginia as a disaster area due to damages caused by Hurricane Floyd beginning on September 13, 1999 and continuing through September 26, 1999: The Counties of Brunswick, Charles City, Essex, Fairfax, Hanover, Henrico, New Kent, Northampton, Richmond, and Westmoreland, and the Independent Cities of Hopewell and Poquoson.

In addition, applications for economic injury loans from small businesses located in the following contiguous areas may be filed until the specified date at the previously designated location: The counties of Arlington, Caroline, King George, Loudoun, Louisa, Lunenburg, Prince William, and Spotsylvania and the Independent Cities of Alexandria, Fairfax, and Falls Church in the Commonwealth of Virginia, and Montgomery County, Maryland. Any areas contiguous to the above-named primary areas and not listed herein have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 16, 1999 and for economic injury the deadline is June 19, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 15, 1999.

**Bernard Kulik,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 99–27804 Filed 10–22–99; 8:45 am]

BILLING CODE 8025–01–P

## SOCIAL SECURITY ADMINISTRATION

### Office of the Commissioner; Cost-of-Living Increase and Other Determinations for the Year 2000

**AGENCY:** Social Security Administration.

**ACTION:** Notice.

[6] 15 U.S.C. 78o–4(b)(2)(C).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

**SUMMARY:** The Commissioner has determined—

(1) A 2.4 percent cost-of-living increase in Social Security benefits under title II of the Social Security Act (the Act), effective for December 1999;

(2) An increase in the Federal Supplemental Security Income (SSI) monthly benefit amounts under title XVI of the Act for 2000 to $512 for an eligible individual, $769 for an eligible individual with an eligible spouse, and $257 for an essential person;

(3) The national average wage index for 1998 to be $28,861.44;

(4) The Old-Age, Survivors, and Disability Insurance (OASDI) contribution and benefit base to be $76,200 for remuneration paid in 2000 and self-employment income earned in taxable years beginning in 2000;

(5) For beneficiaries under age 65, the monthly exempt amount under the Social Security retirement earnings test for taxable years ending in calendar year 2000 to be $840;

(6) The dollar amounts (''bend points'') used in the benefit formula for workers who become eligible for benefits in 2000 to be $531 and $3,202;

(7) The dollar amounts (''bend points'') used in the formula for computing maximum family benefits for workers who become eligible for benefits in 2000 to be $679, $980, and $1,278;

(8) The amount of earnings a person must have to be credited with a quarter of coverage in 2000 to be $780;

(9) The ''old-law'' contribution and benefit base to be $56,700 for 2000;

(10) The monthly amount of substantial gainful activity applicable to statutorily blind individuals in 2000 to be $1,170;

(11) Coverage thresholds for 2000 to be $1,200 for domestic workers and $1,100 for election workers; and

(12) The OASDI fund ratio to be 193.6 percent for 1999.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey L. Kunkel, Office of the Chief Actuary, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–3013. For information on eligibility or claiming benefits, call (800) 772–1213. A summary of the information in this announcement is available in a recorded message by telephoning (410) 965–3053. Information relating to this announcement is also available on the Internet. The address is http://www.ssa.gov/OACT/COLA/index.html.

**SUPPLEMENTARY INFORMATION:** The Commissioner is required by the Act to publish within 45 days after the close of the third calendar quarter of 1999 the benefit increase percentage and the revised table of ''special minimum'' benefits (section 215(i)(2)(D)). Also, the Commissioner is required to publish on or before November 1 the national average wage index for 1998 (section 215(a)(1)(D)), the OASDI fund ratio for 1999 (section 215(i)(2)(C)(ii)), the OASDI contribution and benefit base for 2000 (section 230(a)), the amount of earnings required to be credited with a quarter of coverage in 2000 (section 213(d)(2)), the monthly exempt amounts under the Social Security retirement earnings test for 2000 (section 203(f)(8)(A)), the formula for computing a primary insurance amount for workers who first become eligible for benefits or dies in 2000 (section 215(a)(1)(D)), and the formula for computing the maximum amount of benefits payable to the family of a worker who first becomes eligible for old-age benefits or dies in 2000 (section 203(a)(2)(C)).

## Cost-of-Living Increases

### *General*

The cost-of-living increase is 2.4 percent for benefits under titles II and XVI of the Act.

Under title II, OASDI benefits will increase by 2.4 percent beginning with December 1999 benefits, payable in January 2000. This increase is based on the authority contained in section 215(i) of the Act (42 U.S.C. 415(i)).

Under title XVI, Federal SSI payment levels will also increase by 2.4 percent effective for payments made for the month of January 2000 but paid on December 30, 1999. This is based on the authority contained in section 1617 of the Act (42 U.S.C. 1382f).

### *Automatic Benefit Increase Computation*

Under section 215(i) of the Act, the third calendar quarter of 1999 is a cost-of-living computation quarter for all the purposes of the Act. The Commissioner is, therefore, required to increase benefits, effective with December 1999, for individuals entitled under section 227 or 228 of the Act, to increase primary insurance amounts of all other individuals entitled under title II of the Act, and to increase maximum benefits payable to a family. For December 1999, the benefit increase is the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the third quarter of 1998 through the third quarter of 1999.

Section 215(i)(1) of the Act provides that the Consumer Price Index for a cost-of-living computation quarter shall be the arithmetic mean of this index for the 3 months in that quarter. The arithmetic mean is rounded, if necessary, to the nearest 0.1. The Department of Labor's Consumer Price Index for Urban Wage Earners and Clerical Workers for each month in the quarter ending September 30, 1998, is: for July 1998, 159.8; for August 1998, 160.0; and for September 1998, 160.2. The arithmetic mean for this calendar quarter is 160.0. The corresponding Consumer Price Index for each month in the quarter ending September 30, 1999, is: for July 1999, 163.3; for August 1999, 163.8; and for September 1999, 164.7. The arithmetic mean for this calendar quarter is 163.9. Thus, because the Consumer Price Index for the calendar quarter ending September 30, 1999, exceeds that for the calendar quarter ending September 30, 1998 by 2.4 percent, a cost-of-living benefit increase of 2.4 percent is effective for benefits under title II of the Act beginning December 1999.

### *Title II Benefit Amounts*

In accordance with section 215(i) of the Act, in the case of insured workers and family members for whom eligibility for benefits (*i.e.*, the worker's attainment of age 62, or disability or death before age 62) occurred before 2000, benefits will increase by 2.4 percent beginning with benefits for December 1999 which are payable in January 2000. In the case of first eligibility after 1999, the 2.4 percent increase will not apply.

For eligibility after 1978, benefits are generally determined by a benefit formula provided by the Social Security Amendments of 1977 (Pub. L. 95–216), as described later in this notice.

For eligibility before 1979, benefits are determined by means of a benefit table. A copy of this table may be obtained by writing to: Social Security Administration, Office of Public Inquiries, 4100 Annex, Baltimore, MD 21235. The table is also available on the Internet at address http://www.ssa.gov/OACT/ProgData/tableForm.html.

Section 215(i)(2)(D) of the Act requires that, when the Commissioner determines an automatic increase in Social Security benefits, the Commissioner shall publish in the **Federal Register** a revision of the range of the primary insurance amounts and corresponding maximum family benefits based on the dollar amount and other provisions described in section 215(a)(1)(C)(i). These benefits are referred to as ''special minimum'' benefits and are payable to certain individuals with long periods of relatively low earnings. To qualify for such benefits, an individual must have at least 11 ''years of coverage.'' To earn

a year of coverage for purposes of the special minimum, a person must earn at least a certain proportion (25 percent for years before 1991, and 15 percent for years after 1990) of the ''old-law'' contribution and benefit base. In accordance with section 215(a)(1)(C)(i), the table below shows the revised range of primary insurance amounts and corresponding maximum family benefit amounts after the 2.4 percent benefit increase.

SPECIAL MINIMUM PRIMARY INSURANCE AMOUNTS AND MAXIMUM FAMILY BENEFITS PAYABLE FOR DECEMBER 1999

| Number of years of coverage | Primary insurance amount | Maximum family benefit |
|---|---|---|
| 11 | 28.50 | 43.20 |
| 12 | 57.40 | 86.80 |
| 13 | 86.70 | 130.40 |
| 14 | 115.50 | 173.80 |
| 15 | 144.50 | 217.00 |
| 16 | 173.60 | 261.10 |
| 17 | 202.70 | 304.80 |
| 18 | 231.80 | 348.20 |
| 19 | 260.80 | 391.80 |
| 20 | 289.70 | 435.30 |
| 21 | 319.10 | 479.20 |
| 22 | 347.90 | 522.60 |
| 23 | 377.20 | 566.80 |
| 24 | 406.30 | 610.20 |
| 25 | 435.30 | 653.30 |
| 26 | 464.60 | 697.70 |
| 27 | 493.50 | 741.00 |
| 28 | 522.50 | 784.40 |
| 29 | 551.50 | 828.20 |
| 30 | 580.60 | 871.50 |

Section 227 of the Act provides flat-rate benefits to a worker who became age 72 before 1969 and was not insured under the usual requirements, and to his or her spouse or surviving spouse. Section 228 of the Act provides similar benefits at age 72 for certain uninsured persons. The current monthly benefit amount of $205.70 for an individual under sections 227 and 228 of the Act is increased by 2.4 percent to obtain the new amount of $210.60. The current monthly benefit amount of $102.80 for a spouse under section 227 is increased by 2.4 percent to $105.20.

*Title XVI Benefit Amounts*

In accordance with section 1617 of the Act, Federal SSI benefit amounts for the aged, blind, and disabled are increased by 2.4 percent effective January 2000. For 1999, the monthly benefit amounts for an eligible individual, an eligible individual with an eligible spouse, and for an essential person—$500, $751, and $250, respectively—were derived from corresponding yearly unrounded Federal SSI benefit amounts of $6,010.02, $9,014.01, and $3,011.89. For 2000, these yearly unrounded amounts are increased by 2.4 percent to $6,154.26, $9,230.35, and $3,084.18, respectively, Each of these resulting amounts must be rounded, when not a multiple of $12, to the next lower multiple of $12. Accordingly, the corresponding annual amounts, effective for 2000, are $6,144, $9,228, and $3,084. The corresponding monthly amounts for 2000 are determined by dividing the yearly amounts by 12, giving $512, $769, and $257, respectively. The monthly amount is reduced by subtracting monthly countable income. In the case of an eligible individual with an eligible spouse, the amount payable is further divided equally between the two spouses.

*Fee for Services Performed as a Representative Payee.*

Sections 205(j)(4)(A)(i) and 1631(a)(2)(D)(i) of the Act permit a qualified organization to collect from an individual a monthly fee for expenses incurred in providing services performed as such individual's representative payee. Currently the fee is limited to the lesser of: (1) 10 percent of the monthly benefit involved; or (2) $27 per month ($53 per month in any case in which the individual is entitled to disability benefits and the Commissioner has determined that payment to the representative payee would serve the interest of the individual because the individual has an alcoholism or drug addiction condition and is incapable of managing such benefits). The dollar fee limits are subject to increase by the automatic cost-of-living increase, with the resulting amounts rounded to the nearest whole dollar amount. The current amounts are thus increased by 2.4 percent to $28 and $54 for 2000.

**National Average Wage Index for 1998**

*General*

Under various provisions of the Act, several amounts are scheduled to increase automatically for 2000 based on the annual increase in the national average wage index. The amounts are: (1) The OASDI contribution and benefit base; (2) the retirement test exempt amount for beneficiaries under age 65; (3) the dollar amounts, or ''bend points,'' in the primary insurance amount and maximum family benefit formulas; (4) the amount of earnings required for a worker to be credited with a quarter of coverage; (5) the ''old-law'' contribution and benefit base (as determined under section 230 of the Act as in effect before the 1977 amendments); (6) the substantial gainful activity amount applicable to statutorily blind individuals, and (7) the coverage threshold for election officials and election workers. Also, section 3121(x) of the Internal Revenue Code requires that the domestic employee coverage threshold be based on changes in the national average wage index.

*Computation*

The determination of the national average wage index for calendar year 1998 is based on the 1997 national average wage index of $27,426.00 announced in the **Federal Register** on October 30, 1998 (63 FR 58446), along with the percentage increase in average wages from 1997 to 1998 measured by annual wage data tabulated by the Social Security Administration (SSA). The wage data tabulated by SSA include contributions to deferred compensation plans, as required by section 209(k) of the Act. The average amounts of wages calculated directly from these data were $26,309.73 and $27,686.75 for 1997 and 1998, respectively. To determine the national average wage index for 1998 at a level that is consistent with the national average wage indexing series for 1951 through 1977 (published December 29, 1978, at 43 FR 61016), the 1997 national average wage index of $27,426.00 is multiplied by the percentage increase in average wages from 1997 to 1998 (based on SSA-tabulated wage data) as follows (with the result rounded to the nearest cent):

*Amount*

The national average wage index for 1998 is $27,426.00 times $27,686.75 divided by $26,309.73, which equals $28,861.44. Therefore, the national average wage index for calendar year 1998 is determined to be $28,861.44.

**OASDI Contribution and Benefit Base**

*General*

The OASDI contribution and benefit base is $76,200 for remuneration paid in 2000 and self-employment income earned in taxable years beginning in 2000.

The OASDI contribution and benefit base serves two purposes:

(a) It is the maximum annual amount of earnings on which OASDI taxes are paid. The OASDI tax rate for remuneration paid in 2000 is set by statute at 6.2 percent for employees and employers, each. The OASDI tax rate for self-employment income earned in taxable years beginning in 2000 is 12.4 percent. (The Hospital Insurance tax is

due on remuneration, without limitation, paid in 2000, at the rate of 1.45 percent for employees and employers, each, and on self-employment income earned in taxable years beginning in 2000, at the rate of 2.9 percent.)

(b) It is the maximum annual amount used in determining a person's OASDI benefits.

*Computation*

Section 230(b) of the Act provides the formula used to determine the OASDI contribution and benefit base. Under the formula, the base for 2000 shall be equal to the larger of: (1) The 1994 base of $60,600 multiplied by the ratio of the national average wage index for 1998 to that for 1992; or (2) the current base ($72,600). If the amount so determined is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

*Amount*

The ratio of the national average wage index for 1998, $28,861.44 as determined above, compared to that for 1992, $22,935.42, is 1.2583785. Multiplying the 1994 OASDI contribution and benefit base amount of $60,600 by the ratio of 1.2583785 produces the amount of $76,257.74 which must then be rounded to $76,200. Because $76,200 exceeds the current base amount of $72,600, the OASDI contribution and benefit base is determined to be $76,200 for 2000.

**Retirement Earnings Test Exempt Amounts**

*General*

Social Security benefits are withheld when a beneficiary under age 70 has earnings in excess of the retirement earnings test exempt amount. Since 1978, higher exempt amounts have applied to beneficiaries aged 65 through 69 compared to those under age 65. Formulas for determining the monthly exempt amounts are provided in section 203(f)(8)(B) of the Act, as amended by section 102 of the ''Senior Citizens' Right to Work Act of 1996,'' title I of Pub. L. 104–121. This amendment set the annual exempt amount for beneficiaries aged 65 through 69 to $12,500 for 1996, $13,500 for 1997, $14,500 for 1998, $15,500 for 1999, $17,000 for 2000, $25,000 for 2001, and $30,000 for 2002. The corresponding monthly exempt amounts are exactly one-twelfth of the annual amounts. After 2002, the monthly exempt amount for this group of beneficiaries will increase under the applicable formula.

For beneficiaries aged 65 through 69, $1 in benefits is withheld for every $3 of earnings in excess of the annual exempt amount. For beneficiaries under age 65, $1 in benefits is withheld for every $2 of earnings in excess of the annual exempt amount.

*Computation*

Under the formula applicable to beneficiaries under age 65, the monthly exempt amount for 2000 shall be the larger of: (1) The 1994 monthly exempt amount multiplied by the ratio of the national average wage index for 1998 to that for 1992; or (2) the 1999 monthly exempt amount ($800). If the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

*Exempt Amount for Beneficiaries Under Age 65*

The ratio of the national average wage index for 1998, $28,861.44, compared to that for 1992, $22,935.42, is 1.2583785. Multiplying the 1994 retirement earnings test monthly exempt amount of $670 by the ratio 1.2583785 produces the amount of $843.11. This must then be rounded to $840. Because $840 is larger than the corresponding current exempt amount of $800, the retirement earnings test monthly exempt amount for beneficiaries under age 65 is thus determined to be $840 for 2000. The corresponding retirement earnings test annual exempt amount for these beneficiaries is $10,080.

**Computing Benefits After 1978**

*General*

The Social Security Amendments of 1977 provided a method for computing benefits which generally applies when a worker first becomes eligible for benefits after 1978. This method uses the worker's ''average indexed monthly earnings'' to compute the primary insurance amount. The computation formula is adjusted automatically each year to reflect changes in general wage levels, as measured by the national average wage index.

A worker's earnings are adjusted, or ''indexed,'' to reflect the change in general wage levels that occurred during the worker's years of employment. Such indexation ensures that a worker's future benefits reflect the general rise in the standard of living that occurs during his or her working lifetime. A certain number of years of earnings are needed to compute the average indexed monthly earnings. After the number of years is determined, those years with the highest indexed earnings are chosen, the indexed earnings are summed, and the total amount is divided by the total number of months in those years. The resulting average amount is then rounded down to the next lower dollar amount. The result is the average indexed monthly earnings.

For example, to compute the average indexed monthly earnings for a worker attaining age 62, becoming disabled before age 62, or dying before attaining age 62, in 2000, the national average wage index for 1998, $28,861.44, is divided by the national average wage index for each year prior to 1998 in which the worker had earnings. The actual wages and self-employment income, as defined in section 211(b) of the Act and credited for each year, is multiplied by the corresponding ratio to obtain the worker's indexed earnings for each year before 1998. Any earnings in 1998 or later are considered at face value, without indexing. The average indexed monthly earnings is then computed and used to determine the worker's primary insurance amount for 2000.

*Computing the Primary Insurance Amount*

The primary insurance amount is the sum of three separate percentages of portions of the average indexed monthly earnings. In 1979 (the first year the formula was in effect), these portions were the first $180, the amount between $180 and $1,085, and the amount over $1,085. The dollar amounts in the formula which govern the portions of the average indexed monthly earnings are frequently referred to as the ''bend points'' of the formula. Thus, the bend points for 1979 were $180 and $1,085.

The bend points for 2000 are obtained by multiplying the corresponding 1979 bend-point amounts by the ratio between the national average wage index for 1998, $28,861.44, and for 1977, $9,779.44. These results are then rounded to the nearest dollar. For 2000, the ratio is 2.9512365. Multiplying the 1979 amounts of $180 and $1,085 by 2.9512365 produces the amounts of $531.22 and $3,202.09. These must then be rounded to $531 and $3,202. Accordingly, the portions of the average indexed monthly earnings to be used in 2000 are determined to be the first $531, the amount between $531 and $3,202, and the amount over $3,202.

Consequently, for individuals who first become eligible for old-age insurance benefits or disability insurance benefits in 2000, or who die in 2000 before becoming eligible for benefits, their primary insurance amount will be the sum of:

(a) 90 percent of the first $531 of their average indexed monthly earnings, plus

(b) 32 percent of their average indexed monthly earnings over $531 and through $3,202, plus

(c) 15 percent of their average indexed monthly earnings over $3,202.

This amount is then rounded to the next lower multiple of $.10 if it is not already a multiple of $.10. This formula and the rounding adjustment described above are contained in section 215(a) of the Act (42 U.S.C. 415(a)).

**Maximum Benefits Payable to a Family**

*General*

The 1977 amendments continued the long established policy of limiting the total monthly benefits that a worker's family may receive based on his or her primary insurance amount. Those amendments also continued the then existing relationship between maximum family benefits and primary insurance amounts but did change the method of computing the maximum amount of benefits that may be paid to a worker's family. The Social Security Disability Amendments of 1980 (Pub. L. 96–265) established a formula for computing the maximum benefits payable to the family of a disabled worker. This formula is applied to the family benefits of workers who first become entitled to disability insurance benefits after June 30, 1980, and who first become eligible for these benefits after 1978. For disabled workers initially entitled to disability benefits before July 1980, or whose disability began before 1979, the family maximum payable is computed the same as the old-age and survivor family maximum.

*Computing the Old-Age and Survivor Family Maximum*

The formula used to compute the family maximum is similar to that used to compute the primary insurance amount. It involves computing the sum of four separate percentages of portions of the worker's primary insurance amount. In 1979, these portions were the first $230, the amount between $230 and $332, the amount between $332 and $433, and the amount over $433. The dollar amounts in the formula which govern the portions of the primary insurance amount are frequently referred to as the ''bend points'' of the family-maximum formula. Thus, the bend points for 1979 were $230, $332, and $433.

The bend points for 2000 are obtained by multiplying the corresponding 1979 bend-point amounts by the ratio between the national average wage index for 1998, $28,861.44, and the average for 1977, $9,779.44. This amount is then rounded to the nearest dollar. For 2000, the ratio is 2.9512365. Multiplying the amounts of $230, $332, and $433 by 2.9512365 produces the amounts of $678.78, $979.81, and $1,277.89. These amounts are then rounded to $679, $980, and $1,278. Accordingly, the portions of the primary insurance amounts to be used in 2000 are determined to be the first $679, the amount between $679 and $980, the amount between $980 and $1,278, and the amount over $1,278.

Consequently, for the family of a worker who becomes age 62 or dies in 2000 before age 62, the total amount of benefits payable to them will be computed so that it does not exceed:

(a) 150 percent of the first $679 of the worker's primary insurance amount, plus

(b) 272 percent of the worker's primary insurance amount over $679 through $980, plus

(c) 134 percent of the worker's primary insurance amount over $980 through $1,278, plus

(d) 175 percent of the worker's primary insurance amount over $1,278.

This amount is then rounded to the next lower multiple of $.10 if it is not already a multiple of $.10. This formula and the rounding adjustment described above are contained in section 203(a) of the Act (42 U.S.C. 403(a)).

**Quarter of Coverage Amount**

*General*

The amount of earnings required for a quarter of coverage in 2000 is $780. A quarter of coverage is the basic unit for determining whether a worker is insured under the Social Security program. For years before 1978, an individual generally was credited with a quarter of coverage for each quarter in which wages of $50 or more were paid, or an individual was credited with 4 quarters of coverage for every taxable year in which $400 or more of self-employment income was earned. Beginning in 1978, wages generally are no longer reported on a quarterly basis; instead, annual reports are made. With the change to annual reporting, section 352(b) of the Social Security Amendments of 1977 amended section 213(d) of the Act to provide that a quarter of coverage would be credited for each $250 of an individual's total wages and self-employment income for calendar year 1978 (up to a maximum of 4 quarters of coverage for the year).

*Computation*

Under the prescribed formula, the quarter of coverage amount for 2000 shall be equal to the larger of: (1) The 1978 amount of $250 multiplied by the ratio of the national average wage index for 1998 to that for 1976; or (2) the current amount of $740. Section 213(d) further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

*Quarter of Coverage Amount*

The ratio of the national average wage index for 1998, $28,861.44, compared to that for 1976, $9,226.48, is 3.1281095. Multiplying the 1978 quarter of coverage amount of $250 by the ratio of 3.1281095 produces the amount of $782.03, which must then be rounded to $780. Because $780 exceeds the current amount of $740, the quarter of coverage amount is determined to be $780 for 2000.

**''Old-Law'' Contribution and Benefit Base**

*General.*

The ''old-law'' contribution and benefit base for 2000 is $56,700. This is the base that would have been effective under the Act without the enactment of the 1977 amendments. The base is computed under section 230(b) of the Act as it read prior to the 1977 amendments.

The ''old-law'' contribution and benefit base is used by:

(a) The Railroad Retirement program to determine certain tax liabilities and tier II benefits payable under that program to supplement the tier I payments which correspond to basic Social Security benefits,

(b) The Pension Benefit Guaranty Corporation to determine the maximum amount of pension guaranteed under the Employee Retirement Income Security Act (as stated in section 230(d) of the Social Security Act),

(c) Social Security to determine a year of coverage in computing the special minimum benefit, as described earlier, and

(d) Social Security to determine a year of coverage (acquired whenever earnings equal or exceed 25 percent of the ''old-law'' base for this purpose only) in computing benefits for persons who are also eligible to receive pensions based on employment not covered under section 210 of the Act.

