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# Rules and Regulations

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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

### Cooperative State Research, Education, and Extension Service

### 7 CFR Part 3418

**RIN 0524–AA23**

## Stakeholder Input Requirements for Recipients of Agricultural Research, Education, and Extension Formula Funds

**AGENCY:** Cooperative State Research, Education, and Extension Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Cooperative State Research, Education, and Extension Service (CSREES) adds new regulations for the purpose of implementing section 102(c) of the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA) (7 U.S.C. 7612(c)) which requires 1862 land-grant institutions, 1890 land-grant institutions, and 1994 land-grant institutions that receive agricultural research, extension, or education formula funds to establish a process for stakeholder input on the uses of such funds. Failure to comply with these stakeholder input requirements may result in the withholding of a recipient institution's formula funds and redistribution of its share of formula funds to other eligible institutions.

**EFFECTIVE DATE:** February 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Dr. Sally Rockey; Deputy Administrator, Competitive Research Grants and Awards Management; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Mail Stop 2240; 1400 Independence Avenue, SW; Washington, DC 20250–2240; at 202–401–1761, or via electronic mail at srockey@reeusda.gov.

**SUPPLEMENTARY INFORMATION:**

### Background and Purpose

The Cooperative State Research, Education, and Extension Service (CSREES) adds this rule to implement section 102(c) of the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA) (7 U.S.C. 7612(c)) which requires 1862, 1890, and 1994 institutions (specific land-grant colleges and universities as defined by section 2 of AREERA (7 U.S.C. 7601)) receiving agricultural research, extension, or education formula funds from CSREES to establish a process for receiving input from persons who conduct or use agricultural research, extension, or education on the uses of such funds. For purposes of this rule, these persons are referred to as stakeholders. Section 102(c)(2) of AREERA required the Secretary of Agriculture to promulgate regulations specifying what those land-grant institutions had to do to meet this stakeholder input requirement, and what consequences would befall any institution that did not meet such a requirement.

Section 102(c) on its face only applies to land-grant colleges and universities established pursuant to the First Morrill Act, as amended (7 U.S.C. 301, *et seq.*) (1862 institutions), the Second Morrill Act, as amended (7 U.S.C. 321, *et seq.*) (1890 institutions), and the Equity in Educational Land-Grant Status Act of 1994, as amended (7 U.S.C. 301 note) (1994 institutions). CSREES has determined that the formula funds specified in section 102(c) are: Agricultural research funds provided to the 1862 institutions and agricultural experiment stations under the Hatch Act of 1887, as amended (7 U.S.C. 361a, *et seq.*); extension funds provided to 1862 institutions under sections 3(b) and 3(c) of the Smith-Lever Act, as amended (7 U.S.C. 343(b) and (c)), and section 208(c) of the District of Columbia Public Postsecondary Education Reorganization Act, Pub. L. 93–471, as amended; agricultural research and extension funds provided to 1890 institutions under sections 1444 and 1445, respectively, of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA), as amended (7 U.S.C. 3221 and 3222); education formula funds provided to 1994 institutions under section 534(a) of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note); research funds provided for forestry schools under the McIntire-Stennis Act of 1962, as amended (16 U.S.C. 582a, *et seq.*); and animal health and disease research funds provided to veterinary schools and agricultural experiment stations under section 1433 of NARETPA, as amended (7 U.S.C. 3195).

The 1862, 1890, and 1994 institutions are not the sole institutions eligible to receive formula funds under all of these Acts. There is one agricultural experiment station that is not a college or university, and twelve forestry or veterinary schools that are not land-grant institutions. However, given that the number of such institutions is de minimus, and the impracticality of trying to segregate stakeholder comments with respect to these few institutions, CSREES has determined to apply this rule to any recipient of the aforementioned formula funds.

The rule does not require recipient institutions to adopt any particular format for soliciting stakeholder input. It only requires that recipient institutions report annually to CSREES (1) the actions taken to encourage stakeholder input; (2) a brief statement of the process used by a recipient institution to identify individuals or groups as stakeholders and to collect input from them; and (3) a statement of how collected input was considered.

Failure to comply with the requirements of this rule may result in the withholding of a recipient institution's formula funds and redistribution of its share of formula funds to other eligible institutions, as authorized by law.

### Public Comments and Changes to the Final Rule

*Summary of Statutory Changes*

CSREES has added the definition of *seek stakeholder input* to the Final Rule. This definition has already been included in the Final Guidelines for State Plans of Work for the Agricultural Research and Extension Formula Funds that was published in the **Federal Register** on July 1, 1999, 62 FR 35910–35919.

CSREES revised § 3418.4, Reporting Requirement, by adding a third reporting requirement as follows: ''(3) a statement of how collected input was considered.'' The third and final revision was to change the title of

§ 3418.5, from ''Failure to Report'' to ''Failure to Comply and Report.''

CSREES also will be conducting an evaluation of how the stakeholder input requirements in section 102(c) of AREERA are being implemented by both CSREES and the affected colleges and universities after a 2-year implementation period. Part of this evaluation will be to determine whether this Final Rule will need to be revised.

*Background*

CSREES developed the proposed rule for stakeholder input requirements in consultation with the State partners at the 1862 and 1890 land-grant institutions. Since the enactment of AREERA on June 23, 1998, CSREES has engaged in these consultations under an exemption to the Federal Advisory Committee Act (7 U.S.C. 3124a(e)), with members of the Federal and State partnership, not only on this rule, but on other aspects of implementation of AREERA requirements including the Guidelines for State Plans of Work for Agricultural Research and Extension Formula Funds. This consultation process was consistent with the consultation process required by Executive Order 13132, Federalism, issued by the President on August 4, 1999 (64 FR 43255).

The proposed rule for stakeholder input requirements was published in the **Federal Register** on April 14, 1999, 64 FR 18534–18536, with a 30-day comment period. The proposed rule did not require recipient institutions to adopt any particular format for soliciting stakeholder input. It only required that recipient institutions report annually to CSREES (1) the actions taken to encourage stakeholder input; and (2) a brief statement of the process used by the recipient institution to identify individuals or groups as stakeholders and to collect input from them.

In the preamble to the proposed rule, CSREES encouraged interested parties to review the Proposed Guidelines for State Plans of Work which were published in the **Federal Register** for a 30-day comment period on April 19, 1999, 64 FR 19242–19248. The Proposed Guidelines for State Plans of Work explained in greater detail the stakeholder input requirements, especially how they relate to the development of the 5-Year Plans of Work. These 5-Year Plans of Work include the reporting requirement on the stakeholder input process for the 1862 and 1890 land-grant institutions and these plans apply to the agricultural research and extension formula funds received under the Hatch Act of 1887, sections 3(b) and 3(c) of the Smith-Lever Act, and under sections 1444 and 1445 of NARETPA. These Proposed Guidelines for State Plans of Work did not apply to the agricultural education formula funds received by the 1994 land-grant institutions or to the research or extension formula funds received by colleges and universities under section 3(d) of the Smith-Lever Act, the McIntire-Stennis Act of 1962 for cooperative forestry research, and section 1433 of NARETPA for animal health and disease research.

The 1862 and 1890 land-grant institutions will fulfill their annual reporting requirement on the stakeholder input process via the Annual Report of Accomplishments and Results as outlined in the Final Guidelines for State Plans of Work. The reports on the stakeholder input process for the 1994 land-grant institutions will be required as part of their Tribal College Education Equity Grant proposals and their stakeholder input processes will be reviewed at the time these grant proposals are evaluated. The recipients of the Smith-Lever Act (section 3(d)) formula funds, McIntire-Stennis Cooperative Forestry Research funds, and the Animal Health and Disease Research funds will be required to submit an annual report on their stakeholder input processes prior to the distribution of formula funds each fiscal year. This report will be reviewed by the appropriate program official to determine whether the stakeholder input requirements have been met.

*Impact of Comments on the Related Final Guidelines for State Plans of Work on This Rule*

Two comments were received on the Proposed Guidelines for State Plans of Work published in the **Federal Register** on April 19, 1999, 64 FR 19242–19248, regarding the stakeholder input process. One of the commenters supported the decision of CSREES to provide the maximum flexibility to institutions in the way they report their stakeholder input in their plans of work. The other commenter focused on the definition of *seek stakeholder input*. The notice of the Proposed Guidelines defined *seek stakeholder input* as ''means an open and fair process which allows opportunities for individuals, groups, and organizations a voice in a process that treats all with dignity and respect.'' This commenter urged CSREES to adopt a new definition, building upon the concepts of ''open and fair,'' ''equality of service,'' and ''ease of access'' in the Final Guidelines, as follows: ''*Seek stakeholder input* means an open, fair, transparent, accessible, inclusive, accountable, and comprehensive process which provides opportunities for diverse individuals, groups, and organizations, especially the traditionally under-served and under-represented, to have a voice in a process that treats all with dignity and respect.''

CSREES modified the definition of *seek stakeholder input* to ''*Seek stakeholder input* means an open, fair, and accessible process by which individuals, groups, and organizations may have a voice and one that treats all with dignity and respect.'' However, although CSREES did encourage States to implement a stakeholder input process satisfying the above definition posed by the commenter, CSREES recognized in consultation with the State partners that each State or Tribe has unique characteristics and should implement a stakeholder input process that best suits the needs of their State or Tribe. CSREES had determined to use this modified definition of *seek stakeholder input* as the lowest acceptable threshold of stakeholder input process because CSREES wants to maintain an environment in which land-grant institutions may quickly modify their stakeholder input processes to respond effectively to existing and emerging critical agricultural issues. Also, CSREES did not want to place undue administrative burdens upon the land-grant institutions in meeting the stakeholder input requirements that potentially may interfere with the conduct and delivery of research and extension programs. This determination by CSREES is consistent with the policies set forth in Executive Order 13132, Federalism.

The above commenter made three additional comments. First, the commenter noted that while the definition for *under-served* is referenced once in the review criteria, the definition of *under-represented* did not appear in the Proposed Guidelines. As the commenter had thought, this was an oversight and had been included in the review criteria. Second, this commenter thought CSREES should address *under-served* and *under-represented* in the target audiences section under ''Program Descriptions.'' Third, the commenter urged CSREES to broaden the definition of *under-represented* to specifically include ''small farm owners and operators.'' CSREES revised the Guidelines to incorporate these last two suggestions.

The Final Guidelines for State Plans of Work were published prior to this Final Rule on stakeholder input requirements due to the urgency of the plans of work being received, reviewed, and approved prior to October 1, 1999,

to prevent any disruption in the delivery of research and extension programs. However, 1862 and 1890 land-grant institutions are required to comply with any additional requirements as set forth in this Final Rule.

*Comments on the Proposed Stakeholder Input Requirements Rule*

Eighty-nine comments were received. Eighty-four were received from individuals and stakeholder groups; four from deans or directors at the 1862 land-grant institutions; and one from the USDA Office of Inspector General (OIG).

A. Individuals and Stakeholder Groups

Sixty of the 84 comments received from individuals and stakeholder groups wrote that the proposed rule in the April 14, 1999, **Federal Register** did not provide adequate guidance as to what constitutes a reasonable and adequate stakeholder input process. These commenters felt that by not establishing minimal criteria for a satisfactory and adequate stakeholder input process, the proposed rule did not address the Congressional concern for increased accountability within the land-grant system. CSREES has included in this Final Rule the definition of *seek stakeholder input* which requires that a stakeholder input process be fair, open, and accessible. This definition was originally included in the Proposed Guidelines for State Plans of Work and had been developed in consultation with the 1862 and 1890 land-grant community. Failure to include the definition in the Proposed Rule for stakeholder input requirements was an oversight on the part of CSREES.

Sixty-two commenters felt that while it is not USDA's role to dictate the particular style or format for stakeholder input process, it is vitally important for USDA to ensure that every stakeholder process meet certain minimal public accountability standards. Generally, all of these commenters felt that these public accountability standards should include:

*Fairness:* Basic fairness requires equal access to the process by all citizens and taxpayers.

*Transparency:* All aspects of the stakeholder process should be in the open and on public record.

*Accountability:* Those who take the time and effort to provide input and recommendations should be given the courtesy of reviewing the written record of any meeting they participated in for accuracy as well as some type of timely reporting as to how the stakeholder input was utilized, and if specific recommendations were rejected, the reasons why.

*Balanced Representation:* Each institution should be required to demonstrate a good faith effort to solicit input from, and active engagement with, traditionally under-served and under-represented constituencies (e.g., the full range of farmers and ranchers).

*Comprehensive and Meaningful Role:* Stakeholder input should be sought on a variety of different levels, including but not limited to:

- Advice on priority setting and program development;
- Input on both immediate needs and long-term goals;
- Participation in relevancy and portfolio reviews;
- Guidance on monitoring, evaluation, and oversight systems employed to track performance and results; and
- Counsel on emerging technologies and recommendations for public education and discussion about the mission and directions of the institution.

The Rule applies not only to the 1862 land-grant institutions, but to the 1890 and 1994 land-grant institutions as well as to colleges and universities that are not land-grant institutions, but receive agricultural research, education, and extension formula funds. The 1994 land-grant institutions just started to receive formula funds from CSREES in fiscal year 1996, and the amount of funding per institution is very limited. For the non-land-grant institutions, funding is for a very specific purpose. In addition, there are other new AREERA requirements for the land-grant institutions in addition to section 102(c), such as the submission and approval of plans of work prior to the distribution of formula funds on October 1, 1999, and the establishment of either a merit review process or a scientific peer review process prior to October 1, 1999. Therefore, CSREES has determined at this time to require at the minimum a stakeholder input process that is fair, open, and accessible.

Representation was a particular concern to 34 commenters as summarized by one of the commenters: ''I believe that the original intent of Congress when this Act was passed was to ensure that land-grant institutions are acknowledging their accountability to a larger public and simply not to the traditional land-grant stakeholders. * * * Rather than giving up on stakeholder processes, I believe the land-grants must be encouraged to embrace multiple approaches and to specifically seek out the views of those who are seldom heard in the land-grants such as the full range of farmers and ranchers.* * *''

As mentioned previously, minimal public accountability standards now include a fair, open, and accessible process. Although this Final Rule may not impose all of the public accountability standards desired by the commenters, this will be a new major requirement for many institutions; and it is anticipated that to meet this requirement, institutions will provide more opportunities for stakeholder input. As evident through some of the 5-year Plans of Work received, institutions are establishing processes that are more inclusive, more accessible, and reach beyond their traditional audiences. The concept of balanced representation also is incorporated in the Final Guidelines for State Plans of Work for the 1862 and 1890 land-grant institutions through plan of work reporting requirements and evaluation criteria that address giving attention to under-served and under-represented audiences.

Nine commenters felt that the land-grant institutions tended to serve the needs of agribusiness over the needs of the public good, and seven commenters criticized USDA for only requiring an annual report from the land-grant institutions. Eighteen commenters charged CSREES, by publishing the proposed rule, with ''business as usual'' at the land-grant institutions or supporting the ''status quo,'' and thought that very little would change at the land-grant institutions. Two commenters felt that USDA was being pressured by the land-grant institutions to adopt the proposed rule.

CSREES does not agree that the land-grant institutions tend to serve the needs of agribusiness over the needs of the public but rather focus on meeting the needs of the public at large through the delivery of a wide range of agricultural research, education, and extension programs. In addition, many of the land-grant institutions have modified their stakeholder input processes to extend beyond the traditional advisory groups. Although it may appear that CSREES is only requiring an annual report on the stakeholder input process, CSREES has evaluated the 5-Year Plans of Work (FY 2000–FY 2004) and will continue to evaluate plans of work by reviewing the stakeholder input process and determining whether the input gathered during the process has been considered in developing the plan of work. By reviewing the plans of work in this context, CSREES is not conducting ''business as usual'' with the land-grant institutions.

Four comments were received that suggested this was an opportunity for USDA ''to submit a new proposed rule for comment which will offer substantive, 'broad parameters and guidelines' for stakeholder input as called for by the legislative language and history * * *. The 'broad parameters and guidelines' which CSREES is required to propose should take the form of general performance goal-statements for land-grant institutions' stakeholder input processes. Institutions, in turn, must be required to report their methods, plans and progress in meeting these performance goals.''

By including the minimal standards of fairness, openness, and accessibility for stakeholder input processes, CSREES is establishing broad criteria to which performance goals can be established and outcomes and impacts measured. By requiring institutions to report on how the stakeholder input was considered, CSREES is ensuring that agricultural research and extension programs conducted are indeed a priority and are relevant to the critical agricultural issues in the States.

Seven commenters viewed the implementation of the stakeholder input requirement as an opportunity for the land-grant system to reinvigorate itself and to improve citizen estimation of them. One commenter stated: ''A stakeholder input process that is inclusive, fair, comprehensive, and open should be viewed as an opportunity for the land-grant institution to demonstrate its relevance to the people of the State who support it * * *.''

CSREES does see the implementation of section 102(c) of AREERA for stakeholder input requirements as an opportunity for the land-grant system to make the public more aware of the existence and availability of agricultural research, education, and extension programs; reach new audiences; and deliver agricultural research, education, and extension programs more efficiently and effectively through multistate, multidisciplinary, and multi-institutional activities as well as integrated research and extension activities.

Ten commenters noted the range of stakeholder input processes in the States. They cited examples of processes that were successful as well as those they thought required improvement. Since CSREES is aware of the wide range of stakeholder input processes at the affected institutions, CSREES thought it prudent to establish minimal standards through the definition of *seek stakeholder input* for all affected institutions, including the 1994 land-grant institutions and colleges and universities that are not land-grant institutions. And since the State Plans of Work for the 1862 and 1890 land-grant institutions encompass a significant portion of the Federal formula funds dedicated to agricultural research and extension (approximately $500 million) and support a broad range of agricultural research, education, and extension programs, the Final Guidelines for State Plans of Work require that efforts be made to address traditionally under-served and under-represented audiences.

Three commenters suggested that there be a full array of methods to solicit stakeholder input including small groups, large groups with formal testimony, conventional and electronic contacts, posters at public institutions, and public service announcements on radio and television. CSREES expects that a broad range of methods will be used to solicit input from stakeholders as the definition of seek stakeholder input includes ''accessible,'' but does not feel it is necessary to dictate any specific method to be used.

Two commenters referred to earlier drafts of the proposed rule as follows: ''Earlier draft versions of the proposed rule, while far from adequate, at least made reference to the necessity of an open and fair process, encouraging participation of diverse individuals and groups, and demonstrating that stakeholder input was actually considered * * *.'' CSREES assumes that these commenters were referring to the references in the Proposed Guidelines for State Plans of Work which included the definitions of *seek stakeholder input, under-represented,* and *under-served* as well as the evaluation criteria addressing the involvement of stakeholders in the planning process and the attention given to under-served and under-represented populations. Hence, CSREES has added the definition of *seek stakeholder input* to the Final Rule.

Four comments were received suggesting that the annual reporting requirement be changed to reporting on the actions taken and plans to meet the five public accountability standards identified above by sixty-two commenters as well as an assessment of the progress made towards fulfilling each of these public accountability standards. Two of the commenters suggested that the existing language in § 3418.4 be amended to refer not only to processes to ''collect'' input but also to utilize it, or in the words of the statute ''solicit and consider input and recommendations.'' CSREES has adopted the commenter's suggestion by adding the third reporting requirement under § 3418.4, Reporting Requirement, as follows: ''(3) a statement of how collected input was considered.''

Two comments were received that suggested that the title of § 3418.5, Failure to Report, be revised to include language about failure to comply. CSREES has revised the title of the section as suggested by the commenter to ''Failure to Comply and Report.''

Forty-four commenters felt that CSREES needed to either amend the proposed rule or rewrite the rule and hold another public comment period based on the above comments. CSREES has made three revisions to the Proposed Rule based on the comments received. Based on both the content and the number of comments received, CSREES will be conducting an evaluation of implementation of section 102(c) of AREERA by CSREES and the affected institutions after a 2-year implementation period. This should provide sufficient time for the affected institutions to implement a stakeholder input process based on the Final Rule.

B. Land-Grant Institutions

As mentioned previously, four comments were received from deans or directors at the 1862 land-grant institutions. Two of these commenters felt that the proposed rule as published in the **Federal Register** was adequate. However, one of these commenters thought that meeting the public accountability standards should be strongly encouraged rather than specifically spelled out in the rules. The other commenter was pleased that the proposed rule provided flexibility and noted: ''States are unique in the organizations, structures and processes available in their area. Given the diversity among States it is important to provide flexibility so that each State can optimize stakeholder input in their State.'' As stated previously, CSREES agrees that all stakeholder input processes should be fair, open, and accessible.

One of the commenters stated that there should be maximum transparency and accountability while keeping the administrative costs to a minimum. The commenter continued by stating that AREERA reporting requirements diverted significant resources from the delivery of programs to administrative functions and that any additional requirements would place an unreasonable burden on the agricultural experiment stations. These comments were considered in establishing the minimum criteria for stakeholder input processes. Another commenter was

concerned that while the requirements for stakeholder participation can be accommodated by the land-grant institution, they are concerned about situations in which an individual or stakeholder group may proclaim stakeholder ''rights'' and proclaim that ''no opportunity'' was given to provide input. CSREES feels that stakeholders should be given reasonable opportunity to provide input and that issues such as this one may be addressed during the evaluation of the entire process.

One commenter noted that the clientele of the land-grant system is highly diverse with multiple and broad ranging needs and that it is recognized that resources will simply not be adequate to address all identified needs. Although CSREES agrees with this statement, CSREES feels that this is the primary reason for implementing and maintaining an adequate stakeholder input process. If resources were unlimited, there would be no need for priority setting processes which include soliciting and considering stakeholder input.

Another commenter wanted to know why the stakeholder input process only applied to the agricultural research and extension Federal formula funds and not all the funds supporting agricultural research and extension. Section 102(c) of AREERA only applies to agricultural research, education, and extension formula funds from CSREES.

C. USDA Office of Inspector General

The comment from the USDA Office of Inspector General (OIG) concentrated on three issues: Performance indicators identified in section 102(d) of AREERA, lack of criteria, and the recommendation that CSREES review the descriptions of the stakeholder input processes to assess the institutions' compliance.

The OIG commented ''that the performance indicators prescribed by Congress as the 'management principles' of the priority setting process must be ensured by targeting stakeholders who can achieve this goal and setting priorities for research, education, or extension activities that meet these performance criteria.'' The OIG continued by stating that they found no reference in the Proposed Rule to the performance indicators listed in section 102(d) of AREERA and that they consider the indicators to be critical controls over the outcome of the recipients' solicitation process.

Section 102(d)of AREERA states that the Secretary shall ensure that federally supported and conducted agricultural research, extension, and education activities are accomplished in a manner that (1) integrates agricultural research, extension, and education functions to better link research to technology transfer and information dissemination activities; (2) encourages regional and multistate programs to address relevant issues of common concern and to better leverage scarce resources; and (3) achieves agricultural research, extension, and education objectives through multi-institutional and multifunctional approaches and by conducting research at facilities and institutions best suited to serve those objectives. CSREES accomplished this task in the establishment of the Final Guidelines for State Plans of Work for Agricultural Research and Extension Formula Funds with evaluation criteria addressing these ''management principles'' and the development of requests for proposals which includes evaluation criteria for competitive research, education, and extension grant programs. Section 102(d) is the responsibility of CSREES and is evident in how CSREES establishes evaluation criteria and how they administer both the formula and competitive grant programs. It would defeat the whole purpose of the stakeholder input process if section 102(d) of AREERA was applied to the stakeholders themselves.

As mentioned previously, CSREES plans to conduct an evaluation of implementation of section 102(c) of AREERA by CSREES and the affected institutions after a 2-year implementation period to determine both the adequacy of the stakeholder input processes in priority setting and the effectiveness of this Final Rule. Through the inclusion of the definition for *seek stakeholder input* in the Final Rule, CSREES has adopted the minimum standards or criteria for a stakeholder input process as being fair, open, and accessible.

*Estimated Burden Hours on the Information Collection*

The estimated burden hours per response for the information collection associated with the Final Rule was revised from the original estimate of 9.19 hours to 57.32 hours per response. This estimate was revised after the Office of Management and Budget questioned whether 9.19 hours were sufficient to report not only on the stakeholder input process but on the actual consideration of input and recommendations from stakeholders concerning the use of formula funds.

The estimate for the original burden hours was calculated at 9.19 hours and based mainly on preparing an annual report describing actions taken to seek stakeholder input that encourages their participation and a brief statement of the process used by the recipient institutions to identify individuals and groups who are stakeholders and to collect input from them. The increase to 57.32 hours per response, or an additional 48.13 hours per response, is attributed to the requirement under § 3418.4 relating to how the collected input was considered. It is estimated that it will take 24.5 hours to review the stakeholder input gathered, 23.63 hours to determine whether the priorities for agricultural research, extension, and education activities conducted by the institution need to be adjusted, and 9.19 hours to write and edit the annual report.

**Classification**

This rule has been reviewed under Executive Order 12866 and has been determined to be non-significant as it will not create a serious inconsistency or otherwise interfere with an action planned by another agency; will not materially alter the budgetary impact of entitlement, grants, user fees, or loan programs, or the rights and obligations of the recipients thereof; and will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in this executive order. This rule also will not 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.

**Regulatory Flexibility Act**

The Department certifies that this rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. No. 96–534 (5 U.S.C. 601 *et seq.*). Accordingly, a regulatory flexibility analysis is not required for this proposed rule.

**Catalog of Federal Domestic Assistance**

The programs affected by this rule are listed in the Catalog of Federal Domestic Assistance under No. 10.203, Payments to Agricultural Experiment Stations Under the Hatch Act, No. 10.205, Payments to 1890 Land-Grant Colleges and Tuskegee University, No. 10.202, Cooperative Forestry Research, No. 10.207, Animal Health and Disease Research, No. 10.500, Cooperative Extension Service, and No. 10.221, Tribal Colleges Education Equity Grants.

**Paperwork Reduction Act**

Under the provisions of the paperwork Reduction Act of 1995, as

amended (44 U.S.C. Chapter 35), the collection of information requirements contained in this Final Rule have been reviewed and approved by the Office of Management and Budget (OMB) and given OMB Document No. 0524–0035. Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number.