*Computation*

The ''old-law'' contribution and benefit base shall be the larger of: (1) The 1994 ''old-law'' base ($45,000) multiplied by the ratio of the national average wage index for 1998 to that for 1992; or (2) the current ''old-law'' base ($53,700). If the amount so determined is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

*Amount*

The ratio of the national average wage index for 1998, $28,861.44, compared to that for 1992, $22,935.42, is 1.2583785. Multiplying the 1994 ''old-law'' contribution and benefit base amount of $45,000 by the ratio of 1.2583785 produces the amount of $56,627.03 which must then be rounded to $56,700. Because $56,700 exceeds the current amount of $53,700, the ''old-law'' contribution and benefit base is determined to be $56,700 for 2000.

**Substantial Gainful Activity Amount for Blind Individuals**

*General*

A finding of disability under titles II and XVI of the Act requires that a person be unable to engage in substantial gainful activity (SGA). Under current regulations, a person who is not statutorily blind and who is earning more than $700 a month (net of impairment-related work expenses) is ordinarily considered to be engaging in SGA. Section 223(d)(4)(A) of the Act specifies a higher SGA amount for statutorily blind individuals. This higher SGA amount increases in accordance with increases in the national average wage index.

*Computation*

The monthly SGA amount for statutorily blind individuals for 2000 shall be the larger of: (1) Such amount for 1994 multiplied by the ratio of the national average wage index for 1998 to that for 1992; or (2) such amount for 1999. If the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

*SGA Amount for Statutorily Blind Individuals*

The ratio of the national average wage index for 1998, $28,861.44, compared to that for 1992, $22,935.42, is 1.2583785. Multiplying the 1994 monthly SGA amount for statutorily blind individuals of $930 by the ratio of 1.2583785 produces the amount of $1,170.29. This must then be rounded to $1,170. Because $1,170 is larger than the current amount of $1,110, the monthly SGA amount for statutorily blind individuals is determined to be $1,170 for 2000.

**Domestic Employee Coverage Threshold**

*General*

Section 2 of the ''Social Security Domestic Employment Reform Act of 1994'' (Pub. L. 103–387) increased the threshold for coverage of a domestic employee's wages paid per employer from $50 per calendar quarter to $1,000 per annum in calendar year 1994. The statute held the coverage threshold at the $1,000 level for 1995 and then increased the threshold in $100 increments for years after 1995. Section 3121(x) of the Internal Revenue Code provides the formula for increasing the threshold.

*Computation*

Under the formula, the domestic employee coverage threshold amount for 2000 shall be equal to the 1995 amount of $1,000 multiplied by the ratio of the national average wage index for 1998 to that for 1993. If the amount so determined is not a multiple of $100, it shall be rounded to the next lower multiple of $100.

*Domestic Employee Coverage Threshold Amount*

The ratio of the national average wage index for 1998, $28,861.44, compared to that for 1993, $23,132.67, is 1.2476485. Multiplying the 1995 domestic employee coverage threshold amount of $1,000 by the ratio of 1.2476485 produces the amount of $1,247.65, which must then be rounded to $1,200. Accordingly, the domestic employee coverage threshold amount is determined to be $1,200 for 2000.

**Election Worker Coverage Threshold**

*General*

Section 303(b) of Pub. L. 103–296, the ''Social Security Independence and Program Improvements Act of 1994,'' increased from $100 a year to $1,000 a year the amount an election official or election worker must be paid for the earnings to be covered under Social Security or Medicare, effective January 1, 1995. Beginning in the year 2000, the coverage threshold increases automatically with increases in the national average wage index.

*Computation*

Under the formula, the election worker coverage threshold amount for 2000 shall be equal to the 1999 amount of $1,000 multiplied by the ratio of the national average wage index for 1998 to that for 1997. If the amount so determined is not a multiple of $100, it shall be rounded to the nearest multiple of $100.

*Election Worker Coverage Threshold Amount*

The ratio of the national average wage index for 1998, $28,861.44, compared to that for 1997, $27,426.00, is 1.0523387. Multiplying the 1999 election worker coverage threshold amount of $1,000 by the ratio of 1.0523387 produces the amount of $1,052.34, which must then be rounded to $1,100. Accordingly, the election worker coverage threshold amount is determined to be $1,100 for 2000.

**OASDI Fund Ratio**

*General*

In addition to providing an annual automatic cost-of-living increase in OASDI benefits, section 215(i) of the Act also includes a ''stabilizer'' provision that can limit such benefit increase under certain circumstances. If the combined assets of the OASI and DI Trust Funds, as a percentage of annual expenditures, are below a specified threshold, the automatic benefit increase is equal to the lesser of: (1) The increase in the national average wage index; or (2) the increase in prices. The threshold specified for the OASDI fund ratio is 20.0 percent for benefit increases for December of 1989 and later. The law also provides for subsequent ''catch-up'' benefit increases for beneficiaries whose previous benefit increases were affected by this provision. ''Catch-up'' benefit increases can occur only when trust fund assets exceed 32.0 percent of annual expenditures.

*Computation*

Section 215(i) specifies the computation and application of the OASDI fund ratio. The OASDI fund ratio for 1999 is the ratio of: (1) The combined assets of the OASI and DI Trust Funds at the beginning of 1999 to (2) the estimated expenditures of the OASI and DI Trust Funds during 1999, excluding transfer payments between the OASI and DI Trust Funds, and reducing any transfers to the Railroad Retirement Account by any transfers from that account into either trust fund.

*Ratio*

The combined assets of the OASI and DI Trust Funds at the beginning of 1999 equaled $762,460 million, and the expenditures are estimated to be $393,826 million. Thus, the OASDI fund ratio for 1999 is 193.6 percent, which exceeds the applicable threshold of 20.0 percent. Therefore, the stabilizer provision does not affect the benefit increase for December 1999. Although the OASDI fund ratio exceeds the 32.0-percent threshold for potential ''catch-up'' benefit increases, no past benefit increase has been reduced under the stabilizer provision. Thus, no ''catch-up'' benefit increase is required.

(Catalog of Federal Domestic Assistance: Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.003 Social Security—Special Benefits for Persons Aged 72 and Over; 96.004 Social Security—

Survivors Insurance; 96.006 Supplemental Security Income)

Dated: October 20, 1999.

**Kenneth S. Apfel,**

*Commissioner, Social Security Administration.*

[FR Doc. 99–27865 Filed 10–22–99; 8:45 am]

**BILLING CODE 4191–02–P**

## DEPARTMENT OF STATE

**[Public Notice 3139]**

### Culturally Significant Objects Imported for Exhibition Determinations: ''Berlin Metropolis: Jews and the New Culture, 1890–1918''

**DEPARTMENT:** United States Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985, 22 U.S.C. 2459], the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681 *et seq.*], and Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], I hereby determine that the objects to be included in the exhibit, ''Berlin Metropolis: Jews and the New Culture, 1890–1918,'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the exhibition or display of the exhibit objects at The Jewish Museum, New York, New York, from on or about November 14, 1999 to on or about April 23, 2000, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is Room 700, United States Department of State, 301 4th Street, SW, Washington, DC 20547–0001.

Dated: October 19, 1999.

**Evelyn S. Lieberman,**

*Under Secretary for Public Diplomacy and Public Affairs, United States Department of State.*

[FR Doc. 99–27739 Filed 10–22–99; 8:45 am]

**BILLING CODE 4710–08–P**

## DEPARTMENT OF TRANSPORTATION

### Bureau of Transportation Statistics

**[Docket No. BTS–99–6375]**

### Motor Carrier Financial and Operating Information; Requests for Exemption From Public Release of Reports

**AGENCY:** Bureau of Transportation Statistics, DOT.

**ACTION:** Notice.

**SUMMARY:** Class I and Class II motor carriers of property and household goods are required to file annual and quarterly reports with the Bureau of Transportation Statistics (BTS). As provided by statute, carriers may request that their reports be withheld from public release. BTS is issuing this notice to invite comments on several requests submitted by carriers.

**DATES:** Comments must be submitted by November 24, 1999.

**ADDRESSES:** Please send comments to the Docket Clerk, Docket No. BTS–99–6375, Department of Transportation, 400 Seventh Street, SW., Room PL–401, Washington, DC 20590, from 10:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

You only need to submit one copy. If you would like the Department to acknowledge receipt of the comments, you must include a self-addressed stamped postcard with the following statement: Comments on Docket BTS–99–6375. The Docket Clerk will date stamp the postcard and mail it back to you.

If you wish to file comments using the Internet, you may use the U.S. DOT Dockets Management System website at http://dms.dot.gov. Please follow the instructions online for more information.

**FOR FURTHER INFORMATION CONTACT:** David Mednick, K–1, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590; (202) 366–8871; fax: (202) 366–3640; e-mail: david.mednick@bts.gov.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

Under 49 U.S.C. 14123 and its implementing regulations at 49 CFR 1420, BTS collects financial and operating information from for-hire motor carriers of property and household goods. The data are collected on annual Form M, filed by Class I and Class II carriers, and quarterly Form QFR, filed only by Class I carriers. The data are used by the Department of Transportation, other federal agencies, motor carriers, shippers, industry analysts, labor unions, segments of the insurance industry, investment analysts, and the consultants and data vendors that support these users. Among the uses of the data are: (1) Developing the U.S. national accounts and preparing the quarterly estimates of the Gross Domestic Product, which help us better understand the U.S. economy and the motor carrier industry's role in it; (2) measuring the performance of the for-hire motor carrier industry and segments within it; (3) monitoring carrier safety; (4) benchmarking carrier performance; and (5) analyzing motor carrier safety and productivity.

Generally, all data are made publicly available. A carrier can, however, request that its report be withheld from public release, as provided for by statute, 49 U.S.C. 14123(c)(2), and its implementing regulations, 49 CFR 1420.9. BTS will grant a request upon a proper showing that the carrier is not a publicly held corporation or that the carrier is not subject to financial reporting requirements of the Securities and Exchange Commission, and that the exemption is necessary to avoid competitive harm and to avoid the disclosure of information that qualifies as trade secret or privileged or confidential information under 5 U.S.C. 552(b)(4). The carrier must submit a written request containing supporting information. BTS must receive the request by the report's due date, unless it is postmarked by the due date or there are extenuating circumstances. Requests covering the quarterly reports must be received by the due date of the annual report that relates to the prior year.

In accordance with our regulations, after each due date of each annual report BTS then publishes a notice, such as this one, in the **Federal Register** requesting comments on any requests it has received. After considering the requests and comments, BTS will decide to grant or deny each request no later than 90 days after the request's due date. While a decision is pending, BTS will not publicly release the report except as allowed under 49 CFR 1420.10(c). BTS issued a similar notice and request for comments on September 3, 1999 (64 FR 48452), covering the carrier requests it had received relating to their 1998 annual reports and, in some cases, their 1999 quarterly reports. BTS is issuing this second notice and request for comments for several additional requests. Those carriers received additional time, past the original May 31 report deadline, to make their requests due to extenuating circumstances.

## II. Request for Comments

BTS invites comments on several carrier requests for exemption from public release. These requests cover the 1998 annual report and some also cover the 1999 quarterly reports. BTS is withholding portions of one carrier's request. While BTS will consider this material in deciding whether to grant the request, the information is not being released publicly. BTS has determined that some of the information is confidential business information and therefore exempt from public disclosure by 5 U.S.C. 552(b)(4) and 49 CFR 7.69. Other information would reveal the contents of the carrier's report and therefore releasing it would defeat the purpose of the exemption request. The public version of the request provides adequate notice.

Comments should be made within the context of the governing regulations at 49 CFR 1420.9, which were published in the **Federal Register** on March 23, 1999 (64 FR 13916). We are inviting your comments on requests from the following carriers:

Annett Holdings, Inc. (MC 115730)
D & A Truck Line, Inc. (MC147545)
LTI, Inc. (MC 170078)
North American Van Lines, Inc. (MC 107012)
The Kaplan Trucking Company (MC 002304)

If you wish the read their exemption requests and the comments submitted in response to this Notice, use the DOT Dockets Management System. This is located at the Department of Transportation, 400 Seventh Street, SW., Room PL–401, Washington, DC 20590, and is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays. Internet users can access the Dockets Management System at http://dms.dot.gov. Please follow the instructions online for more information and help.

You must also use the Dockets Management System if you wish to comment on one or more exemption requests. Please follow the instructions listed above under **ADDRESSES.**

**Ashish Sen,**

*Director.*

[FR Doc. 99–27669 Filed 10–22–99; 8:45 am]

**BILLING CODE 4910–FE–P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

October 15, 1999.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, N.W., Washington, D.C. 20220.

**DATES:** Written comments should be received on or before November 24, 1999 to be assured of consideration.

**Bureau of Engraving and Printing (BEP)**

*OMB Number:* 1520–0002.

*Form Number:* BEP 5287.

*Type of Review:* Reinstatement.

*Title:* Claims for Amounts Due in the Case of Deceased Owner of Mutilated Currency.

*Description:* The Office of Currency Standards, Bureau of Engraving and Printing uses Form 5287 to determine ownership in cases of a deceased owner of damaged or mutilated currency.

*Respondents:* Individuals or households, Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.

*Estimated Number of Respondents:* 180.

*Estimated Burden Hours Per Response:* 55 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 165 hours.

*Clearance Officer:* Pam Corsini (202) 874–2647, Bureau of Engraving and Printing, Room 3.2.C, Engraving and Printing Annex, 14th and C Streets, S.W., Washington, DC 20228.

*OMB Reviewer:* Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 99–27706 Filed 10–22–99; 8:45 am]

**BILLING CODE 4840–01–P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

October 15, 1999.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW, Washington, DC 20220.

**DATES:** Written comments should be received on or before November 24, 1999 to be assured of consideration.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–1002.

*Form Number:* IRS Form 8621.

*Type of Review:* Extension.

*Title:* Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.

*Description:* Form 8621 is filed by a U.S. shareholder who owns stock in a foreign investment company. The form is used to report income, make an election to extend the time for payment of tax, and to pay an additional tax and interest amount. The IRS uses Form 8621 to determine if these shareholders have correctly reported amounts of income, made the election correctly, and have correctly computed the additional tax and interest amount.

*Respondents:* Business or other for-profit, Individuals or households.

*Estimated Number of Respondents/ Recordkeepers:* 2,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

| | |
|---|---|
| Recordkeeping | 13 hr., 38 min. |
| Learning about the law or the form | 6 hr., 27 min. |
| Preparing and sending the form to the IRS | 6 hr., 58 min. |

*Frequency of Response:* Annually

*Estimated Total Reporting/ Recordkeeping Burden:* 54,080 hours.

*OMB Number:* 1545–1417.

*Form Number:* IRS Form 8845.

*Type of Review:* Extension.

*Title:* Indian Employment Credit.

*Description:* Employers can claim a credit for hiring American Indians or their spouses to work within an Indian reservation. The credit is figured by multiplying by 20% the increase in wages and health insurance costs over the comparable amount paid or incurred during calendar year 1993.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/ Recordkeepers:* 1,246.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

| | |
|---|---|
| Recordkeeping | 7 hr., 25 min. |
| Learning about the law or the form | 1 hr., 12 min. |
| Preparing and sending the form to the IRS | 1 hr., 22 min. |

*Frequency of Response:* Annually.

*Estimated Total Reporting/ Recordkeeping Burden:* 12,423 hours.

*Clearance Officer:* Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

*OMB Reviewer:* Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 99–27707 Filed 10–22–99; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### International Financial Institution Advisory Commission

**AGENCY:** Department of the Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces the date and time of the first meeting of the International Financial Institution Advisory Commission and the provisional agenda for consideration by the Commission.

**DATES:** The fourth meeting of the Advisory Commission will be held on Tuesday, November 2, 1999 beginning at 9 a.m. in room HC 8 in the Capitol building. The meeting is expected to run until 3 p.m.

**FOR FURTHER INFORMATION CONTACT:** Bill McFadden, Senior Policy Advisor, Office of International Monetary and Financial Policy, Room 4444, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220. Telephone number 202–622–0343. Final meeting details, including the final agenda, can be confirmed by contacting the above number.

**SUPPLEMENTARY INFORMATION:** The Commission is expected to pursue the following agenda at its first meeting. Other topics may be added prior to the meeting:

- Presentation and discussion about the agenda.
- Continuation of the discussion launched at the third meeting on the role of the multilateral development banks, including the World Bank Group and regional development banks.

The meeting is open to the public. If members of the public would like to present a paper to the Commission, please sent 16 copies to the Designated Federal Official on or before October 25, 1999.

Dated: October 19, 1999.

**Bill McFadden,**

*Designated Federal Official.*

[FR Doc. 99–27699 Filed 10–22–99; 8:45]

**BILLING CODE 4810–25–M**

## DEPARTMENT OF THE TREASURY

### Secret Service

### Proposed Collection; Comment Request

September 14, 1999.

**ACTION:** Notice and request for comment.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(C)(2)(A)). Currently, the United States Secret Service, within the Department of the Treasury is soliciting comments concerning the SSF 86A, Supplemental Investigative Date.

**DATES:** Written comments should be received on or before December 20, 1999.

**ADDRESSES:** Direct all written comments to United States Secret Service, Special investigations and Security Division, Robin Deprospero, 950 H. St., N.W., Washington, DC 20001, Suite 3800, 202/ 406–5433.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to (Same as above).

**SUPPLEMENTARY INFORMATION:**

*Title:* Supplemental Investigative Data.

*OMB Number:* 1555–0001.

*Form Number:* SSF 86A.

*Abstract:* Respondents area all Secret Service applicants. These applicants, if approved for hire, will require a Top Secret Clearance, and possible SCI Access. Responses to questions on the SSF 86A yields information necessary for the adjudication for eligibility of the clearance, as well as ensuring that the applicant meets all internal agency requirements.

*Type of Review:* Extension.

*Affected Public:* Individuals or Households.

*Estimated Number of Respondents:* 7,500.

*Estimated Time Per Respondent:* 1.

*Estimated Total Annual Burden Hours:* 7,500.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection of information of respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) The annual cost burden to respondents or record keepers from the collection of information (a) total capital and start-up cost and a total operation and maintence cost.

Dated: September 14, 1999.

**John Machado,**

*Branch Chief, Policy Analysis and Records Systems Branch.*

[FR Doc 99–27452 Filed 10–22–99; 8:45 am]

**BILLING CODE 4810–42–M**

# Corrections

**Federal Register**
Vol. 64, No. 205
Monday, October 25, 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 DEFENSE

### Corps of Engineers, Department of the Army

### Deauthorization of Water Resources Projects

*Correction*

In notice document 99–26628 beginning on page 55459, in the issue of Wednesday, October 13, 1999, make the following corrections:

On pages 55460, 55461, and 55462, due to numerous errors, the tables are reprinted in their entirety:

1994 LIST: PROJECTS/SEPARABLE ELEMENTS DEAUTHORIZED ON MAY 1, 1997 UNDER SECTION 1001(b)(2), PUB. L. 99–662

| District | Project name | Primary state | Purpose |
|---|---|---|---|
| NAE | TRUMBULL LAKE | CT | FC |
| SAJ | C&SF, WATER CONSERVATION AREA—CANAL 301 | FL | FC |
| SAJ | C&SF, WATER CONSERVATION AREA—CANAL 303 | FL | FC |
| SAJ | C&SF, WATER CONSERVATION AREA—CANAL 310 | FL | FC |
| SAJ | C&SF, WATER CONSERVATION AREA—S12 SPREADER | FL | FC |
| SAJ | C&SF, WATER CONSERVATION AREA—STRUCTURE 125 | FL | FC |
| SAJ | C&SF, WATER CONSERVATION AREA—STRUCTURE 320 | FL | FC |
| SAJ | C&SF, WATER CONSERVATION AREA—STRUCTURE 321 | FL | FC |
| SAJ | C&SF, WATER CONSERVATION AREA—STRUCTURE 322 | FL | FC |
| SAJ | C&SF, WATER CONSERVATION AREA—STRUCTURE 323 | FL | FC |
| LRC | LITTLE CALUMET RIVER (1974 ACT) | IL | FC |
| LRL | LOUISVILLE LAKE (1968 ACT) | IL | FC |
| MVN | GULF INTRACOASTAL WATERWAY (16-FT CHANNEL SECTION) | LA | N |
| MVN | MISSISSIPPI DELTA REGION, BOHEMIA | LA | FC |
| MVN | MISSISSIPPI DELTA REGION, HOMEPLACE | LA | FC |
| MVN | MORGAN CITY AND VICINITY, FRANKLIN AREA (1965 ACT) | LA | FC |
| NAE | PHILLIPS LAKE | MA | FC |
| LRE | SAGINAW RIVER, MIDLAND | MI | FC |
| NWO | MILES CITY | MT | FC |
| NWO | OAHE DAM—LAKE OAHE (WILDLIFE RESTORATION) (N. DAKOTA) | ND | MP |
| SPA | SANTA FE RIVER AND ARROYO MASCARAS (1976 ACT) | NM | FC |
| LRH | NEWARK (INTERIOR DRAINAGE) | OH | FC |
| SWT | SHIDLER LAKE | OK | FC |
| NWP | CHETCO RIVER | OR | N |
| | Total: 24. | | |

1996 LIST: PROJECTS/SEPARABLE ELEMENTS DEAUTHORIZED ON APRIL 5, 1999 UNDER SECTION 1001(b)(2), PUB. L. 99–662

| District | Project name | Primary state | Purpose |
|---|---|---|---|
| MVK | TENSAS BASIN, BOEUF TENSAS LESS TENSAS RIVER | AR | FC |
| MVR | ROCK RIVER AGRICULTURAL LEVEE | IL | FC |
| MVR | SAVANNA SMALL BOAT HARBOR | IL | N |
| NWK | FORT SCOTT LAKE | KS | FC |
| NWK | LAWRENCE, KS, SOUTH LAWRENCE UNIT | KS | FC |

1996 LIST: PROJECTS/SEPARABLE ELEMENTS DEAUTHORIZED ON APRIL 5, 1999 UNDER SECTION 1001(b)(2), PUB. L. 99–662—Continued

| District | Project name | Primary state | Purpose |
|---|---|---|---|
| LRL ..... | FALMOUTH LAKE ..... | KY | FC |
| NAE ..... | LYNN-NAHANT BEACH ..... | MA | BE |
| MVS ..... | PINE FORD LAKE ..... | MO | FC |
| SAM ..... | TOMBIGBEE RIVER & TRIBUTARIES, TIBBEE RIVER ..... | MS | FC |
| SAM ..... | TOMBIGBEE RIVER & TRIBUTARIES, CATALPA CREEK ..... | MS | FC |
| SAM ..... | TOMBIGBEE RIVER & TRIBUTARIES, SAKATONCHEE CREEK ..... | MS | FC |
| SAM ..... | TOMBIGBEE RIVER & TRIBUTARIES, LINE CREEK ..... | MS | FC |
| SAM ..... | TOMBIGBEE RIVER & TRIBUTARIES, NORTH CANAL ..... | MS | FC |
| SAM ..... | TOMBIGBEE RIVER & TRIBUTARIES, SOUTH CANAL ..... | MS | FC |
| SAM ..... | TOMBIGBEE RIVER & TRIBUTARIES, JOHNSON CREEK ..... | MS | FC |
| SAM ..... | TOMBIGBEE RIVER & TRIBUTARIES, TRIM CANE CREEK ..... | MS | FC |
| SAM ..... | TOMBIGBEE RIVER & TRIBUTARIES, SUN CREEK ..... | MS | FC |
| MVK ..... | YAZOO RIVER NAVIGATION ..... | MS | N |
| SAW .... | AIWW-MASONBORO INLET—TRAINING WALL ..... | NC | N |
| LRB ..... | DANSVILLE & VICINITY ..... | NY | FC |
| LRB ..... | CUYAHOGA RIVER BASIN ..... | OH | FC |
| SWT .... | SAND LAKE ..... | OK | FC |
| NAP ..... | HAY CREEK, BIRDSBORO (SCHUYLKILL RIVER BASIN) ..... | PA | FC |
| SWF .... | BELTON LAKE HYDROPOWER ..... | TX | MP |
| SWG .... | HIGHLAND BAYOU, LOWER 8.6 MILE CHANNEL RECTIFICATION ..... | TX | FC |
| MVK ..... | MCKINNEY BAYOU (INACTIVE PORTION) ..... | TX | FC |
| LRE ..... | GREEN BAY HARBOR, BROWN COUNTY (1962 MODIFICATION) ..... | WI | N |
| | Total: 27. | | |

PROJECTS/SEPARABLE ELEMENTS REMOVED FROM 1994 AND 1996 DEAUTHORIZATION LISTS IN ACCORDANCE WITH SECTION 1001(b)(2) OF PUBLIC LAW 99–662 DUE TO OBLIGATIONS OF FUNDS

| District | Project name | Primary state | Purpose |
|---|---|---|---|
| SWL ..... | PINE MOUNTAIN LAKE (1996 List) ..... | AR | FC |
| SAJ ..... | LEE COUNTY, ESTERO ISLAND (1994 List) ..... | FL | BE |
| SAJ ..... | LEE COUNTY, GASPARILLA ISLAND (1994 List) ..... | FL | BE |
| MVS ..... | WOOD RIVER DRAINAGE & LEVEE DISTRICT (1996 List) ..... | IL | FC |
| | Total: 4. | | |

PROJECT REMOVED FROM 1994 DEAUTHORIZATION LIST DUE TO REAUTHORIZATION

NOTE: The following project was reauthorized by Section 328 of Public Law 104–303, October 12, 1996; with a five-year limitation. The authorization will expire on October 13, 2001, unless Federal funds are obligated for planning, design or construction.

| District | Project name | Primary state | Purpose |
|---|---|---|---|
| LRE ..... | CROSS VILLAGE HARBOR (1966 ACT) ..... | MI | N |

PROJECTS REMOVED FROM 1996 DEAUTHORIZATION LIST DUE TO REAUTHORIZATION

NOTE: The following projects were among the projects reauthorized by Section 364 of Public Law 106–53, August 17, 1999, subject to determination by the Secretary of the Army that they are technically sound, environmentally acceptable, and economically justified.

| District | Project name | Primary state | Purpose |
|---|---|---|---|
| LRE ..... | CASS RIVER, SAGINAW RIVER BASIN, VASSAR (1958 ACT) ..... | MI | FC |
| LRE ..... | SAGINAW RIVER, SHIAWASSEE FLATS (1958 ACT) ..... | MI | FC |
| | Total: 2. | | |

OTHER PROJECTS REAUTHORIZED BY LAW

NOTE: In addition to the two projects listed above, the following projects also were reauthorized by Section 364 of Public Law 106–53, August 17, 1999, subject to determination by the Secretary of the Army that they are technically sound, environmentally acceptable, and economically justified.

| District | Project name | Primary state | Purpose |
|---|---|---|---|
| SAJ ..... | INDIAN RIVER COUNTY (1986 ACT)* ..... | FL | BE |
| SAJ ..... | LIDO KEY BEACH, SARASOTA (1970 ACT) ..... | FL | BE |

## OTHER PROJECTS REAUTHORIZED BY LAW—Continued

NOTE: In addition to the two projects listed above, the following projects also were reauthorized by Section 364 of Public Law 106–53, August 17, 1999, subject to determination by the Secretary of the Army that they are technically sound, environmentally acceptable, and economically justified.

| District | Project name | Primary state | Purpose |
|---|---|---|---|
| MVP ..... | PARK RIVER, GRAFTON (1986 ACT) ..... | ND | FC |
| MVM .... | MEMPHIS HARBOR, MEMPHIS (1986 ACT) ..... | TN | N |
| | Total: 4. | | |

*Although reauthorized by law, the Indian River County, FL, project was never deauthorized.

## PROJECT ON 1996 LIST THAT WAS SPECIFICALLY DEAUTHORIZED

NOTE: The following project was specifically deauthorized by Section 361(b)(7) of Public Law 104–303, October 12, 1996, with the exception of named relocation and restoration features that remain authorized.

| District | Project name | Primary state | Purpose |
|---|---|---|---|
| MVP ..... | LAFARGE LAKE & CHANNEL IMPROVEMENT (1962 ACT) ..... | WI | FC |

## PROJECTS REAUTHORIZED IN 1992 AND DEAUTHORIZED ON NOVEMBER 1, 1997 UNDER SECTION 115(B), PUB. L. 102–580

| District | Project name | Primary state | Purpose |
|---|---|---|---|
| MVN .... | LAKE PONTCHARTRAIN, NORTH SHORE (1986 ACT) ..... | LA | FC |
| NAN ..... | DEAL LAKE, MONMOUTH COUNTY (1986 ACT) ..... | NJ | FC |
| NAB ..... | TYRONE (1944 ACT) ..... | PA | FC |
| SWT .... | BIG PINE LAKE (1962 ACT) ..... | TX | FC |
| | Total: 4. | | |

[FR Doc. C9–26628 Filed 10–22–99; 8:45 am]

**BILLING CODE 1505–01–D**

Federal Register

Monday
October 25, 1999

# Part II

## Department of the Treasury

**Internal Revenue Service**
**26 CFR Part 54**

## Department of Labor

**Pension and Welfare Benefits Administration**
**29 CFR Part 2590**

## Department of Health and Human Services

**Health Care Financing Administration**
**45 CFR Subtitle A, Parts 144 and 146**
**Health Insurance Portability; Final Rule**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 54**

**DEPARTMENT OF LABOR**

**Pension and Welfare Benefits Administration**

**29 CFR Part 2590**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Care Financing Administration**

**45 CFR Subtitle A, Parts 144 and 146**

**Health Insurance Portability**

**AGENCY:** Office of Tax Policy and Internal Revenue Service, Treasury; Pension and Welfare Benefits Administration, Labor; and Health Care Financing Administration, HHS (the Departments).

**ACTION:** Solicitation of comments on interim rule.

**SUMMARY:** In response to interim regulations published on April 8, 1997, the Departments have received comments from the public on a number of issues arising under the portability, access, and renewability provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The Departments are interested in receiving further comments reflecting the experience that interested parties have had with the interim regulations.

**DATES:** The Departments have requested that comments be submitted on or before January 25, 2000.

**ADDRESSES:** For convenience, written comments should be submitted with a signed original and 3 copies to the Health Care Financing Administration (HCFA) at the address specified below. HCFA will provide copies to each of the Departments for their consideration. All comments will be available for public inspection in their entirety. Comments should be sent to: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–2056–NC, P.O. Box 9013, Baltimore, MD 21244–9013.

If you prefer, you may deliver a signed original and 3 copies of your written comments to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC.

or

Room C5–16–03, 7500 Security Boulevard, Baltimore, Maryland.

Comments may also be submitted electronically to the following e-mail address: HIPAAComments@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 into the text of the e-mail message itself in case of any difficulty in accessing attachments. Electronically submitted comments will be available for public inspection at the Independence Avenue address, below. Because of staffing and resource limitations, comments by facsimile (FAX) transmission cannot be accepted. In commenting, please refer to file code HCFA–2056–NC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of this document, in Room 309–G of the Department of Health and Human Service'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).

Upon receipt from HCFA, the Department of Labor will make all comments available for public inspection and copying in their entirety. All comments received by the Department of Labor will be available for public inspection and copying at the Public Disclosure Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW, Washington, DC 20210, on Monday through Friday of each week from 8:30 a.m. to 4:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** Amy Turner, Department of Labor, Pension and Welfare Benefits Administration, Health Care Task Force, at (202) 219–7006 (not a toll-free number); Russ Weinheimer, Internal Revenue Service, at (202) 622–4695 (not a toll-free number); or Danielle Noll, Health Care Financing Administration, at 410–786–1565 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

## Customer Service Information

To assist consumers and the regulated community, the Departments have issued questions and answers concerning HIPAA. Individuals interested in obtaining a copy of the Department of Labor's publication ''Recent Changes in Health Care Law'' may call a toll free number, 800–998–7542, or access the publication on-line at www.dol.gov/dol/pwba, the Department of Labor's website. Questions and answers pertaining to HIPAA are also available on-line at www.hcfa.gov/hipaa/hipaahm.htm (HCFA's website). The IRS publication ''Deciding Whether to Elect COBRA Health Care Continuation Coverage After the Enactment of HIPAA'' is available on the IRS's website at http://www.irs.ustreas.gov/prod/news/index.html. Copies of the interim rules under HIPAA, as well as notices and press releases related to HIPAA and other recently enacted health care laws, are also available at the above referenced websites.

## Background

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) was enacted on August 21, 1996 (Public Law 104–191). HIPAA amended the Internal Revenue Code of 1986 (Code), the Employee Retirement Income Security Act of 1974 (ERISA), and the Public Health Service Act (PHS Act) to provide for, among other things, improved portability and continuity of health coverage including group health plan coverage provided in connection with employment and other coverage in the group and the individual insurance markets. Health coverage is regulated in part by the Federal government, through the Code, ERISA, the PHS Act and other Federal provisions, and in part by the States.

The portability, access, and renewability provisions of HIPAA are set forth in Subtitle K of the Code, Part 7 of Subtitle B of Title I of ERISA, and Title XXVII of the PHS Act (referred to below as the HIPAA portability provisions). The HIPAA portability provisions are designed to improve the availability and portability of health coverage by limiting exclusions for preexisting conditions and providing credit for prior coverage, guaranteeing availability of health coverage for small employers, prohibiting discrimination against employees and dependents based on health status, and guaranteeing renewability of health coverage for employers and individuals. The HIPAA portability provisions also include rules that guarantee access to individual coverage for people who lose their group coverage. These provisions also set forth requirements imposed on health insurance issuers. Pursuant to sections 101(g)(4), 102(c)(4), and 401(c)(4) of HIPAA, the Departments issued interim regulations made available on April 1, 1997 (published in the **Federal Register** on April 8,1997) (62 FR 16894) to carry out these provisions, and are in the process of updating those regulations.

**Comments**

In response to the interim regulations issued in April of 1997, comments have been received from the public on a number of issues arising under the HIPAA portability provisions. Further comments on the HIPAA portability provisions are welcome, including comments concerning, for example, certificates of creditable coverage, limitations on preexisting condition exclusion periods, special enrollment, excepted benefits, guaranteed availability and renewability of coverage, and individual market requirements. The Departments are interested in comments reflecting the experience of group health plans, health insurance issuers, States, individuals, and other interested parties in complying with or enforcing HIPAA's statutory and regulatory requirements, or in obtaining the protections provided by these provisions. With respect to HIPAA's nondiscrimination provisions, the Departments expect to publish comprehensive regulations shortly and comments will be solicited separately in connection with that rulemaking. In order to quantify the costs and benefits associated with the major provisions of HIPAA and the interim rule, the Departments are interested in comments, studies, surveys, or reports on these costs and benefits and why and how they arise. For benefits, areas of interest include the impact HIPAA has had on: ''job lock,'' in which the risk of losing health care coverage discourages workers from changing jobs; health coverage—whether it has been expanded and whether lapses in health coverage have become less frequent and shorter in duration; and access to health coverage, particularly in light of HIPAA's nondiscrimination and guaranteed issue provisions. In terms of costs, areas of interest include the impact HIPAA has had on administrative costs, claims costs, and group and individual premiums. In addition, comments are sought regarding other changes to group health plans resulting from HIPAA, as well as the experience with State implementation of alternative mechanisms in the individual health insurance market.

In addition, a recent General Accounting Office (GAO) report contained a recommendation that the model certificate of creditable health plan coverage should more explicitly inform consumers of their rights under HIPAA.[1] The GAO recommended that, at a minimum, the model certificate should inform consumers about appropriate contacts for additional information about HIPAA, and highlight key provisions and restrictions, including: (1) The limits on preexisting condition exclusion periods and the guaranteed renewability of all health coverage; (2) the reduction or elimination of preexisting condition exclusion periods for employees changing jobs; (3) the prohibition against excluding an individual from an employer health plan on the basis of one or more health factors; and (4) the guarantee of access to insurance products for certain individuals losing group health coverage and the restrictions placed on that guarantee. In light of the GAO's recommendation, the Departments are interested in comments on how best to improve the model certificate of creditable coverage under HIPAA.

[1] *Private Health Insurance: Progress and Challenges in Implementing 1996 Federal Standards* (HEHS–99–100, May 1999).

Signed at Washington, DC this 5th day of August 1999.

**J. Mark Iwry,**

*Benefits Tax Counsel, Department of the Treasury.*

Signed at Washington, DC this 5th day of August 1999.

**Nancy J. Marks,**

*Acting Associate Chief Counsel, Employee Benefits and Exempt Organizations, Internal Revenue Service, Department of the Treasury.*

Signed at Washington, DC this 19th day of July 1999.

**Richard M. McGahey,**

*Assistant Secretary, Pension and Welfare Benefits Administration, Department of Labor.*

Signed at Washington, DC this 15th day of September 1999.

**Michael M. Hash,**

*Deputy Administrator, Health Care Financing Administration, Department of Health and Human Services.*

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**BILLING CODE 4830–01–P; 4510–29–P; 4120–01–P**

Federal Register

Monday
October 25, 1999

## Part III

# Department of Education

**Office of Student Financial Assistance; William D. Ford Federal Direct Loan Program and Federal Family Education Loan Program; Notice**

## DEPARTMENT OF EDUCATION

### Office of Student Financial Assistance; William D. Ford Federal Direct Loan Program and Federal Family Education Loan Program

**AGENCY:** Department of Education.

**ACTION:** Notice of interest rates for the William D. Ford Federal Direct Loan Program and the Federal Family Education Loan Program for the period July 1, 1999, through June 30, 2000.

**SUMMARY:** The Chief Operating Officer for the Office of Student Financial Assistance announces the interest rates for variable-rate loans made under the William D. Ford Federal Direct Loan (Direct Loan) Program and the Federal Family Education Loan (FFEL) Program for the period July 1, 1999, through June 30, 2000.

**FOR FURTHER INFORMATION CONTACT:** For the FFEL Program: Brian Smith, Program Specialist. For the Direct Loan Program: Barbara F. Grayson, Program Specialist. Mailing address: Program Development Division, Office of Student Financial Assistance, U.S. Department of Education, Room 3045, ROB–3, 400 Maryland Avenue, SW, Washington, DC 20202–5345. Telephone: (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact persons listed in the preceding paragraph.

**SUPPLEMENTARY INFORMATION:** General—The Higher Education Act of 1965, as amended, (HEA) provides that variable interest rates apply to parent and student loans made under the Direct Loan and FFEL programs. Variable interest rates also apply to Direct Consolidation Loans for which the application was received before February 1, 1999, and to FFEL Consolidation loans for which the application was received on or after November 13, 1997, and before October 1, 1998. All other Consolidation loans have fixed interest rates based on the weighted average of the loans being consolidated.

Except for Consolidation loans, the formulas for determining the interest rates charged to borrowers for Direct Loan Program loans and FFEL Program loans are established by section 455(b) of the HEA (20 U.S.C. 1087e) for Direct Loan Program loans and section 427A of the HEA (20 U.S.C. 1077a) for FFEL Program loans. These interest rate formulas do not apply to fixed-rate FFEL loans made before October 10, 1992, unless the fixed-rate loan has been converted to a variable-rate loan.

Consolidation loan interest rate formulas are established in 34 CFR 685.215(g) and 34 CFR 685.202(a) for Direct Consolidation Loans for which the application was received before October 1, 1998; section 455(b)(6)(D) and (E) of the HEA (20 U.S.C 1087e) for Direct Consolidation Loans for which the application is received on or after October 1, 1998, but before July 1, 2003; and section 428C of the HEA (20 U.S.C. 1078–3) for FFEL Consolidation loans.

As noted below, interest rate caps apply to most Direct Loan and FFEL Program loans.

The interest rates on variable-rate loans are determined annually and apply for each 12-month period beginning July 1 and ending June 30. For parent loans first disbursed on or after July 1, 1998, and all student loans, interest rates are based on the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held before June 1st of each year. For parent loans first disbursed before July 1, 1998, interest rates are based on the bond equivalent rate of 52-week Treasury bills auctioned at the final auction held before June 1st of each year.

The bond equivalent rate of the 91-day Treasury bills auctioned on May 24, 1999, (the last auction prior to June 1, 1999) is 4.621 percent, which rounds to 4.62 percent.

The bond equivalent rate of the 52-week Treasury bills auctioned on May 25, 1999, is 4.879 percent, which rounds to 4.88 percent.

### William D. Ford Federal Direct Loan Program

*Interest Rates for Direct Subsidized and Direct Unsubsidized Loans*

1. Direct Subsidized and Direct Unsubsidized Loans first disbursed prior to July 1, 1995—the interest rate may not exceed 8.25 percent: The interest rate for the period July 1, 1999, through June 30, 2000, is 7.72 percent (4.62 percent plus 3.1 percent equals 7.72 percent).

2. Direct Subsidized and Direct Unsubsidized Loans first disbursed on or after July 1, 1995, and before July 1, 1998—the interest rate may not exceed 8.25 percent:

(a) During the in-school, grace, and deferment periods: The interest rate for the period July 1, 1999, through June 30, 2000, is 7.12 percent (4.62 percent plus 2.5 percent equals 7.12 percent); and

(b) During all other periods: The interest rate for the period July 1, 1999, through June 30, 2000, is 7.72 percent (4.62 percent plus 3.1 percent equals 7.72 percent).

3. Direct Subsidized and Direct Unsubsidized Loans first disbursed on or after July 1, 1998, and before July 1, 2003—the interest rate may not exceed 8.25 percent:

(a) During the in-school, grace, and deferment periods: The interest rate for the period July 1, 1999, through June 30, 2000, is 6.32 percent (4.62 percent plus 1.7 percent equals 6.32 percent); and

(b) During all other periods: The interest rate for the period July 1, 1999, through June 30, 2000, is 6.92 percent (4.62 percent plus 2.3 percent equals 6.92 percent).

*Interest Rates for Direct Subsidized and Direct Unsubsidized Consolidation Loans*

1. Direct Subsidized and Direct Unsubsidized Consolidation Loans first disbursed before July 1, 1998—the interest rate may not exceed 8.25 percent:

(a) During the in-school, grace, and deferment periods: The interest rate for the period July 1, 1999, through June 30, 2000, is 7.12 percent (4.62 percent plus 2.5 percent equals 7.12 percent); and

(b) During all other periods: The interest rate for the period July 1, 1999, through June 30, 2000, is 7.72 percent (4.62 percent plus 3.1 percent equals 7.72 percent).

2. Direct Subsidized and Direct Unsubsidized Consolidation Loans for which the application was received before October 1, 1998, and the loan was first disbursed on or after July 1, 1998—the interest rate may not exceed 8.25 percent:

(a) During the in-school, grace, and deferment periods: The interest rate for the period July 1, 1999, through June 30, 2000, is 6.32 percent (4.62 percent plus 1.7 percent equals 6.32 percent); and

(b) During all other periods: The interest rate for the period July 1, 1999, through June 30, 2000, is 6.92 percent (4.62 percent plus 2.3 percent equals 6.92 percent).

3. Direct Subsidized and Direct Unsubsidized Consolidation loans for which the application was received on or after October 1, 1998, and before February 1, 1999—the interest rate may not exceed 8.25 percent: The interest rate for the period July 1, 1999, through June 30, 2000, is 6.92 percent (4.62 percent plus 2.3 percent equals 6.92 percent).

4. Direct Subsidized and Direct Unsubsidized Consolidation loans for which the application is received on or after February 1, 1999, and before July 1, 2003—the interest rate may not

exceed 8.25 percent: The interest rate is the weighted average of the interest rates on the loans consolidated, rounded to the nearest higher one-eighth of one percent.

*Interest Rates for Direct PLUS Loans*

1. Direct PLUS loans first disbursed before July 1, 1998—the interest rate may not exceed 9 percent: The interest rate for the period July 1, 1999, through June 30, 2000, is 7.98 percent (4.88 percent plus 3.1 percent equals 7.98 percent).

2. Direct PLUS loans first disbursed on or after July 1, 1998, and before July 1, 2003—the interest rate may not exceed 9 percent: The interest rate for the period July 1, 1999, through June 30, 2000, is 7.72 percent (4.62 percent plus 3.1 percent equals 7.72 percent).

*Interest Rates for Direct PLUS Consolidation Loans*

1. Direct PLUS Consolidation loans first disbursed before July 1, 1998—the interest rate may not exceed 9 percent: The interest rate for the period July 1, 1999, through June 30, 2000, is 7.98 percent (4.88 percent plus 3.1 percent equals 7.98 percent).

2. Direct PLUS Consolidation loans for which the application was received before October 1, 1998, and the loan was first disbursed on or after July 1, 1998—the interest rate may not exceed 9 percent: The interest rate for the period July 1, 1999, through June 30, 2000, is 7.72 percent (4.62 percent plus 3.1 percent equals 7.72 percent).

3. Direct PLUS Consolidation loans for which the application was received on or after October 1, 1998, and before February 1, 1999—the interest rate may not exceed 8.25 percent: The interest rate for the period July 1, 1999, through June 30, 2000, is 6.92 percent (4.62 percent plus 2.3 percent equals 6.92 percent).

4. Direct PLUS Consolidation loans for which the application is received on or after February 1, 1999, and before July 1, 2003—the interest rate may not exceed 8.25 percent: The interest rate is the weighted average of the interest rates on the loans consolidated, rounded to the nearest higher one-eighth of one percent.

**Federal Family Education Loan Program**

*Interest Rates for ''Converted'' Variable-rate FFEL Stafford Loans*

1. Eight/ten percent loans that were subject to the provisions of section 427A(i)(1) of the HEA and that have been converted to a variable interest rate—the interest rate may not exceed 10 percent: The interest rate for the period July 1, 1999, through June 30, 2000, is 7.87 percent (4.62 percent plus 3.25 percent equals 7.87 percent).

2. Seven percent, eight percent, nine percent and eight/ten percent loans that were subject to the provisions of section 427A(i)(3) of the HEA and that have been converted to a variable interest rate—the interest rate may not exceed seven percent, eight percent, nine percent, or ten percent, respectively: The interest rate for the period July 1, 1999, through June 30, 2000, is 7 percent for 7 percent loans and 7.72 percent for 8 percent, 9 percent, and 10 percent loans (4.62 percent plus 3.1 percent equals 7.72 percent, which exceeds the cap for 7 percent loans).

*Interest Rates for Variable-rate FFEL Stafford Loans*

1. FFEL Stafford loans made to ''new'' borrowers for which the first disbursement was made (a) on or after October 1, 1992, but before July 1, 1994, or (b) on or after July 1, 1994, for a period of enrollment ending before July 1, 1994 (*i.e.* a late disbursement)—the interest rate may not exceed 9 percent: The interest rate for the period July 1, 1999, through June 30, 2000, is 7.72 percent (4.62 percent plus 3.1 percent equals 7.72 percent).

2. FFEL Stafford loans made to all borrowers, regardless of prior borrowing, for periods of enrollment that include or begin on or after July 1, 1994, for which the first disbursement is made on or after July 1, 1994, but before July 1, 1995—the interest rate may not exceed 8.25 percent: The interest rate for the period July 1, 1999, through June 30, 2000, is 7.72 percent (4.62 percent plus 3.1 percent equals 7.72 percent).

3. FFEL Stafford loans made to all borrowers, regardless of prior borrowing, on or after July 1, 1995, but before July 1, 1998—the interest rate may not exceed 8.25 percent:

(a) During the in-school, grace, or deferment period: The interest rate for the period July 1, 1999, through June 30, 2000, is 7.12 percent (4.62 percent plus 2.5 percent equals 7.12 percent); and

(b) During all other periods: The interest rate for the period July 1, 1999, through June 30, 2000, is 7.72 percent (4.62 percent plus 3.1 percent equals 7.72 percent).

4. FFEL Stafford loans, first disbursed on or after July 1, 1998, but before July 1, 2003—the interest rate may not exceed 8.25 percent:

(a) During the in-school, grace, and deferment periods: The interest rate for the period July 1, 1999, through June 30, 2000, is 6.32 percent (4.62 percent plus 1.7 percent equals 6.32 percent); and

(b) During all other periods: The interest rate for the period July 1, 1999, through June 30, 2000, is 6.92 percent (4.62 percent plus 2.3 percent equals 6.92 percent).