The public reporting burden for this collection of information contained in this rule is estimated at 57.32 hours per response. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Please send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Officer, Office of the Chief Information Officer, Stop 7603, 1400 Independence Avenue, SW., Washington, DC 20250–7603, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503. This rule has no additional impact on any existing data collection burden.

**Report to Congress**

As required by 5 U.S.C. 801(a), CSREES submitted a report on this final rule to both houses of Congress and the Comptroller General prior to publication.

**List of Subjects in 7 CFR part 3418**

Agricultural education, Agricultural extension, Agricultural research, Colleges and universities.

For reasons stated in the preamble, chapter XXXIV of Title 7 of the Code of Federal Regulations is amended by adding Part 3418 to read as follows:

## PART 3418—STAKEHOLDER INPUT REQUIREMENTS FOR RECIPIENTS OF AGRICULTURAL RESEARCH, EDUCATION, AND EXTENSION FORMULA FUNDS

Sec.

3418.1 Definitions.
3418.2 Scope and purpose.
3418.3 Applicability.
3418.4 Reporting requirement.
3418.5 Failure to comply and report.
3418.6 Prohibition.

**Authority:** 5 U.S.C. 301; 7 U.S.C. 7612(c)(2).

### § 3418.1 Definitions.

As used in this part:

*1862 institution* means a college or university eligible to receive funds under the Act of July 2, 1862 (7 U.S.C. 301, *et seq.*).

*1890 institution* means a college or university eligible to receive funds under the Act of August 30, 1890 (7 U.S.C. 321, et seq.), including Tuskegee University.

*1994 institution* means an institution as defined in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note).

*Formula funds* means agricultural research funds provided to 1862 institutions and agricultural experiment stations under the Hatch Act of 1887 (7 U.S.C. 361a, et seq.); extension funds provided to 1862 institutions under sections 3(b) and 3(c) of the Smith-Lever Act (7 U.S.C. 343(b) and (c)) and section 208(c) of the District of Columbia Public Postsecondary Education Reorganization Act, Pub. L. 93–471; agricultural extension and research funds provided to 1890 institutions under sections 1444 and 1445 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA)(7 U.S.C. 3221 and 3222); education formula funds provided to 1994 institutions under section 534(a) of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note); research funds provided to forestry schools under the McIntire-Stennis Act of 1962 (16 U.S.C. 582a, et seq.); and animal health and disease research funds provided to veterinary schools and agricultural experiment stations under section 1433 of NARETPA (7 U.S.C. 3195).

*Recipient institution* means any 1862 institution, 1890 institution, 1994 institution, or any other institution that receives formula funds from the Department of Agriculture.

*Seek stakeholder input* means an open, fair, and accessible process by which individuals, groups, and organizations may have a voice, and one that treats all with dignity and respect.

*Stakeholder* means any person who has the opportunity to use or conduct agricultural research, extension, or education activities of recipient institutions.

### § 3418.2 Scope and Purpose.

Section 102(c) of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7612(c)) requires land-grant institutions, as a condition of receipt of formula funds, to solicit and consider input and recommendations from stakeholders concerning the use of formula funds. This regulation implements this requirement consistently for all recipient institutions that receive formula funds.

### § 3418.3 Applicability.

To obtain formula funds after September 30, 1999, each recipient institution shall establish and implement a process for obtaining stakeholder input on the uses of formula funds in accordance with this part.

### § 3418.4 Reporting requirement.

Each recipient institution shall report to the Department of Agriculture by October 1 of each fiscal year, the following information related to stakeholder input and recommendations:

(a) Actions taken to seek stakeholder input that encourages their participation;

(b) A brief statement of the process used by the recipient institution to identify individuals and groups who are stakeholders and to collect input from them; and

(c) A statement of how collected input was considered.

### § 3418.5 Failure to comply and report.

Formula funds may be withheld and redistributed if a recipient institution fails to either comply with § 3418.3 or report under § 3418.4.

### § 3418.6 Prohibition.

A recipient institution shall not require input from stakeholders as a condition of receiving the benefits of, or participating in, the agricultural research, education, or extension programs of the recipient institution.

Done at Washington, DC, this 31st day of January, 2000.

**I. Miley Gonzalez,**

*Under Secretary, Research, Education, and Economics.*

[FR Doc. 00–2822 Filed 2–7–00; 8:45 am]

BILLING CODE 3410–22–P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 77

**[Docket No. 99–063–2]**

### Tuberculosis in Cattle and Bison; State Designations; California, Pennsylvania, and Puerto Rico

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

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the tuberculosis regulations concerning the interstate

movement of cattle and bison by raising the designations of California, Pennsylvania, and Puerto Rico from modified accredited States to accredited-free States. We have determined that California, Pennsylvania, and Puerto Rico meet the criteria for designation as accredited-free States.

**EFFECTIVE DATE:** The interim rule became effective on October 14, 1999.

**FOR FURTHER INFORMATION CONTACT:** Dr. Joseph VanTiem, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–7716.

**SUPPLEMENTARY INFORMATION:**

### Background

In an interim rule effective October 14, 1999, and published in the **Federal Register** on October 20, 1999 (64 FR 56399–56400, Docket No. 99–063–1), we amended the tuberculosis regulations in 9 CFR part 77 by removing California, Pennsylvania, and Puerto Rico from the list of modified accredited States in § 77.1 and adding them to the list of accredited-free States in that section.

Comments on the interim rule were required to be received on or before December 20, 1999. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

### List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

## PART 77—TUBERCULOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 77 and that was published at 64 FR 56399–56400 on October 20, 1999.

**Authority:** 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 2nd day of February 2000.

**Bobby R. Acord,**

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

[FR Doc. 00–2779 Filed 2–7–00; 8:45 am]

BILLING CODE 3410–34–U

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 99–ASO–17]**

## Establishment of Class E Airspace; Puerto Rico, PR

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

**ACTION:** Final rule; correction.

**SUMMARY:** This action corrects errors in the geographic coordinates of a final rule that was published in the **Federal Register** on January 18, 2000, (65 FR 2538), Airspace Docket No. 99–ASO–17.

**EFFECTIVE DATE:** This correction is effective February 8, 2000.

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

**SUPPLEMENTARY INFORMATION:**

### History

**Federal Register** Document DOCID: fr18ja00–6, Airspace Docket No. 99–ASO–17, published on January 18, 2000, (65 FR 2538), amended Class E airspace at Puerto Rico, PR. Errors were discovered in the geographic coordinates of the San Juan Fernando Luis Ribas Dominicci Airport, PR, and in the airspace description. This action corrects those errors.

### Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the geographic coordinates for San Juan Fernando Luis Ribas Dominicci Airport, PR, and the airspace description as published in the **Federal Register** on January 18, 2000 (65 FR 2538) (Federal Register Document DOCID: fr18ja00–6: page 2538, column 3 and page 2539, column 1), are corrected as follows:

**§ 71.71 [Corrected]**

* * * * *

**ASO PR E Puerto Rico, PR [Corrected]**

By removing ''Lat. 18°27′41″ N, long. 66°05′89″ W'' and substituting ''lat. 18°27′25″ N, long. 66°05′53″ W'' for the airport coordinates, and by removing ''long. 5°45′ W'' and substituting ''long. 65°45′ W'' in the airspace description.

* * * * *

Issued in College Park, Georgia, on January 26, 2000.

**Wade T. Carpenter,**

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

[FR Doc. 00–2774 Filed 2–7–00; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 99–ASO–23]**

## Amendment of Class E Airspace; London, KY

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

**ACTION:** Final rule.

**SUMMARY:** This amendment modifies Class E airspace at London, KY. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) has been developed for Manchester Memorial Hospital, Manchester, KY. As a result, additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Manchester Memorial Hospital.

**EFFECTIVE DATE:** 0901 UTC, April 20, 2000.

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

**SUPPLEMENTARY INFORMATION:**

### History

On December 17, 1999, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E airspace at London KY, (64 FR 70612). This action provides adequate Class E airspace for IFR operations at the Manchester Memorial Hospital. Designations for Class E airspace extending upward form 700 feet or more above the surface are published in FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

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

**The Rule**

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class E airspace at London, KY, for the Manchester Memorial Hospital.

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

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

Airspace, Incorporation by Reference, Navigation (air).

**Adoption of the Amendment**

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

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

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

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

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Adminsitration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

*Paragraph 6005 Class E Airspace Areas Extending Upward form 700 feet or More above the Surface of the Earth.*

* * * * *

**ASO KY E5 London, KY [Revised]**

London—Corbin Airport—Magee Field, KY
(Lat 37°05′14″ N, long. 84°04′37″ W)
Manchester memorial Hospital, Manchester, KY
Point in Space Coordinates
(Lat 37°10′28″ N, long. 83°46′35″ W)
That airspace extending upward from 700 feet or more above the surface with an 11-mile radius of London—Corbin—Magee Field and that airspace within a 6-mile radius of the point in space (lat. 37°10′28″ N, long. 83°46′35″ W) serving Manchester Memorial Hospital, Manchester, KY.

* * * * *

Issued in College Park, Georgia, on January 20, 2000.

**Wade T. Carpenter,**

*Acting Manager, Air Traffic Division Southern Region.*

[FR Doc. 00–2773 Filed 2–7–00; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 99–ASO–25]**

## Amendment of Class E Airspace; Lexington, KY

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

**ACTION:** Final rule.

**SUMMARY:** This amendment modifies Class E airspace at Lexington, KY. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) has been developed for Saint Joseph's Hospital and The University of Kentucky Medical Center, Lexington, KY. As a result, additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Saint Joseph's Hospital and The University of Kentucky Medical Center.

**EFFECTIVE DATE:** 0901 UTC, April 20, 2000.

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

**SUPPLEMENTARY INFORMATION:**

**History**

On December 17, 1999, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E Airspace at Lexington, KY (64 FR 70611). This action provides adequate Class E airspace for IFR operations at the Saint Joseph's Hospital and The University of Kentucky Medical Center. Designations for Class E airspace extending upward from 700 feet or more above the surface and published in FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

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

**The Rule**

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class E airspace at Lexington, KY, for the Saint Joseph's Hospital and The University of Kentucky Medical Center.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11304; February 26, 1979); and (3) Does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routin matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

Airspace, Incorporation by Reference, Navigation (air).

**Adoption of the Amendment**

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

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

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

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

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

*Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More above the Surface of the Earth.*

* * * * *

**ASO KY E5 Lexington, KY [Revised]**

Lexington, Blue Grass Airport, KY
(Lat. 38°02′13″ N, long. 84°36′20″ W)
Saint Joseph's Hospital and The University of Kentucky Medical Center, Lexington, KY
Point In Space Coordinates
(Lat. 38°01′15″ N, long. 84°30′59″ W)

That airspace extending upward from 700 feet or more above the surface within a 7-mile radius of Blue Grass Airport and that airspace within a 6-mile radius of the point in space (Lat. 38°01′15″ N, long. 84°30′ 59″ W) serving Saint Joseph's Hospital and the University of Kentucky Medical Center, Lexington, KY.

* * * * *

Issued in College Park, Georgia, on January 20, 2000.

**Wade T. Carpenter,**

*Acting Manager, Air Traffic Division Southern Region*

[FR Doc. 00–2772 Filed 2–7–00; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Parts 1, 35, and 602

**[TD 8873]**

**RIN 1545–AW78**

## New Technologies in Retirement Plans

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

**ACTION:** Final regulations.

**SUMMARY:** This document contains amendments to the regulations governing certain notices and consents required in connection with distributions from retirement plans. Specifically, these regulations set forth applicable standards for the transmission of those notices and consents through electronic media and modify the timing requirements for providing certain distribution-related notices. The regulations provide guidance to plan sponsors and administrators by interpreting the notice and consent requirements in the context of the electronic administration of retirement plans. The regulations affect retirement plan sponsors, administrators, and participants.

**DATES:** *Effective Date:* These regulations are effective January 1, 2001.

*Applicability Date:* These regulations apply to plan years beginning on or after January 1, 2001.

**FOR FURTHER INFORMATION CONTACT:** Catherine Livingston Fernandez, (202) 622–6030 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1632. Responses to this collection of information are mandatory.

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

The estimated annual burden per respondent and/or recordkeeper is 76 minutes.

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

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

### Background

This document contains amendments to the Income Tax Regulations (26 CFR parts 1 and 35) under sections 402(f), 411(a)(11) and 3405(e)(10)(B). The regulations under section 3405(e)(10)(B) (new Q/A d–35 and d–36 of section 35.3405–1), like the regulations under sections 402(f) and 411(a)(11) are final regulations. These regulations finalize proposed regulations that were published as a notice of proposed rulemaking (REG–118662–98) in the **Federal Register** (63 FR 70071) on December 18, 1998. A public hearing was held on the proposed regulations on April 15, 1999.

In addition to the proposed regulations, the IRS and Treasury issued Notice 99–1 (1999–2 I.R.B. 8), and Announcement 99–6 (1999–4 I.R.B. 24), concerning the use of electronic media under retirement plans. Notice 99–1 confirms that the ''paperless'' administration of participant enrollments, contribution elections, investment elections, beneficiary designations (other than designations requiring spousal consent), direct rollover elections, and certain other transactions do not cause a qualified plan to fail to satisfy the requirements of section 401(a) (or the requirements for a qualified cash or deferred arrangement under section 401(k)). Announcement 99–6 authorizes the electronic transmission of Form W–4P.

The proposed regulations, Notice 99–1, and Announcement 99–6 were issued pursuant to section 1510 of the Taxpayer Relief Act of 1997. That section provides for the Secretary of the Treasury to issue guidance designed to interpret the notice, election, consent, disclosure, time, and related recordkeeping requirements under the Code and the Employee Retirement Income Security Act of 1974 (ERISA) regarding the use of new technologies by sponsors and administrators of retirement plans and to clarify the extent to which writing requirements under the Code relating to retirement plans permit paperless transactions. Section 1510 provides that the guidance must protect participant and beneficiary rights. Any final regulations applicable to this guidance may not be effective until the first plan year beginning at least six months after issuance as final regulations.

### Explanation of Provisions

*General*

Commentators generally praised the approach taken in the proposed regulations of providing broad, flexible standards for the transmission of certain notices and consent required for distributions through electronic media. Commentators stated that the guidelines set forth in the proposed regulations facilitate the expanded use of new technologies and recognize the likelihood of future technological advances in plan administration. Accordingly, the final regulations retain this approach and:

- Permit electronic delivery of the notice of distribution options and the right to defer distribution under section 411(a)(11), the rollover notice under section 402(f), and the withholding notice under section 3405(e)(10)(B);

• Permit electronic transmission of participant consent to a distribution under section 411(a)(11); and

• Permit a plan to provide the section 411(a)(11) and section 402(f) notices more than 90 days before a distribution, if the plan provides a summary of the notices within 90 days before the distribution.

*Notices Under Sections 402(f), 411(a)(11), and 3405(e)(10)(B)*

1. Use of Electronic Media for Delivery of Notices

The proposed regulations provide that, in general, a plan may furnish a notice required under section 402(f), 411(a)(11), or 3405(e)(10)(B) either on a written paper document or through an electronic medium reasonably accessible to the participant to whom the notice is given. The proposed regulations require that any electronic notice be provided under a system reasonably designed to give the notice in a manner no less understandable to the participant than a written paper document and that the participant be advised of the right to request and to receive a copy of the notice on a written paper document without charge. The final regulations adopt these rules without change.

One commentator noted that the proposed regulations do not define the term *reasonably accessible* and suggested that the final regulations require that participants have effective access at their place of work to any electronic medium used to deliver the notices under sections 402(f), 411(a)(11), and 3405(e)(10)(B). The IRS and Treasury, after further consideration, believe that the reasonably accessible standard protects the interests of plan participants and, therefore, have retained the proposed terminology.

The same commentator raised more general concerns with the use of electronic media to transmit notices. This commentator argued that an electronic notice should be ''actually received (not just sent or available) and read by the participant, be permanently accessible, and easily converted to a printed document, by using an available printer and/or through a request for a paper writing.'' In response to these concerns, the IRS and Treasury reiterate the view, expressed in the preamble to the proposed regulations, that the legal standards for the delivery of distribution-related notices under sections 402(f), 411(a)(11), and 3405(e)(10)(B) should be the same regardless of the medium of delivery. Additionally, the IRS and Treasury note that many of the concerns raised by this commentator about electronic media are adequately addressed by the requirement in the regulations that participants always have the right to request and to receive a written paper notice without charge.

Several commentators objected to the requirement that participants be able to receive the notice on a written paper document upon request. These commentators argued that simply making written paper notices available through an electronic medium (such as a printing option on an e-mail system or a plan web site) protects the interests of participants in having access to written paper notices without placing the burden of providing written paper notices on plan sponsors and administrators. However, the IRS and Treasury believe that the right to request and to receive a written paper notice is an important fail-safe for paperless plan administration. The requirement ensures that no participant is denied ready access to a usable copy of a required distribution notice, and it limits the need for the IRS and Treasury to regulate the manner in which written paper notices are made available through electronic media. The IRS and Treasury believe that the burden for plan sponsors and administrators to maintain a process that will generate written paper notices upon request is outweighed by the important safeguards provided by the requirement. In addition, as indicated in the preamble to the proposed regulations, the written paper notice provided on request need not be identical to the electronic notice. Therefore, the written paper notice can be either a printed version of the electronic notice or a separate notice prepared for distribution on paper. In light of these considerations, the requirement is retained in the final regulations.

One commentator requested clarification that the proposed regulations under section 3405 would permit the electronic delivery of the annual notice described in section 3405(e)(10)(B)(i)(III) (which is provided to recipients of periodic payments). The proposed regulations, as written, apply to that annual notice; however, the final regulations make this point expressly. One commentator asked that the proposed regulations be amended to provide for electronic withholding elections under section 3405 in addition to electronic transmission of notices under section 3405. It is unclear what, if any, utility such a change in the regulations would have in light of the ability to use electronic media for transmission of Form W–4P, as set out in Announcement 99–6. Therefore, no change has been made to the regulations on this point.

2. Flexibility for Timing Requirement in Providing Notices

Commentators favored the provision in the proposed regulations that provided flexibility with respect to the 90-day period under sections 402(f) and 411(a)(11) by providing an alternative timing rule. Under this alternative timing rule, a plan may give the full section 402(f) and section 411(a)(11) notices more than 90 days before the distribution and provide the participant a summary of the notice during the 90/30-day period under those sections. The full notice is not required to be provided on a regular periodic basis and may be provided in connection with other materials (for example, in the summary plan description or in a brochure describing plan distribution features), but it must be updated (and provided to the participant) as necessary to ensure accuracy as of the time the summary is given. The proposed regulations provide that the summary notice must set out the principal provisions of the full notice, must refer the participant to the most recent occasion on which the full notice was provided, and must advise the participant of the right to request and to receive a copy of the full notice without charge.

Several commentators interpreted the requirement in the proposed regulations that the summary refer the participant to the most recent occasion on which the full notice was provided as requiring an indication of the precise date on which the participant was given the full notice and the precise location of the full notice if it was provided in a document containing other information (such as the summary plan description). These commentators argued that this information may vary on a participant-by-participant basis and so imposes a considerable administrative burden on plan sponsors and administrators.[1]

The IRS and Treasury did not intend for the proposed regulations to be construed as requiring individualized information about the full notice. Therefore, the final regulations clarify, first, that the summary must refer participants to the most recent version of the full notice. The purpose of this rule is to minimize confusion among participants if more than one version of a full notice has been provided in the

[1] For example, many plan sponsors provide a copy of the summary plan description to each employee when the employee is first hired. If the full notice is provided through the summary plan description, the precise date on which the full notice was last provided could differ for each participant.

past. In many of those cases, this reference could reasonably be made by calendar year (for example, by referring to the 1999 version of the section 402(f) notice). If more than one version of a distribution notice was provided in a single calendar year, more precise reference should be made (for example, by referring to the May 1999 version of the section 402(f) notice). Reference to the notice by month or year would not be necessary if only one version of the notice had been provided in the past. If the full notice were constantly available (for example, a notice that is available on a plan web site and is kept up-to-date), it would be adequate to state that fact.

Additionally, the regulations have been modified to provide that, in the case of a full notice provided in a document containing other information, the summary must identify that document and must provide a reasonable indication of where the notice may be found in the document. This requirement could be satisfied through a number of means, including identification of page number, section heading, an index reference, the title of the notice, or any other reference that would reasonably direct the participant to the notice.

One commentator objected to the alternative timing rule set out in the proposed regulations. This commentator argued that distribution-related notices should be tied to a specific event (such as a participant request for a distribution) and that ''it is inappropriate to provide a notice of the notice when using electronic or other new technologies when it is just as easy to provide the actual notice itself.'' The IRS and Treasury agree that the information contained in the section 402(f) and section 411(a)(11) notices should be provided to a participant in connection with the participant's contemplation of a distribution, but the IRS and Treasury believe that providing a summary of a previously provided notice and informing the participant of the right to request and to receive the full notice adequately protect the interests of participants in this regard.

The preamble to the proposed regulations includes an example of a summary section 402(f) notice provided through an automated telephone system. Many commentators raised questions about this example. Several commentators argued that the sample summary is too long and complex to be of use in plan administration; others argued that it does not include reference to every potentially applicable rule concerning the taxation of plan distributions (for example, it does not refer to the taxation of net unrealized appreciation on the distribution of employer securities). Commentators also inquired about the legal status of the example because of its placement in the preamble. The example was intended merely to illustrate a summary notice that, in the view of the IRS and Treasury, satisfies the requirements of the proposed regulations. It was not intended as a model summary or as the exclusive form for such a summary. Although the example is not restated in these final regulations, the IRS and Treasury are considering whether to issue additional guidance providing additional examples of summary notices. In this regard, the IRS and Treasury will solicit comments from interested parties regarding the development of those examples and will invite interested parties to submit draft summary notices to assist in the development of that guidance.

*Consent Under Section 411(a)(11)*

Consistent with the proposed regulations, the final regulations provide that, in general, a plan may receive a participant's consent either on a written paper document or through an electronic medium reasonably accessible to the participant. As in the case of participant notices, the regulations generally do not categorize particular electronic media as either permissible or impermissible for this purpose and do not prescribe detailed, media-specific rules. The standards are intended to parallel the key attributes of participant consent provided on written paper documents without imposing more stringent requirements on electronic consents. The proposed regulations provide that participant consent transmitted through an electronic medium must be given under a system that is reasonably designed to preclude an individual other than the participant from giving the consent and that provides the participant a reasonable opportunity to review and to confirm, modify, or rescind the terms of the distribution before the consent to the distribution becomes effective. Comments on this portion of the proposed regulations were generally favorable, and no change has been made in the final regulations.

One commentator, however, objected outright to the use of electronic media for the transmission of participant consent and argued that, at a minimum, such consent ''should not be effective until after a written confirmation is received and the participant has a specified amount of time to revoke it.'' This commentator also argued that the final regulations should prohibit the use of automated telephone systems to provide distribution-related notices and to receive participant consent unless an automatic, mandatory written confirmation of the participant's election of a distribution option is required along with a seven-day right of revocation. The IRS and Treasury concluded that it is not advisable to impose new revocation rules based on the medium through which a participant consents to a distribution. Both the proposed regulations and the final regulations require that the terms of any consent made through an electronic medium be confirmed to the participant. Additionally, the IRS and Treasury do not believe that a right of revocation for a defined period after consent is given is more necessary or appropriate in the case of consent made through an electronic medium than it is in the case of consent made through a written paper document. More generally, the IRS and Treasury do not believe that the use of electronic media is improper or inappropriate for the transmission of a participant's consent under section 411(a)(11). If the requirements of the regulations are satisfied, consent provided in that manner should reflect the considered wishes of the participant as reliably as a consent provided through a written paper document.

*Changes to the Examples in the Regulations*

Several commentators expressed concern about details in the examples illustrating the proposed regulations for distribution notices and consent. One of the concerns involved the statement in the examples that a participant who wished to change a PIN electronically would be unable to proceed with a distribution transaction until the plan sent a confirmation of the change to the participant. Commentators stated that the electronic systems maintained by plan sponsors and administrators use an array of security features to ensure participant identity, some of which might permit an electronic transaction to proceed after a PIN change. Although the prohibition on proceeding with an electronic transaction after a PIN change was intended only to illustrate a commonly used system and not as a substantive requirement, the final regulations omit the statement from the examples for the sake of clarity. Of course, the examples in the final regulations presuppose that plan sponsors and administrators maintain adequate measures to ensure participant identity when a PIN is changed.

*Notice 99–1 and Announcement 99–6*

Commentators expressed support for Notice 99–1, which indicates that a qualified plan will not fail to meet the requirements of section 401(a) (and that a qualified cash-or-deferred arrangement will not fail to meet the requirements of section 401(k)) merely because it permits a participant or beneficiary to use electronic media to effect a transaction for which no specific provision of the Code, the regulations, or other guidance of general applicability sets forth rules or standards regarding the media through which it may be conducted. Announcement 99–6 permits the electronic transmission of Form W–4P.

Commentators asked for clarification whether Form W–4P may be transmitted through a telephone system. The underlying standards for the electronic transmission of Form W–4P are intended to be the same as those for the electronic transmission of Form W–4, as set out in § 31.3402(f)(5)–1(c). The preamble to the proposed regulations for the electronic transmission of Form W–4 indicates that ''[i]f an employer chooses to establish an electronic system, the employer will be free to determine the type of system (such as telephone or computer) or systems available to its employees.'' (59 FR 18508 (Apr. 15, 1994)). Therefore, the use of a telephone system for electronic transmission of Form W–4P, if otherwise consistent with Announcement 99–6 and § 31.3402(f)(5)–1(c), is permissible.

Commentators also asked the IRS and Treasury to reconsider the requirement, stated in Announcement 99–6, that the electronic signature on Form W–4P be the final entry in the submission of the form. These commentators argue that this effectively requires the participant in most cases to enter a PIN at both the beginning and the end of a transaction that involves the use of an electronic Form W–4P. The IRS and Treasury are considering this issue and anticipate issuing additional guidance on this question.