*Interest Rates for FFEL PLUS and FFEL Supplemental Loans for Students (SLS) Loans*

1. Variable-rate FFEL PLUS and FFEL SLS loans first disbursed before October 1, 1992—the interest rate may not exceed 12 percent: The interest rate for the period July 1, 1999, through June 30, 2000, is 8.13 percent (4.88 percent plus 3.25 percent equals 8.13 percent).

2. FFEL SLS loans first disbursed on or after October 1, 1992, for a period of enrollment beginning before July 1, 1994—the interest rate may not exceed 11 percent: The interest rate for the period July 1, 1999, through June 30, 2000, is 7.98 percent (4.88 percent plus 3.1 percent equals 7.98 percent).

3. FFEL PLUS loans first disbursed on or after October 1, 1992, but before July 1, 1994—the interest rate may not exceed 10 percent: The interest rate for the period July 1, 1999, through June 30, 2000, is 7.98 percent (4.88 percent plus 3.1 percent equals 7.98 percent).

4. FFEL PLUS loans first disbursed on or after July 1, 1994, but prior to July 1, 1998—the interest rate may not exceed 9 percent: The interest rate for the period July 1, 1999, through June 30, 2000, is 7.98 percent (4.88 percent plus 3.1 percent equals 7.98 percent).

5. FFEL PLUS loans first disbursed on or after July 1, 1998, and before July 1, 2003—the interest rate may not exceed 9 percent: The interest rate for the period July 1, 1999, through June 30, 2000, is 7.72 percent (4.62 percent plus 3.1 percent equals 7.72 percent).

**Interest Rates for FFEL Consolidation Loans**

1. FFEL Consolidation loans made before July 1, 1994—the interest rate may not be less than 9 percent: The interest rate is the weighted average of the interest rates on the loans consolidated, rounded to the nearest whole percent.

2. FFEL Consolidation loans made on or after July 1, 1994, for which the consolidation loan application was received by the lender before November 13, 1997: The interest rate is the weighted average of the interest rates on the loans consolidated, rounded upward to the nearest whole percent.

3. FFEL Consolidation loans for which the consolidation loan application was received by the lender on or after November 13, 1997, and before October 1, 1998—the interest rate may not exceed 8.25 percent: The

interest rate for the period July 1, 1999, through June 30, 2000, is 7.72 percent (4.62 percent plus 3.1 percent equals 7.72 percent).

4. FFEL Consolidation loans for which the consolidation loan application was received by the lender on or after October 1, 1998, and before July 1, 2003—the interest rate may not exceed 8.25 percent: The interest rate is the weighted average of the interest rates on the loans being consolidated, rounded to the nearest higher one-eighth of one percent.

5. If a portion of a Consolidation loan is attributable to a loan made under subpart I of part A of title VII of the Public Health Service Act, the maximum interest rate for that portion of a Consolidation loan is determined annually, for each 12-month period beginning on July 1 and ending on June 30. The interest rate equals the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the quarter ending prior to July 1, plus 3 percent. For the quarter ending prior to July 1, 1999, the average 91-day Treasury bill rate was 4.60 percent. The maximum interest rate for the period July 1, 1999, through June 30, 2000, is 7.60 percent (4.60 percent plus 3.0 percent equals 7.60 percent).

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**Program Authority:** 20 U.S.C. 1077a and 20 U.S.C. 1087e.

Dated: October 19, 1999.

**Greg Woods,**

*Chief Operating Officer, Office of Student Financial Assistance.*

[FR Doc. 99–27729 Filed 10–22–99; 8:45 am]

BILLING CODE 4000–01–U

Federal Register

Monday
October 25, 1999

# Part IV

# Department of Education

**34 CFR Parts 674 and 682**

**Federal Perkins Loan Program and Federal Family Education Loan Program; Final Rule**

## DEPARTMENT OF EDUCATION

## 34 CFR Parts 674 and 682

## Federal Perkins Loan Program and Federal Family Education Loan Program

**AGENCY:** Department of Education.

**ACTION:** Final regulations.

**SUMMARY:** The Secretary amends the Federal Perkins Loan and Federal Family Education Loan (FFEL) program regulations by adding criteria that allow Peace Corps volunteers who are ineligible for deferment or cancellation of their federal student loans based solely on Peace Corps service to automatically qualify for economic hardship deferments while they are serving in the Peace Corps. This change also applies to the William D. Ford Federal Direct Loan (Direct Loan) Program in accordance with § 685.204(b)(3) of the Direct Loan Program regulations, which references the standards set forth in § 682.210(s) of the FFEL Program regulations in establishing a Direct Loan borrower's eligibility for an economic hardship deferment.

The Secretary also amends the Federal Perkins Loan Program regulations to eliminate the provision that requires a borrower to submit a request for a loan deferment, including a deferment in anticipation of cancellation, in writing.

**DATES:** *Effective Date:* These regulations are effective July 1, 2000.

*Implementation Date:* The Secretary has determined, in accordance with section 482(c)(2)(A) of the Higher Education Act of 1965, that institutions that participate in the Federal Perkins Loan Program and lenders and guaranty agencies that participate in the FFEL Programs may, at their discretion, choose to implement the provisions of §§ 674.34, 674.38, and 682.210 as amended by these final regulations, on or after October 25, 1999. For further information see ''Implementation Date of These Regulations'' under the **SUPPLEMENTARY INFORMATION** section of this preamble.

**FOR FURTHER INFORMATION CONTACT:**

1. For the Federal Perkins Loan Program: Vanessa Freeman, U.S. Department of Education, 400 Maryland Avenue, SW, ROB–3, Room 3045, Washington, DC 20202–5447. Telephone: (202) 708–8242.

2. For the FFEL Program: George Harris, U.S. Department of Education, 400 Maryland Avenue, SW, ROB–3, Room 3045, Washington, DC 20202–5447. Telephone: (202) 708–8242.

3. For the Direct Loan Program: Jon Utz, U.S. Department of Education, 400 Maryland Avenue, SW, ROB–3, Room 3045, Washington, DC 20202–5447. Telephone: (202) 708–8242.

If you use a telecommunications device for the deaf (TDD), you 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 contact persons listed in the preceding paragraphs.

**SUPPLEMENTARY INFORMATION:** On September 17, 1998, the Secretary published a notice of proposed rulemaking (NPRM) for the Federal Perkins Loan Program and FFEL Program regulations in the **Federal Register** (63 FR 49798).

The NPRM included a discussion of the issues surrounding the proposed changes that are not repeated here. The following changes were proposed:

Amending §§ 674.34(e)(2) and 682.210(s)(6)(ii) to add criteria that allow borrowers to qualify automatically for economic hardship deferments while they are serving in the Peace Corps.

Amending §§ 674.38(d) and 682.210(s)(6) to allow borrowers to receive economic hardship deferments for longer than a one-year period for each request while serving as Peace Corps volunteers.

Amending § 674.38(a) to eliminate the requirement that a borrower must submit a deferment or postponement request in writing.

### Implementation Date of These Regulations

Section 482(c) of the Higher Education Act of 1965, as amended (20 U.S.C. 1089(c)) requires that regulations affecting programs under title IV of the Act be published in final form by November 1 prior to the start of the award year in which they apply. However, that section also permits the Secretary to designate any regulation as one that an entity subject to the regulation may choose to implement earlier. If the Secretary designates a regulation for early implementation, he may specify when and under what conditions the entity may implement it. Under this authority, the Secretary has designated the following regulations for early implementation:

Sections 674.34, 674.38 and 682.210—In Dear Colleague letter GEN–98–16, the Secretary provided interim procedures to be used by FFEL loan holders and postsecondary institutions in granting economic hardship deferments to Peace Corps volunteers until final regulations were published. Institutions that participate in the Federal Perkins Loans Program and guaranty agencies and lenders that participate in the FFEL program may, now at their discretion, choose to implement the provisions of §§ 674.34, and 682.210 upon October 25, 1999. Institutions that participate in the Federal Perkins Loan Program may implement the provisions of § 674.38 that eliminate the written request for a deferment in the Perkins Loan Program upon October 25, 1999.

These final regulations contain changes from the NPRM that are explained in the Analysis of Comments and Changes that follows.

### Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 10 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since the publication of the NPRM follows.

We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical and other minor changes in the proposed regulations, and we do not respond to comments suggesting changes that the Secretary is not authorized by law to make.

### General

*Comments:* All of the commenters who addressed the Secretary's proposal to simplify the economic hardship deferment application process for certain Peace Corps volunteers supported the proposed changes.

*Discussion:* The Secretary appreciates the commenters' support for the proposed changes and believes they will encourage and support Peace Corps service.

*Changes:* None.

### Sections 674.34 and 682.210 Deferment

*Comments:* Several commenters noted that the proposed placement of the new provision in §§ 674.34(e)(2) and 682.210(s)(6)(ii) appears to require a borrower to provide evidence that he or she is receiving payment from the Peace Corps rather than indicating clearly that the information required to establish a borrower's eligibility for the deferment is documentation from the Peace Corps that the borrower is serving (or will serve) as a Peace Corps volunteer. The commenters suggested that the regulatory language be revised to indicate that a borrower must provide documentation showing that he or she

is serving or has agreed to serve as a Peace Corps volunteer.

*Discussion:* In the preamble to the NPRM and in Dear Colleague letter GEN 98–16, we indicated that evidence of a borrower's eligibility for an economic hardship deferment under the new provision is provided by documentation from the Peace Corps showing that the borrower will be or is serving as a Peace Corps volunteer. It was not our intent to require a borrower to provide documentation that he or she is actually receiving payments from the Peace Corps. However, we agree with the commenters that the regulatory language proposed in the NPRM could be misinterpreted.

*Changes:* The paragraph establishing Peace Corps service as a criterion for receipt of an economic hardship deferment has been removed from §§ 674.34(e)(2) and 682.210(s)(6)(ii) and made a separate paragraph in each part that clarifies that the borrower is not required to provide evidence of receiving payment from the Peace Corps to establish eligibility for the economic hardship deferment.

*Comments:* Several commenters felt that the proposed language amending Sections 674.34(e) and 682.210(s)(6) did not define clearly the intended deferment period as the borrower's term of service in the Peace Corps, not to exceed the statutory maximum of three years. The commenters noted that the proposed language stated only that an economic hardship deferment under the new provision for Peace Corps volunteers may be granted for longer than one year at a time. The commenters suggested that the regulatory language be revised to indicate that the deferment period covers a borrower's full term of service in the Peace Corps or the borrower's remaining period of economic hardship deferment eligibility, not to exceed the three-year statutory maximum.

*Discussion:* As discussed in the preamble to the NPRM and in Dear Colleague letter GEN–98–16, the deferment period for an economic hardship deferment granted to Peace Corps volunteers under the new provision is intended to be for the borrower's full term of service, up to the statutory maximum of three years. We agree with the commenters that the regulatory language proposed in the NPRM may not convey clearly the intended deferment period.

*Changes:* Sections 674.34(e) and 682.210(s)(6) have been revised to clarify that the period of an economic hardship deferment under the new provision is the lesser of the borrower's full term of service in the Peace Corps or the borrower's remaining period of economic hardship deferment eligibility under the statutory three-year maximum.

*Comments:* Several commenters expressed concern that the Peace Corps certification form the borrower receives from the Peace Corps at pre-service orientation sessions, and that certifies that the borrower will be serving as a Peace Corps volunteer, does not include the borrower's dates of service. The commenters believe that without information on the beginning and ending dates of the borrower's service, they will not have sufficient documentation to process an economic hardship deferment for the appropriate period of time. The commenters suggested that the Peace Corps certification document that was attached to Dear Colleague letter GEN–98–16 be revised to include the beginning and ending dates of the borrower's service to make the form consistent with the regulatory changes proposed in the NPRM.

*Discussion:* We agree that the documentation the Peace Corps supplies to the borrower supporting the borrower's request for deferment should include the beginning and ending dates of the borrower's Peace Corps service. We also believe that the Peace Corps certification form, which was originally developed to support only a borrower's request for the categorical Peace Corps deferment, should be revised to support both borrowers who apply for the categorical deferment and those that apply for an economic hardship deferment based on Peace Corps service.

*Changes:* The Peace Corp certification form has been revised to include the borrower's dates of service and to make it suitable for use as supporting documentation of Peace Corps service for both categories of borrowers serving in the Peace Corps.

*Comments:* Two commenters noted that the proposed regulations would permit borrowers to receive economic hardship deferments for their full term of service in the Peace Corps without having to reapply each year. These commenters expressed concern about the potential for fraud by borrowers who do not complete their term of service and felt that a system should be established to notify loan holders of a borrower's continuation in or termination from Peace Corps service. One of the commenters recommended that loan holders receive verification of a borrower's continued service in the Peace Corps annually before authorizing an extension of the borrower's deferment. The other commenter was concerned particularly about potential for fraud by borrowers who are eligible for loan cancellation in the Federal Perkins Loan Program based on their service as Peace Corps volunteers, and believed that borrowers should continue to be required to provide documentation of both the beginning and termination dates of their service.

*Discussion:* We appreciate the commenters' concerns regarding fraud in the case of borrowers who terminate their Peace Corps service early. However, we believe that requiring borrowers who receive economic hardship deferments based on their Peace Corps service to provide documentation annually to their loan holders essentially eliminates one of major benefits provided by the proposal to Peace Corps volunteers. Borrowers are clearly told, both on the deferment request forms used in the FFEL and Direct Loan programs and on the revised Peace Corps service certification form, that they must immediately notify their loan holders if they leave the Peace Corps before the projected termination date shown on their Peace Corps certification form. The new economic hardship deferment provisions for Peace Corps volunteers do not change this borrower responsibility.

We did not propose to eliminate the requirement that the loan holder make an annual determination of a borrower's eligibility for a categorical Peace Corp deferment in the FFEL and the Federal Direct Loan Programs, or for a deferment or cancellation, or both, based on Peace Corps service in the Federal Perkins Loan Program. We believe, however, that the same benefits of a less burdensome deferment and cancellation application process should be extended to all Peace Corps volunteers.

*Changes:* Sections 674.38(d) and 682.210(k) are amended to authorize a loan holder to grant a categorical deferment, including a deferment in anticipation of cancellation in the Federal Perkins Loan Program, for the borrower's full term of service in the Peace Corps, not to exceed three years.

**Section 674.38 Deferment Procedures**

*Comments:* Many commenters supported our proposal to eliminate the written request for deferment in the Federal Perkins Loan Program. The commenters believe that telephone or electronic requests by the borrower to the institution are an appropriate means for the borrower to request a deferment. They also stated that uniformity among the title IV loan program regulations, where possible, is beneficial for both institutions and borrowers.

All of the commenters, however, expressed concern about the disparities

that remain between the FFEL, Direct Loan, and Federal Perkins Loan Programs with regard to the processing of in-school deferments. Several commenters indicated that, in the FFEL and Direct Loan programs, a lender may use a certified loan application, a form certified by the borrower's school, or other data it receives from the Student Status Confirmation Report (SSCR) or another third-party servicer verifying the borrower's in-school status as sufficient documentation to initiate and process an in-school deferment. In these instances, the student borrower is not required to make a specific request for the deferment. The commenters pointed out that under the regulations proposed by the Secretary for the Federal Perkins Loan Program, borrowers would still be required to contact the institution to request an in-school deferment.

*Discussion:* We agree that consistency between the various title IV student loan programs is an important goal. We also believe that the use of technology to reduce administrative burden for institutions is equally important. We further agree that the regulatory changes proposed to facilitate the processing of in-school deferments in the Federal Perkins Loan Program may not provide schools with enough flexibility in the processing of those deferments.

After examining the applicability of the methods used in the FFEL and Direct Loan Program to the Federal Perkins Loan Program, we have decided that use of a certified loan application to initiate the in-school deferment process is impractical because there is no separate Federal Perkins Loan application to use for this process. However, we believe that data verifying the borrower's in-school enrollment status, either from a third-party servicer or from the school in which the borrower is enrolled, is sufficient documentation for a school participating in the Federal Perkins Loan Program to grant an in-school deferment. To preserve the borrower's ability to participate in the deferment process, we also believe that the institution should notify the borrower when it grants a deferment in this manner to provide the borrower with the option to decline the deferment and to continue paying on the loan.

*Changes:* A provision has been added to § 674.38(a) to allow an institution to determine a borrower's eligibility and grant an in-school deferment based on the institution's receipt of student enrollment information from the school in which the borrower is enrolled or from a third-party servicer. The institution must notify the borrower that a deferment has been granted and provide the borrower with the option to continue paying on the loan.

**Section 674.39 Postponement of Loan Repayments in Anticipation of Cancellation of Loans Made Before July 1, 1993.**

*Comments:* Many commenters supported the Secretary's proposal to eliminate the written request for postponement of repayment in anticipation of cancellation for loans made under the Federal Perkins Loan Program before July 1, 1993.

*Discussion:* The Secretary published a notice of proposed rulemaking (NPRM) on July 29, 1999, in accordance with the Higher Education Amendments of 1998 (Pub. L. 105–244), that extends a deferment in anticipation of cancellation to all borrowers with a loan made under the Federal Perkins Loan Program. Because the extension of a deferment in anticipation of cancellation would eliminate the need for a postponement, the NPRM proposed to eliminate § 674.39 in its entirety from the Federal Perkins Loan Program regulations.

*Changes:* Proposed amendatory language with respect to § 674.39 has been eliminated from these final regulations.

**Executive Order 12866**

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined are necessary for administering these programs effectively and efficiently. Burden specifically associated with information collection requirements, if any, was identified and explained in the preamble to the NPRM.

In assessing the potential costs and benefits, both quantitative and qualitative, of these final regulations, we have determined that the benefits of the regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

The potential costs and benefits of these final regulations were discussed in the preamble to the NPRM (63 FR 49800).

**Paperwork Reduction Act of 1995**

These regulations do not contain any information collection requirements.

**Intergovernmental Review**

The Federal Perkins Loan, Federal Family Education Loan, and William D. Ford Federal Direct Loan programs are not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79.

**Assessment of Educational Impact**

In the NPRM, we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the responses to the NPRM and on our review, we have determined that the regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Numbers: 84.032 Stafford Loan Program; 84.032 PLUS Program; 84.032 Supplemental Loans for Students Program; 84.038 Federal Perkins Loan Program; and 84.268 William D. Ford Federal Direct Loan Program)

**List of Subjects in 34 CFR Parts 674 and 682**

Administrative practice and procedure, Colleges and universities, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: October 19, 1999.

**Richard W. Riley**

*Secretary of Education.*

For the reasons stated in the preamble, the Secretary amends parts 674 and 682 of the Code of Federal Regulations as follows:

## PART 674—FEDERAL PERKINS LOAN PROGRAM

1. The authority citation for part 674 continues to read as follows by:

**Authority:** 20 U.S.C. 1087aa–1087ii and 20 U.S.C. 421–429, unless otherwise noted.

2. Section 674.34 is amended as follows by:

A. Revising paragraph (e) introductory text.

B. Redesignating paragraphs (e)(6), (e)(7), (e)(8), and (e)(9) as (e)(7), (e)(8), (e)(9), and (e)(10), respectively.

C. Removing the word ''or'' at the end of paragraph(e)(4).

D. Removing the semicolon at the end of paragraph (e)(1), (e)(2), and (e)(3) and adding, in its place, a period.

E. Adding a new paragraph (e)(6).

**§ 674.34 Deferment of repayment—Federal Perkins loans and Direct loans made on or after July 1, 1993.**

* * * * *

(e) The borrower need not repay principal, and interest does not accrue, for periods of up to one year at a time (except that a deferment under paragraph (e)(6) of this section may be granted for the lesser of the borrower's full term of service in the Peace Corps or the borrower's remaining period of economic hardship deferment eligibility) that, collectively, do not exceed 3 years, during which the borrower is suffering an economic hardship, if the borrower provides documentation satisfactory to the institution showing that the borrower is within any of the categories described in paragraphs (e)(1) through (e)(6) of this section.

* * * * *

(6) Is serving as a volunteer in the Peace Corps.

* * * * *

3. Section 674.38 is amended by redesignating paragraph (a)(2) as paragraph (a)(3), adding new paragraph (a)(2), and by revising paragraphs (a)(1) and (d) to read as follows:

**§ 674.38 Deferment procedures.**

(a)(1) Except as provided in paragraph (a)(2)of this section, a borrower must request the deferment and provide the institution with all information and documents required by the institution by the date that the institution establishes.

(2) In the case of an in school deferment, the institution may grant the deferment based on student enrollment information showing that a borrower is enrolled as a regular student on at least a half-time basis, if the institution notifies the borrower of the deferment and of the borrower's option to cancel the deferment and continue paying on the loan.

* * * * *

(d) The institution must determine the continued eligibility of a borrower for a deferment at least annually, except that a borrower engaged in service described in §§ 674.34(e)(6), 674.35(c)(3), 674.36(c)(2), 674.37(c)(2), and § 674.60(a)(1) must be granted a deferment for the lesser of the borrower's full term of service in the Peace Corps, or the borrower's remaining period of eligibility for a deferment under § 674.34(e), not to exceed 3 years.

## PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

4. The authority citation for part 682 continues to read as follows:

**Authority:** 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

5. Section 682.210 is amended by:

A. Redesignating paragraph (k) introductory text, following the heading *Peace Corps deferment.*, (k)(1), (k)(2), and (k)(3) as paragraphs (k)(1),(k)(1)(i),(k)(1)(ii), and (k)(1)(iii), respectively.

B. Adding new paragraph (k)(2).

C. Revising paragraph (s)(6) introductory text.

D. Redesignating paragraphs (s)(6)(vi), (vii), (viii), (ix), and (x) as paragraphs (s)(6)(vii), (viii), (ix), (x), and (xi), respectively.

E. By removing ''; or'' at the end of paragraph (s)(6)(iv), and adding, in its place, a period.

F. Removing the semicolon at the end of paragraphs (s)(6)(i), (s)(6)(ii), and (s)(6)(iii), and adding, in its place a period.

G. Removing ''(s)(6)(ix)'' in newly redesignated paragraphs (s)(6) (viii) and (ix) and by adding, its place, ''(s)(6)(x)''.

H. Adding a new paragraph (s)(6)(vi).

**§ 682.210 Deferment**

* * * * *

(k) * * *

(2) The lender must grant a deferment for the borrower's full term of service in the Peace Corps, not to exceed three years.

* * * * *

(s) * * *

(6) *Economic hardship deferment.* An eligible borrower is entitled to an economic hardship deferment for periods of up to one year at a time that, collectively, do not exceed 3 years (except that a borrower who receives a deferment under paragraph (s)(6)(vi) of this section is entitled to an economic hardship deferment for the lesser of the borrower's full term of service in the Peace Corps or the borrower's remaining period of economic hardship deferment eligibility under the 3-year maximum), if the borrower provides documentation satisfactory to the lender showing that the borrower is within any of the categories described in paragraphs (s)(6)(I) through (s)(6)(vi) of this section.

* * * * *

(vi) Is serving as a volunteer in the Peace Corps.

* * * * *

[FR Doc. 99–27728 Filed 10–22–99; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Monday
October 25, 1999

# Part V

# Department of the Interior

## Fish and Wildlife Service

**50 CFR Part 17**

**Endangered and Threatened Wildlife and Plants; Review of Plant and Animal Taxa That Are Candidates or Proposed for Listing as Endangered or Threatened; Annual Notice of Findings on Recycled Petitions; Annual Description of Progress on Listing Actions; Proposed Rule**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

## Endangered and Threatened Wildlife and Plants; Review of Plant and Animal Taxa That Are Candidates or Proposed for Listing as Endangered or Threatened; Annual Notice of Findings on Recycled Petitions; and Annual Description of Progress on Listing Actions

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of review.

**SUMMARY:** In this document, we present an updated list of plant and animal taxa native to the United States that we regard as candidates or have proposed for possible addition to the Lists of Endangered and Threatened Wildlife and Plants under the Endangered Species Act of 1973, as amended. Identification of candidate taxa can assist environmental planning efforts by providing advance notice of potential listings, allowing resource managers to alleviate threats and thereby possibly remove the need to list taxa as endangered or threatened. Even if we subsequently list a candidate taxon, the early notice provided here could result in fewer restrictions on activities by prompting candidate conservation measures to alleviate threats to the taxon.

We request additional status information that may be available for the identified candidate taxa and information on taxa that we should include as candidates in future updates of this list. We will consider this information in preparing listing documents and future revisions to the notice of review. This information will help us in monitoring changes in the status of candidate taxa and in conserving candidate taxa.

We announce the availability of listing priority assignment forms for candidate taxa and listing priority determinations for proposed taxa. These documents describe the status and threats that we evaluated in order to assign a listing priority number to each taxon.

We also announce our findings on recycled petitions and describe our progress in revising the Lists of Endangered and Threatened Wildlife and Plants during the period September 3, 1997, to October 1, 1999.

**DATES:** We will accept comments on the candidate notice of review at any time.

**ADDRESSES:** Submit your comments regarding a particular taxon to the Regional Director of the Region identified as having the lead responsibility for that taxon. You may submit comments of a more general nature to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 1849 C Street, NW, Mail Stop 420 ARLSQ, Washington, DC 20240 (703/358–2171). Written comments and materials received in response to this notice will be available for public inspection by appointment at the appropriate Regional Office listed below.

Information regarding the range, status, and habitat needs of and listing priority assignment for a particular taxon is available for review at the appropriate Regional Office listed below or at the Division of Endangered Species, 4401 N. Fairfax Drive, Room 420, Arlington, Virginia 22203.

Region 1: California, Hawaii, Idaho, Nevada, Oregon, Washington, American Samoa, Guam, and Commonwealth of the Northern Mariana Islands
Regional Director (TE), US Fish and Wildlife Service, Eastside Federal Complex, 911 NE 11th Avenue, Portland, Oregon 97232–4181 (503/231–6158).

Region 2: Arizona, New Mexico, Oklahoma, and Texas
Regional Director (TE), U.S. Fish and Wildlife Service, 500 Gold Avenue S.W., Room 4012, P.O. Box 1306, Albuquerque, New Mexico 87102 (505/248–6920).

Region 3: Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin
Regional Director (TE), U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, One Federal Drive, Fort Snelling, Minnesota 55111–4056 (612/725–5334).

Region 4: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the U.S. Virgin Islands
Regional Director (TE), U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (404/679–4156).

Region 5: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia
Regional Director (TE), U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589 (413/253–8615).

Region 6: Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming
Regional Director (TE), U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0486 (303/236–7400).

Region 7: Alaska
Regional Director (TE), U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503–6199 (907/786–3505).

**FOR FURTHER INFORMATION CONTACT:** The Endangered Species Coordinator(s) in the appropriate Regional Office(s) or Nancy Gloman Chief, Division of Endangered Species (703/358–2171).

**SUPPLEMENTARY INFORMATION:**

### Candidate Notice of Review

*Background*

The Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that we identify taxa of wildlife and plants that are endangered or threatened, based on the best available scientific and commercial information. As part of this program, we have maintained a list of taxa we regard as candidates for listing. A candidate is one for which we have on file sufficient information on biological vulnerability and threats to support a proposal to list as endangered or threatened. We maintain this list for a variety of reasons, including: to provide advance knowledge of potential listings that could affect decisions of environmental planners and developers; to solicit input from interested parties to identify those candidate taxa that may not require protection under the Act or additional taxa that may require the Act's protections; and to solicit information needed to prioritize the order in which we will propose taxa for listing. Table 1 of this notice includes 258 taxa that we regard as candidates for possible addition to the Lists of Endangered and Threatened Wildlife and Plants, as well as 56 taxa for which we have published proposed rules to list, most of which we identified as candidates in the September 19, 1997, Candidate Notice of Review (62 FR 49398). We encourage consideration of these taxa in environmental planning, such as in environmental impact analysis under the National Environmental Policy Act of 1969 (implemented at 40 CFR parts 1500–1508) and in local and Statewide land use planning. Table 2 of this notice contains 18 taxa identified as candidates in the September 19, 1997, Candidate Notice of Review that we have removed from candidate status, 93 taxa identified

as proposed species in the 1997 notice that we have listed as threatened or endangered, and 15 taxa identified as proposed species in the 1997 notice for which we have withdrawn proposed rules. The Regional Offices identified as having lead responsibility for the particular taxa will revise and update the information on candidate taxa continually. We intend to publish an updated combined notice of review for animals and plants annually in the **Federal Register**. This will include our findings on recycled petitions and a description of our progress on listing actions.

*Previous Notices of Review*

The Act directed the Secretary of the Smithsonian Institution to prepare a report on endangered and threatened plant taxa, which was published as House Document No. 94–51. We published a notice in the **Federal Register** on July 1, 1975 (40 FR 27823), in which we announced that we would review more than 3,000 native plant taxa named in the Smithsonian's report and other taxa added by the 1975 notice for possible addition to the List of Endangered and Threatened Plants. A new comprehensive notice of review for native plants, that took into account the earlier Smithsonian report and other accumulated information, superseded the 1975 notice on December 15, 1980 (45 FR 82479). On November 28, 1983 (48 FR 53640), a supplemental plant notice of review noted changes in the status of various taxa. We published complete updates of the plant notice on September 27, 1985 (50 FR 39526), February 21, 1990 (55 FR 6184), September 30, 1993 (58 FR 51144), and, as part of combined animal and plant notices, on February 28, 1996 (61 FR 7596) and September 19, 1997 (62 FR 49398).

Previous animal notices of review included many of the animal taxa in the accompanying Table 1. We published earlier comprehensive reviews for vertebrate animals in the **Federal Register** on December 30, 1982 (47 FR 58454), and on September 18, 1985 (50 FR 37958). We published an initial comprehensive review for invertebrate animals on May 22, 1984 (49 FR 21664). We published a combined animal notice of review on January 6, 1989 (54 FR 554), and with minor corrections on August 10, 1989 (54 FR 32833). We again published comprehensive animal notices on November 21, 1991 (56 FR 58804), November 15, 1994 (59 FR 58982), and, as part of combined animal and plant notices, on February 28, 1996 (61 FR 7596), and September 19, 1997 (62 FR 49398). This revised notice supersedes all previous animal, plant, and combined notices of review.

*Current Notice of Review*

We gather data on plants and animals native to the United States that appear to merit consideration for addition to the Lists of Endangered and Threatened Wildlife and Plants. This notice identifies those taxa (including, by definition, biological species, subspecies, and distinct population segments of vertebrate animals, and biological species, subspecies, and varieties of plants) that we currently regard as candidates for addition to the Lists of Endangered and Threatened Wildlife and Plants. In issuing this compilation, we rely on information from status surveys conducted for candidate assessment and on information from State Natural Heritage Programs, other State and Federal agencies (such as the Forest Service and the Bureau of Land Management), knowledgeable scientists, public and private natural resource interests, and comments received in response to previous notices of review.

Tables 1 and 2 are arranged alphabetically by names of genera, species, and relevant subspecies and varieties under the major group headings for animals first, then plants. Animals are grouped by class or order. Plants are subdivided into three groups: flowering plants, conifers and cycads, and ferns and their allies. Useful synonyms and subgeneric scientific names appear in parentheses (the synonyms preceded by an equal sign). Several taxa that have not yet been formally described in the scientific literature are included; such taxa are identified by a generic or specific name (in italics) followed by ''sp.'' or ''ssp.'' We incorporate standardized common names in these notices as they become available. The flux in common names, the inclusion of vernacular and composite subspecific names, and the fact that a majority of invertebrates still lack a standardized name combine to make common names relatively impractical for organizing the tables.

Table 1 lists all taxa that we regard as candidates for listing and all taxa proposed for listing under the Act. Candidate taxa are those taxa for which we have on file sufficient information on biological vulnerability and threats to support issuance of a proposed rule to list, but issuance of the proposed rule is precluded by other higher priority listing actions. We emphasize that we are not proposing these candidate taxa for listing by this notice, but we anticipate developing and publishing proposed listing rules for these taxa in the future. We encourage State agencies, other Federal agencies and other parties to give consideration to these taxa in environmental planning. Proposed taxa are those taxa for which we have published a proposed rule to list as endangered or threatened in the **Federal Register** (exclusive of taxa for which we have withdrawn or finalized the proposed rule).

Taxa in Table 1 of this notice are assigned to several status categories, noted in the ''Category'' column at the left side of the table. We explain the codes for the category status column of taxa in Table 1 below:

PE—Taxa proposed for listing as endangered.

PT—Taxa proposed for listing as threatened.

C—Candidates: Taxa for which we have on file sufficient information on biological vulnerability and threats to support proposals to list them as endangered or threatened. Issuance of proposed rules for these taxa is precluded at present by other higher priority listing actions. This category includes taxa for which we have made a ''warranted but precluded'' 12-month finding on a petition to list. We have recycled all petitions for which we have previously made ''warranted but precluded'' findings. We identify the taxa for which we have made a continued ''warranted but precluded'' finding on a recycled petition by the code ''C*'' in the category column. We anticipate developing and publishing proposed rules for candidate taxa in the future. We encourage State and other Federal agencies as well as other parties to give consideration to these taxa in environmental planning.

The column labeled ''Priority'' indicates the listing priority number for candidate taxa. We assign this number based on the immediacy and magnitude of threats as well as on taxonomic status. We published a complete description of our listing priority system in the September 21, 1983, **Federal Register** notice (48 FR 43098).

The third column identifies the Regional Office (R1–R7) to which you should direct comments or questions (see **ADDRESSES** section). We provided the comments received in response to the 1997 notice of review to the Region having lead responsibility for each candidate taxon mentioned in the comment. We will likewise consider all information provided in response to this notice of review in deciding whether to propose taxa for listing and when to undertake necessary listing actions. Comments received will become part of the administrative record for the taxa.

Following the scientific name of each taxon (fourth column) is the family designation (fifth column) and the common name if one exists (sixth column). The seventh column provides the known historical range for the taxon, indicated by postal code abbreviations for States and US territories (many taxa no longer occur in all of the areas listed). In the section on birds, the abbreviation ''N'' indicates the nesting range of the taxon, and the abbreviation ''V'' indicates additional areas in which the taxon spends other parts of its life cycle.

Taxa in Table 2 of this notice are taxa we included either as proposed taxa or as candidates in the 1997 notice of review but have since removed from such status for a variety of reasons. We have added many of the taxa identified as proposed in the last notice of review, to the Lists of Endangered or Threatened Wildlife and Plants. Table 2 also includes taxa that became candidates or were proposed for listing since the 1997 notice of review and are no longer classified as either candidates or proposed taxa (for example candidates or proposed species that we have listed or withdrawn since the 1997 notice of review). The first column indicates the present status of the taxa, using the following codes:

E—Taxa we listed as endangered.
T—Taxa we listed as threatened.
Rc—Taxa we removed from the candidate list because currently available information does not support issuance of a proposed listing.
Rp—Taxa we removed from the candidate list because we have withdrawn the proposed listing.

The second column provides a coded explanation of why we no longer regard the taxon as a candidate or proposed. Descriptions of the codes are as follows:

A—Taxa that are more abundant or widespread than previously believed and taxa that are not subject to the degree of threats sufficient to warrant continuance of candidate status, issuance of a proposed listing, or a final listing.
F—Taxa whose range is no longer a U.S. Territory.
I—Taxa for which we have insufficient information on biological vulnerability and threats to support issuance of a proposed rule to list.
L—Taxa we added to the Lists of Endangered or Threatened Wildlife and Plants.
M—Taxa we mistakenly included as candidates or proposed taxa in the last notice of review.
N—Taxa that are not a listable entity (do not meet the Act's definition of ''species'') based on current taxonomic understanding.
X—Taxa we believe to be extinct.

The columns describing lead region, scientific name, family, common name, and historic range include information as previously described for Table 1.

*Summary*

Since publication of the 1997 notice of review, we reviewed the available information on candidate taxa to ensure that issuance of a proposed listing is justified for each taxon and to reevaluate the relative listing priority assignment of each taxon. We undertook this effort to ensure that we are focusing conservation efforts on those taxa at greatest risk. As of October 1, 1999, there are 16 plants and 25 animals proposed for endangered status; 7 plants and 8 animals proposed for threatened status; and 154 plant and 104 animal candidates awaiting preparation of proposed rules (see Table 1). Table 2 includes 126 taxa that we classified as either proposed for listing or candidates that we no longer classify in those categories.

**Petition of a Candidate Species**

The Act provides two mechanisms for considering species for listing. First, the Act places on the Service the duty to identify and propose for listing those species which the Service finds require listing under the standards of section 4(a)(1). We implement this duty with the candidate program, discussed above. Second, the Act allows the public to petition us to add a species to the Threatened and Endangered Species Lists. Under section 4(b)(3)(A), when we receive such a petition, we must determine within 90 days, to the maximum extent practicable, whether the petition presents substantial information that listing is warranted (a ''90-day finding''). If we make a positive 90-day finding, under section 4(b)(3)(B) we must make one of three possible findings within 12 months of the receipt of the petition (a ''12-month finding'').

The first possible 12-month finding is that listing is not warranted, in which case we need take no further action on the petition. Second, we may find that listing is warranted, in which case we must promptly publish a proposed rule to list the species. Once we publish a proposed rule for a species, section 4(b)(5) and (6) govern further procedures, regardless of whether or not we issued the proposal in response to a petition. Third, we may find that listing is ''warranted but precluded.'' Such a finding means that immediate publication of a proposed rule to list the species is precluded by higher priority listing proposals, and that we are making expeditious progress to add and remove species from the Lists, as appropriate.

The standard for making a 12-month warranted but precluded finding on a petition to list a species is identical to our standard for making a species a candidate for listing. Therefore, we add all petitioned species subject to such a finding to the candidate list. Likewise, it follows that we can treat all candidates as having been subject to both a positive 90-day finding and a warranted but precluded 12-month finding; this notice constitutes publication of such findings pursuant to section 4(b)(3) for each species listed in Table 1 that is the subject of a subsequent petition to list as threatened or endangered. Pursuant to our Petition Management Guidance, made available on July 9, 1996 (61 FR 36075), we consider a petition to list a species already on the candidate list to be a second petition, and therefore redundant. We do not interpret the petition provisions of the Act to require us to make a duplicative finding; therefore, we will not make additional 90-day findings or initial 12-month findings on petitions to list candidate species. As discussed below, we will make recycled petition findings for petitions on such species via Candidate Notices of Review such as this one.

**Findings on Recycled Petitions**

Pursuant to section 4(b)(3)(C)(i), when, in response to a petition, we find that listing a species is warranted but precluded, we must make a new 12-month finding each year until we publish a proposed rule or make a determination that listing is not warranted. These subsequent 12-month findings are referred to as recycled petition findings.

We reviewed the current status and threats to the taxa that were the subjects of the 25 outstanding warranted but precluded findings. As a result of this review, we have made continued warranted but precluded findings for all 25 species. For the 21 of these species that are candidates, we maintain them as candidates and identify them by the code ''C*'' in the category column on the left side of Table 1.

We have also previously made warranted but precluded findings on four petitions that sought to reclassify to endangered status, species already listed as threatened. Because these species are already listed, they are not technically candidates for listing and are not included in Table 1. However, this notice also constitutes the recycled petition findings for these species. We

find that reclassification to endangered status is currently warranted but precluded for the:

(1) North Cascades Ecosystem grizzly bear (*Ursus arctos horribilis*) population (Region 6);
(2) Cabinet-Yaak and Selkirk grizzly bear populations (Region 6);
(3) spikedace (*Meda fulgida*) (Region 2); and
(4) loach minnow (*Tiaroga cobitis*) (Region 2).

We recently published a recycled warranted but precluded finding to reclassify the Cabinet-Yaak and Selkirk grizzly bear populations from threatened to endangered on May 17, 1999 (64 FR 26725). This recycled petition finding was prepared separately from this notice in response to litigation; however, as noted above, we are making another recycled petition finding at this time so that its annual reevaluation will come due at the same time as the others.

**Progress in Revising the Lists**

As described in section 4(b)(3)(B)(iii) of the Act, in order for us to make a ''warranted but precluded'' finding on a petitioned action, we must be making expeditious progress to add qualified taxa to the Lists of Endangered and Threatened Wildlife and Plants and to remove from the lists taxa for which the protections of the Act are no longer necessary. This notice describes our annual progress in revising the lists during the period September 3, 1997, to October 1, 1999. We intend to publish these descriptions annually.

Our progress in listing and delisting qualified taxa during the period September 3, 1997, to October 1, 1999, is represented by the publication in the **Federal Register** of emergency rules for 2 taxa, final listing actions for 94 taxa, proposed listing actions for 65 taxa, final delisting actions for 2 taxa, proposed delisting actions for 7 taxa, and withdrawals of proposed rules for 15 taxa. One taxon listed as threatened due to similarity of appearance, the southern population of the bog turtle (*Clemmys muhlenbergii*), is not included in the counts above.

**Request for Information**

We request you submit any further information on the taxa named in this notice as soon as possible or whenever it becomes available. We especially seek information:

(1) indicating that we should remove a taxon from candidate or proposed status;

(2) indicating that we should add a taxon to the list of candidate taxa;

(3) recommending areas that we should designate as critical habitat for a taxon, or indicating that designation of critical habitat would not be prudent for a taxon;

(4) documenting threats to any of the included taxa;

(5) describing the immediacy or magnitude of threats facing candidate taxa;

(6) pointing out taxonomic or nomenclatural changes for any of the taxa;

(7) suggesting appropriate common names; or

(8) noting any mistakes, such as errors in the indicated historical ranges.

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Authority**

This document is published under the authority of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: October 1, 1999.

**Jamie Rappaport Clark,**

*Director, U.S. Fish and Wildlife Service.*

TABLE 1.—CANDIDATE NOTICE OF REVIEW (ANIMAL AND PLANT)

| Status | | Lead region | Scientific name | Family | Common name | Historic range |
|---|---|---|---|---|---|---|
| Category | Priority | | | | | |
| | | | MAMMALS: | | | |
| C | 3 | R1 | *Emballonura semicaudata* .... | Emballonuridae ..... | Bat, sheath-tailed (Aguijan, American Samoa pops.). | U.S.A. (AS, GU, MP (Aguijan)) |
| PT | 3 | R6 | *Lynx canadensis* ..... | Felidae ..... | Lynx, Canada (contiguous U.S. pop.). | U.S.A. (AK, CO, ID, ME, MI, MN, MT, ND, NH, NY, OR, PA, UT, VT, WA, WI, WY), Canada, circumboreal |
| PE | 3 | R1 | *Neotoma fuscipes riparia* ..... | Muridae ..... | Woodrat, riparian (=San Joaquin Valley). | U.S.A. (CA) |
| PE | 3 | R1 | *Ovis canadensis* ..... | Bovidae ..... | Sheep, bighorn (Sierra Nevada pop.). | U.S.A. (Western conterminous states), Canada (southwestern), Mexico (northern) |
| PT | 3 | R1 | *Pteropus mariannus mariannus.* | Pteropodidae ..... | Bat, Mariana fruit (Aguijan, Tinian, Saipan pops.). | U.S.A. (MP) |
| C | 3 | R1 | *Sorex ornatus relictus* ..... | Soricidae ..... | Shrew, Buena Vista Lake ornate. | U.S.A. (CA) |
| PT | 3 | R1 | *Spermophilus brunneus brunneus.* | Sciuridae ..... | Squirrel, northern Idaho ground. | U.S.A. (ID) |
| C | 5 | R1 | *Spermophilus tereticaudus* ssp. *chlorus.* | Sciuridae ..... | Squirrel, Coachella Valley round-tailed ground. | U.S.A. (CA) |
| C | 5 | R1 | *Spermophilus washingtoni* .... | Sciuridae ..... | Squirrel, Washington ground squirrel. | U.S.A. (WA, OR) |
| PE | 3 | R1 | *Sylvilagus bachmani riparius* | Leporidae ..... | Rabbit, riparian brush ..... | U.S.A. (CA) |
| C* | 9 | R6 | *Vulpes velox* ..... | Canidae ..... | Fox, swift (U.S. pop.) ..... | U.S.A. (CO, IA, KS, MN, MT, ND, NE, NM, OK, SD, TX, WY), Canada |
| | | | BIRDS: | | | |
| PT | 2 | R6 | *Charadrius montanus* ..... | Charadriidae ..... | Plover, mountain ..... | U.S.A. (western), Canada, Mexico |

TABLE 1.—CANDIDATE NOTICE OF REVIEW (ANIMAL AND PLANT)—Continued

| Status | | Lead region | Scientific name | Family | Common name | Historic range |
|---|---|---|---|---|---|---|
| Category | Priority | | | | | |
| PE | 3 | R1 | *Chasiempis sandwichensis ibidus*. | Musicapidae | Elepaio, Oahu | U.S.A. (HI) |
| C | 5 | R4 | *Dendroica angelae* | Emberizidae | Warbler, elfin woods | U.S.A. (PR) |
| C | 6 | R1 | *Gallicolumba stairi* | Columbidae | Dove, friendly ground (American Somoa pop.). | U.S.A. (AS), Fiji, Tonga, Western Samoa |
| C | 3 | R1 | *Oceanodroma castro* | Hydrobatidae | Petrel, band-rumped storm (=Harcourt's). | U.S.A. (HI) |
| C | 5 | R1 | *Oreomystis bairdi* | Fringillidae | Creeper, Kauai | U.S.A. (HI) |
| PE | 3 | R7 | *Phoebastris albatrus* | Diomedeidae | Albatross, short-tailed (U.S. pop.). | North Pacific Ocean—U.S.A. (AK, CA, HI, OR, WA), Canada, Japan, Russia |
| C | 6 | R1 | *Porzana tubuensis* | Rallidae | Crake, spotless (American Samoa pop.). | U.S.A. (AS), Figi, Marquesas, Polynesia, Philippines, Australia, Society Islands, Tonga, Western Samoa |
| C | 6 | R1 | *Ptilinopus perousii perousii* | Columbidae | Dove, many-colored fruit | U.S.A. (AS) |
| C* | 8 | R2 | *Tympanuchus pallidicinctus* | Phasianidae | Prairie-chicken, lesser | U.S.A. (CO, KA, NM, OK, TX) |
| C | 6 | R1 | *Zosterops conspicillata rotensis*. | Zosteropidae | White-eye, Rota bridled | U.S.A. (MP) |
| | | | REPTILES: | | | |
| C* | 5 | R2 | *Graptemys caglei* | Emydidae | Turtle, Cagle´s map | U.S.A. (TX) |
| C | 3 | R2 | *Kinosternon sonoriense longifemorale*. | Kinosternidae | Turtle, Sonoyta mud | U.S.A. (AZ), Mexico |
| C | 6 | R4 | *Pituophis melanoleucus* ssp. *lodingi*. | Colubridae | Snake, black pine | U.S.A. (AL, LA, MS) |
| C | 5 | R4 | *Pituophis melanoleucus* | Colubridae | Snake, Louisiana pine | U.S.A. (LA, TX) |
| C | 9 | R3 | *Sistrurus catenatus catenatus*. | Viperidae | Massasauga, eastern | U.S.A. (IL, IN, IA, MI, MN, MO, NY, OH, PA, WI), Canada (Ont.) |
| | | | AMPHIBIANS: | | | |
| C* | 5 | R1 | *Ambystoma californiense (=A. tigrinum c.)*. | Ambystomatidae | Salamander, California tiger | U.S.A. (CA) |
| C* | 3 | R6 | *Bufo boreas boreas* | Bufonidae | Toad, boreal (Southern Rocky Mountain pop.). | U.S.A. (CO, NM, WY) |
| C | 5 | R4 | *Necturus alabamensis* | Proteidae | Waterdog, Black Warrior | U.S.A. (AL) |
| C | 2 | R4 | *Rana capito sevosa (=R. sevosa)*. | Ranidae | Frog, Mississippi gopher | U.S.A. (AL, LA, MS) |
| C* | 2 | R2 | *Rana chiricahuensis* | Ranidae | Frog, Chiricahua leopard | U.S.A. (AZ, NM), Mexico |
| C* | 9 | R1 | *Rana luteiventris* (formerly incl. in *R. pretiosa*). | Ranidae | Frog, Columbia spotted (formerly spotted) (Great Basin pop.). | U.S.A. (AK, CA, ID, MT, NV, OR, UT, WA, WY), Canada |
| C* | 6 | R1 | *Rana pretiosa* | Ranidae | Frog, Oregon spotted (formerly spotted frog (W. Coast pop.)). | U.S.A. (CA, OR, WA) |
| | | | FISHES: | | | |
| PT | 8 | R1 | *Catostomus santaanae* | Catostoidae | Sucker, Santa Ana | U.S.A. (CA) |
| PE | 2 | R2 | *Cyprinodon pecosensis* | Cyprinodontidae | Pupfish, Pecos | U.S.A. (NM, TX) |
| PE | 2 | R2 | *Dionda diaboli* | Cyprinidae | Minnow, Devils River | U.S.A. (TX), Mexico |
| C | 5 | R6 | *Etheostoma cragini* | Percidae | Darter, Arkansas | U.S.A. (AR, CO, KS, MO, OK) |
| C | 6 | R4 | *Etheostoma nigrum* ssp. *susanae*. | Percidae | Darter, Cumberland johnny | U.S.A. (KY, TN) |
| PE | 3 | R1 | *Gila bicolor vaccaceps* | Cyprinidae | Chub, Cowhead Lake tui | U.S.A. (CA) |
| C* | 2 | R2 | *Gila intermedia* | Cyprinidae | Chub, Gila | U.S.A. (AZ, NM), Mexico |
| C | 2 | R6 | *Macrhybopsis gelida* | Cyprinidae | Chub, sturgeon | U.S.A. (AR, IA, IL, KY, KS, LA, MO, MS, MT, NE, ND, SD, TN, WY) |
| C* | 2 | R6 | *Macrhybopsis meeki* | Cyprinidae | Chub, sicklefin | U.S.A. (AR, IA, IL, KS, KY, LA, MO, MS, MT, NE, ND, SD, TN) |
| PT | 6 | R1 | *Oncorhynchus (=Salmo) clarki clarki*. | Salmonidae | Trout, coastal cutthroat (SW Washington/Columbia R. pop.). | U.S.A. (AK, CA, OR, WA), Canada |
| C | 5 | R4 | *Percina aurora* | Percidae | Darter, Pearl | U.S.A. (LA, MS) |
| C | 3 | R5 | *Salmo salar* | Salmonidae | Salmon, Atlantic (distinct population in 8 Maine Rivers). | U.S.A. (ME) |