*Scope of These Regulations*

These regulations do not address the application of Title I of ERISA (except for section 203(e)) to the use of electronic media for any plan communication or transaction. Several commentators requested that the regulations be expanded to include matters not covered by the proposed regulations. Most notably, commentators asked that the IRS and Treasury provide guidance on the use of electronic media for plan loans under section 72(p), nondiscrimination safe-harbor notices under sections 401(k)(12) and 401(m)(11), notices under section 204(h) of ERISA, and distribution notices, elections, and spousal consents governed by sections 401(a)(11) and section 417.

The IRS and Treasury are actively considering comments submitted on regulations proposed under section 72(p) and expect to issue additional guidance under that section. It is anticipated that any guidance on the use of electronic media in connection with plan loans would be issued in connection with that additional guidance. As the IRS and Treasury have noted in the past, notices under sections 401(k)(12) and 401(m)(11) and ERISA section 204(h) present legal issues distinct from those presented by notices under sections 402(f), 411(a)(11), and 3405(e)(10)(B). Notice 2000–3 (2000–4 I.R.B.____) provides that, pending further guidance, notices under sections 401(k)(12) and 401(m)(11) may be issued through electronic media if standards set forth in Notice 2000–3 which are similar to those applicable to notices under these regulations, are satisfied. Because of the unique considerations applicable to notices under ERISA section 204(h), guidance with respect to the use of electronic media in connection with section 204(h) notices is not being issued at this time.

Finally, regarding notices, elections, and spousal consents governed by sections 401(a)(11) and section 417, the IRS and Treasury note that the statutory requirement that spousal consent be witnessed either by a notary public or a plan representative appears to presuppose that a spouse be in the physical presence of the notary public or the plan representative at the time consent is given. This appears to place significant limitations on the utility of electronic media in effecting spousal consent.[2] Thus, it is unclear what guidance the IRS and Treasury could issue that would meaningfully facilitate paperless distributions in the case of plans subject to sections 401(a)(11) and 417.

*Reliance*

Plan sponsors and administrators may rely on these final regulations for guidance for distributions made prior to the effective date.

[2] One commentator suggested that electronic transmission of spousal consent be permitted if the plan has ''reasonable certainty that the spouse has consented.'' That suggested standard appears to fall far short of the witnessing requirement specifically set forth in the statute.

**Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory impact analysis is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the regulations provide paperless alternatives to notices that otherwise must be sent as written paper documents. It is anticipated that most small businesses affected by these regulations will be sponsors of retirement plans. Since these notices are provided only upon distributions and since, in the case of a small plan, there will be relatively few distributions per year, small plans that implement a paperless system for delivering these notices will likely contract for them as part of a paperless system for distributions offered by outside vendors. The paperless delivery of the notices will not add more than a minor increment to the cost of these distribution systems or the plan sponsor will continue to use a paper-based system. Accordingly, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Drafting Information**

The principal author of these regulations is Catherine Livingston Fernandez, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, personnel from other offices of the IRS and Treasury Department participated in their development.

**List of Subjects**

*26 CFR Part 1*

Income taxes, Reporting and recordkeeping requirements.

*26 CFR Part 35*

Employment taxes, Income taxes, Reporting and recordkeeping requirements.

*26 CFR Part 602*

Reporting and recordkeeping requirements.

**Amendments to the Regulations**

Accordingly, 26 CFR parts 1, 35, and 602 are amended as follows:

## PART 1—INCOME TAXES

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

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

**Par. 2.** Section 1.402(f)–1 is amended by:

1. Revising Q&A–2.
2. Adding Q&A–5 and Q&A–6.

The revision and additions read as follows:

**§ 1.402(f)—1 Required explanation of eligible rollover distributions; questions and answers.**

* * * * *

Q–2: When must the plan administrator provide the section 402(f) notice to a distributee?

A–2: The plan administrator must provide the section 402(f) notice to a distributee at a time that satisfies either paragraph (a) or (b) of this Q&A–2.

(a) This paragraph (a) is satisfied if the plan administrator provides a distributee with the section 402(f) notice no less than 30 days and no more than 90 days before the date of a distribution. However, if the distributee, after having received the section 402(f) notice, affirmatively elects a distribution, a plan will not fail to satisfy section 402(f) merely because the distribution is made less than 30 days after the section 402(f) notice was provided to the distributee, provided the plan administrator clearly indicates to the distributee that the distributee has a right to consider the decision of whether or not to elect a direct rollover for at least 30 days after the notice is provided. The plan administrator may use any method to inform the distributee of the relevant time period, provided that the method is reasonably designed to attract the attention of the distributee. For example, this information could be either provided in the section 402(f) notice or stated in a separate document (*e.g.,* attached to the election form) that is provided at the same time as the notice. For purposes of satisfying the requirement in the first sentence of paragraph (a) of this Q&A–2, the plan administrator may substitute the annuity starting date, within the meaning of § 1.401(a)–20, Q&A–10, for the date of the distribution.

(b) This paragraph (b) is satisfied if the plan administrator—

(1) Provides a distributee with the section 402(f) notice;

(2) Provides the distributee with a summary of the section 402(f) notice within the time period described in paragraph (a) of this Q&A–2; and

(3) If the distributee so requests after receiving the summary described in paragraph (b)(2) of this Q&A–2, provides the section 402(f) notice to the distributee without charge and no less than 30 days before the date of a distribution (or the annuity starting date), subject to the rules for the distributee's waiver of that 30-day period. The summary described in paragraph (b)(2) of this Q&A–2 must set forth a summary of the principal provisions of the section 402(f) notice, must refer the distributee to the most recent version of the section 402(f) notice (and, in the case of a notice provided in any document containing information in addition to the notice, must identify that document and must provide a reasonable indication of where the notice may be found in that document, such as by index reference or by section heading), and must advise the distributee that, upon request, a copy of the section 402(f) notice will be provided without charge.

* * * * *

Q–5: Will the requirements of section 402(f) be satisfied if a plan administrator provides a distributee with the section 402(f) notice or the summary of the notice described in paragraph (b)(2) of Q&A–2 of this section other than through a written paper document?

A–5: A plan administrator may provide a distributee with the section 402(f) notice or the summary of that notice described in paragraph (b)(2) of Q&A–2 of this section either on a written paper document or through an electronic medium reasonably accessible to the distributee. A notice or summary provided through an electronic medium must be provided under a system that satisfies the following requirements:

(a) The system must be reasonably designed to provide the notice or summary in a manner no less understandable to the distributee than a written paper document.

(b) At the time the notice or summary is provided, the distributee must be advised that the distributee may request and receive the notice on a written paper document at no charge, and, upon request, that document must be provided to the distributee at no charge.

Q–6: Are there examples that illustrate the provisions of Q&A–2 and Q&A–5 of this section?

A–6: The following examples illustrate the provisions of Q&A–2 and Q&A–5 of this section:

*Example 1.* (i) A qualified plan (Plan A) permits participants to request distributions by e-mail. Under Plan A's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan A's records in order for the transaction to proceed. If a participant requests a distribution from Plan A by e-mail and the distribution is an eligible rollover distribution, the plan administrator provides the participant with a section 402(f) notice by e-mail. The plan administrator also advises the participant that he or she may request the section 402(f) notice on a written paper document and that, if the participant requests the notice on a written paper document, it will be provided at no charge. To proceed with the distribution by e-mail, the participant must acknowledge receipt, review, and comprehension of the section 402(f) notice.

(ii) In *Example 1,* Plan A does not fail to satisfy the notice requirement of section 402(f) merely because the notice is provided to the participant other than through a written paper document.

*Example 2.* (i) A qualified plan (Plan B) permits participants to request distributions through the Plan B web site (Internet or intranet). Under Plan B's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan B's records in order for the transaction to proceed. A participant may request a distribution from Plan B by following the applicable instructions on the Plan B web site. After the participant has requested a distribution that is an eligible rollover distribution, the participant is automatically shown a page on the web site containing a section 402(f) notice. Although this page of the web site may be printed, the page also advises the participant that he or she may request the section 402(f) notice on a written paper document by calling a telephone number indicated on the web page and that, if the participant requests the notice on a written paper document, it will be provided at no charge. To proceed with the distribution by e-mail, the participant must acknowledge receipt, review, and comprehension of the section 402(f) notice.

(ii) In this *Example 2,* Plan B does not fail to satisfy the notice requirement of section 402(f) merely because the notice is provided to the participant other than through a written paper document.

*Example 3.* (i) A qualified plan (Plan C) permits participants to request distributions through Plan C's automated telephone system. Under Plan C's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan C's records in order for the transaction to proceed. Plan C provides the section 402(f) notice in the summary plan description, the most recent version of which was distributed to participants in 1997. A participant may request a distribution from Plan C by following the applicable instructions on the automated telephone system. In 1999, a participant, using Plan C's automated telephone system, requests a distribution that is an eligible rollover distribution. The automated telephone system refers the participant to the most recent version of the section 402(f) notice which was provided in the summary plan description, informs the participant where the section 402(f) notice

may be located in the summary plan description, and provides an oral summary of the material provisions of the section 402(f) notice. The system also advises the participant that the participant may request the section 402(f) notice on a written paper document and that, if the participant requests the notice on a written paper document, it will be provided at no charge. Before proceeding with the distribution, the participant must acknowledge receipt, review, and comprehension of the summary. Under Plan C's system for processing such transactions, the participant's distribution will be made no more than 90 days and no fewer than 30 days after the participant requests the distribution and receives the summary of the section 402(f) notice (unless the participant waives the 30-day period).

(ii) In this *Example 3,* Plan C does not fail to satisfy the notice requirement of section 402(f) merely because Plan C provides a summary of the section 402(f) notice or merely because the summary is provided to the participant other than through a written paper document.

*Example 4.* (i) Same facts as *Example 3,* except that, pursuant to Plan C's system for processing such transactions, a participant who so requests is transferred to a customer service representative whose conversation with the participant is recorded. The customer service representative provides the summary of the section 402(f) notice by reading from a prepared text.

(ii) In this *Example 4,* Plan C does not fail to satisfy the notice requirement of section 402(f) merely because Plan C provides a summary of the section 402(f) notice or merely because the summary of the section 402(f) notice is provided to the participant other than through a written paper document.

*Example 5.* (i) Same facts as *Example 3,* except that Plan C does not provide the section 402(f) notice in the summary plan description. Instead, the automated telephone system reads the section 402(f) notice to the participant.

(ii) In this *Example 5,* Plan C does not satisfy the notice requirement of section 402(f) because oral delivery alone of the section 402(f) notice through the automated telephone system is not sufficient.

*Example 6.* (i) The facts are the same as in *Example 1,* except that Participant D requested a distribution by e-mail, then terminated employment, and, following the termination, no longer has reasonable access to Plan A e-mail.

(ii) In this *Example 6,* Plan A does not satisfy the notice requirement of section 402(f) because the electronic medium through which the notice is provided is not reasonably accessible to Participant D. Plan A must provide the section 402(f) notice to Participant D in a written paper document or by an electronic means that is reasonably accessible to Participant D.

**Par. 3.** Section 1.411(a)–11 is amended by:

1. Revising paragraphs (c)(2)(i) and (iii).

2. Removing the language ''Written consent'' in paragraph (c)(2)(ii) and (c)(3) and adding ''Consent'' in its place.

3. Adding paragraphs (f) and (g).

The revisions and additions read as follows:

**§ 1.411(a)–11 Restriction and valuation of distributions.**

* * * * *

(c) * * *

(2) *Consent.* (i) No consent is valid unless the participant has received a general description of the material features of the optional forms of benefit available under the plan. In addition, so long as a benefit is immediately distributable, a participant must be informed of the right, if any, to defer receipt of the distribution. Furthermore, consent is not valid if a significant detriment is imposed under the plan on any participant who does not consent to a distribution. Whether or not a significant detriment is imposed shall be determined by the Commissioner by examining the particular facts and circumstances.

* * * * *

(iii) A plan must provide a participant with notice of the rights specified in this paragraph (c)(2) at a time that satisfies either paragraph (c)(2)(iii)(A) or (B) of this section:

(A) This paragraph (c)(2)(iii)(A) is satisfied if the plan provides a participant with notice of the rights specified in this paragraph (c)(2) no less than 30 days and no more than 90 days before the date the distribution commences. However, if the participant, after having received this notice, affirmatively elects a distribution, a plan will not fail to satisfy the consent requirement of section 411(a)(11) merely because the distribution commences less than 30 days after the notice was provided to the participant, provided the plan administrator clearly indicates to the participant that the participant has a right to at least 30 days to consider whether to consent to the distribution.

(B) This paragraph (c)(2)(iii)(B) is satisfied if the plan—

(*1*) Provides the participant with notice of the rights specified in this paragraph (c)(2);

(*2*) Provides the participant with a summary of the notice within the time period described in paragraph (c)(2)(iii)(A) of this section; and

(*3*) If the participant so requests after receiving the summary described in paragraph (c)(2)(iii)(B)(*2*) of this section, provides the notice to the participant without charge and no less than 30 days before the date the distribution commences, subject to the rules for the participant's waiver of that 30-day period. The summary described in paragraph (c)(2)(iii)(B)(*2*) of this section must advise the participant of the right, if any, to defer receipt of the distribution, must set forth a summary of the distribution options under the plan, must refer the participant to the most recent version of the notice (and, in the case of a notice provided in any document containing information in addition to the notice, must identify that document and must provide a reasonable indication of where the notice may be found in that document, such as by index reference or by section heading), and must advise the participant that, upon request, a copy of the notice will be provided without charge.

* * * * *

(f) *Medium for notice and consent*—(1) *Notice.* The notice of a participant's rights described in paragraph (c)(2) of this section or the summary of that notice described in paragraph (c)(2)(iii)(B)(*2*) of this section may be provided either on a written paper document or through an electronic medium reasonably accessible to the participant. A notice or summary provided through an electronic medium must be provided under a system that satisfies the following requirements:

(i) The system must be reasonably designed to provide the notice or summary in a manner no less understandable to the participant than a written paper document.

(ii) At the time the notice or summary is provided, the participant must be advised that he or she may request and receive the notice on a written paper document at no charge, and, upon request, that document must be provided to the participant at no charge.

(2) *Consent.* The consent described in paragraphs (c)(2) and (3) of this section may be given either on a written paper document or through an electronic medium reasonably accessible to the participant. A consent given through an electronic medium must be given under a system that satisfies the following requirements:

(i) The system must be reasonably designed to preclude any individual other than the participant from giving the consent.

(ii) The system must provide the participant with a reasonable opportunity to review and to confirm, modify, or rescind the terms of the distribution before the consent to the distribution becomes effective.

(iii) The system must provide the participant, within a reasonable time after the consent is given, a confirmation of the terms (including the form) of the distribution either on a written paper document or through an electronic medium under a system that

satisfies the requirements of paragraph (f)(1) of this section.

(g) *Examples.* The provisions of paragraph (f) of this section are illustrated by the following examples:

*Example 1.* (i) A qualified plan (Plan A) permits participants to request distributions by e-mail. Under Plan A's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan A's records in order for the transaction to proceed. If a participant requests a distribution from Plan A by e-mail, the plan administrator provides the participant with a section 411(a)(11) notice by e-mail. The plan administrator also advises the participant by e-mail that he or she may request the section 411(a)(11) notice on a written paper document and that, if the participant requests the notice on a written paper document, it will be provided at no charge. To proceed with the distribution by e-mail, the participant must acknowledge receipt, review, and comprehension of the section 411(a)(11) notice and must consent to the distribution within the time required under section 411(a)(11). Within a reasonable time after the participant's consent by e-mail, the plan administrator, by e-mail, sends confirmation of the terms (including the form) of the distribution to the participant and advises the participant that he or she may request the confirmation on a written paper document that will be provided at no charge.

(ii) In this *Example 1,* Plan A does not fail to satisfy the notice or consent requirement of section 411(a)(11) merely because the notice and consent are provided other than through written paper documents.

*Example 2.* (i) Same facts as *Example 1,* except that, instead of sending a confirmation of the distribution by e-mail, the plan administrator, within a reasonable time after the participant's consent, sends the participant an account statement for the period that includes information reflecting the terms of the distribution.

(ii) In this *Example 2,* Plan A does not fail to satisfy the consent requirement of section 411(a)(11) merely because the consent is provided other than through a written paper document.

*Example 3.* (i) A qualified plan (Plan B) permits participants to request distributions through the Plan B web site (Internet or intranet). Under Plan B's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan B's records in order for the transaction to proceed. A participant may request a distribution from Plan B by following the applicable instructions on the Plan B web site. After the participant has requested a distribution, the participant is automatically shown a page on the web site containing a section 411(a)(11) notice. Although this page of the web site may be printed, the page also advises the participant that he or she may request the section 411(a)(11) notice on a written paper document by calling a telephone number indicated on the web page and that, if the participant requests the notice on a written paper document, it will be provided at no charge. To proceed with the distribution by e-mail, the participant must acknowledge receipt, review, and comprehension of the section 411(a)(11) notice and must consent to the distribution within the time required under section 411(a)(11). The web site requires the participant to review and confirm the terms (including the form) of the distribution before the transaction is completed. After the participant has given consent via e-mail, the Plan B web site confirms the distribution to the participant and advises the participant that he or she may request the confirmation on a written paper document that will be provided at no charge.

(ii) In this *Example 3,* Plan B does not fail to satisfy the notice or consent requirement of section 411(a)(11) merely because the notice and consent are provided other than through written paper documents.

*Example 4.* (i) A qualified plan (Plan C) permits participants to request distributions through Plan C's automated telephone system. Under Plan C's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan C's records in order for the transaction to proceed. Plan C provides only the following distribution options: a lump sum and annual installments over 5, 10, or 20 years. A participant may request a distribution from Plan C by following the applicable instructions on the automated telephone system. After the participant has requested a distribution, the automated telephone system reads the section 411(a)(11) notice to the participant. The automated telephone system also advises the participant that he or she may request the notice on a written paper document and that, if the participant requests the notice on a written paper document, it will be provided at no charge. Before proceeding with the distribution transaction, the participant must acknowledge receipt, review, and comprehension of the section 411(a)(11) notice and must consent to the distribution within the time required under section 411(a)(11). The automated telephone system requires the participant to review and confirm the terms (including the form) of the distribution before the transaction is completed. After the participant has given consent, the automated telephone system confirms the distribution to the participant and advises the participant that he or she may request the confirmation on a written paper document that will be provided at no charge. Because Plan C has relatively few and simple distribution options, the provision of the section 411(a)(11) notice over the automated telephone system is no less understandable to the participant than a written paper notice.

(ii) In this Example 4, Plan C does not fail to satisfy the notice or consent requirement of section 411(a)(11) merely because the notice and consent are provided other than through written paper documents.

*Example 5.* (i) Same facts as *Example 4,* except that, pursuant to Plan C's system for processing such transactions, a participant who so requests is transferred to a customer service representative whose conversation with the participant is recorded. The customer service representative provides the section 411(a)(11) notice from a prepared text and processes the participant's distribution in accordance with predetermined instructions of the plan administrator.

(ii) In this *Example 5,* Plan C does not fail to satisfy the notice or consent requirement of section 411(a)(11) merely because the notice and consent are provided other than through written paper documents.

*Example 6.* (i) Same facts as *Example 1,* except that Participant D requested a distribution by e-mail, then terminated employment and, following the termination, no longer has access to e-mail.

(ii) In this *Example 6,* Plan A does not satisfy the notice or consent requirement of section 411(a)(11) because the electronic medium through which the notice is provided is not reasonably accessible to Participant D. Plan A must provide Participant D the section 411(a)(11) notice in a written paper document or by an electronic means that is reasonably accessible to Participant D.

**Par. 4.** The heading for part 35 is revised to read as follows:

## PART 35—EMPLOYMENT TAX AND COLLECTION OF INCOME TAX AT SOURCE REGULATIONS UNDER THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982

**Par. 5.** The authority citation for part 35 is revised to read as follows:

**Authority:** 26 U.S.C. 6047(e), 7805; 68A Stat. 917; 96 Stat. 625; Public Law 97–248 (96 Stat. 623).

Section 35.3405–1 also issued under 26 U.S.C. 3405(e)(10)(B)(iii).

Section 35.3405–1T also issued under 26 U.S.C. 3405(e)(10)(B)(iii).

**Par. 6.** Redesignate § 35.3405–1T and revise the heading to read as follows:

### § 35.3405–1T Questions and answers relating to withholding on pensions, annuities, and certain other deferred income (temporary regulations).

* * * * *

**Par. 7.** A new § 35.3405–1 is added to read as follows:

### § 35.3405–1 Questions and answers relating to withholding on pensions, annuities, and certain other deferred income.

The following questions and answers relate to withholding on pensions, annuities, and other deferred income under section 3405 of the Internal Revenue Code of 1986, as added by section 334 of the Tax Equity and Fiscal Responsibility Tax Act of 1982 (Public Law 97–248) (TEFRA).

a–1 through d–34 [Reserved] For further guidance, see § 35.3405–1T.

d–35. Q. *Through what medium may a payor provide the notice required under section 3405 to a payee?*

A. A payor may provide the notice required under section 3405 (including the abbreviated notice described in d–27 and the annual notice described in d–31) to a payee either on a written paper document or through an electronic medium reasonably accessible to the payee. A notice provided through an electronic medium must be provided under a system that satisfies the following requirements:

(a) The system must be reasonably designed to provide the notice in a manner no less understandable to the payee than a written paper document.

(b) At the time the notice is provided, the payee must be advised that the payee may request and receive the notice on a written paper document at no charge, and, upon request, that document must be provided to the payee at no charge.

d–36. Q. *Are there examples that illustrate the provisions of d–35 of this section?*

A. The provisions of d–35 of this section are illustrated by the following examples:

*Example 1.* (i) An employer deferred compensation plan (Plan A) permits participants to request distributions by e-mail. Under Plan A's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan A's records in order for the transaction to proceed. The plan administrator is the payor. If a participant requests a distribution from Plan A by e-mail, the plan administrator provides the participant with the notice required under section 3405 by e-mail. The plan administrator also advises the participant by e-mail that he or she may request the notice on a written paper document and that, if the participant requests the notice on a written paper document, it will be provided at no charge. To proceed with the distribution by e-mail, the participant must acknowledge receipt, review, and comprehension of the notice.

(ii) In this *Example 1,* the plan administrator does not fail to satisfy the notice requirement of section 3405 merely because the notice is provided to the participant other than through a written paper document.

*Example 2.* (i) An employer deferred compensation plan (Plan B) permits participants to request distributions through the Plan B web site (Internet or intranet). Under Plan B's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan B's records in order for the transaction to proceed. The plan administrator is the payor. A participant may request a distribution from Plan B by following the applicable instructions on the Plan B web site. After the participant has requested a distribution, the participant is automatically shown a page on the web site containing the notice required by section 3405. Although this page of the web site may be printed, the page also advises the participant that he or she may request the notice on a written paper document and that, if the participant requests the notice on a written paper document, it will be provided at no charge. To proceed with the distribution through the web site, the participant must acknowledge receipt, review, and comprehension of the notice.

(ii) In this *Example 2,* the plan administrator does not fail to satisfy the notice requirement of section 3405 merely because the notice is provided to the participant other than through a written paper document.

*Example 3.* (i) An employer deferred compensation plan (Plan C) permits participants to request distributions through Plan C's automated telephone system. Under Plan C's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan C's records in order for the transaction to proceed. The plan administrator is the payor. A participant may request a distribution from Plan C by following the applicable instructions on the automated telephone system. After the participant has requested a distribution, the automated telephone system reads the notice required by section 3405 to the participant. The automated telephone system also advises the participant that he or she may request the notice on a written paper document and that, if the participant requests the notice on a written paper document, it will be provided at no charge. Before proceeding with the distribution transaction, the participant must acknowledge receipt, review, and comprehension of the notice.

(ii) In this *Example 3,* the plan administrator does not fail to satisfy the notice requirement of section 3405 merely because the notice is provided to the participant other than through a written paper document.

*Example 4.* (i) Same facts as *Example 3,* except that, pursuant to the system for processing such transactions, a participant who so requests is transferred to a customer service representative whose conversation with the participant is recorded. The customer service representative provides the notice required by section 3405 by reading from a prepared text.

(ii) *Conclusion.* In this *Example 4,* the plan administrator does not fail to satisfy the notice requirement of section 3405 merely because the notice is provided to the participant other than through a written paper document.

*Example 5.* (I) Same facts as *Example 1,* except that Participant D requested a distribution by e-mail and then terminated employment. Participant D no longer has access to e-mail.

(ii) In *this Example 5,* Plan A does not satisfy the notice requirement of section 3405 because the electronic medium through which the notice is provided is not reasonably accessible to Participant D. Plan A must provide the notice required by section 3405 to Participant D in a written paper document or by an electronic medium that is reasonably accessible to Participant D.

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

**Par. 6.** The authority citation for part 602 continues to read as follows:

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

**Par. 7.** In § 602.101, paragraph (b) is amended by adding the following entry in the table in numerical order to read as follows:

**§ 602.101 OMB Control numbers.**

* * * * *

(b) * * *

| CFR part or section where identified and described | Current OMB control No. |
|---|---|
| * * * * * | |
| 1.402(f)–1 ..... | 1545–1632 |
| * * * * * | |
| 1.411(a)–11 ..... | 1545–1632 |
| * * * * * | |

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

Approved: January 20, 2000.

**Jonathan Talisman,**

*Acting Assistant Secretary of the Treasury.*

[FR Doc. 00–1897 Filed 2–7–00; 8:45 am]

**BILLING CODE 4830–01–U**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

**[Docket No. NH040–7167a; FRL–6532–2]**

### Approval and Promulgation of State Plans for Designated Facilities and Pollutants: New Hampshire; Plan for Controlling Emissions From Existing Hospital/Medical/Infectious Waste Incinerators

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

**ACTION:** Direct final rule.

**SUMMARY:** The United States Environmental Protection Agency (EPA) approves the Sections 111(d)/129 State Plan submitted by the New Hampshire Department of Environmental Services (NHDES) on June 2, 1999. This State Plan is for implementing and enforcing provisions at least as protective as the Emissions Guidelines (EG) applicable to

existing Hospital/Medical/Infectious Waste Incinerators (HMIWIs) for which construction commenced on or before June 20, 1996.

**DATES:** This direct final rule is effective on April 10, 2000 without further notice unless EPA receives significant, material and adverse comment by March 9, 2000. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** You should address your written comments to: Mr. Brian Hennessey, Acting Chief, Air Permits Unit, Office of Ecosystem Protection, U.S. EPA-New England, Region 1, One Congress Street, Suite 1100 (CAP), Boston, Massachusetts 02114–2023.

Documents which EPA has incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. You may examine copies of materials the NHDES submitted to EPA relative to this action during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency-New England, Region 1, Air Permits Unit, Office of Ecosystem Protection, Suite 1100, One Congress Street, Boston, Massachusetts 02114–2023.

New Hampshire Department of Environmental Services, Air Resources Division, 6 Hazen Drive, Concord, New Hampshire 03301, (603) 271–1370.

**FOR FURTHER INFORMATION CONTACT:** John Courcier at (617) 918–1659.

**SUPPLEMENTARY INFORMATION:**

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## I. What Action Is EPA Taking Today?

EPA is approving New Hampshire's State Plan submitted on June 2, 1998 for the control of air emissions from HMIWIs throughout the State. When EPA developed the New Source Performance Standards (NSPS) for HMIWIs, the Agency simultaneously developed the Emission Guidelines (EG) to control air emissions from older HMIWIs (see 62 FR 48348–48391, September 15, 1997). New Hampshire developed a State Plan, as required by sections 111(d) and 129 of the Clean Air Act (the Act), to adopt the EG into its body of regulations, and EPA is acting today to approve New Hampshire's State Plan.

Under section 129 of the Act, the EG are not federally enforceable. Section 129(b)(2) of the Act requires states to submit to EPA for approval State Plans that implement and enforce the EG. State Plans must be at least as protective as the EG, and they become federally enforceable upon approval by EPA. The procedures for adopting and submitting State Plans are located in 40 CFR part 60, subpart B.

EPA originally issued the subpart B provisions on November 17, 1975. EPA amended subpart B on December 19, 1995, to allow the subparts developed under section 129 to include specifications that supersede the general provisions in subpart B regarding the schedule for submittal of State Plans, the stringency of the emission limitations, and the compliance schedules, see 60 FR 65414 (December 19, 1995). This action approves the State Plan submitted by New Hampshire to implement and enforce the EG, as it applies to older HMIWI units.

EPA is publishing this approval action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the State Plan should relevant adverse comments be filed. If EPA receives no significant, material, and adverse comments by March 9, 2000, this action will be effective April 10, 2000.

If EPA receives significant, material, and adverse comments by the above date, the Agency will withdraw this action before the effective date by publishing a subsequent document in the **Federal Register** that will withdraw this final action. EPA will address all public comments received in a subsequent final rule based on the parallel proposed rule published in today's **Federal Register**. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

## II. Why Does EPA Want To Regulate Air Emissions From HMIWIs?

When burned, hospital waste and medical/infectious waste emit various air pollutants, including hydrochloric acid, dioxin/furan, toxic metals (lead, cadmium, and mercury) and particulate matter. Mercury is highly hazardous and is of particular concern because it persists in the environment and bioaccumulates through the food web. Serious developmental and adult effects in humans, primarily damage to the nervous system, have been associated with exposures to mercury. Harmful effects in wildlife have also been reported; these include nervous system damage and behavioral and reproductive deficits. Human and wildlife exposure to mercury occur mainly through eating of fish. When inhaled, mercury vapor attacks also the lung tissue and is a cumulative poison. Short-term exposure to mercury in certain forms can cause hallucinations and impair consciousness. Long-term exposure to mercury in certain forms can affect the central nervous system and cause kidney damage.

Exposure to particulate matter can aggravate existing respiratory and cardiovascular disease and increase risk of premature death. Hydrochloric acid is a clear colorless gas. Chronic exposure to hydrochloric acid has been reported to cause gastritis, chronic bronchitis, dermatitis, and photosensitization. Acute exposure to high levels of chlorine in humans may result in chest pain, vomiting, toxic pneumonitis, pulmonary edema, and death. At lower levels, chlorine is a potent irritant to the eyes, the upper respiratory tract, and lungs.

Exposure to dioxin and furan can cause skin disorders, cancer, and reproductive effects such as endometriosis. These pollutants can also affect the immune system.

## III. When Did EPA First Publish These Requirements?

The EPA proposed the EG in the **Federal Register** on June 20, 1996. On September 15, 1997, according to sections 111 and 129 of the Clean Air Act (Act), the EPA published the final form of the EG applicable to existing HMIWIs. The EG are at 40 CFR Part 60,

Subpart Ce. *See* 62 FR 48348 and the Background section.

**IV. Who Must Comply With The Requirements?**

All HMIWIs that commenced construction on or before June 20, 1996 must comply with these requirements.

**V. Are Any Sources Exempt From the Requirements?**

The following incinerator source categories are exempt from the federal requirements for HMIWIs:

(1) Incinerators that burn only pathological, low-level radiation, and/or chemotherapeutic waste (all defined in section 60.51c). However, the owner or operator must notify the EPA Administrator of an exemption claim and the owner or operator must keep records of the periods of time when only pathological, low-level radioactive, and/or chemotherapeutic waste is burned.

(2) Any unit required to have a permit under section 3005 of the Solid Waste Disposal Act.

(3) Incinerators that are subject to the NSPS and/or EG for Municipal Waste Combustors.

(4) Existing incinerators, processing operations, or boilers that co-fire medical/infectious waste or hospital waste with other fuels or wastes and that combust less than ten percent or less medical/infectious waste and hospital waste by weight (on a calendar quarter basis). However, the owner or operator must notify the EPA Administrator of an exemption claim and the owner or operator must keep records of the amount of each fuel and waste fired.

**VI. By What Date Must HMIWIs in New Hampshire Achieve Compliance?**

All existing HMIWIs in the state of New Hampshire must comply with these requirements within one year of the effective date of EPA approval of this plan, unless NHDES grants an extension. However, final compliance must be achieved by September 15, 2002.

**VII. What Happens If an HMIWI Does Not/Cannot Meet the Requirements by the Final Compliance Date?**

Any existing HMIWI that fails to meet the requirements by September 15, 2002 must shut down. The unit will not be allowed to start up until the owner/operator installs the controls necessary to meet the requirements.

**VIII. What Options Are Available to Operators If They Cannot Achieve Compliance Within One Year of the Effective Date of the State Plan?**

If an HMIWI cannot achieve compliance within one year of the effective date of EPA approval of the State Plan, the operator must agree to meet certain increments of progress until they achieve compliance. The State Rule details the increments of progress for the affected HMIWIs.

**IX. What Is a State Plan?**

Section 111(d) of the Act requires that pollutants controlled under NSPS must also be controlled at older sources in the same source category. Once an NSPS is issued, EPA then publishes an EG applicable to the control of the same pollutant from existing (designated) facilities. States with designated facilities must then develop State Plans to adopt the EG into their body of regulations. States must also include in their State Plans other elements, such as inventories, legal authority, and public participation documentation, to demonstrate their ability to enforce the State Plans.

**X. What did the state submit as part of its State Plan?**

The State of New Hampshire submitted its Sections 111(d)/129 State Plan to EPA for approval on June 2, 1999 and supplemented it on November 1, 1999. The State adopted the EG requirements into the New Hampshire Code of Administrative Rules Env–A–3500, ''Hospital/Medical/Infectious Waste Incineration'' on January 29, 1999 and promulgated certain revisions on October 30, 1999. The State Plan contains:

1. A demonstration of the State's legal authority to implement the State Plan.
2. New Hampshire Rule CHAPTER Env–A–3500, ''Hospital/Medical/Infectious Waste Incineration'' as the enforceable mechanism.
3. An inventory of the sources on pages 4 and 5 of the State Plan.
4. An emissions inventory on pages 5 and 6 of the State Plan.
5. Emission limits, at least as protective as the EG, that are contained in Env–A–3505. (Please note that the State's mercury limit of 0.055 ''g/dscm is more stringent than EPA's EG.)
6. Provisions for compliance schedules that are contained in Env–A–3507.
7. Testing, monitoring, and inspection requirements that are contained in Env–A–3510, 3511, and 3512.
8. Reporting and Recordkeeping requirements that are contained in Env–A–3513.
9. Operator training and qualification requirements that are contained in Env–A–3506.
10. Requirements for the development of a Waste Management Plan that are contained in Env–A–3509.
11. A record of the public notice and hearing requirements that are contained in Appendices D and E of the State Plan.
12. Provisions for state progress reports to EPA that are contained on page 10 of the State Plan.
13. Title V permit application due date requirements that are contained in Env–A–3514 and are due on September 1, 2000.
14. A final compliance date of September 15, 2002.

**XI. Why Is EPA Approving New Hampshire's State Plan?**

EPA has evaluated the HMIWI State Plan submitted by New Hampshire for consistency with the Act, EPA guidelines and policy. EPA has determined that New Hampshire's State Plan meets all requirements and, therefore, EPA is approving New Hampshire's Plan to implement and enforce the EG, as it applies to older HMIWIs.

EPA's approval of New Hampshire's State Plan is based on our findings that:

(1) NHDES provided adequate public notice of public hearings for the proposed rule-making that allows New Hampshire to carry out and enforce provisions that are at least as protective as the EG for HMIWIs, and

(2) NHDES demonstrated legal authority to adopt emission standards and compliance schedules applicable to the designated facilities; enforce applicable laws, regulations, standards and compliance schedules; seek injunctive relief; obtain information necessary to determine compliance; require record keeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and make emission data publicly available.

A detailed discussion of EPA's evaluation of the State Plan is included in the technical support document (TSD) located in the official file for this action and available from the EPA contact listed above. The State Plan meets all of the applicable approval criteria.

**XII. Why Does EPA Need to Approve State Plans?**

Under section 129 of the Act, emission guidelines are not federally enforceable. Section 129(b)(2) of the Act requires states to submit State Plans to EPA for approval. Each state must show that its State Plan will carry out and

enforce the emission guidelines. State Plans must be at least as protective as the emission guidelines, and they become federally enforceable upon EPA's approval.

The procedures for adopting and submitting State Plans are in 40 CFR Part 60, Subpart B. EPA originally issued the Subpart B provisions on November 17, 1975. EPA amended Subpart B on December 19, 1995, to allow the subparts developed under Section 129 to include specifications that supersede the general provisions in Subpart B regarding the schedule for submittal of State Plans, the stringency of the emission limitations, and the compliance schedules. *See* 60 FR 65414.

**XIII. Administrative Requirements**

*A. Executive Order 12866*

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

*B. Executive Order 13132*

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves an existing state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

*C. 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 E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks that EPA has reason to believe may have a disproportionate effect on children.

*D. Executive Order 13084*

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E. O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's action does not create any new requirements on any entity affected by this State Plan. Thus, the action will not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

*E. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

State Plan approvals under section 111(d) and section 129(b)(2) of the Clean Air Act do not create any new requirements on any entity affected by this rule, including small entities. They simply approve requirements that the state is already imposing. Furthermore, in developing the HMIWI emission guidelines and standards, EPA prepared a written statement pursuant to the Regulatory Flexibility Act which it published in the 1997 promulgation notice (*see* 62 FR 48348). In accordance with EPA's determination in issuing the 1997 HMIWI emission guidelines, this State Plan does not include any new requirements that will have a significant economic impact on a substantial number of small entities. Therefore, because the Federal 111(d) Plan approval does not impose any new requirements and pursuant to section 605(b) of the Regulatory Flexibility Act, the Regional Administrator certifies that this rule will not have a significant impact on a substantial number of small entities.

*F. Unfunded Mandates*

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the 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 on by the rule.

In developing the HMIWI emission guidelines and standards, EPA prepared a written statement pursuant to section 202 of the Unfunded Mandates Act which it published in the 1997 promulgation notice (*see* 60 FR 48374 to 48378). The EPA has determined that this State Plan does not include any new Federal mandates above those previously considered during promulgation of the 1997 HMIWI guidelines. The State Plan does include an emission limitation for mercury that will be more stringent than the limit required by the EG. However, that limit is not the result of a Federal mandate. In approving the State Plan, EPA is approving pre-existing requirements under State law and imposing no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from EPA's approval of State Plan provisions that may be more stringent than the EG requirements, nor will EPA's approval of the State Plan significantly or uniquely affect small governments. Thus, this action is not subject to the requirements of sections 202, 203, 204, and 205 of the Unfunded Mandates Act.

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

Under 5 U.S.C. 801(a)(1)(A), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

*H. 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 bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

In approving or disapproving State Plans under section 129 of the Clean Air Act, EPA does not have the authority to revise or rewrite the State's rule, so the Agency does not have authority to require the use of particular voluntary consensus standards. Accordingly, EPA has not sought to identify or require the State to use voluntary consensus standards. Furthermore, New Hampshire's Plan incorporates by reference test methods and sampling procedures for existing HMIWI units already established by the emissions guidelines for HMIWIs at 40 CFR Part 60, Subpart Ce, and does not establish new technical standards for HMIWIs. Therefore, the requirements of the NTTAA are not applicable to this final rule.

*I. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 10, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2). EPA encourages interested parties to comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

**List of Subjects in 40 CFR Part 62**

Administrative practice and procedure, Air pollution control, Environmental protection, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: January 20, 2000.

**Mindy S. Lubber,**

*Acting Regional Administrator, Region 1.*

40 CFR Part 62 is amended as follows:

## PART 62—[AMENDED]

1. The authority citation for Part 62 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7642.

### Subpart EE—New Hampshire

2. Section 62.7325 is amended by adding paragraphs (b)(2) and (c)(2) to read as follows:

**§ 62.7325 Identification of plan.**

(b) * * *

(2) Control of air emissions from existing hospital/medical/infectious waste incinerators, submitted on June 2, 1999.

(c) * * *

(2) Hospital/medical/infectious waste incinerators.

3. Part 62 is amended by adding a new § 62.7450 and a new undesignated center heading to Subpart EE to read as follows:

**Air Emissions From Existing Hospital/Medical/Infectious Waste Incinerators**

**§ 62.7450 Identification of sources.**

(a) The plan applies to existing hospital/medical/infectious waste incinerators for which construction commenced on or before June 20, 1996.

(b) [Reserved].

[FR Doc. 00–2472 Filed 2–7–00; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### 43 CFR Part 11

**RIN 1090–AA72**

## Natural Resource Damage Assessments—Type A Procedures

**AGENCY:** Department of the Interior.

**ACTION:** Final rule: correcting amendments.

**SUMMARY:** On May 7, 1996, the Department of the Interior published a final rule establishing two simplified, or ''type A,'' procedures for assessing natural resource damages under the Comprehensive Environmental Response, Compensation, and Liability Act. 61 FR 20559. Those procedures incorporated two computer models. The Department made a number of technical corrections to the models on November 10, 1997. 62 FR 60457. This rule makes additional technical corrections to those models.

**DATES:** This final rule is effective February 8, 2000. The incorporation by reference of the publications listed in this rule was approved by the Director of the Federal Register as of February 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** David Rosenberger at (202) 208–3301.

Interested parties may obtain copies of the computer models and supporting documentation free of charge from the Department through April 28, 2000, and thereafter for a fee from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, ph: (703) 487–4650. The models are also on the Internet at http://www.doi.gov/oepc/oepcbb.html.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. 9601 *et seq.*) (CERCLA) provides that certain categories of persons, known as potentially responsible parties (PRPs), are liable for natural resource damages resulting from a release of a hazardous substance. CERCLA sec. 107(a). Natural resource damages are monetary compensation for injury to, destruction of, or loss of natural resources. CERCLA sec. 107(a)(4)(C). Only those Federal, State, and Indian tribe officials designated as natural resource trustees may recover natural resource damages. CERCLA requires the President to promulgate regulations for the assessment of natural resource damages resulting from hazardous substance releases. CERCLA sec. 301(c). The President delegated the responsibility for promulgating these regulations to the Department. E.O. 12316, as amended by E.O. 12580. CERCLA requires that the natural resource damage assessment regulations include two types of assessment procedures. ''Type A'' procedures are ''standard procedures for simplified assessments requiring minimal field observation.'' CERCLA sec. 301(c)(2)(A). ''Type B'' procedures are ''alternative protocols for conducting assessments in individual cases.'' CERCLA sec. 301(c)(2)(B). Both types of procedures are codified at 43 CFR part 11.

On May 7, 1996, the Department published a final rule that revised an existing type A procedure for assessing natural resource damages from minor releases in coastal areas and established an additional type A procedure for minor releases in the Great Lakes. Trustees obtain a rebuttable presumption in litigation for damages, up to $100,000, calculated in accordance with those procedures. Both procedures incorporate computer models. The type A procedure for coastal areas incorporates the Natural Resource Damage Assessment Model for Coastal and Marine Environments (NRDAM/CME) and the type A procedure for Great Lakes incorporates the Natural Resource Damage Assessment Model for Great Lakes Environments (NRDAM/GLE). The Department made a number of technical corrections to the models on November 10, 1997. 62 FR 60457. The models currently incorporated by reference in the regulations are the NRDAM/CME Version 2.5 and the NRDAM/GLE Version 1.5.

The regulations identify the conditions under which trustees may use the models. 43 CFR 11.34. The regulations also specify the data inputs trustees must provide to operate the NRDAM/CME and the NRDAM/GLE. After trustees supply the data inputs, the models themselves perform the remaining calculations necessary to establish if there has been an injury, quantify the extent of injury, estimate the cost of restoration actions, and value economic losses. Both models include four linked submodels: a physical fates submodel, a biological effects submodel, a restoration submodel, and a compensable value submodel.

**Need for This Rulemaking**

The Department has discovered that the NRDAM/CME Version 2.5 and the NRDAM/GLE Version 1.5 are not Y2K compliant. The source codes for the models make limited use of dates, instead using time since the spill for most calculations. However, the compensable value submodel does use the spill year (supplied by the user as a 2-digit number) when determining how to discount economic values into present-day terms.

Test runs of the NRDAM/GLE Version 1.5 showed that the year entry ''0'' for year 2000 caused the model to enter an infinite loop, such that it is unable to run a spill occurring in year 2000. The model would run year = 1 for 2001, but the year was incorrectly interpreted as 1901. This caused the discounting to be incorrectly calculated. Test runs of the NRDAM/CME Version 2.5 showed that, unlike the NRDAM/GLE Version 1.5, the year entry ''0'' for year 2000 (or 1, 2, etc. for after 2000) allowed the model to run. However, as with the NRDAM/GLE Version 1.5, the year was interpreted incorrectly (as 1900), thus causing the discounting to be calculated incorrectly.

The Department has also learned of two non-Y2K related programming errors in the models. In the model output text of the NRDAM/GLE Version 1.5, the implicit price deflator (which is entered by the user and used in the discounting calculations) was stated to be relative to 1987, when in fact the regulations require that the user supply the implicit price deflator relative to 1992. In the NRDAM/CME Version 2.5, a problem arose if a user ran the physical fates submodel alone and then ran the biological effects and compensable value submodels later. In that case, the user interface was not providing the implicit price deflator to the biological effects and compensable value submodels, and zero was assumed, which caused compensable values to be zeroed out.

The Department has developed new versions of the models that correct these programming errors: the NRDAM/GLE Version 1.51 and the NRDAM/CME Version 2.51. The Department is issuing this rule to announce the availability of these new versions and to amend the regulations so that they incorporate these new versions. In order to obtain the rebuttable presumption, trustees must now use the new versions of the models.

**Changes to the NRDAM/GLE and its Technical Documentation**

To fix the Y2K problem, the Department made two changes in the source code for the NRDAM/GLE. First, the infinite loop for year = 0 was caused by the model simply not accepting a zero entry; therefore, the Department changed the source code so that a year greater than or equal to zero is acceptable to the model. Second, the Department changed the source code so that years from 0 to 49 are interpreted as 2000 to 2049, while years 50–99 are interpreted as 1950–1999. The Department has also changed the source code so that the model output text indicates the correct base year (1992) for the implicit price deflator.

The source code for the NRDAM/GLE is included in Volume IV of ''The CERCLA Type A Natural Resource Damage Assessment Model for Great Lakes Environments, Technical Documentation,'' which is incorporated by reference into the regulations. 43 CFR 11.18(a)(5). The Department is amending Volume IV with a document entitled ''Revision II,'' and dated December 1999, that describes how the source code for the NRDAM/GLE Version 1.5 was modified to create the NRDAM/GLE Version 1.51.

**Changes to the NRDAM/CME and its Technical Documentation**

To fix the Y2K problem in the NRDAM/CME, the Department changed the source code so that years from 0 to 49 are interpreted as 2000 to 2049, while years 50–99 are interpreted as 1950–1999. The Department also changed the source so that the user interface supplies the implicit price deflator to the biological effects and compensable value submodels even

when those submodels are run separately from the physical fates submodel.

The source code for the NRDAM/CME is included in Volume VI of ''The CERCLA Type A Natural Resource Damage Assessment Model for Coastal and Marine Environments, Technical Documentation,'' which is incorporated by reference into the regulations. 43 CFR 11.18(a)(4). The Department is amending Volume VI with a document entitled ''Revision II,'' and dated December 1999, that describes how the source code for the NRDAM/CME Version 2.5 was modified to create the NRDAM/CME Version 2.51.

**Justification for Issuing a Direct Final Rule**

This rule does not modify any substantive decisions the Department made in the May 7, 1996 rulemaking. The technical corrections described in this rule are necessary to ensure that NRDAM/CME and NRDAM/GLE conform to the descriptions and decisions stated in the May 7, 1996, preamble and in the supporting technical documentation for the models. The additional changes are also nonsubstantive in nature. Therefore, the Department finds that there is good cause under section 553(b)(3)(b) of the Administrative Procedure Act (5 U.S.C. 551 et seq.) to make these corrections and changes without first issuing a notice of proposed rulemaking. For the same reasons, the Department finds that there is good cause under section 553(d)(3) of the Administrative Procedure Act to make this final rule effective immediately.

**List of Subjects in 43 CFR Part 11**

Coastal zone, Environmental protection, Fish, Hazardous substances, Incorporation by reference, Indian lands, Marine resources, National forests, National parks, Natural resources, Public lands, Recreation areas, Sea shores, Wildlife, Wildlife refuges.

For the reasons set out in the preamble, Title 43, Subtitle A of the Code of Federal Regulations is amended as follows:

## PART 11—NATURAL RESOURCE DAMAGE ASSESSMENTS

1. The authority citation for Part 11 continues to read as follows:

**Authority:** 42 U.S.C. 9651(c), as amended.

### Subpart A—Introduction

2. Section 11.18 is amended by revising paragraphs (a)(4) and (a)(5) to read as follows:

**§ 11.18 Incorporation by reference.**

(a) * * *

(4) The CERCLA Type A Natural Resource Damage Assessment Model for Coastal and Marine Environments Technical Documentation, Volumes I–VI, dated April 1996, including Revision I dated October 1997, and Revision II dated December 1999, prepared for the U.S. Department of the Interior by Applied Science Associates, Inc., A.T. Kearney, Inc., and Hagler Bailly Consulting, Inc. (NRDAM/CME technical document). Interested parties may obtain a copy of this document from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; PB96–501788; ph: (703) 487–4650. Sections 11.34 (a), (b), and (e), 11.35(a), 11.36(b), 11.40(a), and 11.42(a), and Appendix II refer to this document.

(5) The CERCLA Type A Natural Resource Damage Assessment Model for Great Lakes Environments Technical Documentation, Volumes I–IV, dated April 1996, including Revision I dated October 1997, and Revision II dated December 1999, prepared for the U.S. Department of the Interior by Applied Science Associates, Inc., and Hagler Bailly Consulting, Inc. (NRDAM/GLE technical document). Interested parties may obtain a copy of this document from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; PB96–501770; ph: (703) 487–4650. Sections 11.34 (a), (b), and (e), 11.35(a), 11.36(b), 11.40(a), and 11.42(a), and Appendix III refer to this document.

* * * * *

### Subpart C—Assessment Plan Phase

3. Section 11.33(a) is amended by revising the third sentence to read as follows:

**§ 11.33 What types of assessment procedures are available?**

* * * * *

(a) * * * There are two type A procedures: a procedure for coastal or marine environments, which incorporates the Natural Resource Damage Assessment Model for Coastal and Marine Environments, Version 2.51 (NRDAM/CME); and a procedure for Great Lakes environments, which incorporates the Natural Resource Damage Assessment Model for Great Lakes Environments, Version 1.51 (NRDAM/GLE).

* * * * *

### Subpart D—Type A Procedures

4. Section 11.40(a) is amended by revising the third and fifth sentences to read as follows:

**§ 11.40 What are type A procedures?**

(a) * * * The type A procedure for coastal and marine environments incorporates a computer model called the Natural Resource Damage Assessment Model for Coastal and Marine Environments Version 2.51 (NRDAM/CME). * * * The type A procedure for Great Lakes environments incorporates a computer model called the Natural Resource Damage Assessment Model for Great Lakes Environments Version 1.51 (NRDAM/GLE). * * *

* * * * *

**John Berry,**

*Assistant Secretary—Policy, Management, and Budget.*

[FR Doc. 00–2432 Filed 2–7–00; 8:45 am]

BILLING CODE 4310–RG–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 65

### Changes in Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Final rule.

**SUMMARY:** Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

**EFFECTIVE DATES:** The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) in effect for each listed community prior to this date.