TABLE 1.—CANDIDATE NOTICE OF REVIEW (ANIMAL AND PLANT)—Continued

| Status | | Lead region | Scientific name | Family | Common name | Historic range |
|---|---|---|---|---|---|---|
| Category | Priority | | | | | |
| PT | 9 | R1 | *Salvelinus confluentus* | Salmonidae | Trout, bull | U.S.A. (Pacific NW), Canada (NW Territories) |
| PE | 5 | R4 | *Scaphirhynchus suttkusi* | Acipenseridae | Sturgeon, Alabama | U.S.A. (AL, MS) |
| C* | 9 | R6 | *Thymallus arcticus* | Salmonidae | Grayling, Arctic (Upper Missouri R. fluvial pop.). | U.S.A. (MT, WY) |
| | | | CLAMS: | | | |
| PE | 2 | R3 | *Leptodea leptodon* | Unionidae | Scaleshell (mussel) | U.S.A. (AL, AR, IL, IN, IA, KY, MN, MO, OH, OK, SD, TN, WI) |
| C | 5 | R4 | *Lexingtonia dolabelloides* | Unionidae | Pearlymussel, slabside | U.S.A. (AL, KY, TN, VA) |
| C | 5 | R4 | *Margaritifera marrianae* | Margaritiferidae | Pearlshell, Alabama | U.S.A. (AL) |
| C | 5 | R4 | *Pleurobema chattanoogaense.* | Unionidae | Clubshell, painted | U.S.A. (AL, GA, TN) |
| C | 5 | R4 | *Pleurobema hanleyanum* | Unionidae | Pigtoe, Georgia | U.S.A. (AL, GA, TN) |
| C | 5 | R4 | *Pleurobema troshelianum* | Unionidae | Clubshell, Alabama | U.S.A. (AL, GA, TN) |
| C | 5 | R4 | *Ptychobranchus subtentum* | Unionidae | Kidneyshell, fluted | U.S.A. (AL, KY, TN, VA) |
| | | | SNAILS: | | | |
| C | 7 | R3 | *Antrobia culveri* | Hydrobiidae | Cavesnail, Tumbling Creek | U.S.A. (MO) |
| C* | 2 | R2 | *Assiminea pecos* | Assimineidae | Snail, Pecos assiminea | U.S.A. (NM, TX), Mexico |
| PE | 5 | R4 | *Campeloma decampi* | Viviparidae | Campeloma, slender | U.S.A. (AL) |
| PT | 7 | R1 | *Erinna newcombi* | Lymnaeidae | Snail, Newcomb's | U.S.A. (HI) |
| C | 2 | R1 | *Eua zebrina* | Partulidae | Snail, Tutuila tree | U.S.A. (AS) |
| C | 5 | R4 | *Leptoxis downei* | Pleuroceridae | Rocksnail, Georgia | U.S.A. (GA, AL) |
| C | 5 | R1 | *Newcombia cumingi* | Achatinellidae | Newcomb's tree snail | U.S.A. (HI) |
| C | 9 | R6 | *Oreohelix peripherica wasatchensis.* | Oreohelicidae | Mountainsnail, Ogden (=Ogden Rocky). | U.S.A. (UT) |
| C | 2 | R1 | *Ostodes strigatus* | Potaridae | Sisi (snail) | U.S.A. (AS) |
| C | 2 | R1 | *Partula gibba* | Partulidae | Snail, Humped tree | U.S.A. (GU, MP) |
| C | 2 | R1 | *Partula langfordi* | Partulidae | Snail, Langford's tree | U.S.A. (MP) |
| C | 2 | R1 | *Partula radiolata* | Partulidae | Snail, Guam tree | U.S.A. (GU) |
| C | 2 | R1 | *Partulina semicarinata* | Achatinellidae | Snail, Lanai tree or pupu kani oe. | U.S.A. (HI) |
| C | 2 | R1 | *Partulina variabilis* | Achatinellidae | Snail, Lanai tree or pupu kani oe. | U.S.A. (HI) |
| PE | 5 | R4 | *Pyrgulopsis (=Marstonia) pachyta.* | Hydrobiidae | Armored (=thick-shelled) snail (=marstonia). | U.S.A. (AL) |
| C* | 8 | R2 | *Pyrgulopsis chupaderae* | Hydrobiidae | Springsnail, Chupadera | U.S.A. (NM) |
| C* | 11 | R2 | *Pyrgulopsis gilae* | Hydrobiidae | Springsnail, Gila | U.S.A. (NM) |
| C | 2 | R2 | *Pyrgulopsis morrisoni* | Hydrobiidae | Springsnail, Page | U.S.A. (AZ) |
| C* | 2 | R2 | *Pyrgulopsis roswellensis* | Hydrobiidae | Springsnail, Roswell | U.S.A. (NM) |
| C* | 11 | R2 | *Pyrgulopsis thermalis* | Hydrobiidae | Springsnail, New Mexico | U.S.A. (NM) |
| C | 5 | R2 | *Pyrgulopsis thompsoni* | Hydrobiidae | Springsnail, Huachuca | U.S.A. (AZ), Mexico |
| C | 2 | R1 | *Samoana fragilis* | Partulidae | Snail, fragile tree | U.S.A. (GU, MP) |
| C | 5 | R2 | *Sonorella macrophallus* | Helminthoglyptida | Talussnail, Wet Canyon | U.S.A. (AZ) |
| C | 2 | R6 | *Stagnicola bonnevillensis* | Lymnaeidae | Pondsnail, Bonneville (=fat-whorled). | U.S.A. (UT) |
| C | 5 | R2 | *Tryonia adamantina* | Hydrobiidae | Snail, Diamond Y Spring | U.S.A. (TX) |
| C* | 2 | R2 | *Tryonia kosteri* | Hydrobiidae | Snail, Koster's tryonia | U.S.A. (NM) |
| C | 5 | R2 | *Tryonia stocktonensis* | Hydrobiidae | Springsnail, Gonzales | U.S.A. (TX) |
| | | | INSECTS: | | | |
| PE | 2 | R2 | *Batrisodes venyivi* | Pselaphidae | Beetle, Helotes mold | U.S.A. (TX) |
| C | 2 | R4 | *Cicindela highlandensis* | Cicindelidae | Beetle, highlands tiger | U.S.A. (FL) |
| C | 2 | R1 | *Cicindela ohlone* | Cicindelidae | Beetle, Ohlone tiger | U.S.A. (CA) |
| C | 5 | R4 | *Glyphopsyche sequatchie* | Limnephilidae | Caddisfly, Sequatchie | U.S.A. (TN) |
| PE | 2 | R2 | *Rhadine exilis* | Carabidae | Beetle, [no common name] | U.S.A. (TX) |
| PE | 2 | R2 | *Rhadine infernalis* | Carabidae | Beetle, [no common name] | U.S.A. (TX) |
| C | 5 | R1 | *Polites mardon* | Hesperiidae | Skipper, Mardon | U.S.A. (CA, OR, WA) |
| C | 12 | R1 | *Pseudocopaeodes eunus* ssp. *obscurus.* | Hesperiidae | Carson wandering skipper | U.S.A. (CA, NV) |
| C | 1 | R1 | *Tinostoma smaragditis* | Sphingidae | Moth, fabulous green sphinx | U.S.A. (HI) |
| C* | 9 | R6 | *Cicindela limbata albissima* | Cicindelidae | Beetle, Coral Pink Sand Dunes tiger. | U.S.A. (UT) |
| C | 2 | R1 | *Drosophila aglaia* | Drosophilidae | Pomace fly, [no common name]. | U.S.A. (HI) |
| C | 2 | R1 | *Drosophila attigua* | Drosophilidae | Pomace fly, [no common name]. | U.S.A. (HI) |
| C | 2 | R1 | *Drosophila differens* | Drosophilidae | Pomace fly, [no common name]. | U.S.A. (HI) |
| C | 2 | R1 | *Drosophila digressa* | Drosophilidae | Pomace fly, [no common name]. | U.S.A. (HI) |

TABLE 1.—CANDIDATE NOTICE OF REVIEW (ANIMAL AND PLANT)—Continued

| Status | | Lead region | Scientific name | Family | Common name | Historic range |
|---|---|---|---|---|---|---|
| Category | Priority | | | | | |
| C | 2 | R1 | *Drosophila hemipeza* | Drosophilidae | Pomace fly, [no common name]. | U.S.A. (HI) |
| C | 2 | R1 | *Drosophila heteroneura* | Drosophilidae | Pomace fly, [no common name]. | U.S.A. (HI) |
| C | 2 | R1 | *Drosophila montgomeryi* | Drosophilidae | Pomace fly, [no common name]. | U.S.A. (HI) |
| C | 2 | R1 | *Drosophila mulli* | Drosophilidae | Pomace fly, [no common name]. | U.S.A. (HI) |
| C | 2 | R1 | *Drosophila musaphila* | Drosophilidae | Pomace fly, [no common name]. | U.S.A. (HI) |
| C | 2 | R1 | *Drosophila neoclavisetae* | Drosophilidae | Pomace fly, [no common name]. | U.S.A. (HI) |
| C | 2 | R1 | *Drosophila obatai* | Drosophilidae | Pomace fly, [no common name]. | U.S.A. (HI) |
| C | 2 | R1 | *Drosophila ochrobasis* | Drosophilidae | Pomace fly, [no common name]. | U.S.A. (HI) |
| C | 2 | R1 | *Drosophila substenoptera* | Drosophilidae | Pomace fly, [no common name]. | U.S.A. (HI) |
| C | 2 | R1 | *Drosophila tarphytrichia* | Drosophilidae | Pomace fly, [no common name]. | U.S.A. (HI) |
| C | 3 | R1 | *Hypolimnas octucula mariannensis*. | Nymphalidae | Butterfly, Mariana eight-spot | U.S.A. (GU, MP) |
| PE | 3 | R1 | *Icaricia icarioides fenderi* | Lycaenidae | Butterfly, Fender's blue | U.S.A. (OR) |
| PE | 2 | R1 | *Manduca blackburni* | Sphingidae | Moth, Blackburn's sphinx | U.S.A. (HI) |
| C | 2 | R1 | *Megalagrion leptodemus* | Coenagrionidae | Damselfly, crimson Hawaiian (=leptodemas megalagrion). | U.S.A. (HI) |
| C | 2 | R1 | *Megalagrion nesiotes* | Coenagrionidae | Damselfly, flying earwig Hawaiian (=nesiotes megalagrion). | U.S.A. (HI) |
| C | 9 | R1 | *Megalagrion nigrohamatum nigrolineatum*. | Coenagrionidae | Damselfly, blackline Hawaiian (=blackline megalagrion). | U.S.A. (HI) |
| C | 2 | R1 | *Megalagrion oceanicum* | Coenagrionidae | Damselfly, oceanic Hawaiian (=oceanic megalagrion). | U.S.A. (HI) |
| C | 2 | R1 | *Megalagrion pacificum* | Coenagrionidae | Damselfly, Pacific Hawaiian (=Pacific megalagrion). | U.S.A. (HI) |
| C | 8 | R1 | *Megalagrion xanthomelas* | Coenagrionidae | Damselfly, orangeblack Hawaiian (=orangeblack megalagrion). | U.S.A. (HI) |
| C | 2 | R1 | *Nysius wekiuicola* | Lygaeidae | Bug, Wekiu | U.S.A. (HI) |
| C | 5 | R1 | *Phaeogramma* sp. | Tephritidae | Gall fly, Po'olanui | U.S.A. (HI) |
| C | 5 | R5 | *Pseudanophthalmus holsingeri*. | Carabidae | Beetle, Holsinger's cave | U.S.A. (VA) |
| C | 2 | R1 | *Vagrans egestina* | Nymphalidae | Butterfly, Mariana wandering | U.S.A. (GU, MP) |
| C | 11 | R6 | *Zaitzevia thermae* | Elmidae | Beetle, warm springs zaitzevian riffle. | U.S.A. (MT) |
| | | | ARACHNIDS: | | | |
| PE | 2 | R2 | *Cicurina baroni* | Dictynidae | Spider, Robber Baron cave | U.S.A. (TX). |
| PE | 2 | R2 | *Cicurina madla* | Dictynidae | Spider, Madla's cave | U.S.A. (TX). |
| PE | 2 | R2 | *Cicurina venii* | Dictynidae | Spider [no common name] | U.S.A. (TX). |
| PE | 2 | R2 | *Cicurina vespera* | Dictynidae | Spider, Vesper cave | U.S.A. (TX). |
| PE | 2 | R2 | *Neoleptoneta microps* | Leptonetidae | Spider, Government Canyon cave. | U.S.A. (TX). |
| PE | 2 | R2 | *Texella cokendolpheri* | Phalangodidae | Harvestman, Robber Baron Cave. | U.S.A. (TX) |
| PE | 1 | R1 | *Adelocosa anops* | Lycosidae | Spider, Kauai cave wolf or pe'e pe'e maka 'ole. | U.S.A. (HI) |
| C | 8 | R2 | *Cicurina wartoni* | Dictynidae | Spider, Warton's cave | U.S.A. (TX) |
| | | | CRUSTACEANS: | | | |
| C | 2 | R1 | *Metabetaeus lohena* | Alpheidae | Shrimp, anchialine pool | U.S.A. (HI) |
| C | 2 | R1 | *Antecaridina lauensis* | Atyidae | Shrimp, anchialine pool | U.S.A. (HI), Mozambique, Saudi Arabia, Japan |
| C | 2 | R1 | *Calliasmata pholidota* | Alpheidae | Shrimp, anchialine pool | U.S.A. (HI), Funafuti Atol, Saudi Arabia, Sinai Penninsula, Tuvalu |
| C | 11 | R4 | *Fallicambarus gordoni* | Cambaridae | Crayfish, Camp Shelby burrowing. | U.S.A. (MS) |
| C | 2 | R1 | *Palaemonella burnsi* | Palaemonidae | Shrimp, anchialine pool | U.S.A. (HI) |

TABLE 1.—CANDIDATE NOTICE OF REVIEW (ANIMAL AND PLANT)—Continued

| Status | | Lead region | Scientific name | Family | Common name | Historic range |
|---|---|---|---|---|---|---|
| Category | Priority | | | | | |
| C | 2 | R1 | *Procaris hawaiana* | Procarididae | Shrimp, anchialine pool | U.S.A. (HI) |
| C | 5 | R4 | *Typhlatya monae* | Atyidae | Shrimp, troglobitic groundwater. | U.S.A. (PR), Barbuda, Dominican Republic |
| C | 2 | R1 | *Vetericaris chaceorum* | Procaridae | Shrimp, anchialine pool | U.S.A. (HI) |
| PE | 1 | R1 | *Spelaeorchestia koloana* | Talitridae | Amphipod, Kauai cave | U.S.A. (HI) |
| | | | FLOWERING PLANTS: | | | |
| C | 11 | R1 | *Abronia alpina* | Nyctaginaceae | Ramshaw Meadows sand-verbena. | U.S.A. (CA) |
| C | 11 | R4 | *Arabis georgiana* | Brassicaceae | Georgia rockcress | U.S.A. (AL, GA) |
| C | 11 | R4 | *Argythamnia blodgettii* | Euphorbiaceae | Blodgett's silverbrush (=Bloddgett's wild mercury). | U.S.A. (FL) |
| C | 3 | R1 | *Artemisia campestris* var. *wormskioldii*. | Asteraceae | Northern wormwood | U.S.A. (OR, WA) |
| C | 2 | R1 | *Astelia waialealae* | Liliaceae | Pa'ini'u | U.S.A. (HI) |
| C | 5 | R4 | *Aster georgianus* | Asteraceae | Aster, Georgia | U.S.A. (AL, FL, GA, NC, SC) |
| C* | 2 | R6 | *Astragalus ampullarioides* | Fabaceae | Shivwitz (=Shem) milk-vetch | U.S.A. (UT) |
| PT | 2 | R6 | *Astragalus desereticus* | Fabaceae | Deseret milk-vetch | U.S.A. (UT) |
| C | 8 | R6 | *Astragalus equisolensis* | Fabaceae | Horseshoe milk-vetch | U.S.A. (UT) |
| C* | 2 | R6 | *Astragalus holmgreniorum* | Fabaceae | Holmgren milk-vetch | U.S.A. (AZ, UT) |
| PE | 3 | R1 | *Astragalus pycnostachyus* var. *lanosissimus*. | Fabaceae | Milk-vetch, Ventura Marsh | U.S.A. (CA) |
| C | 2 | R6 | *Astragalus tortipes* | Fabaceae | Sleeping Ute milk-vetch | U.S.A. (CO) |
| C | 5 | R1 | *Bidens amplectens* | Asteraceae | Ko'oko'olau | U.S.A. (HI) |
| C | 6 | R1 | *Bidens campylotheca ssp. pentamera*. | Asteraceae | Ko'oko'olau | U.S.A. (HI) |
| C | 3 | R1 | *Bidens campylotheca* ssp. *waihoiensis*. | Asteraceae | Ko'oko'olau | U.S.A. (HI) |
| C | 5 | R1 | *Bidens conjuncta* | Asteraceae | Ko'oko'olau | U.S.A. (HI) |
| C | 6 | R1 | *Bidens micrantha* ssp. *ctenophylla*. | Asteraceae | Ko'oko'olau | U.S.A. (HI) |
| C | 5 | R4 | *Brickellia mosieri* | Asteraceae | Florida brickell-bush (=Mosier's false boneset). | U.S.A. (FL) |
| C | 5 | R1 | *Calamagrostis expansa* | Poaceae | None | U.S.A. (HI) |
| C | 5 | R1 | *Calamagrostis hillebrandii* | Poaceae | None | U.S.A. (HI) |
| C | 5 | R4 | *Calliandra locoensis* | Mimosaceae | None | U.S.A. (PR) |
| C | 5 | R4 | *Calyptranthes estremerae* | Myrtaceae | None | U.S.A. (PR) |
| C | 5 | R1 | *Canavalia napaliensis* | Fabaceae | 'Awikiwiki | U.S.A. (HI) |
| C | 2 | R1 | *Canavalia pubescens* | Fabaceae | 'Awikiwiki | U.S.A. (HI) |
| PE | 5 | R4 | *Carex lutea* | Cyperaceae | Golden sedge | U.S.A. (NC) |
| C | 8 | R6 | *Castilleja aquariensis* | Scrophulariaceae | Aquarius paintbrush | U.S.A. (UT) |
| C | 11 | R1 | *Castilleja christii* | Scrophulariaceae | Christ's paintbrush | U.S.A. (ID) |
| C | 6 | R4 | *Chamaecrista lineata* var. *keyensis (=Cassia keyensis)*. | Fabaceae | Big Pine partridge pea (=Key cassia). | U.S.A. (FL) |
| C | 6 | R4 | *Chamaesyce deltoidea* ssp. *pinetorum*. | Euphorbiaceae | Pineland sandmat | U.S.A. (FL) |
| C | 6 | R4 | *Chamaesyce deltoidea* ssp. *serpyllum*. | Euphorbiaceae | Wedge spurge (=Wedge sandmat). | U.S.A. (FL) |
| C | 5 | R1 | *Chamaesyce eleanoriae* | Euphorbiaceae | 'Akoko | U.S.A. (HI) |
| C | 6 | R1 | *Chamaesyce remyi* var. *kauaiensis*. | Euphorbiaceae | 'Akoko | U.S.A. (HI) |
| C | 6 | R1 | *Chamaesyce remyi* var. *remyi*. | Euphorbiaceae | 'Akoko | U.S.A. (HI) |
| C | 5 | R1 | *Charpentiera densiflora* | Amaranthaceae | Papala | U.S.A. (HI) |
| PT | 9 | R1 | *Chlorogalum purpureum* | Liliaceae | Purple amole | U.S.A. (CA) |
| C | 3 | R1 | *Chorizanthe parryi* var. *fernandina*. | Polygonaceae | San Fernando Valley spineflower. | U.S.A. (CA) |
| C | 5 | R4 | *Chromolaena frustata (=Eupatorium frustatum)*. | Asteraceae | Cape Sable thoroughwort | U.S.A. (FL) |
| PE | 2 | R1 | *Cirsium loncholepis* | Asteraceae | La Graciosa thistle | U.S.A. (CA) |
| C | 2 | R4 | *Cordia rupicola* | Boraginaceae | None | U.S.A. (PR), Anegada |
| C | 6 | R1 | *Cyanea (=Rollandia) lanceolata* spp. *calycina*. | Campanulaceae | Haha | U.S.A. (HI) |
| C | 6 | R1 | *Cyanea (=Rollandia) lanceolata* spp. *lanceolata*. | Campanulaceae | Haha | U.S.A. (HI) |
| C | 2 | R1 | *Cyanea asplenifolia* | Campanulaceae | Haha | U.S.A. (HI) |
| C | 2 | R1 | *Cyanea eleeleensis* | Campanulaceae | Haha | U.S.A. (HI) |
| C | 2 | R1 | *Cyanea kuhihewa* | Campanulaceae | Haha | U.S.A. (HI) |