**ADDRESSES:** The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

**FOR FURTHER INFORMATION CONTACT:** Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency makes the final determinations listed below of the final determinations of

modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

**National Environmental Policy Act**

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

**Regulatory Flexibility Act**

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

**Regulatory Classification**

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

**Executive Order 12612, Federalism**

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

**Executive Order 12778, Civil Justice Reform**

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

**List of Subjects in 44 CFR Part 65**

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

## PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 65.4 [Amended]**

2. The tables published under the authority of § 65.4 are amended as follows:

| State and county | Location | Dates and name of newspaper where notice was published | Chief executive officer of community | Effective Date of modification | Community No. |
|---|---|---|---|---|---|
| Arizona: | | | | | |
| Coconino (FEMA Docket No. 7296). | City of Flagstaff .. | July 8, 1999, July 15, 1999, *Arizona Daily Sun*. | The Honorable Christopher J. Bavasi, Mayor, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001. | June 4, 1999 ..... | 040020 |
| Pima (FEMA Docket No. 7296). | City of Tucson .... | June 8, 1999, June 15, 1999, *Tucson Citizen*. | The Honorable George Miller, Mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona 85726. | May 11, 1999 ..... | 040076 |
| Arkansas: Saline (FEMA Docket No. 7296). | Unincorporated Areas. | June 17, 1999, June 24, 1999, *Benton Courier*. | The Honorable Lanny Fite, Saline County Judge, 200 North Main, Room 116, Benton, Arkansas 72015. | May 7, 1999 ..... | 050191 |
| California: | | | | | |
| Orange (FEMA Docket No. 7296). | City of Irvine ..... | June 8, 1999, June 15, 1999, *Orange County Register*. | The Honorable Christina Shea, Mayor, City of Irvine, P.O. Box 19575, Irvine, California 92623. | Sept. 13, 1999 ..... | 060222 |
| Orange (FEMA Docket No. 7296). | City of Placentia | July 8, 1999, July 15, 1999, *Placentia News-Times*. | The Honorable Constance Underhill, Mayor, City of Placentia, 410 East Chapman Avenue, Placentia, California 92870. | June 9, 1999 ..... | 060229 |
| Sacramento (FEMA Docket No. 7296). | Unincorporated Areas. | July 7, 1999, July 14, 1999, *Sacramento Bee*. | The Honorable Illa Collin, Chairperson, Sacramento County, Board of Supervisors, 700 H Street, Room 2450, Sacramento, California 95814. | Oct. 12, 1999 ..... | 060262 |

| State and county | Location | Dates and name of newspaper where notice was published | Chief executive officer of community | Effective Date of modification | Community No. |
|---|---|---|---|---|---|
| San Diego (FEMA Docket No. 7296). | City of San Diego | June 18, 1999, June 25, 1999, *San Diego Daily Transcript*. | The Honorable Susan Golding, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, California 92101. | May 25, 1999 ..... | 060295 |
| San Diego (FEMA Docket No. 7296). | Unincorporated Areas. | July 15, 1999, July 22, 1999, *San Diego Union-Tribune*. | The Honorable Pam Slater, Chairperson, San Diego County, Board of Supervisors, 1600 Pacific Highway, Room 335, San Diego, California 92101. | June 22, 1999 ..... | 060289 |
| Ventura (FEMA Docket No. 7296). | City of Simi Valley. | June 22, 1999, June 29, 1999, *Ventura County Star*. | The Honorable Bill Davis, Mayor, City of Simi Valley, 2929 Tapo Canyon Road, Simi Valley, California 93063–2199. | May 26, 1999 ..... | 060421 |
| Orange (FEMA Docket No. 7296). | City of Tustin ..... | June 8, 1999, June 15, 1999, *Orange County Register*. | The Honorable Thomas Saltarelli, Mayor, City of Tustin, 300 Centennial Way, Tustin, California 92780. | Sept. 13, 1999 ..... | 060235 |
| Colorado: Summit (FEMA Docket No. 7296). | Town of Frisco .... | June 18, 1999, June 25, 1999, *Breckenridge Summit County Journal*. | The Honorable M.L. Etie, Mayor, Town of Frisco, P.O. Box 4100, Frisco, Colorado 80443. | May 14, 1999 ..... | 080245 |
| Iowa: Story (FEMA Docket No. 7296). | City of Ames ..... | June 23, 1999, June 30, 1999, *The Tribune*. | The Honorable Ted Tedesco, Mayor, City of Ames, 515 Clark Avenue, Ames, Iowa 50010. | Sept. 28, 1999 ..... | 190254 |
| Kansas: | | | | | |
| Sedgwick (FEMA Docket No. 7296). | City of Haysville .. | June 21, 1999, June 28, 1999, *Haysville Times*. | The Honorable Tim Norton, Mayor, City of Haysville, 200 West Grand, Haysville, Kansas 67060. | May 20, 1999 ..... | 200324 |
| Johnson (FEMA Docket No. 7296). | City of Prairie Village. | July 9, 1999, July 16, 1999, *The Sun*. | The Honorable Ronald Schaffer, Mayor, City of Prairie Village, 7700 Mission Road, Prairie Village, Kansas 66208. | June 15, 1999 ..... | 200175 |
| Sedgwick (FEMA Docket No. 7296). | Unincorporated Areas. | June 30, 1999, July 7, 1999, *Wichita Eagle*. | The Honorable William Hancock, Chairman, Board of Commissioners, Sedgwick County, 525 North Main, Wichita, Kansas 67203. | May 27, 1999 ..... | 200321 |
| Sedgwick (FEMA Docket No. 7296). | Unincorporated Areas. | June 21, 1999, June 28, 1999, *Wichita Eagle*. | The Honorable William Hancock, Chairman, Board of Commissioners, Sedgwick County, 525 North Main, Wichita, Kansas 67203. | May 20, 1999 ..... | 200321 |
| Sedgwick (FEMA Docket No. 7296). | City of Wichita .... | June 22, 1999, June 29, 1999, *Wichita Eagle*. | The Honorable Bob Knight, Mayor, City of Wichita, 455 North Main Street, First Floor, Wichita, Kansas 67202. | May 20, 1999 ..... | 200328 |
| Sedgwick (FEMA Docket No. 7296). | City of Wichita .... | June 30, 1999, July 7, 1999, *Wichita Eagle*. | The Honorable Bob Knight, Mayor, City of Wichita, 455 North Main Street, First Floor, Wichita, Kansas 67202. | May 27, 1999 ..... | 200328 |
| Missouri: St. Louis (FEMA Docket No. 7296). | City of Maryland | June 15, 1999, June 22, 1999, *St. Louis Countian*. | The Honorable Michael O'Brien, Mayor, City of Maryland Heights, 212 Millwell Drive, Maryland Heights, Missouri 63043. | Sept. 20, 1999 ..... | 290889 |
| North Dakota: Cass (FEMA Docket No. 7296). | City of Fargo ..... | June 22, 1999, June 29, 1999, *The Forum*. | The Honorable Bruce Furness, Mayor, City of Fargo, City Hall, 200 Third Street North, Fargo, North Dakota 58102–4809. | May 21, 1999 ..... | 385364 |
| Oklahoma: | | | | | |
| Oklahoma (FEMA Docket No. 7296). | City of Oklahoma City. | June 18, 1999, June 25, 1999, *Daily Oklahoman*. | The Honorable Kirk Humphreys, Mayor, City of Oklahoma City, 200 North Walker, Suite 302, Oklahoma City, Oklahoma 73102. | May 27, 1999 ..... | 405378 |
| Tulsa (FEMA Docket No. 7296). | City of Tulsa ..... | June 11, 1999, June 18, 1999, *Tulsa World*. | The Honorable M. Susan Savage, Mayor, City of Tulsa, City Hall, 200 Civic Center, Tulsa, Oklahoma 74103. | Sept. 16, 1999 ..... | 405381 |
| Oregon: Clackamas (FEMA Docket No. 7296). | City of Milwaukie | June 24, 1999, July 1, 1999, *The Oregonian*. | The Honorable Carolyn Tomei, Mayor, City of Milwaukie, 10722 Southeast Main Street, Milwaukie, Oregon 97222. | May 21, 1999 ..... | 410019 |

| State and county | Location | Dates and name of newspaper where notice was published | Chief executive officer of community | Effective Date of modification | Community No. |
|---|---|---|---|---|---|
| South Dakota: Minnehaha (FEMA Docket No. 7296). | Unincorporated Areas. | June 18, 1999, June 25, 1999, *Argus Leader*. | The Honorable Robert Kolbe, Chairman, Minnehaha County Commissioners, 415 North Dakota Avenue, Sioux Falls, South Dakota 57104–2465. | May 21, 1999 ..... | 460057 |
| Texas: | | | | | |
| Tarrant (FEMA Docket No. 7296). | City of Arlington .. | July 9, 1999, July 16, 1999, *Fort Worth Star-Telegram*. | The Honorable Elzie Odom, Mayor, City of Arlington, P.O. Box 231, Arlington, Texas 76004–0231. | June 11, 1999 ..... | 485454 |
| Tarrant (FEMA Docket No. 7296). | City of Arlington .. | June 15, 1999, June 22, 1999, *Fort Worth Star-Telegram*. | The Honorable Elzie Odom, Mayor, City of Arlington, P.O. Box 231, Arlington, Texas 76004–0231. | Sept. 20, 1999 ..... | 485454 |
| Travis (FEMA Docket No. 7296). | City of Austin ..... | June 22, 1999, June 29, 1999, *Austin American-Statesman*. | The Honorable Kirk Watson, Mayor, City of Austin, 124 West Eighth Street, Austin, Texas 78701. | May 27, 1999 ..... | 480624 |
| Williamson (FEMA Docket No. 7296). | City of Cedar Park. | July 7, 1999, July 14, 1999, *Hill Country News*. | The Honorable George Denny, Mayor, City of Cedar Park, 600 North Bell Boulevard, Cedar Park, Texas 78613. | Oct. 12, 1999 ..... | 481282 |
| Tarrant (FEMA Docket No. 7296). | City of Colleyville | June 11, 1999, June 18, 1999, *Fort Worth Star-Telegram*. | The Honorable Richard Newton, Mayor, City of Colleyville, P.O. Box 185, Fort Worth, Texas 76034–0185. | May 19, 1999 ..... | 480590 |
| Dallas (FEMA Docket No. 7296). | City of Farmers Branch. | July 23, 1999, July 30, 1999, *Dallas Morning News*. | The Honorable Bob Phelps, Mayor, City of Farmers Branch, P.O. Box 819010, Farmers Branch, Texas 75381–9010. | June 23, 1999 ..... | 480174 |
| Tarrant (FEMA Docket No. 7296). | City of Fort Worth | June 15, 1999, June 22, 1999, *Fort Worth Star-Telegram*. | The Honorable Kenneth Barr, Mayor, City of Fort Worth, City Hall, 1000 Throckmorton Street, Fort Worth, Texas 76102–6311. | Sept. 20, 1999 ..... | 480596 |
| Tarrant (FEMA Docket No. 7296). | City of Fort Worth | June 23, 1999, June 30, 1999, *Fort Worth Star-Telegram*. | The Honorable Kenneth Barr, Mayor, City of Fort Worth, City Hall, 1000 Throckmorton Street, Fort Worth, Texas 76102–6311. | May 20, 1999 ..... | 480596 |
| Collin (FEMA Docket No. 7296). | City of Frisco ..... | June 11, 1999, June 18, 1999, *Frisco Enterprise*. | The Honorable Kathy Seei, Mayor, City of Frisco, P.O. Box 1100, Frisco, Texas 75034. | May 21, 1999 ..... | 480134 |
| Dallas and Collin (FEMA Docket No. 7296). | City of Garland ... | June 24, 1999, July 1, 1999, *Garland News*. | The Honorable Jim Stence, Mayor, City of Garland, 200 North Fifth Street, Garland, Texas 75040. | May 21, 1999 ..... | 485471 |
| Galveston (FEMA Docket No. 7296). | City of League City. | June 18, 1999, June 25, 1999, *Galveston Daily News*. | The Honorable A. Tommy Frankovich, Mayor, City of League City, City Hall, 300 West Walker, League City, Texas 77573. | May 19, 1999 ..... | 485488 |
| Williamson (FEMA Docket No. 7296). | City of Leander ... | July 7, 1999, July 14, 1999, *Hill Country News*. | The Honorable Charles E. Eaton, Mayor, City of Leander, P.O. Box 319, Leander, Texas 78646. | Oct. 12, 1999 ..... | 481282 |
| Tarrant (FEMA Docket No. 7296). | Unincorporated Areas. | June 11, 1999, June 18, 1999, *Fort Worth Star-Telegram*. | The Honorable Tom Vandergriff, Tarrant County Judge, 100 East Weatherford Street, Fort Worth, Texas 76196–0601. | May 19, 1999 ..... | 480582 |
| Washington: Spokane (FEMA Docket No. 7296). | Unincorporated Areas. | June 8, 1999, June 15, 1999, *Spokesman-Review*. | The Honorable Kate McCaslin, Chairperson, Spokane County, Board of Commissioners, 1116 West Broadway Avenue, Spokane, Washington 99260–0100. | Sept. 13, 1999 ..... | 53017 |

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: January 28, 2000.

**Michael J. Armstrong,**

*Associate Director for Mitigation.*

[FR Doc. 00–2799 Filed 2–7–00; 8:45 am]

**BILLING CODE 6718–04–P**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 65

**[Docket No. FEMA–7312]**

### Changes in Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Interim rule.

**SUMMARY:** This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

**DATES:** These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director for Mitigation reconsider the changes. The modified elevations may be changed during the 90-day period.

**ADDRESSES:** The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

**FOR FURTHER INFORMATION CONTACT:** Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

**SUPPLEMENTARY INFORMATION:** The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

**National Environmental Policy Act**

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

**Regulatory Flexibility Act**

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

**Regulatory Classification.**

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

**Executive Order 12612, Federalism.**

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

**Executive Order 12778, Civil Justice Reform.**

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

**List of Subjects in 44 CFR Part 65**

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

## PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

**Authority:** 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 65.4 [Amended]**

2. The tables published under the authority of § 65.4 are amended as follows:

| State and county | Location | Dates and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Arizona: | | | | | |
| Cochise ..... | Unincorporated Areas. | November 10, 1999, November 17, 1999, *Arizona Range News.* | The Honorable Mike Palmer, Chairman, Cochise County Board of Supervisors, 1415 West Melody Lane, Building B, Bisbee, Arizona 85603. | February 15, 2000 | 040012 |

| State and county | Location | Dates and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Maricopa | Town of Gilbert | October 20, 1999, October 27, 1999, *The Tribune Newspapers*. | The Honorable Cynthia Dunham, Mayor, Town of Gilbert, 1025 South Gilbert Road, Gilbert, Arizona 85296. | September 28, 1999. | 040044 |
| Graham | Unincorporated Areas. | November 10, 1999, November 17, 1999, *Eastern Arizona Courier*. | The Honorable Lynn Skinner, Chairman, Graham County Board of Supervisors, 921 Thatcher Boulevard, Safford, Arizona 85546. | February 15, 2000 | 040032 |
| Pima | Town of Marana | October 8, 1999, October 15, 1999, *Arizona Daily Star*. | The Honorable Ora Mae Harn, Mayor, Town of Marana, 13251 North Lon Adams Road, Marana, Arizona 85653. | August 31, 1999 | 040118 |
| Maricopa | Unincorporated Areas. | October 20, 1999, October 27, 1999, *Arizona Republic*. | The Honorable Fulton Brock, Chairman, Maricopa County, Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, Arizona 85003. | September 28, 1999. | 040037 |
| Maricopa | Unincorporated Areas. | November 12, 1999, November 19, 1999, *Arizona Republic*. | The Honorable Fulton Brock, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, Arizona 85003. | February 17, 2000 | 040037 |
| Maricopa | City of Mesa | October 20, 1999, October 27, 1999, *Mesa Tribune*. | The Honorable Wayne Brown, Mayor, City of Mesa, P.O. Box 1466, Mesa, Arizona 85211–1466. | September 28, 1999. | 040048 |
| Pima | Unincorporated Areas. | October 8, 1999, October 15, 1999, *The Arizona Daily Star*. | The Honorable Sharon Bronson, Chairperson, Pima County Board of Supervisors, 130 West Congress, 11th Floor, Tucson, Arizona 85701. | August 31, 1999 | 040073 |
| Pima | Unincorporated Areas. | November 10, 1999, November 17, 1999, *The Arizona Daily Star*. | The Honorable Sharon Bronson, Chairperson, Pima County Board of Supervisors, 130 West Congress, 11th Floor, Tucson, Arizona 85701. | October 1, 1999 | 040073 |
| Maricopa | Town of Queen Creek. | October 20, 1999, October 27, 1999, *Arizona Republic*. | The Honorable Mark Schnepf, Mayor, Town of Queen Creek, 22350 South Ellsworth Road, Queen Creek, Arizona 85242. | September 28, 1999. | 040132 |
| Pima | Town of Sahuarita | November 10, 1999, November 17, 1999, *Green Valley News & Sun*. | The Honorable Gordon Van Camp, Mayor, Town of Sahuarita, P.O. Box 879, Sahuarita, Arizona 85629. | October 1, 1999 | 040173 |
| Santa Cruz | Unincorporated Areas. | October 19, 1999, October 21, 1999, *Nogales International*. | The Honorable Robert Damon, Chairperson, Santa Cruz County Board of Supervisors, 2150 North Congress Drive, Nogales, Arizona 85621. | September 21, 1999. | 040090 |
| Cochise | City of Willcox | November 10, 1999, November 17, 1999, *Arizona Range News*. | The Honorable Marlin Easthouse, Mayor, City of Willcox, 101 South Railroad Avenue, Suite B, Willcox, Arizona 85643. | February 15, 2000 | 040018 |
| Yavapai | Unincorporated Areas. | October 21, 1999, October 28, 1999, *Prescott Courier*. | The Honorable A.G. ''Chip'' Davis, Chairman, Yavapai County Board of Supervisors, 10 South Sixth Street, Cottonwood, Arizona 86326. | January 26, 2000 | 040093 |
| Arkansas: | | | | | |
| Craighead | City of Jonesboro | October 8, 1999, October 15, 1999, *The Jonesboro Sun*. | The Honorable Hubert Brodell, Mayor, City of Jonesboro, P.O. Box 1845, Jonesboro, Arkansas 72403–1845. | September 10, 1999. | 050048 |

| State and county | Location | Dates and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Pulaski ..... | City of Little Rock .. | November 4, 1999, November 11, 1999, *Arkansas Democrat Gazette*. | The Honorable Jim Dailey, Mayor, City of Little Rock, City Hall, 500 West Markham Street, Room 203, Little Rock, Arkansas 72201. | September 30, 1999. | 050181 |
| California: | | | | | |
| Los Angeles ..... | City of Calabasas .. | October 7, 1999, DOctober 14, 1999, D*Los Angeles Daily News*. | The Honorable Robert Sibilia, Mayor, City of Calabasas, 26135 Mureau Road, Calabasas, California 91302. | September 2, 1999 | 060749 |
| Riverside ..... | City of Murrieta ..... | November 16, 1999, November 23, 1999, *The Californian*. | The Honorable Chuck Washington, Mayor, City of Murrieta, 26442 Beckman Court, Murrieta, CA 92562. | October 19, 1999 ... | 060751 |
| Riverside ..... | Unincorporated Areas. | November 10, 1999, November 17, 1999, *Press-Enterprise*. | The Honorable Roy Wilson, Chairperson, Riverside County Board of Supervisors, County Administrative Center, 4080 Lemon Street, 14th Floor, Riverside, California 92501. | October 6, 1999 ..... | 060245 |
| San Diego ..... | Unincorporated Areas. | November 9, 1999, November 16, 1999, *San Diego Union-Tribune*. | The Honorable Pam Slater, Chairwoman, San Diego County Board of Supervisors, 1600 Pacific Highway, Room 335, San Diego, California 92101. | February 14, 2000 | 060284 |
| San Deigo ..... | City of Santee ..... | November 9, 1999, November 16, 1999, *San Diego Union-Tribune*. | The Honorable Jack Dale, Mayor, City of Santee, 10601 Magnolia Avenue, Santee, California 92071–1266. | February 14, 2000 | 060703 |
| Colorado: | | | | | |
| Arapahoe ..... | Unincorporated Areas. | November 4, 1999, November 11, 1999, *The Villager*. | The Honorable Steve Ward, Chairman, Arapahoe County Board of Commissioners, 5334 South Prince Street, Littleton, Colorado 80166. | October 12, 1999 ... | 080011 |
| Arapahoe ..... | Unincorporated Areas. | November 18, 1999, November 25, 1999, *The Villager*. | The Honorable Steve Ward, Chairperson, Arapahoe County Board of Commissioners, 5334 South Prince Street, Littleton, Colorado 80166. | October 12, 1999 ... | 080011 |
| Boulder ..... | Unincorporated Areas. | November 9, 1999, November 16, 1999, *Daily Camera*. | The Honorable Ron Stewart, Chairman, Boulder County Board of Commissioners, P.O. Box 471, Boulder, Colorado 80306–0471. | October 5, 1999 ..... | 080023 |
| Boulder ..... | City of Boulder ..... | November 12, 1999, November 19, 1999, *Daily Camera*. | The Honorable Robert D. Greenlee, Mayor, City of Boulder, P.O. Box 791, Boulder, Colorado 80306–0791. | October 12, 1999 ... | 080024 |
| Arapahoe ..... | Town of Columbine Valley. | November 4, 1999, November 11, 1999, *The Littleton Independent*. | The Honorable James C. McShane, Mayor, Town of Columbine Valley, 5931 South Middlefield Road, Suite 101, Columbine Valley, Colorado 80123. | October 12, 1999 ... | 080014 |
| Douglas ..... | Unincorporated Areas. | November 17, 1999, November 24, 1999, *Douglas County News Press*. | The Honorable James Sullivian, Chairperson, Douglas County Board of Commissioners, 101 Third Street, Castle Rock, Colorado 80104. | October 12, 1999 ... | 080049 |
| Boulder ..... | City of Longmont ... | November 9, 1999, November 16, 1999, *Longmont Daily Times-Call*. | The Honorable Leona Stoecker, Mayor, City of Longmont, 350 Kimbark Street, Longmont, Colorado 80501. | October 5, 1999 ..... | 080027 |

| State and county | Location | Dates and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Hawaii: | | | | | |
| | City and County of Honolulu. | October 19, 1999, October 26, 1999, *Honolulu Star Bulletin*. | The Honorable Jeremy Harris, Mayor, City of Honolulu, Honolulu Hali, 530 South King Street, Honolulu, Hawaii 96813. | January 24, 2000 ... | 150001 |
| Kansas: | | | | | |
| Johnson ..... | City of Overland Park. | November 5, 1999, November 12, 1999, *Overland Park Sun*. | The Honorable Ed Eiler, Mayor, City of Overland Park, City Hall, 8500 Santa Fe Drive, Overland Park, Kansas 66212. | October 12, 1999 ... | 200174 |
| Missouri: | | | | | |
| Jefferson ..... | City of Crystal City | October 20, 1999, October 27, 1999, *Suburban Journal*. | The Honorable Grant Johnston, Mayor, City of Crystal City, 130 Mississippi Avenue, Crystal City, Missouri 63019. | September 28, 1999. | 290189 |
| Clay, Platte, and Jackson. | City of Kansas City | October 12, 1999, October 19, 1999, *Daily Record*. | The Honorable Kay Barnes, Mayor, City of Kansas City, 414 East 12th Street, 29th Floor, Kansas City, Missouri 64106. | September 8, 1999 | 290173 |
| New Mexico: | | | | | |
| Bernalillo ..... | City of Albuquerque | November 3, 1999, November 10, 1999, *Albuquerque Journal*. | The Honorable Jim Baca, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103. | September 29, 1999. | 350002 |
| Nevada: | | | | | |
| Clark ..... | Unincorporated Areas. | October 14, 1999, October 21, 1999, *Las Vegas Review-Journal*. | The Honorable Bruce Woodbury, Chairperson, Clark County Board of Commissioners, 500 Grand Central Parkway, Las Vegas, Nevada 89155. | January 19, 2000 ... | 320003 |
| Clark ..... | Unincorporated Areas. | October 14, 1999, October 21, 1999, *Las Vegas Review-Journal*. | The Honorable Bruce Woodbury, Chairperson, Clark County Board of Supervisors, P.O. Box 551601, Las Vegas, Nevada 89155–1601. | September 17, 1999. | 320003 |
| Clark ..... | City of Henderson .. | October 14, 1999, October 21, 1999, *Las Vegas Review-Journal*. | The Honorable James Gibson, Mayor, City of Henderson, 240 South Water Street, Henderson, Nevada 89015. | January 19, 2000 ... | 320005 |
| Oklahoma: | | | | | |
| Tulsa ..... | City of Broken Arrow. | October 22, 1999, October 29, 1999, *Broken Arrow Ledger*. | The Honorable James Reynolds, Mayor, City of Broken Arrow, P.O. Box 610, Broken Arrow, Oklahoma 74013. | September 28, 1999. | 400236 |
| Cleveland ..... | City of Moore ..... | October 22, 1999, October 29, 1999, *Moore American*. | The Honorable Glenn Lewis, Mayor, City of Moore, 301 North Broadway, Moore, Oklahoma 73160. | September 24, 1999. | 400044 |
| Texas: | | | | | |
| Tarrant ..... | City of Arlington ..... | October 21, 1999, October 28, 1999, *Fort Worth Star-Telegram*. | The Honorable Elzie Odom, Mayor, City of Arlington, P.O. Box 231, Arlington, Texas 76004–0231. | January 26, 2000 ... | 485454 |
| Tarrant ..... | City of Arlington ..... | November 19, 1999, November 26, 1999, *Fort Worth Star-Telegram*. | The Honorable Elzie Odom, Mayor, City of Arlington, P.O. Box 231, Arlington, Texas 76004–0231. | October 25, 1999 ... | 485454 |
| Bexar ..... | Unincorporated Areas. | November 10, 1999, November 17, 1999, *San Antonio Express-News*. | The Honorable Cyndi Taylor Krier, Bexar County Judge, Bexar County Courthouse, 100 Dolorosa, Suite 101, San Antonio, Texas 78205–3036. | October 12, 1999 ... | 480035 |

| State and county | Location | Dates and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Brazos | City of College Station. | November 19, 1999, November 16, 1999, *Bryan and College Station Eagle*. | The Honorable Lynn McIlhaney, Mayor, City of College Station, P.O. Box 9960, College Station, Texas 77842–9960. | October 8, 1999 | 480083 |
| Dallas | City of Dallas | October 12, 1999, October 19, 1999, *Dallas Morning News*. | The Honorable Ron Kirk, Mayor, City of Dallas, City Hall, 1500 Marilla Street, Dallas, Texas 75201. | January 17, 2000 | 480171 |
| Dallas | City of Dallas | October 14, 1999, October 21, 1999, *Dallas Morning News*. | The Honorable Ron Kirk, Mayor, City of Dallas, City Hall, 1500 Marilla Street, Dallas, Texas 75201. | September 17, 1999. | 480171 |
| Dallas | City of Dallas | November 16, 1999, November 23, 1999, *Dallas Morning News*. | The Honorable Ron Kirk, Mayor, City of Dallas, City Hall, 1500 Marilla Street, Dallas, Texas 75201. | October 6, 1999 | 480171 |
| Dallas | City of Garland | October 14, 1999, October 21, 1999, *The Garland News*. | The Honorable Jim Spence, Mayor, City of Garland, P.O. Box 469002, Garland, Texas 75046–9002. | September 15, 1999. | 485471 |
| Harris | Unincorporated Areas. | November 3, 1999, November 10, 1999, *Houston Chronicle*. | The Honorable Robert Eckels, Harris County Judge, 1001 Preston Street, Suite 911, Houston, Texas 77002. | September 29, 1999. | 480287 |
| Hays | Unincorporated Areas. | November 26, 1999, December 3, 1999, *San Marcos Daily Record*. | The Honorable Eddy Etheredge, Hays County Judge, Hays County Courthouse, 111 East San Antonio Street, San Marcos, Texas 78666. | March 2, 2000 | 480321 |
| Tarrant | City of Keller | October 6, 1999, October 13, 1999, *Fort Worth Star-Telegram*. | The Honorable Dave Phillips, Mayor, City of Keller, P.O. Box 770, Keller, Texas 76244. | August 30, 1999 | 480602 |
| Kendall | Unincorporated Areas. | October 19, 1999, October 26, 1999, *The Boerne Star*. | The Honorable Bill Gooden, Kendall County Judge, 201 East San Antonio Street, 120, Boerne, Texas 78006. | September 15, 1999. | 480417 |
| Dallas | City of Lancaster | October 7, 1999, October 14, 1999, *Lancaster Today*. | The Honorable Martha Wallace, Mayor, City of Lancaster, P.O. Box 940, Lancaster, Texas 75146–0940. | September 7, 1999 | 480182 |
| Collin | City of Plano | October 13, 1999, October 20, 1999, *Plano Star Courier*. | The Honorable John Longstreet, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358. | September 7, 1999 | 480140 |
| Bexar | City of San Antonio | October 15, 1999, October 22, 1999, *San Antonio Express-News*. | The Honorable Howard W. Peak, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283–3966. | January 20, 2000 | 480045 |

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: January 28, 2000.