TABLE 1.—CANDIDATE NOTICE OF REVIEW (ANIMAL AND PLANT)—Continued

| Status | | Lead region | Scientific name | Family | Common name | Historic range |
|---|---|---|---|---|---|---|
| Category | Priority | | | | | |
| C | 5 | R1 | *Cyanea kunthiana* | Campanulaceae | Haha | U.S.A. (HI) |
| C | 2 | R1 | *Cyanea obtusa* | Campanulaceae | Haha | U.S.A. (HI) |
| C | 5 | R1 | *Cyanea pseudofauriei* | Campanulaceae | Haha | U.S.A. (HI) |
| C | 5 | R1 | *Cyanea tritomantha* | Campanulaceae | Haha | U.S.A. (HI) |
| C | 2 | R1 | *Cyrtandra filipes* | Gesneriaceae | Ha'iwale | U.S.A. (HI) |
| C | 5 | R1 | *Cyrtandra kaulantha* | Gesneriaceae | Ha'iwale | U.S.A. (HI) |
| C | 5 | R1 | *Cyrtandra oenobarba* | Gesneriaceae | Ha'iwale | U.S.A. (HI) |
| C | 2 | R1 | *Cyrtandra oxybapha* | Gesneriaceae | Ha'iwale | U.S.A. (HI) |
| C | 2 | R1 | *Cyrtandra sessilis* | Gesneriaceae | Ha'iwale | U.S.A. (HI) |
| C | 6 | R4 | *Dalea carthagenensis* var. *floridana*. | Fabaceae | Florida prairie-clover (=Cartagena prairie-clover) | U.S.A. (FL) |
| PE | 2 | R1 | *Delphinium bakeri* | Ranunculaceae | Baker's larkspur | U.S.A. (CA) |
| PE | 2 | R1 | *Delphinium luteum* | Ranunculaceae | Yellow larkspur | U.S.A. (CA) |
| C | 5 | R4 | *Digitaria pauciflora* | Poaceae | Florida pineland crabgrass (=twospike fingergrass, twospike crabgrass, few-flowered fingergrass) | U.S.A. (FL) |
| C | 6 | R1 | *Dubautia imbricata* ssp. *imbricata*. | Asteraceae | Na'ena'e | U.S.A. (HI) |
| C | 3 | R1 | *Dubautia plantaginea* ssp. *magnifolia*. | Asteraceae | Na'ena'e | U.S.A. (HI) |
| C | 5 | R1 | *Dubautia waialealae* | Asteraceae | Na'ena'e | U.S.A. (HI) |
| C | 6 | R2 | *Echinomastus erectocentrus* var. *acunensis*. | Cactaceae | Acuna cactus | U.S.A. (AZ), Mexico |
| PE | 3 | R1 | *Erigeron decumbens* var. *decumbens*. | Asteraceae | Willamette daisy | U.S.A. (OR) |
| C | 8 | R1 | *Erigeron basalticus* | Asteraceae | Basalt daisy | U.S.A. (WA) |
| C | 5 | R2 | *Erigeron lemmonii* | Asteraceae | Lemmon fleabane | U.S.A. (AZ) |
| PE | 2 | R1 | *Eriodictyon capitatum* | Hydrophyllaceae | Lompoc yerba santa | U.S.A. (CA) |
| C | 5 | R1 | *Eriogonum codium* | Polygonaceae | Umtanum desert-buckwheat | U.S.A. (WA) |
| C | 5 | R1 | *Eriogonum kelloggii* | Polygonaceae | Red Mountain buckwheat | U.S.A. (CA) |
| C | 5 | R1 | *Festuca hawaiiensis* | Poaceae | None | U.S.A. (HI) |
| C | 11 | R2 | *Festuca ligulata* | Poaceae | Guadalupe fescue | U.S.A. (TX), Mexico |
| PE | 2 | R1 | *Fritillaria gentneri* | Liliaceae | Gentner's (=Mission-bells) fritillaria. | U.S.A. (OR) |
| C | 5 | R1 | *Gardenia remyi* | Rubiaceae | Nanu | U.S.A. (HI) |
| PT | 3 | R6 | *Gaura neomexicana* ssp. *coloradensis*. | Onagraceae | Colorado butterfly plant | U.S.A. (CO, NE, WY) |
| C | 5 | R1 | *Geranium hanaense* | Geraniaceae | Nohoanu | U.S.A. (HI) |
| C | 8 | R1 | *Geranium humile* | Geraniaceae | Nohoanu | U.S.A. (HI) |
| C | 2 | R1 | *Geranium kauaiense* | Geraniaceae | Nohoanu | U.S.A. (HI) |
| C | 11 | R6 | *Gilia caespitosa* | Polemoniaceae | Wonderland alice-flower (=Rabbit Valley gilia) | U.S.A. (UT) |
| C | 6 | R1 | *Gnaphalium sandwicensium* var. *molokaiense*. | Asteraceae | 'Ena'ena | U.S.A. (HI) |
| C | 5 | R4 | *Gonocalyx concolor* | Ericaceae | None | U.S.A. (PR) |
| C | 2 | R1 | *Hackelia venusta* | Boraginaceae | Showy stickseed | U.S.A. (WA) |
| C | 5 | R1 | *Hedyotis fluviatilis* | Rubiaceae | Kamapua'a | U.S.A. (HI) |
| PT | 8 | R2 | *Helianthus paradoxus* | Asteraceae | Pecos (=puzzle) sunflower | U.S.A. (NM, TX) |
| C | 5 | R4 | *Helianthus verticillatus* | Asteraceae | Whorled sunflower | U.S.A. (AL, GA, TN) |
| PE | 3 | R1 | *Hemizonia increscens* ssp. *villosa*. | Asteraceae | Gaviota tarplant | U.S.A. (CA) |
| C | 5 | R2 | *Hibiscus dasycalyx* | Malvaceae | Neches River rose-mallow | U.S.A. (TX) |
| PT | 2 | R1 | *Holocarpha macradenia* | Asteraceae | Santa Cruz tarplant | U.S.A. (CA) |
| C | 6 | R4 | *Indigofera mucronata* var. *keyensis*. | Fabaceae | Florida (=Key's) indigo | U.S.A. (FL) |
| C | 3 | R1 | *Joinvillea ascendens* ssp. *ascendens*. | Joinvilleaceae | 'Ohe | U.S.A. (HI) |
| C | 5 | R1 | *Korthalsella degeneri* | Viscaceae | Hulumoa | U.S.A. (HI) |
| C | 5 | R1 | *Labordia helleri* | Loganiaceae | Kamakahala | U.S.A. (HI) |
| C | 5 | R1 | *Labordia pumila* | Loganiaceae | Kamakahala | U.S.A. (HI) |
| C | 5 | R1 | *Lagenifera erici* | Asteraceae | None | U.S.A. (HI) |
| C | 5 | R1 | *Lagenifera helenae* | Asteraceae | None | U.S.A. (HI) |
| C | 5 | R4 | *Leavenworthia crassa* | Brassicaceae | Glade-cress | U.S.A. (AL) |
| C | 5 | R2 | *Leavenworthia texana* | Brassicaceae | Texas golden gladecress | U.S.A (TX) |
| C | 2 | R1 | *Lepidium papilliferum* | Brassicaceae | Slick spot peppergrass | U.S.A. (ID) |
| C | 5 | R4 | *Lesquerella globosa* | Brassicaceae | Short's bladderpod | U.S.A. (IN, KY, TN) |
| PE | 2 | R2 | *Lesquerella thamnophila* | Brassicaceae | Zapata bladderpod | U.S.A. (TX) |
| C | 5 | R1 | *Lesquerella tuplashensis* | Brassicaceae | White Bluffs bladderpod | U.S.A. (WA) |

TABLE 1.—CANDIDATE NOTICE OF REVIEW (ANIMAL AND PLANT)—Continued

| Status | | Lead region | Scientific name | Family | Common name | Historic range |
|---|---|---|---|---|---|---|
| Category | Priority | | | | | |
| C | 3 | R1 | *Limnanthes floccosa* ssp. *grandiflora*. | Limnanthaceae | Large-flowered wooly meadowfoam. | U.S.A. (OR) |
| C | 2 | R4 | *Linum arenicola* | Linaceae | Sand flax | U.S.A. (FL) |
| C | 3 | R4 | *Linum carteri* var. *carteri* | Linaceae | Carter's small-flowered flax | U.S.A. (FL) |
| C | 2 | R1 | *Lomatium cookii* | Apiaceae | Cook's lomatium | U.S.A. (OR) |
| PE | 2 | R1 | *Lupinus nipomensis* | Fabaceae | Nipomo Mesa lupine | U.S.A. (CA) |
| PT | ..... | R1 | *Lupinus sulphureus* var. *kincaidii*. | Fabacaeae | Kincaid's lupine | U.S.A. (OR, WA) |
| C | 5 | R1 | *Lysimachia daphnoides* | Primulaceae | Lehua makanoe | U.S.A. (HI) |
| C | 2 | R1 | *Lysimachia venosa* | Primulaceae | None | U.S.A. (HI) |
| C | 5 | R1 | *Melicope christophersenii* | Rutaceae | Alani | U.S.A. (HI) |
| C | 2 | R1 | *Melicope degeneri* | Rutaceae | Alani | U.S.A. (HI) |
| C | 2 | R1 | *Melicope hiiakae* | Rutaceae | Alani | U.S.A. (HI) |
| C | 2 | R1 | *Melicope macropus* | Rutaceae | Alani | U.S.A. (HI) |
| C | 2 | R1 | *Melicope makahae* | Rutaceae | Alani | U.S.A. (HI) |
| C | 2 | R1 | *Melicope paniculata* | Rutaceae | Alani | U.S.A. (HI) |
| C | 5 | R1 | *Melicope puberula* | Rutaceae | Alani | U.S.A. (HI) |
| C | 5 | R1 | *Myrsine fosbergii* | Myrsinaceae | Kolea | U.S.A. (HI) |
| C | 2 | R1 | *Myrsine mezii* | Myrsinaceae | Kolea | U.S.A. (HI) |
| C | 5 | R1 | *Myrsine vaccinioides* | Myrsinaceae | Kolea | U.S.A. (HI) |
| C | 8 | R5 | *Narthecium americanum* | Liliaceae | Bog asphodel | U.S.A. (DE, NJ, NC, NY, SC) |
| C | 1 | R1 | *Nesogenes rotensis* | Verbenaceae | None | U.S.A. (MP) |
| C | 5 | R1 | *Nothocestrum latifolium* | Solanaceae | 'Aiea | U.S.A. (HI) |
| C | 2 | R1 | *Ochrosia haleakalae* | Apocynaceae | Holei | U.S.A. (HI) |
| C | 5 | R4 | *Opuntia corallicola* | Cactaceae | Florida semaphore cactus (=semaphore pricklypear). | U.S.A. (FL) |
| C | 12 | R1 | *Opuntia whipplei* var. *multigeniculata*. | Cactaceae | Blue Diamond cholla | U.S.A. (NV) |
| C | 2 | R1 | *Osmoxylon mariannense* | Araliaceae | None | U.S.A. (MP) |
| C | 5 | R5 | *Panicum hirstii* | Poaceae | Hirsts panic grass | U.S.A. (DE, GA, NC, NJ) |
| C | 11 | R2 | *Paronychia congesta* | Caryophyllaceae | Bushy whitlow-wort | U.S.A. (TX) |
| C | 6 | R2 | *Pediocactus peeblesianus* var. *fickeiseniae*. | Cactaceae | Fickeisen plains cactus | U.S.A. (AZ) |
| C | 5 | R6 | *Penstemon debilis* | Scrophulariaceae | Parachute beardtongue | U.S.A. (CO) |
| C | 5 | R6 | *Penstemon grahamii* | Scrophulariaceae | Graham beardtongue | U.S.A. (CO, UT) |
| C | 6 | R6 | *Penstemon scariosus* var. *albifluvis*. | Scrophulariaceae | White River beardtongue | U.S.A. (CO, UT) |
| C | 2 | R1 | *Peperomia subpetiolata* | Piperaceae | 'Ala 'ala wai nui | U.S.A. (HI) |
| C | 11 | R6 | *Phacelia submutica* | Hydrophyllaceae | DeBeque phacelia | U.S.A. (CO) |
| PE | 2 | R1 | *Phlox hirsuta* | Polemoniaceae | Yreka phlox | U.S.A. (CA) |
| C | 2 | R1 | *Phyllostegia bracteata* | Lamiaceae | None | U.S.A. (HI) |
| C | 5 | R1 | *Phyllostegia floribunda* | Lamiaceae | None | U.S.A. (HI) |
| C | 2 | R1 | *Phyllostegia helleri* | Lamiaceae | None | U.S.A. (HI) |
| C | 2 | R1 | *Phyllostegia hispida* | Lamiaceae | None | U.S.A. (HI) |
| C | 2 | R1 | *Phyllostegia imminuta* | Lamiaceae | None | U.S.A. (HI) |
| C | 5 | R1 | *Pittosporum napaliense* | Pittosporaceae | Ho'awa | U.S.A. (HI) |
| PE | 2 | R1 | *Plagiobothrys hirtus* | Boraginaceae | Rough popcornflower | U.S.A. (OR) |
| C | 5 | R4 | *Platanthera integrilabia* | Orchidaceae | White fringeless orchid | U.S.A. (AL, GA, KY, MS, NC, SC, TN, VA) |
| C | 6 | R1 | *Platydesma cornuta* var. *cornuta*. | Rutaceae | None | U.S.A. (HI) |
| C | 6 | R1 | *Platydesma cornuta* var. *decurrens*. | Rutaceae | None | U.S.A. (HI) |
| C | 2 | R1 | *Platydesma remyi* | Rutaceae | None | U.S.A. (HI) |
| C | 5 | R1 | *Platydesma rostrata* | Rutaceae | Pilo kea lau li'I | U.S.A. (HI) |
| C | 5 | R1 | *Pleomele fernaldii* | Agavaceae | Hala pepe | U.S.A. (HI) |
| C | 2 | R1 | *Pleomele forbesii* | Agavaceae | Hala pepe | U.S.A. (HI) |
| C | 2 | R1 | *Polygonum hickmanii* | Polygonaceae | Scotts Valley polygonum | U.S.A. (CA) |
| C | 5 | R1 | *Pritchardia hardyi* | Asteraceae | Na'ena'e | U.S.A. (HI) |
| C | 2 | R1 | *Psychotria grandiflora* | Rubiaceae | Kopiko | U.S.A. (HI) |
| C | 3 | R1 | *Psychotria hexandra* ssp. *oahuensis*. | Rubiaceae | Kopiko | U.S.A. (HI) |
| C | 2 | R1 | *Psychotria hobdyi* | Rubiaceae | Kopiko | U.S.A. (HI) |
| C | 5 | R1 | *Pteralyxia macrocarpa* | Apocynaceae | Kaulu | U.S.A. (HI) |
| C | 5 | R1 | *Ranunculus hawaiensis* | Ranunculaceae | Makou | U.S.A. (HI) |
| C | 2 | R1 | *Ranunculus mauiensis* | Ranunculaceae | Makou | U.S.A. (HI) |
| C | 2 | R1 | *Rorippa subumbellata* | Brassicaceae | Tahoe yellow cress | U.S.A. (CA, NV) |
| C | 2 | R1 | *Schiedea attenuata* | Caryophyllaceae | None | U.S.A. (HI) |
| C | 3 | R1 | *Schiedea pubescens* var. *pubescens*. | Caryophyllaceae | None | U.S.A. (HI) |

TABLE 1.—CANDIDATE NOTICE OF REVIEW (ANIMAL AND PLANT)—Continued

| Status | | Lead region | Scientific name | Family | Common name | Historic range |
|---|---|---|---|---|---|---|
| Category | Priority | | | | | |
| C | 2 | R1 | *Schiedea salicaria* | Caryophyllaceae | None | U.S.A. (HI) |
| C | 5 | R1 | *Sedum eastwoodiae* | Crassulaceae | Red Mountain stonecrop | U.S.A. (CA) |
| C | 5 | R1 | *Sicyos macrophyllus* | Cucurbitaceae | ‘Anunu | U.S.A. (HI) |
| C | 9 | R1 | *Sidalcea hickmanii* ssp. *parishii.* | Malvaceae | Parish’s checkerbloom | U.S.A. (CA) |
| PE | 2 | R1 | *Sidalcea keckii* | Malvaceae | Keck’s checkermallow | U.S.A. (CA) |
| PE | 3 | R1 | *Sidalcea oregana* var. *calva* | Malvaceae | Wenatchee Mountains (=Oregon) checkermallow. | U.S.A. (WA) |
| C | 11 | R1 | *Solanum nelsonii* | Solanaceae | Popolo | U.S.A. (HI) |
| C | 2 | R1 | *Stenogyne cranwelliae* | Lamiaceae | None | U.S.A. (HI) |
| C | 2 | R1 | *Stenogyne kealiae* | Lamiaceae | None | U.S.A. (HI) |
| C | 2 | R1 | *Tabernaemontana rotensis* | Apocynaceae | None | U.S.A. (GU, MP) |
| C | 5 | R1 | *Thelypteris boydiae* | Thelypteridaceae | None | U.S.A. (HI) |
| PE | 2 | R1 | *Thlaspi californicum* | Brassicaceae | Kneeland Prairie penny-cress. | U.S.A. (CA) |
| C | 9 | R1 | *Torulinium odoratum* ssp. *auriculatum.* | Cyperaceae | Pu‘uka‘a (=kili‘o‘opu, kiolohia, mau‘u pu‘u, puko‘a). | U.S.A. (HI) |
| PT | 1 | R6 | *Yermo xanthocephalus* | Asteraceae | Desert yellowhead | U.S.A. (WY) |
| C | 2 | R1 | *Zanthoxylum oahuense* | Rutaceae | A‘e | U.S.A. (HI) |
| C | ..... | R2 | *Zanthoxylum parvum* | Rutaceae | Shinner’s tickle-tongue | U.S.A. (TX) |
| | | | FERNS AND ALLIES: | | | |
| C | 2 | R1 | *Doryopteris takeuchii* | Pteridaceae | None | U.S.A. (HI) |
| C | 2 | R1 | *Dryopteris tenebrosa* | Dryopteridaceae | None | U.S.A. (HI) |
| C | 2 | R1 | *Microlepia mauiensis* | Dennstaedtiaceae | None | U.S.A. (HI) |
| C | 2 | R1 | *Phlegmariurus stemmermanniae.* | Lycopodiaceae | Wawae‘iole (or Lei lani firmoss). | U.S.A. (HI) |

TABLE 2.—FORMER CANDIDATE AND FORMER PROPOSED ANIMALS AND PLANTS

| Status | | Lead region | Scientific name | Family | Common name | Historic range |
|---|---|---|---|---|---|---|
| Code | Expl. | | | | | |
| | | | MAMMALS: | | | |
| E | L | R1 | *Dipodomys merriami parvus* | Heteromyidae | Kangaroo rat, San Bernardino Merriam’s | U.S.A. (CA) |
| T | L | R6 | *Zapus hudsonius preblei* | Zapodidae | Mouse, Preble’s meadow jumping | U.S.A. (CO, WY) |
| E | L | R4 | *Peromyscus polionotus peninsularis.* | Muridae | Mouse, St. Andrew beach | U.S.A. (FL) |
| E | L | R1 | *Ovis canadensis* | Bovidae | Sheep, bighorn (U.S.A.—CA Peninsular Ranges pop.) | U.S.A. (Western conterminous states), Canada (southwestern), Mexico (northern) |
| E | L | R1 | *Ovis canadensis* | Bovidae | Sheep, bighorn (Sierra Nevada pop.) | U.S.A. (Western conterminous states), Canada (southwestern), Mexico (northern) |
| Rc | A | R4 | *Ursus americanus floridanus* | Ursidae | Bear, Florida black | U.S.A. (AL, FL, GA) |
| | | | REPTILES: | | | |
| Rp | A | R1 | *Anniella pulchra nigra* | Anniellidae | Lizard, black legless | U.S.A. (CA) |
| T | L | R5 | *Clemmys muhlenbergii* | Emydidae | Turtle, bog (=Muhlenberg) (northern pop. excluding GA, NC, SC, TN, VA) | U.S.A. (CT, DE, GA, MA, MD, NC, NJ, NY, PA, SC, TN, VA) |
| T | L | R1 | *Masticophis lateralis euryxanthus.* | Colubridae | Whipsnake (=striped racer), Alameda | U.S.A. (CA) |
| T | L | R3 | *Nerodia sipedon insularum* | Colubridae | Snake, Lake Erie water | U.S.A. (OH), Canada |
| | | | AMPHIBIANS: | | | |
| T | L | R4 | *Ambystoma cingulatum* | Ambystomatidae | Salamander, flatwoods | U.S.A. (AL, FL, GA, SC) |
| Rc | A | R6 | *Rana luteiventris* (formerly incl. in *R. pretiosa*). | Ranidae | Frog, Columbia spotted (formerly spotted)(Wasatch Front pop) | U.S.A. (AK, CA, ID, MT, NV, OR, UT, WA, WY), Canada |
| Rc | A | R6 | *Rana luteiventris* (formerly incl. in *R. pretiosa*). | Ranidae | Frog, Columbia spotted (formerly spotted) (West Desert pop.). | U.S.A. (AK, CA, ID, MT, NV, OR, UT, WA, WY), Canada |
| | | | FISHES: | | | |
| Rp | A | R6 | *Iotichthys phlegethontis* | Cyprinidae | Chub, least | U.S.A. (UT) |

TABLE 2.—FORMER CANDIDATE AND FORMER PROPOSED ANIMALS AND PLANTS—Continued

| Status | | Lead region | Scientific name | Family | Common name | Historic range |
|---|---|---|---|---|---|---|
| Code | Expl. | | | | | |
| T | L | R2 | *Notropis girardi* | Cyprinidae | Shiner, Arkansas River (Arkansas R. Basin pop.) | U.S.A. (AR, KS, NM, OK, TX) |
| E | L | R6 | *Notropis topeka (=tristis)* | Cyprinidae | Shiner, Topeka | U.S.A. (IA, KS, MN, MO, NE, SD) |
| Rc | A | R1 | *Oncorhynchus (=Salmo) mykiss* ssp.. | Salmonidae | Trout, McCloud R. redband | U.S.A. (CA) |
| T | L | R1 | *Pogonichthys macrolepidotus* | Cyprinidae | Splittail, Sacramento | U.S.A. (CA) |
| T | L | R1 | *Salvelinus confluentus* | Salmonidae | Trout, bull (Columbia R. pop.) | U.S.A. (Pacific NW), Canada (NW Territories) |
| T | L | R1 | *Salvelinus confluentus* | Salmonidae | Trout, bull (Klamath R. pop.) | U.S.A. (Pacific NW), Canada (NW Territories) |
| T | L | R1 | *Salvelinus confluentus* | Salmonidae | Trout, bull (Jarbidge R. pop.) | U.S.A. (Pacific NW), Canada (NW Territories) |
| | | | CLAMS: | | | |
| E | L | R4 | *Amblema neislerii* | Unionidae | Three-ridge (mussel), fat | U.S.A. (FL, GA) |
| T | L | R4 | *Elliptoideus sloatianus* | Unionidae | Bankclimber (mussel), purple | U.S.A. (AL, GA, FL) |
| E | L | R4 | *Medionidus penicillatus* | Unionidae | Moccasinshell, Gulf | U.S.A. (AL, FL, GA) |
| E | L | R4 | *Medionidus simpsonianus* | Unionidae | Moccasinshell, Ochlockonee | U.S.A. (FL, GA) |
| E | L | R4 | *Pleurobema pyriforme* | Unionidae | Pigtoe, oval | U.S.A. (AL, FL, GA) |
| E | L | R4 | *Lampsilis subangulata* | Unionidae | Pocketbook, shinyrayed | U.S.A. (AL, FL, GA) |
| T | L | R4 | *Elliptio chipolaensis* | Unionidae | Slabshell, Chipola | U.S.A. (AL, FL) |
| | | | SNAILS: | | | |
| T | L | R4 | *Elimia crenatella* | Pleuroceridae | Elimia (snail), lacy | U.S.A. (AL) |
| E | L | R4 | *Lioplax cyclostomaformis* | Viviparidae | Lioplax (snail), cylindrical | U.S.A. (AL, GA) |
| E | L | R4 | *Lepyrium showalteri* | Hydrobiidae | Pebblesnail, flat | U.S.A. (AL) |
| T | L | R4 | *Leptoxis taeniata* | Pleuroceridae | Rocksnail, painted | U.S.A. (AL) |
| E | L | R4 | *Leptoxis plicata* | Pleuroceridae | Rocksnail, plicate | U.S.A. (AL) |
| T | L | R4 | *Leptoxis ampla* | Pleuroceridae | Rocksnail, round | U.S.A. (AL) |
| Rp | A | R2 | *Sonorella eremita* | Helminthoglyptidae | Talussnail, San Xavier | U.S.A. (AZ) |
| | | | INSECTS:. | | | |
| E | L | R2 | *Heterelmis comalensis* | Elmidae | Beetle, Comal Springs riffle | U.S.A. (TX) |
| E | L | R2 | *Stygoparnus comalensis* | Dryopidae | Beetle, Comal Springs dryopid. | U.S.A. (TX) |
| E | L | R1 | *Speyeria zerene behrensii* | Nymphalidae | Butterfly, Behren's silverspot | U.S.A. (CA) |
| E | L | R1 | *Speyeria callippe callippe* | Nymphalidae | Butterfly, callippe silverspot | U.S.A. (CA) |
| | | | CRUSTACEANS: | | | |
| E | L | R3 | *Gammarus acherondytes* | Gammaridae | Amphipod, Illinois cave | U.S.A. (IL) |
| E | L | R2 | *Stygobromus (=Stygonectes) pecki*. | Crangonyctidae | Amphipod, Peck's cave | U.S.A. (TX) |
| | | | FLOWERING PLANTS: | | | |
| T | L | R1 | *Acanthomintha ilicifolia* | Lamiaceae | San Diego thornmint | U.S.A. (CA), Mexico |
| Rc | A | R2 | *Allium gooddingii* | Liliaceae | Goodding's onion | U.S.A. (AZ, NM) |
| E | L | R1 | *Allium munzii* | Liliaceae | Munz's onion | U.S.A. (CA) |
| Rp | A | R1 | *Allium tuolumnense* | Liliaceae | Rawhide Hill onion | U.S.A. (CA) |
| E | L | R1 | *Alopecurus aequalis* var. *sonomensis*. | Poaceae | Sonoma alopecurus | U.S.A. (CA) |
| Rp | A | R1 | *Arabis johnstonii* | Brassicaceae | Johnston's rock-cress | U.S.A. (CA) |
| Rc | A | R6 | *Arabis pusilla* | Brassicaceae | Small rock-cress | U.S.A. (WY) |
| T | L | R1 | *Arctostaphylos myrtifolia* | Ericaceae | Ione manzanita | U.S.A. (CA) |
| T | L | R1 | *Arctostaphylos pallida* | Ericaceae | Pallid manzanita | U.S.A. (CA) |
| T | L | R1 | *Arenaria ursina* | Caryophyllaceae | Bear Valley sandwort | U.S.A. (CA) |
| E | L | R1 | *Astragalus clarianus* | Fabaceae | Clara Hunt's milk-vetch | U.S.A. (CA) |
| E | L | R1 | *Astragalus jaegerianus* | Fabaceae | Lane Mountain milk-vetch | U.S.A. (CA) |
| E | L | R1 | *Astragalus lentiginosus* var. *coachellae*. | Fabaceae | Coachella Valley milk-vetch | U.S.A. (CA) |
| Rp | A | R1 | *Astragalus lentiginosus* var. *micans*. | Fabaceae | Shining (=shiny) milk-vetch | U.S.A. (CA) |
| T | L | R1 | *Astragalus lentiginosus* var. *piscinensis*. | Fabaceae | Fish Slough milk-vetch | U.S.A. (CA) |
| Rp | A | R1 | *Astragalus lentiginosus* var. *sesquimetralis*. | Fabaceae | Sodaville milk-vetch | U.S.A. (CA, NV) |
| T | L | R1 | *Astragalus magdalenae* var. | Fabaceae *peirsonii* | Peirson's milk-vetch | U.S.A. (CA) |
| Rc | A | R1 | *Astragalus oophorus* var. *clokeyanus*. | Fabaceae | Clokey's egg-vetch | U.S.A. (NV) |
| E | L | R1 | *Astragalus tener* var. *titi* | Fabaceae | Coastal dunes milk-vetch | U.S.A. (CA) |
| E | L | R1 | *Astragalus tricarinatus* | Fabaceae | Triple-ribbed milk-vetch | U.S.A. (CA) |
| E | L | R1 | *Atriplex coronata* var. *notatior* | Chenopodiaceae | San Jacinto Valley crownscale. | U.S.A. (CA) |
| E | L | R1 | *Berberis nevinii* | Berberidaceae | Nevin's barberry | U.S.A. (CA) |
| T | L | R1 | *Brodiaea filifolia* | Liliaceae | Thread-leaved brodiaea | U.S.A. (CA) |

TABLE 2.—FORMER CANDIDATE AND FORMER PROPOSED ANIMALS AND PLANTS—Continued

| Status | | Lead region | Scientific name | Family | Common name | Historic range |
|---|---|---|---|---|---|---|
| Code | Expl. | | | | | |
| T | L | R1 | *Brodiaea pallida* | Liliaceae | Chinese Camp brodiaea | U.S.A. (CA) |
| Rc | A | R1 | *Calochortus umpquaensis* | Liliaceae | Umpqua mariposa lily | U.S.A. (OR) |
| T | L | R1 | *Calyptridium pulchellum* | Portulacaceae | Mariposa pussypaws | U.S.A. (CA) |
| E | L | R1 | *Carex albida* | Cyperaceae | White sedge | U.S.A. (CA) |
| Rp | A | R1 | *Carpenteria californica* | Saxifragaceae | Carpenteria | U.S.A. (CA) |
| T | L | R1 | *Castilleja cinerea* | Scrophulariaceae | Ash-gray Indian paintbrush | U.S.A. (CA) |
| Rc | N | R2 | *Castilleja elongata* | Scrophulariaceae | Tall paintbrush | U.S.A. (TX) |
| E | L | R4 | *Catesbaea melanocarpa* | Rubiaceae | None | U.S.A. (PR, VI), Antigua, Barbuda, Guadalupe |
| T | L | R1 | *Ceanothus ophiochilus* | Rhamnaceae | Vail Lake ceanothus | U.S.A. (CA) |
| Rc | A | R2 | *Cimicifuga arizonica* | Ranunculaceae | Arizona bugbane | U.S.A. (AZ) |
| E | L | R1 | *Cirsium hydrophilum var. hydrophilum.* | Asteraceae | Suisun thistle | U.S.A. (CA) |
| E | L | R1 | *Clarkia imbricata* | Onagraceae | Vine Hill clarkia | U.S.A. (CA) |
| T | L | R1 | *Clarkia springvillensis* | Onagraceae | Springville clarkia | U.S.A. (CA) |
| Rc | N | R2 | *Clematis hirsutissma* var. *arizonica.* | Ranunculaceae | Arizona leatherflower | U.S.A. (AZ) |
| E | 5 | R1 | *Clermontia samuelii* | Campanulaceae | ‘Oha wai | U.S.A. (HI) |
| E | L | R1 | *Cordylanthus mollis* ssp. *mollis.* | Scrophulariaceae | Soft bird’s-beak | U.S.A. (CA) |
| E | 3 | R1 | *Cyanea copelandii* ssp. *haleakalaensis.* | Campanulaceae | Haha | U.S.A. (HI) |
| E | 2 | R1 | *Cyanea glabra* | Campanulaceae | Haha | U.S.A. (HI) |
| E | 3 | R1 | *Cyanea hamatiflora* ssp. *hamatiflora.* | Campanulaceae | Haha | U.S.A. (HI) |
| Rc | A | R2 | *Dalea tentaculoides* | Fabaceae | Gentry’s indigobush | U.S.A. (AZ), Mexico |
| E | 6 | R1 | *Dubautia plantaginea* ssp. *humilis.* | Asteraceae | Na’ena’e | U.S.A. (HI) |
| T | L | R1 | *Dudleya stolonifera* | Crassulaceae | Laguna Beach liveforever | U.S.A. (CA) |
| E | L | R1 | *Eriogonum apricum* (incl. var. *prostratum*). | Polygonaceae | Ione (incl. Irish Hill) buck-wheat. | U.S.A. (CA) |
| Rc | A | R1 | *Eriogonum argophyllum* | Polygonaceae | Sulphur Springs buckwheat | U.S.A. (NV) |
| T | L | R1 | *Eriogonum kennedyi* var. *austromontanum.* | Polygonaceae | Southern mountain wild-buckwheat. | U.S.A. (CA) |
| E | L | R1 | *Fremontodendron mexicanum.* | Sterculiaceae | Mexican flannelbush | U.S.A. (CA), Mexico |
| Rp | A | R1 | *Fritillaria striata* | Liliaceae | Greenhorn adobe-lily | U.S.A. (CA) |
| E | 3 | R1 | *Hedyotis schlechtendahliana* var. *remyi.* | Rubiaceae | None | U.S.A. (HI) |
| T | L | R5 | *Helenium virginicum* | Asteraceae | Virginia sneezeweed | U.S.A. (VA) |
| T | L | R1 | *Hemizonia conjugens* | Asteraceae | Otay tarplant | U.S.A. (CA) |
| E | 1 | R1 | *Kanaloa kahoolawensis* | Fabaceae | Kohe malama malama o kanaloa. | U.S.A. (HI) |
| E | 6 | R1 | *Labordia tinifolia* var. *lanaiensis.* | Loganiaceae | Kamakahala | U.S.A. (HI) |
| E | 2 | R1 | *Labordia triflora* | Loganiaceae | Kamakahala | U.S.A. (HI) |
| Rc | A | R1 | *Lathyrus biflorus* | Fabaceae | Two-flowered lathyrus | U.S.A. (CA) |
| Rc | A | R4 | *Lesquerella stonensis* | Brassicaceae | Stones River bladderpod | U.S.A. (TN) |
| E | L | R1 | *Lilium pardalinum* ssp. *pitkinense.* | Liliaceae | Pitkin Marsh lily | U.S.A. (CA) |
| Rp | A | R1 | *Lupinus citrinus* var. *deflexus* | Fabaceae | Mariposa lupine | U.S.A. (CA) |
| E | 2 | R1 | *Melicope munroi* | Rutaceae | Alani | U.S.A. (HI) |
| Rp | A | R1 | *Mimulus shevockii* | Scrophulariaceae | Kelso Creek monkey-flower | U.S.A. (CA) |
| E | L | R1 | *Monardella linoides* ssp. *viminea.* | Lamiaceae | Willowy monardella | U.S.A. (CA) |
| T | L | R1 | *Navarretia fossalis* | Polemoniaceae | Spreading navarretia | U.S.A. (CA), Mexico (Baja California) |
| Rp | A | R1 | *Navarretia setiloba* | Polemoniaceae | Piute Mountains navarretia | U.S.A. (CA) |
| Rp | A | R1 | *Nolina interrata* | Liliaceae | Bear-grass, dehesa | U.S.A. (CA), Mexico |
| Rc | A | R2 | *Pediocactus paradinei* | Cactaceae | Kaibab plains cactus | U.S.A. (AZ) |
| T | L | R6 | *Pediocactus winkleri* | Cactaceae | Winkler cactus | U.S.A. (UT) |
| E | L | R1 | *Piperia yadonii* | Orchidaceae | Yadon’s piperia | U.S.A. (CA) |
| E | L | R1 | *Plagiobothrys strictus* | Boraginaceae | Calistoga allocarya | U.S.A. (CA) |
| E | L | R1 | *Poa atropurpurea* | Poaceae | San Bernardino bluegrass | U.S.A. (CA) |
| E | L | R1 | *Poa napensis* | Poaceae | Napa bluegrass | U.S.A. (CA) |
| E | L | R1 | *Potentilla hickmanii* | Rosaceae | Hickman’s potentilla | U.S.A. (CA) |
| Rp | A | R2 | *Puccinellia parishii* | Poaceae | Parish’s alkali grass | U.S.A. (AZ, CA, CO, NM) |
| Rp | A | R2 | *Rumex orthoneurus* | Polygonaceae | Chiricahua (=Blumer’s) dock | U.S.A. (AZ, NM) |
| E | L | R1 | *Sidalcea oregana* ssp. *valida* | Malvaceae | Kenwood Marsh checker-mallow. | U.S.A. (CA) |

TABLE 2.—FORMER CANDIDATE AND FORMER PROPOSED ANIMALS AND PLANTS—Continued

| Status | | Lead region | Scientific name | Family | Common name | Historic range |
|---|---|---|---|---|---|---|
| Code | Expl. | | | | | |
| Rc ..... | A | R1 | *Silene campanulata* ssp. *campanulata*. | Caryophyllaceae ..... | Red Mountain catchfly (=campion). | U.S.A. (CA) |
| E ..... | L | R1 | *Taraxacum californicum* ..... | Asteraceae ..... | California taraxacum ..... | U.S.A. (CA) |
| T ..... | L | R1 | *Thelypodium howellii* ssp. *spectabilis*. | Brassicaceae ..... | Howell's spectacular thelypody. | U.S.A. (OR) |
| T ..... | L | R1 | *Trichostema austromontanum* ssp. *compactum*. | Lamiaceae ..... | Hidden Lake bluecurls ..... | U.S.A. (CA) |
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| 50–299 | (869–038–00092–0) | 21.00 | Apr. 1, 1999 |
| 300–499 | (869–038–00093–8) | 37.00 | Apr. 1, 1999 |
| 500–599 | (869–038–00094–6) | 11.00 | Apr. 1, 1999 |
| 600–End | (869–038–00095–4) | 11.00 | Apr. 1, 1999 |
| **27 Parts:** | | | |
| 1–199 | (869–038–00096–2) | 53.00 | Apr. 1, 1999 |

| Title | Stock Number | Price | Revision Date |
|---|---|---|---|
| 200–End | (869–038–00097–1) | 17.00 | Apr. 1, 1999 |
| **28 Parts:** | | | |
| 0-42 | (869–034–00098–9) | 39.00 | July 1, 1999 |
| 43-end | (869-034-00099-7) | 32.00 | July 1, 1999 |
| **29 Parts:** | | | |
| 0–99 | (869–034–00100–4) | 28.00 | July 1, 1999 |
| 100–499 | (869–038–00101–2) | 13.00 | July 1, 1999 |
| 500–899 | (869–034–00102–1) | 40.00 | [8] July 1, 1999 |
| *900–1899 | (869–034–00103–9) | 21.00 | July 1, 1999 |
| 1900–1910 (§§ 1900 to 1910.999) | (869–034–00104–7) | 46.00 | July 1, 1999 |
| 1910 (§§ 1910.1000 to end) | (869–034–00105–5) | 28.00 | July 1, 1999 |
| 1911–1925 | (869–034–00106–3) | 18.00 | July 1, 1999 |
| 1926 | (869–034–00107–1) | 30.00 | July 1, 1999 |
| 1927–End | (869–034–00108–0) | 43.00 | July 1, 1999 |
| **30 Parts:** | | | |
| 1–199 | (869–034–00109–8) | 35.00 | July 1, 1999 |
| 200–699 | (869–038–00110–1) | 30.00 | July 1, 1999 |
| 700–End | (869–034–00111–0) | 35.00 | July 1, 1999 |
| **31 Parts:** | | | |
| 0–199 | (869–038–00112–8) | 21.00 | July 1, 1999 |
| *200–End | (869–034–00113–6) | 48.00 | July 1, 1999 |
| **32 Parts:** | | | |
| 1–39, Vol. I | | 15.00 | [2] July 1, 1984 |
| 1–39, Vol. II | | 19.00 | [2] July 1, 1984 |
| 1–39, Vol. III | | 18.00 | [2] July 1, 1984 |
| 1–190 | (869–034–00114–4) | 46.00 | July 1, 1999 |
| 191–399 | (869–034–00115–7) | 51.00 | July 1, 1998 |
| 400–629 | (869–034–00116–1) | 32.00 | July 1, 1999 |
| 630–699 | (869–034–00117–9) | 23.00 | July 1, 1999 |
| 700–799 | (869–034–00118–7) | 27.00 | July 1, 1999 |
| 800–End | (869–034–00119–5) | 27.00 | July 1, 1999 |
| **33 Parts:** | | | |
| 1–124 | (869–034–00120–3) | 29.00 | July 1, 1998 |
| 125–199 | (869–034–00121–7) | 41.00 | July 1, 1999 |
| 200–End | (869–034–00122–5) | 33.00 | July 1, 1999 |
| **34 Parts:** | | | |
| *1–299 | (869–034–00123–3) | 28.00 | July 1, 1999 |
| 300–399 | (869–034–00124–1) | 25.00 | July 1, 1999 |
| 400–End | (869–034–00125–4) | 44.00 | July 1, 1998 |
| **35** | (869–034–00126–2) | 14.00 | July 1, 1998 |
| **36 Parts** | | | |
| 1–199 | (869–034–00127–6) | 21.00 | July 1, 1999 |
| *200–299 | (869–034–00128–4) | 23.00 | July 1, 1999 |
| 300–End | (869–034–00129–2) | 38.00 | July 1, 1999 |
| ***37** | (869–034–00130–6) | 29.00 | July 1, 1999 |
| **38 Parts:** | | | |
| *0–17 | (869–034–00131–4) | 37.00 | July 1, 1999 |
| 18–End | (869–034–00132–2) | 41.00 | July 1, 1999 |
| **39** | (869–034–00133–1) | 24.00 | July 1, 1999 |
| **40 Parts:** | | | |
| 1–49 | (869–034–00134–9) | 33.00 | July 1, 1999 |
| 50–51 | (869–034–00135–7) | 25.00 | July 1, 1999 |
| 52 (52.01–52.1018) | (869–034–00136–0) | 28.00 | July 1, 1998 |
| *52 (52.1019–End) | (869–034–00137–3) | 37.00 | July 1, 1999 |
| *53–59 | (869–034–00138–1) | 19.00 | July 1, 1999 |
| 60 | (869–034–00139–4) | 53.00 | July 1, 1998 |
| 61–62 | (869–034–00140–3) | 19.00 | July 1, 1999 |
| 63 | (869–034–00141–6) | 57.00 | July 1, 1998 |
| 64–71 | (869–034–00143–8) | 11.00 | July 1, 1999 |
| 72–80 | (869–034–00143–2) | 36.00 | July 1, 1998 |
| 81–85 | (869–034–00144–1) | 31.00 | July 1, 1998 |
| 86 | (869–034–00144–9) | 53.00 | July 1, 1998 |
| 87-135 | (869–034–00146–7) | 47.00 | July 1, 1998 |
| 136–149 | (869–034–00147–5) | 37.00 | July 1, 1998 |
| 150–189 | (869–034–00148–3) | 34.00 | July 1, 1998 |
| 190–259 | (869–034–00150–1) | 23.00 | July 1, 1999 |
| *260–265 | (869–034–00151–9) | 32.00 | July 1, 1999 |
| *266–299 | (869–034–00152–7) | 33.00 | July 1, 1999 |
| 300–399 | (869–034–00152–1) | 26.00 | July 1, 1998 |
| 400–424 | (869–034–00153–0) | 33.00 | July 1, 1998 |
| 425–699 | (869–034–00154–8) | 42.00 | July 1, 1998 |
| 700–789 | (869–034–00155–6) | 41.00 | July 1, 1998 |
| *790–End | (869–034–00157–8) | 23.00 | July 1, 1999 |
| **41 Chapters:** | | | |
| 1, 1–1 to 1–10 | | 13.00 | [3] July 1, 1984 |
| 1, 1–11 to Appendix, 2 (2 Reserved) | | 13.00 | [3] July 1, 1984 |
| 3–6 | | 14.00 | [3] July 1, 1984 |
| 7 | | 6.00 | [3] July 1, 1984 |
| 8 | | 4.50 | [3] July 1, 1984 |
| 9 | | 13.00 | [3] July 1, 1984 |
| 10–17 | | 9.50 | [3] July 1, 1984 |
| 18, Vol. I, Parts 1–5 | | 13.00 | [3] July 1, 1984 |
| 18, Vol. II, Parts 6–19 | | 13.00 | [3] July 1, 1984 |
| 18, Vol. III, Parts 20–52 | | 13.00 | [3] July 1, 1984 |
| 19–100 | | 13.00 | [3] July 1, 1984 |
| 1–100 | (869–034–00157–2) | 13.00 | July 1, 1998 |
| 101 | (869–034–00159–4) | 39.00 | July 1, 1999 |
| 102–200 | (869–034–00160–8) | 16.00 | July 1, 1999 |
| 201–End | (869–034–00161–6) | 15.00 | July 1, 1999 |
| **42 Parts:** | | | |
| 1–399 | (869–034–00161–1) | 34.00 | Oct. 1, 1998 |
| 400–429 | (869–034–00162–9) | 41.00 | Oct. 1, 1998 |
| 430–End | (869–034–00163–7) | 51.00 | Oct. 1, 1998 |
| **43 Parts:** | | | |
| 1–999 | (869–034–00164–5) | 30.00 | Oct. 1, 1998 |
| 1000–end | (869–034–00165–3) | 48.00 | Oct. 1, 1998 |
| **44** | (869–034–00166–1) | 48.00 | Oct. 1, 1998 |
| **45 Parts:** | | | |
| 1–199 | (869–034–00167–0) | 30.00 | Oct. 1, 1998 |
| 200–499 | (869–034–00168–8) | 14.00 | Oct. 1, 1998 |
| 500–1199 | (869–034–00169–6) | 30.00 | Oct. 1, 1998 |
| 1200–End | (869–034–00170–0) | 39.00 | Oct. 1, 1998 |
| **46 Parts:** | | | |
| 1–40 | (869–034–00171–8) | 26.00 | Oct. 1, 1998 |
| 41–69 | (869–034–00172–6) | 21.00 | Oct. 1, 1998 |
| 70–89 | (869–034–00173–4) | 8.00 | Oct. 1, 1998 |
| 90–139 | (869–034–00174–2) | 26.00 | Oct. 1, 1998 |
| 140–155 | (869–034–00175–1) | 14.00 | Oct. 1, 1998 |
| 156–165 | (869–034–00176–9) | 19.00 | Oct. 1, 1998 |
| 166–199 | (869–034–00177–7) | 25.00 | Oct. 1, 1998 |
| 200–499 | (869–034–00178–5) | 22.00 | Oct. 1, 1998 |
| 500–End | (869–034–00179–3) | 16.00 | Oct. 1, 1998 |
| **47 Parts:** | | | |
| 0–19 | (869–034–00180–7) | 36.00 | Oct. 1, 1998 |
| 20–39 | (869–034–00181–5) | 27.00 | Oct. 1, 1998 |
| 40–69 | (869–034–00182–3) | 24.00 | Oct. 1, 1998 |
| 70–79 | (869–034–00183–1) | 37.00 | Oct. 1, 1998 |
| 80–End | (869–034–00184–0) | 40.00 | Oct. 1, 1998 |
| **48 Chapters:** | | | |
| 1 (Parts 1–51) | (869–034–00185–8) | 51.00 | Oct. 1, 1998 |
| 1 (Parts 52–99) | (869–034–00186–6) | 29.00 | Oct. 1, 1998 |
| 2 (Parts 201–299) | (869–034–00187–4) | 34.00 | Oct. 1, 1998 |
| 3–6 | (869–034–00188–2) | 29.00 | Oct. 1, 1998 |
| 7–14 | (869–034–00189–1) | 32.00 | Oct. 1, 1998 |
| 15–28 | (869–034–00190–4) | 33.00 | Oct. 1, 1998 |
| 29–End | (869–034–00191–2) | 24.00 | Oct. 1, 1998 |
| **49 Parts:** | | | |
| 1–99 | (869–034–00192–1) | 31.00 | Oct. 1, 1998 |
| 100–185 | (869–034–00193–9) | 50.00 | Oct. 1, 1998 |
| 186–199 | (869–034–00194–7) | 11.00 | Oct. 1, 1998 |
| 200–399 | (869–034–00195–5) | 46.00 | Oct. 1, 1998 |
| 400–999 | (869–034–00196–3) | 54.00 | Oct. 1, 1998 |
| 1000–1199 | (869–034–00197–1) | 17.00 | Oct. 1, 1998 |
| 1200–End | (869–034–00198–0) | 13.00 | Oct. 1, 1998 |
| **50 Parts:** | | | |
| 1–199 | (869–034–00199–8) | 42.00 | Oct. 1, 1998 |
| 200–599 | (869–034–00200–5) | 22.00 | Oct. 1, 1998 |
| 600–End | (869–034–00201–3) | 33.00 | Oct. 1, 1998 |

| Title | Stock Number | Price | Revision Date |
|---|---|---|---|
| CFR Index and Findings Aids | (869–038–00047–4) | 48.00 | Jan. 1, 1999 |
| Complete 1998 CFR set | | 951.00 | 1998 |
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| Complete set (one-time mailing) | | 247.00 | 1997 |
| Complete set (one-time mailing) | | 264.00 | 1996 |

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[5] No amendments to this volume were promulgated during the period January 1, 1998 through December 31, 1998. The CFR volume issued as of January 1, 1997 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 1998, through April 1, 1999. The CFR volume issued as of April 1, 1998, should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 1998, through July 1, 1999. The CFR volume issued as of July 1, 1998, should be retained.