**Michael J. Armstrong,**

*Associate Director for Mitigation.*

[FR Doc. 00–2802 Filed 2–7–00; 8:45 am]

**BILLING CODE 6718–04–P**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 65

**[Docket No. FEMA–7316]**

### Changes in Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Interim rule.

**SUMMARY:** This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

**DATES:** These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any

person has ninety (90) days in which to request through the community that the Associate Director for Mitigation reconsider the changes. The modified elevations may be changed during the 90-day period.

**ADDRESSES:** The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

**FOR FURTHER INFORMATION CONTACT:** Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

**SUPPLEMENTARY INFORMATION:** The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

**National Environmental Policy Act**

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

**Regulatory Flexibility Act**

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

**Regulatory Classification**

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

**Executive Order 12612, Federalism**

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

**Executive Order 12778, Civil Justice Reform**

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

**List of Subjects in 44 CFR Part 65**

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

## PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 65.4 [Amended]**

2. The tables published under the authority of § 65.4 are amended as follows:

| State and county | Location | Dates and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community number |
|---|---|---|---|---|---|
| California: | | | | | |
| Santa Clara ..... | City of Milpitas ..... | December 3, 1999, December 10, 1999, *San Jose Mercury News*. | The Honorable Henry Manayan, Mayor, City of Milpitas, 455 East Calaveras Boulevard, Milpitas, California 95035. | November 2, 1999 | 060344 |
| Sacramento ..... | City of Sacramento | December 21, 1999, December 28, 1999, *Sacramento Bee*. | The Honorable Joe Serna, Mayor, City of Sacramento, City Hall, 9151 I Street, Room 205, Sacramento, California 95814. | November 24, 1999 | 060266 |
| Sacramento ..... | Unincorporated Areas. | December 15, 1999, December 22, 1999, *Sacramento Bee*. | The Honorable Muriel Johnson, Chairperson, Sacramento County Board of Supervisors, 700 H Street, Room 2450, Sacramento, California 95814. | March 21, 2000 ..... | 060262 |
| Sacramento ..... | Unincorporated Areas. | December 21, 1999, December 28, 1999, *Sacramento Bee*. | The Honorable Muriel Johnson, Chairperson, Sacramento County Board of Supervisors, 700 H Street, Room 2450, Sacramento, California 95814. | November 24, 1999 | 060262 |

| State and county | Location | Dates and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community number |
|---|---|---|---|---|---|
| Colorado: | | | | | |
| Boulder | City of Boulder | December 9, 1999, December 16, 1999, *Daily Camera*. | The Honorable Robert D. Greenlee, Mayor, City of Boulder, P.O. Box 791, Boulder, Colorado 80306. | November 9, 1999 | 080024 |
| Kansas: | | | | | |
| Butler | Unincorporated Areas. | November 26, 1999, December 3, 1999, *El Dorado Times*. | The Honorable Linsey Cutsinger, Butler County Commissioner Chair, Butler County Courthouse, 205 West Central Avenue, Fourth Floor, El Dorado, Kansas 67042. | March 2, 2000 | 200037 |
| Missouri: | | | | | |
| St. Louis | City of Chesterfield | December 14, 1999, December 21, 1999, *St. Louis Countian*. | The Honorable Nancy Greenwood, Mayor, City of Chesterfield, 16052 Swingley Ridge Road, Suite 100, Chesterfield, Missouri 63017. | November 24, 1999 | 290896 |
| Clay | Unincorporated Areas. | December 16, 1999, December 23, 1999, *Kearney Courier*. | The Honorable Thomas M. Brandon, Commissioner, Clay County, Courthouse Square, Liberty, Missouri 64068. | March 22, 2000 | 290068 |
| Jackson | Unincorporated Areas. | December 16, 1999, December 23, 1999, *The Independence Examiner*. | The Honorable Katheryn Shields, County Executive, Jackson County Courthouse, 415 East 12th Street, Kansas City, Missouri 64106. | March 22, 2000 | 290492 |
| Ray | Unincorporated Areas. | December 16, 1999, December 23, 1999, *Daily News*. | The Honorable William Edgar, Commissioner, Ray County, 100 West Main Street, Richmond, Missouri 64085. | March 22, 2000 | 290778 |
| Nevada: | | | | | |
| Clark | City of Las Vegas | December 8, 1999, December 15, 1999, *Las Vegas Review Journal*. | The Honorable Oscar Goodman, Mayor, City of Las Vegas, 400 East Stewart Avenue, Las Vegas, Nevada 89101. | November 2, 1999 | 325276 |
| Oregon: | | | | | |
| Marion | Unincorporated Areas. | December 2, 1999, December 9, 1999, *Statesman Journal*. | The Honorable Patti Milne, Chairman, Marion County Board of Supervisors, County Courthouse, 100 High Street Northeast, Salem, Oregon 97301. | November 9, 1999 | 410154 |
| Texas: | | | | | |
| Collin | City of Allen | December 8, 1999, December 15, 1999, *Allen American*. | The Honorable Steve Terrell, Mayor, City of Allen, One Butler Circle, Allen, Texas 75013. | November 2, 1999 | 480131 |
| Tarrant | City of Arlington | December 3, 1999, December 10, 1999, *Fort Worth Star-Telegram*. | The Honorable Elzie Odom, Mayor, City of Arlington, P.O. Box 231, Arlington, Texas 76004–0231. | November 3, 1999 | 485454 |
| Denton | Town of Copper Canyon. | December 22, 1999, December 29, 1999, *Lewisville News*. | The Honorable Thomas A. Rogers, Mayor, Town of Copper Canyon, City Hall, 400 Woodland Drive, Copper Canyon, Texas 75067–8501. | March 28, 2000 | 481508 |
| Dallas | City of Dallas | November 30, 1999, December 7, 1999, *Dallas Morning News*. | The Honorable Ronald Kirk, Mayor, City of Dallas, City Hall, 1500 Marilla Street, Room 5EN, Dallas, Texas 75201. | November 1, 1999 | 480171 |
| Denton | Town of Flower Mound. | December 22, 1999, December 29, 1999, *Lewisvillle News*. | The Honorable Lori DeLuca, Mayor, Town of Flower Mound, Town Hall, 2121 Cross Timbers Drive, Flower Mound, Texas 75028. | November 29, 1999 | 480777 |

| State and county | Location | Dates and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community number |
|---|---|---|---|---|---|
| Denton | City of Highland Village. | December 22, 1999, December 29, 1999, *Lewisville News*. | The Honorable Austin Adams, Mayor, City of Highland Village, City Hall, 1800 FM 407, Highland, Texas 75077. | March 28, 2000 | 481105 |
| Montgomery | Unincorporated Areas. | December 20, 1999, December 27, 1999, *Conroe Courier*. | The Honorable Alan Sadler, Montgomery County Judge, 301 North Thompson Street, Suite 210, Conroe, Texas 777301. | November 29, 1999 | 480483 |
| Hays | City of San Marcos | November 26, 1999, December 3, 1999, *San Marcos Daily Record*. | The Honorable Billy Moore, Mayor, City of San Marcos, City Hall, 630 East Hopkins Street, San Marcos, Texas 78666. | March 2, 2000 | 485505 |
| Fort Bend | Unincorporated Areas. | December 15, 1999, December 22, 1999, *Herald Coaster*. | The Honorable James C. Adolphus, Fort Bend County Judge, 301 Jackson Street, Suite 719, Richmond, Texas 77469. | November 5, 1999 | 480228 |
| Collin | City of Frisco | December 3, 1999, December 10, 1999, *Frisco Enterprise*. | The Honorable Kathy Seei, Mayor, City of Frisco, P.O. Box 1100, Frisco, Texas 75034. | March 9, 2000 | 480134 |
| Dallas | City of Garland | November 18, 1999, November 25, 1999, *Garland News*. | The Honorable Jim Spence, Mayor, City of Garland, 200 North Fifth Street, Garland, Texas 75040. | October 12, 1999 | 485471 |
| Dallas | City of Garland | November 18, 1999, November 25, 1999, *Garland News*. | The Honorable Jim Spence, Mayor, City of Garland, P.O. Box 469002, Garland, Texas 75046–9002. | February 23, 2000 | 485471 |
| Cameron | Town of South Padre Island. | November 18, 1999, November 25, 1999, *Port Isable and South Padre Press*. | The Honorable Edmund Cyganiewicz, Mayor, Town of South Padre Island, 4501 Padre Boulevard, South Padre Island, Texas 78597. | October 12, 1999 | 480115 |
| Utah: | | | | | |
| Davis | Unincorporated Areas. | December 2, 1999, December 9, 1999, *Davis County Clipper*. | The Honorable Dannie McConkie, Chairman, Davis County Board of Supervisors, P.O. Box 618, Farmington, Utah 84025. | October 26, 1999 | 490038 |
| Davis | City of Kaysville | December 2, 1999, December 9, 1999, *Davis County Clipper*. | The Honorable Brian Cook, Mayor, City of Kaysville, 23 East Center Street, Kaysville, Utah 84037. | October 26, 1999 | 490046 |

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: January 28, 2000.

**Michael J. Armstrong,**

*Associate Director for Mitigation.*

[FR Doc. 00–2803 Filed 2–7–00; 8:45 am]

**BILLING CODE 6718–04–P**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 65

### Changes in Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Final rule.

**SUMMARY:** Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

**EFFECTIVE DATES:** The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) in effect for each listed community prior to this date.

**ADDRESSES:** The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

**FOR FURTHER INFORMATION CONTACT:** Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency makes the final determinations listed below of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive

Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

**National Environmental Policy Act**

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

**Regulatory Flexibility Act**

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

**Regulatory Classification**

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

**Executive Order 12612, Federalism**

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

**Executive Order 12778, Civil Justice Reform**

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

**List of Subjects in 44 CFR Part 65**

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

## PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

**Authority:** 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§65.4 [Amended]**

2. The tables published under the authority of § 65.4 are amended as follows:

| State and county | Location | Dates and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community number |
|---|---|---|---|---|---|
| Alaska: | | | | | |
| Kenai Peninsula Borough (FEMA Docket No. 7304). | City of Homer ..... | September 21, 1999, September 28, 1999, *Homer Tribune*. | The Honorable Jack Cushing, Mayor, City of Homer, 491 East Pioneer Avenue, Homer, Alaska 99603–7624. | August 25, 1999 .... | 020107 |
| Arizona: | | | | | |
| Greenlee (FEMA Docket No. 7304). | Town of Clifton ..... | September 15, 1999, September 22, 1999, The *Copper Era*. | Ms. Tonya L. Williams, Town Manager, Town of Clifton, P.O. Box 1415, Clifton, Arizona 85533. | August 23, 1999 .... | 040035 |
| Maricopa (FEMA Docket No. 7304). | City of Peoria ..... | August 13, 1999, August 20, 1999, *Peoria Times*. | The Honorable John Keegan, Mayor, City of Peoria, 8401 West Monroe Street, Peoria, Arizona 85345. | July 6, 1999 ..... | 040050 |
| Pima (FEMA Docket No. 7304). | City of Tucson ..... | September 23, 1999, September 30, 1999, *The Arizona Daily Star*. | The Honorable George Miller, Mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona 85726. | September 2, 1999 | 040076 |
| Arkansas: | | | | | |
| Pulaski (FEMA Docket No. 7304). | City of North Little Rock. | September 10, 1999, September 17, 1999, *Arkansas Democrat Gazette*. | The Honorable Patrick Henry Hays, Mayor, City of North Little Rock, P.O. Box 5757 North Little Rock, Arkansas 72119. | August 13, 1999 .... | 050182 |
| California: | | | | | |
| Riverside (FEMA Docket No. 7304). | City of Corona ..... | August 20, 1999, August 27, 1999, *The Press-Enterprise*. | The Honorable Bill Franklin, Mayor, City of Corona, P.O. Box 940, Corona, California 91718. | August 5, 1999 ..... | 060250 |

| State and county | Location | Dates and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community number |
|---|---|---|---|---|---|
| Riverside (FEMA Docket No. 7304). | City of Indian Wells | September 15, 1999, September 22, 1999, *The News Review*. | The Honorable Phil Bostley, Jr., Mayor, City of Indian Wells, 44–950 El Dorado Drive, Indian Wells, California 92210. | August 24, 1999 .... | 060254 |
| Riverside, (FEMA Docket No. 7304). | City of Norco ..... | August 20, 1999, August 27, 1999, *The Press-Enterprise*. | The Honorable Bill Vaughan, Mayor, City of Norco, P.O. Box 428, Norco, California 91760–0428. | August 5, 1999 ..... | 060256 |
| Riverside (FEMA Docket No. 7304). | Unincorporated Areas. | September 15, 1999, September 22, 1999, *The Press Enterprise*. | The Honorable John Tavaglione, Chairman, Riverside County Board of Supervisors, P.O. Box 1646 Riverside, California 95202–1359. | August 24, 1999 .... | 060245 |
| Ventura (FEMA Docket No. 7304). | City of San Buenaventura. | August 19, 1999, August 26, 1999, *Ventura County Star*. | The Honorable James J. Friedman, Mayor, City of San Buenaventura, P.O. Box 99, Ventura, California 93002–0099. | July 26, 1999 ..... | 060419 |
| Ventura (FEMA Docket No. 7304). | Unincorporated Areas. | August 19, 1999, August 26, 1999, *Ventura County Star*. | The Honorable Susan K. Lacey, Chairperson, Ventura County Board of Supervisors, 800 South Victoria Avenue, Ventura, California 93009. | July 26, 1999 ..... | 060413 |
| Colorado: | | | | | |
| Arapahoe (FEMA Docket No. 7304). | Unincorporated Areas. | August 19, 1999, August 26, 1999 *The Villager*. | The Honorable Steve Ward, Chairperson, Arapahoe County Board of Commissioners, 5334 South Prince Street, Littleton, Colorado 80166–0060. | July 15, 1999 ..... | 080011 |
| Arapahoe (FEMA Docket No. 7304). | Unincorporated Areas. | September 23, 1999, September 30, 1999, *The Villager*. | The Honorable Steve Ward, Chairperson, Arapahoe County Board of Commissioners, 5334 South Prince Street, Littleton, Colorado 80166–0060. | August 26, 1999 .... | 080011 |
| Kansas: | | | | | |
| Johnson (FEMA Docket No. 7304). | City of Olathe ..... | September 21, 1999, September 28, 1999, *The Olathe Daily News*. | The Honorable Larry L. Campbell, Mayor, City of Olathe, P.O. Box 768, Olathe, Kansas 66051–0768. | August 18, 1999 .... | 200173 |
| Johnson (FEMA Docket No. 7304). | City of Overland Park. | September 3, 1999, September 10, 1999, *Overland Park Sun*. | The Honorable Ed Eiler, Mayor, City of Overland Park, City Hall, 8500 Santa Fe Drive, Overland Park, Kansas 66212. | August 16, 1999 .... | 200174 |
| Nebraska: | | | | | |
| Douglas (FEMA Docket No. 7304). | City of Omaha ..... | August 18, 1999, August 25, 1999, *The Daily Record*. | The Honorable Hal Daub, Mayor, City of Omaha, 1819 Farman Street, Suite 300, Omaha, Nebraska 68183. | July 23, 1999 ..... | 315274 |
| New Mexico: | | | | | |
| Sandoval (FEMA Docket No. 7304). | Unincorporated Areas. | August 24, 1999, August 31, 1999, *Santa Fe New Mexican*. | Ms. Debbie Hays, County Manager, Sandvol County, P.O. Box 40, Bernalillo, New Mexico 87004. | November 29, 1999 | 350055 |
| Texas: | | | | | |
| Collin (FEMA Docket No. 7304). | City of Allen ..... | August 18, 1999, August 25, 1999, *Allen American*. | The Honorable Kevin Lilly, Mayor, City of Allen, One Butler Circle Allen, Texas 75013. | November 23, 1999 | 480131 |
| Bexar (FEMA Docket No. 7304). | Unincorporated Areas. | August 27, 1999, September 3, 1999, *San Antonio Express-News*. | The Honorable Cyndi Taylor Krier, Bexar County Judge, Bexar County Courthouse, 100 Dolorosa, San Antonio, Texas 78205–3036. | August 9, 1999 ..... | 480035 |

| State and county | Location | Dates and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community number |
|---|---|---|---|---|---|
| Cameron (FEMA Docket No. 7304). | Unincorporated Areas. | August 13, 1999, August 20, 1999, *Brownsville Herald*. | The Honorable Gilberton Hinojosa, Cameron County Judge, 964 East Harrison, Brownsville, Texas 78520. | July 26, 1999 ..... | 480101 |
| Bexar (FEMA Docket No. 7304). | City of Castle Hills | August 27, 1999, September 3, 1999, *San Antonio Express-News*. | The Honorable Bob Anderson, Mayor, City of Castle Hills, 6915 West Avenue, San Antonio, Texas 78213–1822. | August 9, 1999 ..... | 480037 |
| Denton (FEMA Docket No. 7304). | City of Coppell ..... | August 13, 1999, August 20, 1999, *Citizen's Advocate*. | The Honorable Candy Sheehan, Mayor, City of Coppell, 255 Parkway Boulevard, Coppell, Texas 75019. | July 6, 1999 ..... | 480170 |
| Denton (FEMA Docket No. 7304). | Town of Double Oak. | August 20, 1999, August 27, 1999, *Lewisville News*. | The Honorable Bill Wilkinson, Mayor, Town of Double Oak, City Hall, 100 Cross Timbers Drive, Double Oak, Texas 75067. | July 27, 1999 ..... | 481516 |
| El Paso (FEMA Docket No. 7304). | City of El Paso ..... | September 23, 1999, September 30, 1999, *El Paso Times*. | The Honorable Charles M. Ramirez, Mayor, City of El Paso, Two Civic Center Plaza, El Paso, Texas 79901–1196. | August 30, 1999 .... | 480214 |
| Dallas (FEMA Docket No. 7304). | City of Farmers Branch. | October 1, 1999, October 8, 1999, *Metrocrest News*. | The Honorable Bob Phelps, Mayor, City of Farmers Branch, P.O. Box 819010, Farmers Branch, Texas 75381–9010. | September 1, 1999 | 480174 |
| Denton (FEMA Docket No. 7304). | Town of Flower Mound. | August 20, 1999, August 27, 1999, *Lewisville News*. | The Honorable Lori DeLuca, Mayor, Town of Flower Mound, 2121 Cross Timbers Road, Flower Mound, Texas 75028. | July 27, 1999 ..... | 480777 |
| Collin (FEMA Docket No. 7304). | City of Frisco ..... | August 13, 1999, August 20, 1999, *Frisco Enterprise*. | The Honorable Kathy Seei, Mayor, City of Frisco, P.O. Box 1100, Frisco, Texas 75034. | July 13, 1999 ..... | 480134 |
| Tarrant (FEMA Docket No. 7304). | City of Hurst ..... | August 11, 1999, August 18, 1999, *Dallas Morning News*. | The Honorable Bill Sounder, Mayor, City of Hurst, 1505 Precinct Line Road, Hurst, Texas 76054. | July 15, 1999 ..... | 480601 |
| Denton (FEMA Docket No. 7304). | City of Lewisville .... | August 18, 1999, August 25, 1999, *Lewisville News*. | The Honorable Bobbie J. Mitchell, Mayor, City of Lewisville, P.O. Box 299002, Lewisville, Texas 75029–9002. | July 22, 1999 ..... | 480195 |
| Parker (FEMA Docket No. 7304). | Unincorporated Areas. | August 20, 1999, August 27, 1999, *Weatherford Democrat*. | The Honorable Mark Riley, County Judge, One Courthouse Square, Weatherford, Texas 76086. | July 30, 1999 ..... | 480520 |
| Bexar (FEMA Docket No. 7304). | City of San Antonio | August 27, 1999, September 3, 1999, *San Antonio Express-News*. | The Honorable Howard W. Peak, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283–3966. | August 9, 1999 ..... | 480045 |
| Bexar (FEMA Docket No. 7304). | City of Shavano Park. | August 27, 1999, September 3, 1999, *San Antonio Express-News*. | The Honorable Tommy Peyton, Mayor, City of Shavano Park, 99 Sandletree Road, San Antonio, Texas 78231. | August 9, 1999 ..... | 480047 |

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: January 28, 2000.

**Michael J. Armstrong,**

*Associate Director for Mitigation.*

[FR Doc. 00–2798 Filed 2–7–00; 8:45 am]

**BILLING CODE 6718–04–P**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 67

### Final Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Final rule.

**SUMMARY:** Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that

each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**EFFECTIVE DATE:** The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

**ADDRESSES:** The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

### National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

### Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

### Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

### Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

### Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

### List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended to read as follows:

## PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

### § 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

| Source of flooding and location | # Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| **CALIFORNIA** | |
| **Butte County (and Incorporated Areas) (FEMA Docket No. 7270)** | |
| *Keefer Slough:* | |
| Just upstream of State Route 99 | None |
| Approximately 930 feet upstream of Keefer Road | None |
| **Maps are available for inspection** at the Butte County Public Works Department, 7 County Center Drive, Oroville, California. | |
| **Fremont (City), Alameda County (FEMA Docket No. 7242)** | |
| *Line K (Zone 6):* | |
| At confluence with Line E (Zone 6) Laguna Creek | *42 |
| Approximately 2,170 feet upstream of Paseo Padre Parkway (at downstream end of 60-inch reinforced concrete pipe) | *263 |
| *Line B (Zone 5):* | |
| At upstream side of Interstate 880 | *32 |
| Approximately 630 feet upstream of Paseo Padre Parkway | *56 |
| *Line C (Zone 6) (Torges Creek):* | |
| At confluence of Line D (Zone 6) | *13 |
| Just upstream of Interstate 680 | *183 |
| *Line E (Zone 6) Laguna Creek:* | |
| At mouth | *9 |
| Approximately 2,400 feet downstream of Cushing Parkway | *10 |
| Approximately 50 feet upstream of parking lot driveway | *54 |
| *Line F (Zone 6) Arroyo Del Agua Caliente Creek:* | |
| At confluence with Line E (Zone 6) Laguna Creek | *10 |
| Approximately 1,300 feet upstream of Curtner Road | *200 |
| **Maps are available for inspection** at the City of Fremont Planning Department, 39550 Liberty Street, Fremont, California. | |
| **IDAHO** | |
| **Carey (City) and Blaine County (Unincorporated Areas) (FEMA Docket No. 7294)** | |
| *Little Wood River:* | |
| Approximately 1.5 miles downstream of Santa Rosa Lane | *4,754 |
| Approximately 1.2 miles upstream of Highway 26/93 (Main Street) | *4,805 |
| *Middle Branch of Little Wood River:* | |
| Approximately 50 feet upstream of Griffin Loop Road | *4,761 |
| At confluence with Little Wood River, approximately 1,700 feet upstream of Highway 26/93 (Main Street) | *4,786 |
| **Maps are available for inspection** at the Planning and Zoning Department, 206 First Avenue South, Suite 310, Hailey, Idaho. | |
| **Maps are available for inspection** at the City of Carey, 20516 Main Street, Carey, Idaho. | |

| Source of flooding and location | # Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| **IOWA** | |
| **Dickinson County (Unincorporated Areas) (FEMA Docket No. 7290)** | |
| *Lower Gar Outlet Channel:* | |
| Approximately 2,700 feet upstream of confluence with Little Sioux River | *1,354 |
| Approximately 1.23 miles (6,480 feet) upstream of County Road A34 | *1,397 |
| *Spirit Lake:* | |
| Entire lake shoreline | *1,404 |
| *Okoboji Lake Chain:* | |
| Entire lake shoreline | *1,399 |
| **Maps are available for inspection** at the Dickinson County Zoning Office, 1810 Ithaca Avenue, Spirit Lake, Iowa. | |
| **NEVADA** | |
| **Washoe County (and Incorporated Areas) (FEMA Docket No. 7298)** | |
| *Mogul Creek:* | |
| At intersection with Interstate 80 Frontage Road | *4,680 |
| Approximately 1,050 feet upstream from Cliff View Court | *4,737 |
| **Maps are available for inspection** at Washoe County Engineering, 1001 East 9th Street, Reno, Nevada. | |
| **Maps are available for inspection** at the Community Development Office, 450 Sinclair Street, Reno, Nevada. | |
| **TEXAS** | |
| **Harris County (and Incorporated Areas) (FEMA Docket No. 7270)** | |
| *Bens Branch (G103–33–00):* | |
| Just upstream of confluence with Lake Houston | *50 |
| Just upstream of Tree Lake Court | *66 |
| Approximately 2,800 feet upstream of Woodland Hills | *74 |
| *Brays Bayou:* | |
| Just upstream of Forest Hill Boulevard | ++18 |
| Just upstream of Martin Luther King Boulevard | ++32 |
| Approximately 300 feet downstream of Kirby Drive | ++48 |
| At the intersection of Cason and Swanee | ++49 |
| Just upstream of Southern Pacific Railroad | ++51 |
| Just upstream of Interstate 610 | ++53 |
| Approximately 1,000 feet upstream of Beechnut | ++70 |
| Just upstream of Dairy Ashford Road | ++79 |
| Approximately 1,100 feet upstream of Addicks-Clodine Road | ++83 |
| *Yates Gully:* Approximately 1,300 feet upstream of South Wayside Drive | ++19 |
| *Kuhlman Gully:* At Sunrise Drive | ++28 |
| *Willow Waterhole Bayou:* | |
| Approximately 500 feet upstream of South Post Oak Road | ++52 |
| Just upstream of Chimney Rock Road | ++56 |
| *Chimney Rock Diversion Channel:* | |
| Approximately 550 feet upstream of Ruthglenn Avenue | ++56 |
| Approximately 400 feet upstream of McKnight | ++56 |
| *Tributary 17.42 to Brays Bayou:* | |
| Approximately 700 feet downstream of Grape | ++61 |
| Just downstream of Neff Drive | ++65 |
| *Fondren Diversion Channel:* | |
| Approximatley 2,000 feet downstream of West Bellefort | ++61 |
| Just downstream of Arbor Ridge | ++64 |
| Approximately 1,900 feet upstream of McLain Boulevard | ++67 |
| *Keegans Bayou:* | |
| Approximately 1,500 feet upstream of South Braeswood Boulevard | ++68 |
| Just downstream of U.S. Highway 59 | ++77 |
| Approximately 1,000 feet upstream of Synott Road | ++86 |
| *Tributary 20.86 to Brays Bayou:* | |
| Just downstream of Carvel Lane | ++69 |
| Just upstream of Leader Street | ++72 |
| Just upstream of Harwin Drive | ++74 |
| *Tributary 20.90 to Brays Bayou:* | |
| Approximately 1,300 feet downstream of Sam Houston Tollway | ++69 |
| Approximately 2,300 feet upstream of Kirkwood Road | ++80 |
| *Tributary 21.95 to Brays Bayou:* | |
| Just downstream of Bellepark Drive | ++72 |
| Approximately 800 feet downstream of Synott Road | ++82 |
| *Tributary 22.69 to Brays Bayou:* | |
| Approximately 200 feet downstream of Richmond Avenue | ++74 |
| Approximately 400 feet upstream of Richmond Avenue | ++74 |
| *Tributary 23.53 to Brays Bayou:* | |
| Approximately 150 feet upstream of Bellepark Drive | ++75 |
| Just upstream of Dairy Ashford Road | ++76 |
| *Tributary 26.20 to Brays Bayou:* | |
| Approximately 2,000 feet upstream of Piping Rock Road | ++84 |
| *Tributary 29.16 to Brays Bayou:* | |
| Approximately 1,200 feet downstream of Old Winkleman Road | ++84 |
| At the intersection of Marchena Road and Mesita Drive | ++84 |
| Approximately 200 feet upstream of Addicks-Clodine Road | ++85 |
| **Fort Bend County (and Incorporated Areas)** | |
| *Keegans Bayou:* | |
| Along Monticeto Lane, approximately 500 feet west of the intersection of Briarwood | ++83 |
| Just south of Belknap Road, approximately 500 feet west of the intersection of Maykirk | ++84 |
| Approximately 1,000 feet upstream of Synott Road | ++86 |
| ++NGVD—1987 Releveling | |
| **Maps are available for inspection** at the Harris County Flood Control District Building, 9900 Northwest Freeway, Suite 103, Houston, Texas. | |
| **Maps are available for inspection** at the City of Piney Point Village City Office, 7721 San Felipe, Suite 100, Houston, Texas. | |
| **Maps are available for inspection** at Putney, Moffitt & Easley, Inc., 1303 Sherwood Forest, Houston, Texas. | |
| **Maps are available for inspection** at 7007 South Rice, Bellaire, Texas. | |
| **Maps are available for inspection** at the City of Houston Building (Basement), 1801 Main, Houston, Texas. | |
| **Maps are available for inspection** at the City of Humble City Hall, 114 West Higgins, Humble, Texas. | |
| **Maps are available for inspection** at the Office of the Chief Building Official, 3826 Amherst, West University Place, Texas. | |
| **Maps are available for inspection** at the City of Stafford City Hall, 2610 South Main, Stafford, Texas. | |
| **Maps are available for inspection** at the City of Missouri City, City Hall, 1522 Texas Parkway, Missouri City, Texas. | |
| **Maps are available for inspection** at the City of Galena Park, City Hall, 2000 Clinton Drive, Galena Park, Texas. | |
| **Maps are available for inspection** at 800 First City Tower, 1001 Fannin Street, Houston, Texas. | |
| **Maps are available for inspection** at Fort Bend County, 301 Jackson Street, Suite 719, Richmond, Texas. | |
| **Maps are available for inspection** at 2300 First City Tower, 1001 Fannin, Houstin, Texas. | |
| **Maps are available for inspection** at the City of Meadows Place, City Hall, One Troyan Drive, Meadows Place, Texas. | |

| Source of flooding and location | # Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| **Maps are available for inspection** at the City of Sugarland Engineering Department, 10405 Corporate Drive, Sugarland, Texas. | |
| **Maps are available for inspection** at the City of Southside Place, City Hall, 6309 Edloe Street, Houston Texas. | |
| **Harris County (and Incorporated Areas) (FEMA Docket No. 7298)** | |
| *White Oak Bayou (E–100–00–00):* | |
| At confluence with Buffalo Bayou (W100–00–00) | *38 |
| Just upstream of West 18th Street | *59 |
| Just upstream of Lakeview Drive | *107 |
| Approximately 300 feet upstream of Huffmeister Road | *133 |
| *Little White Oak Bayou (E101–00–00):* | |
| At confluence with White Oak Bayou (E100–00–00) | *43 |
| Just upstream of West Rittenhouse | *86 |
| *Brickhouse Gully (E115–00–00):* | |
| At confluence with White Oak Bayou (E100–00–00) | *68 |
| Just upstream of Campbell Road | *90 |
| Approximately 700 feet upstream of Talina Way | *101 |
| *Cole Creek (E117–00–00):* | |
| At confluence with White Oak Bayou (E100–00–00) | *73 |
| Approximately 1,300 feet upstream of Sommermeyer Road | *104 |
| *Vogel Creek (E121–00–00):* | |
| At confluence with White Oak Bayou (E100–00–00) | *77 |
| Just upstream of West Gulf Bank Road | *85 |
| Just upstream of Silentwood Lane | *108 |
| Approximately 2,500 feet upstream of FairBanks-Fallbrook Road | *115 |
| *Ditch (E141–00–00):* | |
| At confluence with White Oak Bayou (E100–00–00) | *103 |
| Approximately 9,200 feet upstream of Windfern Forest | *108 |
| **Maps are available for inspection** at Harris County Permits Division, 9900 North West Freeway, Houston, Texas. | |
| **Maps are available for inspection** at the Planning and Development Office, 611 Walker, 6th Floor, Houston, Texas. | |
| **Maps are available for inspection** at the Public Works Department, 16501 Jersey Drive, Houston, Texas. | |
| **Harris County (and Incorporated Areas) (FEMA Docket No. 7242)** | |
| *Clear Creek:* | |
| Approximately 4,300 feet upstream of Interstate 45/75 | +14 |
| Just upstream of Edgewood Drive | +26 |
| Approximately 1,000 feet upstream of Mykawa Road | +47 |
| Approximately 800 feet upstream of South Freeway | +58 |
| *Tributary 10.08 to Clear Creek:* | |
| Just downstream of Interstate 45/75 | +12 |
| Approximately 850 feet downstream of Forest Park Cemetery Road | +13 |
| *Turkey Creek:* Approximately 2,000 feet upstream of Beamer Road | +28 |
| *Halls Road Ditch:* Approximately 1,600 feet upstream of Dixie Farm Road | +29 |
| **Fort Bend County (and Incorporated Areas) (FEMA Docket No. 7242)** | |
| *Clear Creek:* | |
| Just downstream of Missouri Pacific Railroad | +63 |
| Downstream of Rouen Road | +70 |
| **Maps are available for inspection** at the Harris County Engineering Division, c/o Ms. Lupe Zamora, Permit Department, 9900 Northwest Freeway, Suite 103, Houston, Texas. | |
| **Maps are available for inspection** at the City of Houston, c/o Mr. Mike Loomis, Floodplain Group, P.O. Box 1562, Houston, Texas. | |
| **Maps are available for inspection** at the Fort Bend County Engineer's Office, 1124 Blume Road, Rosenberg, Texas. | |
| **Maps are available for inspection** at the City of Webster, c/o Mr. Jim Williams, Director of Community Development, P.O. Box 57130, Webster, Texas. | |

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: January 28, 2000.

**Michael J. Armstrong,**

*Associate Director for Mitigation.*

[FR Doc. 00–2800 Filed 2–7–00; 8:45 am]

**BILLING CODE 6718–04–P**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 67

### Final Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Final rule.

**SUMMARY:** Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**EFFECTIVE DATE:** The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

**ADDRESSES:** The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

**National Environmental Policy Act**

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

**Regulatory Flexibility Act**

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

**Regulatory Classification**

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

**Executive Order 12612, Federalism**

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

**Executive Order 12778, Civil Justice Reform**

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

**List of Subjects in 44 CFR Part 67**

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended to read as follows:

## PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 67.11 [Amended]**

2. The tables published under the authority of § 67.11 are amended as follows:

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| **CALIFORNIA** | |
| **Amador County (Unincorporated Areas) (FEMA Docket No. 7302)** | |
| *Sutter Creek:* | |
| At Old Stockton Road | *271 |
| Approximately 2,780 feet upstream from Preston Avenue (Highway 104) | *313 |
| *Sutter Creek Overflow:* | |
| Approximately 230 feet upstream of Stockton Road | *259 |
| Approximately 2,400 feet upstream from the Southern Pacific Railroad | *279 |
| **Maps are available for inspection** at Amador County Planning Department, 500 Argonaut Lane, Jackson, California. | |
| **Ione (City), Amador County (FEMA Docket No. 7302)** | |
| *Sutter Creek:* | |
| Approximately 11,880 feet upstream of mouth | *271 |
| Approximately 2,160 feet upstream of Preston Avenue | *312 |
| *Sutter Creek Overflow:* | |
| Approximately 1,820 feet downstream of Depot Road | *278 |
| At its divergence from Sutter Creek | *302 |
| **Maps are available for inspection** at City Hall, 1 E. Main Street, Ione, California. | |
| **Texas** | |
| **Edinburg (City) Hidalgo County (FEMA Docket No. 7294)** | |
| *North Main Drain:* | |
| Approximately 2,735 feet downstream of Davis Road | *82 |
| At downstream side of Chapin Street (formerly part of Hidalgo County) | *95 |
| At confluence of West Main Drain | *95 |
| **Maps are available for inspection** at 1304 South 25th Street, Edinburg, Texas. | |
| **Hidalgo County (Unincorporated Areas) (FEMA Docket No. 7294)** | |
| *East Lateral Drain:* | |
| Approximately 2,620 feet downstream of Mile 2 West Road | *59 |
| Approximately 595 feet upstream of Mile 11 North Road | *70 |
| *North Main Drain:* | |
| At confluence with Donna Drain | *74 |
| Approximately 1,175 feet upstream of Mile 17½ Road (Russell Road) | *93 |
| At Chaplin Road | *95 |
| *West Main Drain:* | |
| Approximately 2 feet downstream of a drop structure located approximately 1,000 feet downstream of Taylor Road | *124 |
| Approximately 2,095 feet upstream of Brushliner Road | *202 |
| **Maps are available for inspection** at 1304 South 25th Street, Edinburg, Texas. | |

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: January 28, 2000.

**Michael J. Armstrong,**

*Associate Director for Mitigation.*

[FR Doc. 00–2801 Filed 2–7–00; 8:45 am]

BILLING CODE 6718–04–P

# Proposed Rules

Federal Register
Vol. 65, No. 26
Tuesday, February 8, 2000

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

## DEPARTMENT OF AGRICULTURE

## Federal Crop Insurance Corporation

## 7 CFR Part 457

## Common Crop Insurance Regulations; Fig, Pear, Walnut, Almond, Prune, Table Grape, Peach, Plum, Apple and Stonefruit Crop Insurance Provisions

**AGENCY:** Federal Crop Insurance Corporation, USDA.

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

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend the Fig Crop Insurance Provisions, Pear Crop Insurance Provisions, Walnut Crop Insurance Provisions, Almond Crop Insurance Provisions, Prune Crop Insurance Provisions, Table Grape Crop Insurance Provisions, Peach Crop Insurance Provisions, Plum Crop Insurance Provisions, Apple Crop Insurance Provisions and Stonefruit Crop Insurance Provisions. The intended effect of this action is to provide policy changes to better meet the needs of the insureds.

**DATES:** Written comments and opinions on this proposed rule will be accepted until close of business March 9, 2000 and will be considered when the rule is to be made final. The comment period for information collection under the Paperwork Reduction Act of 1995 continues through April 7, 2000.

**ADDRESSES:** Interested persons are invited to submit written comments to the Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131. Comments relating to the Fig, Pear, Walnut, Almond, Prune, Table Grape, Peach, Plum, Apple and Stonefruit Crop Insurance Provisions may also be sent via the Internet to (pddirector@rm.fcic.usda.gov). A copy of each response will be available for public inspection and copying from 7:00 a.m. to 4:30 p.m., CDT, Monday through Friday except holidays, at the above address.

**FOR FURTHER INFORMATION CONTACT:** Gary Johnson, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12866

This rule has been determined to be exempt for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

*Paperwork Reduction Act of 1995*

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501), the information collection and recordkeeping requirements included in the proposed rule have been submitted for approval to OMB. Please submit your written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for RMA, Washington, D.C. 20503. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are soliciting comments from the public concerning our proposed information collection and recordkeeping requirements. We need this outside input to help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission responses.)

The collections of information for this rule revise the Multiple Peril Crop Insurance Collections of Information 0563–0053 which expires April 30, 2001.

*Title:* Multiple Peril Crop Insurance (Fig, Pear, Walnut, Almond, Prune, Table Grape, Peach, Plum, Apple and Stonefruit).

*Abstract:* This rule improves the existing Fig, Pear, Walnut, Almond, Prune, Table Grape, Peach, Plum, Apple and Stonefruit Crop Insurance Provisions. The Apple Crop Insurance Provisions are revised by allowing optional units and price elections by varietal group. The Fig, Pear, Walnut, Almond, Prune, Table Grape, Peach, Plum, Apple and Stonefruit Crop Insurance Provisions are revised by adding provisions to specify that the insured's elected or assigned coverage level or the ratio of the insured's price election to the maximum price election offered may not be increased and that each subsequent crop year coverage begins on the day immediately following the end of the insurance period for the prior crop year. The Almond and Walnut crop insurance provisions are revised by allowing insurance coverage for trees that have been grafted. The Almond crop insurance provisions are revised by deleting the word ''rejects'' from the definition of ''meat pounds.''

*Purpose:* The purpose of this proposed rule is to clarify existing crop provisions, clarify the methodology for calculating losses, and provide additional coverage benefits to improve these risk management tools so they better meet the needs of producers in all regions of the country.

*Burden statement:* The information FCIC collects on the specified forms will be used in offering crop insurance coverage, determining program eligibility, establishing a production guarantee or amount of insurance, calculating losses qualifying for a payment, etc. The burden hours may increase the information collection because of the possibility the number of claims may increase as a result of these changes.

*Estimate of Burden:* We estimate it will take insured producers, a loss adjuster, and an insurance agent an average of .9 of an hour to provide the information required by the Fig, Pear, Walnut, Almond, Prune, Table Grape, Peach, Plum, Apple and Stonefruit Crop Insurance Provisions.

*Respondents:* Insureds, insurance agents, and loss adjusters.

*Estimated annual number of respondents:* 14,137.

*Estimated annual number of responses per respondents:* 2.8.

*Estimated annual number of responses:* 39,255.

*Estimated total annual burden of respondents:* The total public burden for this proposed rule is estimated at 13,314 hours.

*Record keeping requirements:* FCIC requires records to be kept for three years, but all records required by FCIC are retained as part of the normal business practice. However, these records are retained as part of the normal business practice and FCIC's requirement does not place additional burden on insured producers. Therefore, FCIC is not estimating additional burden related to record keeping requirement.

Copies of this information collection can be obtained from Information Collection Clearance Office, OCIO, USDA, Room 404–W, 1400 Independence Ave., S.W., Washington, D.C. 20250.

**Unfunded Mandates Reform Act of 1995**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

**Executive Order 13132**

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the states. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

**Regulatory Flexibility Act**

This regulation will not have a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. Under the current regulations, every producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. This regulation does not alter those requirements. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

**Federal Assistance Program**

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

**Executive Order 12372**

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

**Executive Order 12988**

This proposed rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

**Environmental Evaluation**

This action is not expected to have a significant economic impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

**Background**

FCIC proposes to amend the Common Crop Insurance Regulations (7 CFR part 457) by amending the following Crop Insurance Provisions:

1. 7 CFR 457.110 Fig Crop Insurance Provisions effective for the 2001 and succeeding crop years. The changes to the provisions for insuring fig are as follows:

a. Section 3—This section has been redesignated as section 3(a) and (b) to specify that the insured's elected or assigned coverage level or the ratio of the insured's price election to the maximum price election offered may not be increased after coverage begins if a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time that change in coverage is requested. This change was made to preclude insureds with continuous coverage from increasing the liability on insured acreage following a cause of loss that could or would reduce the yield of the crop.

b. Section 8(b)—Specify that for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. This provision provides for fig year round coverage. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage. This rule proposes to eliminate any lapse in insurance coverage between crop years.

c. Section 8(c)—Clarify that if the insured's policy is canceled or terminated for any crop year after insurance attached for that crop year, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year. This change is needed to avoid premium and administrative fees for canceled or terminated coverage because insurance will have attached before the last day a policy can be canceled or terminated.

2. FCIC proposes to amend the Common Crop Insurance Regulations (7 CFR part 457) by amending 457.111 Pear, 457.133 Prune, 457.149 Table Grape, 457.153 Peach, 457.157 Plum and 457.159 Stonefruit Crop Insurance Provisions, effective for the 2001 and succeeding crop years. The changes are as follows:

a. Section 1—Peach—Add definition for ''marketable'' for clarification.

b. Section 2—Peach and section 3—Table Grape, Pear, Plum, Prune and Stonefruit—Specify that the insured's elected or assigned coverage level or the ratio of the insured's price election to the maximum price election offered may not be increased after coverage begins if a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time that change in coverage is requested. This change was made to preclude insureds with continuous coverage from increasing the liability on insured acreage following a cause of loss that could or will reduce the yield of the crop.

c. Section 7 for Peach, section 8 for Pear, Plum, Prune and Stonefruit, and section 9 for Table Grape—Specify that for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. These provisions provide for year round coverage. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage. The current provisions specify calendar dates for the beginning and end of the insurance period, thereby establishing a minimum time period during which no insurance coverage exists between crop years. This rule proposes to eliminate any lapse in insurance coverage between crop years. Also, specify that if the insured's policy is canceled or terminated for any crop year after insurance attached for that crop year, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year. This change is needed to avoid premium and administrative fees for canceled or terminated coverage because insurance will have attached before the last day a policy can be canceled or terminated.

3. 7 CFR 457.122 Walnut Crop Insurance Provisions effective for the 2001 and succeeding crop years. The changes to the provisions for insuring walnuts as well as other minor editorial changes are as follow:

a. Section 3(c)—Specify that the insured's elected or assigned coverage level or the ratio of the insured's price election to the maximum price election offered may not be increased after coverage begins if a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time that change in coverage is requested. This change was made to preclude insureds with continuous coverage from increasing the liability on insured acreage following a cause of loss that could or would reduce the yield of the crop.

b. Section 8(a)(3)—Specify that for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. This provision provides year round coverage for walnuts. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage. The current Walnut Crop Insurance Provisions specify calendar dates for the beginning and end of the insurance period, thereby, establishing a time period during which no insurance coverage exists between crop years. This rule proposes to eliminate any lapse in insurance coverage between crop years.

c. Section 8(a)(4)—Specify that if the insured's policy is canceled or terminated for any crop year after insurance attached for that crop year, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year. This change is needed to avoid premium and administrative fees for canceled or terminated coverage because insurance will have attached before the last day a policy can be canceled or terminated.

d. Section 10—Modify the format of this section and require that notice be given 15 days prior to harvest if there is mold damage to the walnuts so that an inspection may be performed.

e. Section 11(b)—Add an example of claim for indemnity for clarity.

f. Section 11(d)—Add that whenever mold damage exceeds 30 percent and such production will not be sold, the production to count will be zero.

4. 7 CFR 457.123 Almond Crop Insurance Provisions effective for the 2001 and succeeding crop years. The changes to the provisions for insuring almonds are as follows:

a. Section 1—Delete the words ''and rejects'' in the definition of ''meat pounds.'' These changes were made to better fit the current almond industry practice and to be consistent with the changes to section 11(c)(2).

b. Section 3(c)—Specify that the insured's elected or assigned coverage level or the ratio of the insured's price election to the maximum price election offered may not be increased after coverage begins if a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time that change in coverage is requested. This change will preclude insureds with continuous coverage from increasing the liability on insured acreage following a cause of loss that could or would reduce the yield of the crop.

c. Section 8(a)(3)—Specify that for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. This provision provides year round coverage for almonds. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage. The current Almond Crop Insurance Provisions specify calendar dates for the beginning and end of the insurance period, thereby, establishing a time period during which no insurance coverage exists between crop years. This rule proposes to eliminate any lapse in insurance coverage between crop years.

d. Section 8(a)(4)—Specify that if the insured's policy is canceled or terminated for any crop year after insurance attached for that crop year, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year. This change is needed to avoid premium and administrative fees for canceled or terminated coverage because insurance will have attached before the last day a policy can be canceled or terminated.

e. Section 11(b)—Add an example of claim for indemnity for clarity.

f. Section 11(c)(2)—Revise language to count all harvested meat pounds towards the production to count that is accepted by a buyer. Also removed exception for harvested meat pounds rejected due to an insured cause of loss. Under the current exception it is difficult to accurately determine whether the rejects are due to an insurable cause of loss, so the term, ''rejects'' will be removed.

1. 7 CFR 457.158 Apple Crop Insurance Provisions effective for the 2001 and succeeding crop years. The changes to the provisions for insuring apples are as follows:

a. Section 1—For clarity, define ''varietal group'' as apple varieties with similar characteristics that are grouped for insurance purposes as specified in the Special Provisions.

b. Section 2—In addition to section 34(b) of the Basic Provisions, allow optional units by varietal group and if on non-contiguous land. This will allow apple producers to produce new apple varieties in response to public demand while having adequate risk management protection through crop insurance.

c. Section 3(a) and (b)—Add references to price election and reporting by type or ''varietal group.'' This change was made to clarify that insureds may select one price election for each apple type or varietal group and must report all varietal groups of apples for insurance.

d. Section 3(c)—Specify that the insured's elected or assigned coverage level or the ratio of the insured's price election to the maximum price election offered may not be increased after coverage begins if a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time

that change in coverage is requested. This change will preclude insureds with continuous coverage from increasing the liability on insured acreage following a cause of loss that could or would reduce the yield of the crop.

e. Section 8(c)—Specify that for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. This provision provides year round coverage for apples. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage. The current Apple Crop Insurance Provisions specify calendar dates for the beginning and end of the insurance period, thereby, establishing a time period during which no insurance coverage exists. This rule proposes to eliminate any lapse in insurance coverage between crop years.

f. Section 8(d)—Specify that if the insured's policy is canceled or terminated for any crop year after insurance attached for that crop year, insurance will not be considered to have attached for that crop year and no premium, administrative fee or indemnity will be due for such crop year. This change is needed to avoid premium and administrative fees for canceled or terminated coverage because insurance will have attached before the last day a policy can be canceled or terminated.

g. Section 14 Option C—Prices and Units by Varietal Group—Allow optional units and price elections by varietal group for an additional premium designated in the actuarial documents. Allow optional units and price elections based on varietal groups and non-contiguous land. This will allow apple producers to produce new apple varieties in response to public demand while having adequate risk management protection through crop insurance. The option is not available to producers insured under the Catastrophic Risk Protection (CAT) level of coverage. This limitation is consistent with options contained in other crop policies and the CAT Endorsement. Option C is targeted toward producers of apples intended for fresh market; therefore, Option C is unavailable to insureds who select Fresh Fruit Option A for all insurable acreage. Fresh Fruit Option A primarily covers apples intended for processing.

**List of Subjects in 7 CFR Part 457**

Almond, Apple, Crop insurance, Fig, Peach, Pear, Plum, Prune, Stonefruit, Table Grape, Walnut, and Reporting and recordkeeping requirements.

**Proposed Rule**

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457 as follows:

## PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

**Authority:** 7 U.S.C. 1506(1), 1506(p).

2. Amend § 457.110 to:

a. Revise the first sentence of the introductory text;

b. Revise section 3 of the crop provisions; and

c. Revise section 8 of the crop provisions all to read as follows:

**§ 457.110 Fig crop insurance provisions.**

The Fig Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

(a) In addition to the requirements under section 3 of the Basic Provisions, you may select only one price election for each fig type designated in the Special Provisions and insured in the county under this policy.

(b) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election we offer if a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time you request the increase.

* * * * *

8. Insurance Period.

(a) In lieu of the provisions of section 11 of the Basic Provisions, insurance attaches on each unit the later of the date you submit your application or March 1 of the crop year and ends the earliest of:

(1) Total destruction of the fig crop;

(2) The date harvest of the figs (by type) should have started on any acreage that will not be harvested;

(3) Harvest of the figs;

(4) Final adjustment of a loss;

(5) Abandonment of the crop; or

(6) October 31 of the crop year.

(b) Notwithstanding paragraph (a) of this section, for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(c) If your fig policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

* * * * *

3. Amend 457.111 to revise the first sentence of the introductory text, and add sections 3(c), 8(c) and 8(d) of the crop provisions to read as follows:

**§ 457.111 Pear crop insurance provisions.**

The Pear Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

* * * * *

(c) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election we offer if a cause of loss that could or would reduce the yield of the insured crop occurs prior to the time that you request the increase.

* * * * *

8. Insurance Period.

* * * * *

(c) For each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(d) If your pear policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

* * * * *

4. Amend 457.122 to:

a. Revise the first sentence of the introductory text;

b. Revise the introductory text and paragraph (b) of section 3 of the crop provisions by removing the parenthetical phrase, ''(Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities),'' and add a new paragraph (c);

c. Add a new section 3(c) to the crop provisions.

d. Revise section 4 of the crop provisions by removing the parenthetical phrase, ''(Contract Changes);''

e. Revise section 5 of the crop provisions by removing the parenthetical phrase, ''(Life of Policy, Cancellation, and Termination);''

f. Revise section 6 of the crop provisions introductory text, by removing the parenthetical phrase, ''(Insured Crop);''

g. Revise section 7 of the crop provisions introductory text, by removing the parenthetical phrase, ''(Insurable Acreage);''

h. Revise section 8, paragraph (a) of the crop provisions, introductory text, by removing the parenthetical phrase, ''(Insurance Period);''

i. Add section 8(a)(3) and 8(a)(4) to the crop provisions.

j. Revise section 9, paragraph (a) of the crop provisions, introductory text, by removing the parenthetical phrase ''(Causes of Loss);''

k. Revise section 10 of the crop provisions; and

l. In the crop provisions add an example of settlement of claim in section 11 after paragraph (b)(7) and revise paragraph (d);

The additions and revisions read as follows:

**§ 457.122 Walnut crop insurance provisions.**

The Walnut Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

* * * * *

(c) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election we offer if a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time that you request the increase.

* * * * *

8. Insurance Period.

* * * * *

(a) * * *

(3) For each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(4) If your walnut policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

* * * * *

10. Duties in the Event of Damage or Loss.

(a) In addition to the requirements of section 14 of the Basic Provisions, if you intend to claim an indemnity on any unit:

(1) You must notify us prior to the beginning of harvest so that we may inspect the damaged production;

(2) You must notify us of any mold damage 15 days before harvest so that we may inspect the mold damaged production; and

(3) You must not sell or dispose of the damaged crop until we have given you written consent to do so.

(b) If you fail to meet the requirements of this section, all such production will be considered undamaged and included as production to count.

11. Settlement of Claim.

* * * * *

(b) * * *

(7) * * *

For example:

You have a 100 percent share in 100 acres of walnuts in the unit, with a guarantee of 2,500 pounds per acre and a price election of $0.61 per pound. You are only able to harvest 200,000 pounds. Your indemnity would be calculated as follows:

(1) 100 acres × 2,500 pounds = 250,000 pound insurance guarantee;

(2 & 3) 250,000 pounds × $0.61 price election = $152,500 total value of insurance guarantee;

(4 & 5) 200,000 pounds production to count × $0.61 price election = $122,000 total value of production to count;

(6) $152,500 total value guarantee − $122,000 total value of production to count = $30,500 loss; and

(7) $30,500 × 100 percent share = $30,500 indemnity payment.

* * * * *

(d) Mature walnut production damaged due to an insurable cause of loss which occurs within the insurance period may be adjusted for quality based on an inspection by the Dried Fruit Association. Walnut production that has mold damage greater than 8 percent, based on the net delivered weight, will be reduced by the quality adjustment factors contained in the Special Provisions. Walnut production that exceeds 30 percent mold damage and such production will not be sold, the production to count will be zero.

* * * * *

5. Amend 457.123 to read as follows:

a. Revise the first sentence of the introductory text;

b. In the crop provisions in section 1 revise the definition of ''meat pounds;''

c. In the crop provisions revise section 3, the introductory text and paragraph (b), the introductory text, by removing the parenthetical phrase, ''(Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities),'' and adding paragraph (c);

d. In the crop provisions add section 3(c);

e. In the crop provisions revise section 4 by removing the parenthetical phrase, ''(Contract Changes);''

f. In the crop provisions revise section 5 by removing the parenthetical phrase, ''(Life of Policy, Cancellation and Termination);''

g. In the crop provisions revise section 6 by removing the parenthetical phrase, ''(Insured Crop);''

h. In the crop provisions revise section 7 by removing the parenthetical phrase, ''(Insurable Acreage);''

i. In the crop provisions revise section 8(a), introductory text, by removing the parenthetical phrase, ''(Insurance Period);''

j. In the crop provisions add section 8(a)(3) and (4);

k. In the crop provisions revise section 9(a), introductory text, by removing the parenthetical phrase, ''(Causes of Loss);''

l. In the crop provisions amend section 10 by removing the parenthetical phrase, ''(Duties In the Event of Damage or Loss);''

m. In the crop provisions add an example of settlement of claim after section 11 (b)(7) and revise paragraph (c)(2);

The additions and revisions read as follows:

**§ 457.123 Almond crop insurance provisions.**

The Almond Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

1. Definitions.

* * * * *

*Meat pounds.* The total pounds of almond meats (whole, chipped and broken, and in-shell meats). Unshelled almonds will be converted to meat pounds in accordance with FCIC approved procedures.

* * * * *

3. Insurance Guaranteed, Coverage Levels, and Prices for Determining Indemnities.

* * * * *

(c) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election we offer if a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time that you request the increase.

* * * * *

8. Insurance Period.

* * * * *

(a) * * *

(3) For each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(4) If your almond policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

* * * * *

11. Settlement of Claim.

* * * * *

(b) * * *

(7) * * *

For example:

You have a 100 percent share in 100 acres of almonds in the unit, with a guarantee of 1,200 pounds per acre and a price election of $1.70 per pound. You are only able to harvest 100,000 pounds. Your indemnity would be calculated as follows:

(1) 100 acres × 1,200 pounds = 120,000 pound insurance guarantee;

(2 & 3) 120,000 pounds × $1.70 price election = $204,000 total value of insurance guarantee;

(4 & 5) 100,000 pounds production to count × $1.70 price election = $170,000 total value of production to count;

(6) $204,000 total of value guarantee − $170,000 total value of production to count = $34,000 loss; and

(7) $34,000 × 100 percent share = $34,000 indemnity payment.

(c) * * *

(2) All harvested meat pounds accepted by a buyer.

* * * * *

6. Amend 457.133 to:

a. Revise the first sentence of the introductory text;

b. In the crop provisions add section 3(c); and

c. In the crop provisions add section 8(c) and (d) all to read as follows:

**§ 457.133 Prune crop insurance provisions.**

The Prune Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

* * * * *

(c) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election we offer if a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time that you request the increase.

* * * * *

8. Insurance Period.

* * * * *

(c) For each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(d) If your prune policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

* * * * *

7. Amend 457.149 to:

a. Revise the first sentence of the introductory text;

b. In the crop provisions add section 3(c); and

c. In the crop provisions add section 9(c) and (d) all to read as follows:

**§ 457.149 Table grape crop insurance provisions.**

The Table Grape Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

* * * * *

(c) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election we offer if a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time that you request the increase.

* * * * *

9. Insurance Period.

* * * * *

(c) For each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(d) If your table grape policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

* * * * *

8. Amend 457.153 to:

a. Revise the first sentence of the introductory text;

b. In the crop provisions add a definition for ''marketable'' in section 1;

c. In the crop provisions add section 2(c); and

d. In the crop provisions add section 7(c) and (d) all to read as follows:

**§ 457.153 Peach crop insurance provisions.**

The Peach Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

1. Definitions.

* * * * *

*Marketable*—Peach production acceptable for processing or other human consumption even if failing to meet any U.S. or applicable state grading standard.

* * * * *

2. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

* * * * *

(c) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election we offer if a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time that you request the increase.

* * * * *

7. Insurance Period.

* * * * *

(c) For each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the

insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(d) If your peach policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

* * * * *

9. Amend 457.157 to:

a. Revise the first sentence of the introductory text; and

b. In the crop provisions add sections 3(c) and 8(c) and (d) all to read as follows:

**§ 457.157 Plum crop insurance provisions.**

The Plum Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

* * * * *

(c) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election we offer if a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time that you request the increase.

* * * * *

8. Insurance Period.

* * * * *

(c) For each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(d) If your plum policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

* * * * *

10. Amend 457.158 to:

a. Revise the first sentence of the introductory text;

b. In the crop provisions add a definition for ''varietal group'' in section 1;

c. In the crop provisions revise section 2;

d. In the crop provisions revise sections 3(a),(b) introduction, (b)(4) and add new section 3(c);

e. In the crop provisions add new sections 8(c) and (d); and

f. In the crop provisions add a new section 14 all to read as follows:

**§ 457.158 Apple crop insurance provisions.**

The Apple Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

1. Definitions.

* * * * *

*Varietal group.* Apple varieties with similar characteristics that are grouped for insurance purposes as specified in the Special Provisions.

2. Unit Division.

In addition to the requirements of section 34(b) of the Basic Provisions, optional units may be established if each optional unit is located on non-contiguous land. Optional units may also be established by varietal group in accordance with section 14 of these provisions.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

* * * * *

(a) You may select only one price election for all the apples in the county insured under this policy unless the Special Provisions provide different price elections by type or varietal group in which case you may select one price election for each apple type or varietal group designated in the Special Provisions. The price elections you choose for each type or varietal group must have the same percentage relationship to the maximum price offered by us for each type or varietal group. For example, if you choose 100 percent of the maximum price election for one type or varietal group, you must also choose 100 percent of the maximum price election for all other types or varietal group.

(b) You must report, by the production reporting date designated in section 3 of the Basic Provisions, by type or varietal group if applicable:

* * * * *

(4) The separate acreage for each varietal group of apples intended for fresh-market or processing, for each varietal group as shown on the actuarial table; and

* * * * *

(c) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election we offer if a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time that you request the increase.

* * * * *

8. Insurance Period.

* * * * *

(c) For each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(d) If your apple policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

* * * * *

14. Option C—Prices and Units by Varietal Group.

(a) Exclusive of other options, optional units and price elections by varietal group apply only if the following conditions are met:

(1) You have not elected to insure your apples under the Catastrophic Risk Protection (CAT) Endorsement; and

(2) You or we did not cancel the option in writing on or before the cancellation date. Your election of CAT coverage for any crop year after this endorsement is effective will be considered notice of cancellation of the option by you.

(b) If you select the Fresh Fruit Option A for all insurable acreage, Option C is not available.

11. Amend 457.159 to revise the first sentence of the introductory text, and add sections 3(c), 8(c) and 8(d) of the crop provisions all to read as follows:

**§ 457.159 Stonefruit crop insurance provisions.**

The Stonefruit Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

* * * * *

(c) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election we offer if a cause of loss that could or would reduce the yield of

the insured crop is evident prior to the time that you request the increase.

* * * * *

8. Insurance Period.

* * * * *

(c) For each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(d) If your stonefruit policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

* * * * *

Signed in Washington, D.C., on January 28, 2000.

**Kenneth D. Ackerman,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 00–2620 Filed 2–7–00; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 94

**[Docket No. 98–094–1]**

### Poultry Products From Mexico Transiting the United States

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to allow poultry carcasses, parts, and products (except eggs and egg products) that are not eligible for entry into the United States to move through the United States via land ports from Mexican States that Mexico considers to be free of exotic Newcastle disease (END), under certain conditions, for export to another country. We believe such in-transit movements would present a negligible risk of introducing END into the United States. This action would relieve restrictions on trade while continuing to provide protection against the introduction of END into the United States.

**DATES:** We invite you to comment on this docket. We will consider all comments that we receive by April 10, 2000.

**ADDRESSES:** Please send your comment and three copies to: Docket No. 98–094–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 98–094–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

**FOR FURTHER INFORMATION CONTACT:** Dr. Michael David, Senior Staff Veterinarian, Animals Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737; (301) 734–8364.

**SUPPLEMENTARY INFORMATION:**

#### Background

The regulations in 9 CFR part 94 (referred to below as the regulations) prohibit or restrict the importation of certain animals and animal products into the United States to prevent the introduction of certain animal diseases. The regulations in § 94.6 govern, among other things, the importation of poultry carcasses, parts, products, and eggs (other than hatching eggs) from regions where exotic Newcastle disease (END) or *Salmonella enteritidis*, phage-type 4, is considered to exist. Because END exists in certain parts of Mexico, Mexico is characterized, under § 94.6(a), as a region where END is considered to exist. Further, under the regulations in § 94.6(b), Mexico is also characterized as a region where *S. enteritidis*, phage-type 4, is considered to exist.

Under the regulations, poultry carcasses, and parts and products of poultry carcasses may be imported into the United States from Mexico only if they have been cooked or are consigned directly to an approved establishment in the United States. Poultry eggs (other than hatching eggs) from Mexico may be imported into the United States only if: (1) They are accompanied by a health certificate regarding the flock of origin and meet certain other conditions; (2) they are consigned directly to an approved establishment for breaking and pasteurization; (3) they are imported under permit for scientific, educational, or research purposes; or (4) they are imported under permit and have been cooked or processed or will be handled in a manner that prevents the introduction of END and *S. enteritidis* into the United States.

Further, poultry carcasses, parts, products, and eggs (other than hatching eggs) that do not qualify for entry into the United States under one of these conditions may transit the United States via air and sea ports under the conditions contained in § 94.15(d).

Mexico's Director of Animal Health has requested that we allow poultry carcasses, parts, and products from the Mexican States that Mexico considers free of END to transit the United States via land border ports for export to another country. Currently, Mexico recognizes the States of Baja California, Baja California Sur, Campeche, Chihuahua, Coahuila, Durango, Nuevo Leon, Quintana Roo, Sinaloa, Sonora, Tamaulipas, and Yucatan as free of END.

In response, officials of the Animal and Plant Health Inspection Service (APHIS) have met with representatives from Mexico knowledgeable in disease prevention, epidemiology, and diagnostic methods. The APHIS officials reviewed the information supplied by these representatives (discussed below) and found two factors contributing to the 12 States' apparent successes in remaining free of END: The States' locations and relative isolation from States or countries where END is considered to exist, and controls by Mexico's Division of Animal Health on the movement of poultry and eggs into and through the END-free States. Based on this review, the APHIS officials recommended granting Mexico's request. However, because the term ''poultry carcasses, parts, and products'' might be construed to include eggs and egg products, we wish to make it clear that because Mexico is characterized as a region where *S. enteritidis*, phage-type 4, is considered to exist, eggs (other than hatching eggs) and egg products are only allowed to transit the United States via air and sea ports under the conditions currently contained in § 94.15(d). We are not proposing to amend the regulations concerning the transit of eggs or egg products from Mexico in this document.

**General Information**

The table below shows the year of the last outbreak of END in each State and the year Mexico officially declared each State free of END. As shown in the table, none of the States listed has had an outbreak of END in the last 8 years.

| Mexican State | Year of last outbreak of END | Year declared free of END |
|---|---|---|
| Baja California | 1982 | 1995 |
| Baja California Sur | *N/A | 1995 |
| Campeche | *N/A | 1997 |
| Chihuahua | *N/A | 1995 |
| Coahuila | 1987 | 1997 |
| Durango | 1991 | 1995 |
| Nuevo Leon | 1983 | 1995 |
| Quintana Roo | 1990 | 1997 |
| Sinaloa | 1989 | 1993 |
| Sonora | 1989 | 1993 |
| Tamaulipas | 1989 | 1997 |
| Yucatan | 1984 | 1996 |

*Never reported.

Geographically, the 12 States compose two contiguous areas in Mexico. The States of Yucatan, Campeche, and Quintana Roo are located on the Yucatan Peninsula. They are bordered by only one Mexican State, Tabasco, and two countries, Guatemala and Belize, not considered free of END. Yucatan, Campeche, and Quintana Roo maintain active border surveillance, ensuring that no poultry from Tabasco, Guatemala, and Quintana Roo enters without proper documentation, as explained below.

The remaining nine States considered by Mexico to be free of END—Baja California, Baja California Sur, Chihuahua, Coahuila, Durango, Nuevo Leon, Sinaloa, Sonora, and Tamaulipas—are contiguously located in northern Mexico, along the U.S. border and south into north-central Mexico. These States are bordered to the south by States not considered free of END, but, like the Yucatan Peninsula States, they maintain active border surveillance to ensure the safety of their poultry from END.

Of the 12 States that would be eligible to transit poultry carcasses, parts, and products (except eggs and egg products) through the United States via land ports under this proposed rule, Nuevo Leon had the highest volume of poultry production in 1997 (120,000 metric tons, or less than one-tenth of one percent of Mexico's total poultry production for that year). Following Nuevo Leon were Durango and Coahuila, with a combined total of 150,000 metric tons, and Yucatan with 60,000 metric tons. The other 8 States produced less than 60,000 metric tons of poultry each.

Poultry carcasses, parts, and products from Mexico that would be eligible to transit the United States via land border ports under this proposed rule must be processed and packaged in Tipo Inspeccion Federal (TIF) plants. TIF plants are facilities that are approved by the Government of Mexico and that are subject to strict Federal supervision to ensure that international health standards are maintained. A TIF plant may be a slaughter facility, a processing plant, or a combination of the two. The number of TIF plants in each of the 12 Mexican States is shown in the table below. Data is not available on the exact number of nonslaughter TIF plants that process poultry. The number of TIF plants listed in the ''Industrial plant'' column below includes pork, beef, and poultry processing plants.

| Mexican State | Number of TIF Plants Slaughtering Poultry | Number of ''Industrial'' TIF plants |
|---|---|---|
| Baja California | 0 | 1 |
| Baja California Sur | 0 | 0 |
| Campeche | 0 | 0 |
| Chihuahua | 0 | 5 |
| Coahuila | 0 | 3 |
| Durango | 1 | 0 |
| Nuevo Leon | 1 | 11 |
| Quintana Roo | 0 | 0 |
| Sinaloa | 1 | 2 |
| Sonora | 2 | 1 |
| Tamaulipas | 0 | 0 |
| Yucatan | 1 | 1 |

As required by the Government of Mexico, the 12 States that are subject to this proposed rule may import live poultry only from other END-free States and countries. The Government of Mexico requires shipments of poultry from END-free countries to be accompanied by a certificate of origin issued by that country's veterinary authorities and by a certificate of import issued by Mexico's veterinary authorities. States recognized by Mexico as free of END also require and issue their own permits and health certificates, further ensuring that the products originate in an END-free region. In addition, live poultry and poultry carcasses, parts, or products imported into these END-free States must be shipped in sealed trucks, and all shipments are inspected at inspection stations located either on State lines or at international ports of entry.

The Government of Mexico also requires that any poultry carcasses, parts, or products that are shipped for processing to an END-free State from a region where END is believed to exist arrive at TIF processing plants in sealed, numbered containers. The seals must show no evidence of tampering, and the shipment must be accompanied by a certificate signed by an authorized official in the region of origin. Once they arrive at the TIF plant in an END-free State, such poultry carcasses, parts, or products are not allowed to come in contact with poultry that is eligible for importation into the United States in accordance with the regulations contained in 9 CFR part 94 to ensure that no commingling occurs. The poultry carcasses, parts, or products must be immediately cooked to eliminate any risk of disseminating END.

**Conditions for Movement Through the United States**

Under this proposed rule, the following conditions would apply to the in-transit movement of poultry carcasses, parts, and products (except eggs and egg products) from Baja California, Baja California Sur, Campeche, Chihuahua, Coahuila, Durango, Nuevo Leon, Quintana Roo, Sinaloa, Sonora, Tamaulipas, and Yucatan:

1. Any person wishing to move poultry carcasses, parts, or products from Baja California, Baja California Sur, Campeche, Chihuahua, Coahuila, Durango, Nuevo Leon, Quintana Roo, Sinaloa, Sonora, Tamaulipas, and Yucatan through the United States via land ports for export must first obtain a permit from APHIS. The application for the permit would tell APHIS how much and what type of poultry carcasses, parts, or products would be transported; when they would be transported; the method and route of shipment; and who would be involved in the transportation.

2. The poultry carcasses, parts, or products must be packaged prior to movement from the TIF plant in leakproof containers sealed with serially numbered seals approved by APHIS. The containers must remain sealed at all times while transiting Mexico and the United States.

3. The person moving the poultry carcasses, parts, or products through the United States via land ports must inform the APHIS officer at the U.S. port of arrival, in writing, of the following information before the poultry carcasses, parts, or products arrive in the United States: The time and date that the poultry carcasses, parts, or products are expected at the port of arrival in the United States, the time schedule and route of the shipments through the United States, the permit

number, and the serial numbers of the seals on the containers.

4. The poultry carcasses, parts, or products must transit the United States under Customs bond.

5. The poultry carcasses, parts, or products must be exported from the United States within the time period specified on the permit.

Any poultry carcasses, parts, or products exceeding the time limit specified on the permit or transiting in violation of any of the requirements of the permit or the regulations may be destroyed or otherwise disposed of at the discretion of the Administrator, APHIS, pursuant to section 2 of the Act of February 2, 1903, as amended (21 U.S.C. 111).

These safeguards are intended to prevent tampering with the shipments, ensure that the shipments actually leave the United States, and otherwise ensure that the shipments do not present a significant risk of introducing END into the United States.

Under these circumstances—the low risk associated with the poultry carcasses, parts, and products coupled with the safeguards for in-transit shipments—we believe that there would be little, if any, risk of introducing END into the United States as a result of this proposed rule. Therefore, we are proposing to amend § 94.15 to allow poultry carcasses, parts, and products (except eggs and egg products) that do not meet the requirements in § 94.6 for entry into the United States and that originate in one of the Mexican States listed above to transit the United States via land ports for export to another country.

**Executive Order 12866 and Regulatory Flexibility Act**

This proposed rule has been reviewed under Executive Order 12866. The rule 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.

Currently, the regulations in 9 CFR part 94 prohibit or restrict the importation of certain animals or animal products into the United States to prevent the introduction of certain animal diseases. Under the regulations, poultry carcasses, parts, and products from Mexico must meet the requirements of § 94.6 to be imported into the United States because exotic Newcastle disease (END) is considered to exist in certain areas in Mexico. However, under § 94.15, certain products that are not eligible for entry into the United States in accordance with the regulations in 9 CFR part 94 may transit the United States for immediate export if certain conditions are met. Currently § 94.15(b) covers only pork and pork products from Chihuahua, Baja California, Sonora, or Yucatan, Mexico, and 94.15(d) allows the transit via air and sea ports of all meat and animal products not otherwise eligible for entry into the United States.

In this document, we are proposing to allow poultry carcasses, parts, and products (except eggs and egg products) that are not eligible for entry into the United States under § 94.6 to move via land ports through the United States from 12 Mexican States, under certain conditions, for export to another country. These 12 States have been officially declared by the Government of Mexico to be free of END.

An APHIS review of the END situation in those States has revealed that, if proper risk management techniques continue to be applied in Mexico, and if accident and exposure are minimized by proper handling during transport, there would be a negligible risk that END could be disseminated into the United States as a result of this proposal.

The proposed regulations would have no direct effect on U.S. producers and consumers of poultry because Mexican poultry would only transit the United States en route to other countries and would not enter U.S. marketing channels. Neither the quantity or price of poultry traded in U.S. domestic markets nor U.S. consumer or producer surplus would be affected by the proposed rule.

A benefit of allowing Mexican poultry to transit the United States for export is that U.S. companies would ship the poultry from U.S. receiving centers in the border States of California, Arizona, and Texas to export points. Current Department of Transportation regulations restrict trucks from Mexico from proceeding into the United States due to safety restrictions. However, any economic activity that would result from this proposal is dependent on the volume of poultry shipped from Mexico for export to other countries. Given Mexico's low volume of poultry and poultry product exports, few shipments of poultry are likely to transit the United States to other countries under this proposal, and benefits to U.S. carriers and shippers are likely to be very small.

Potential losses from disease outbreaks are not quantified because APHIS judges the likelihood of outbreaks (which could result from a combination of factors such as the presence of the disease in Mexico, failure of the preclearance program, accidental openings while in transit, or exposure after an accidental opening of a shipment) to be negligible.

**Mexican Poultry Production and Exports**

Since 1990, poultry meat production in Mexico has grown 5 percent annually to reach 1.7 million metric tons in 1998. However, nearly all of the poultry meat produced in Mexico is consumed domestically. For example, in 1997, Mexico produced 1.5 million metric tons of poultry, but exported only 5,000 metric tons of that total. Therefore, we anticipate that the volume of poultry that would transit the United States under this proposal would be very small.

**Effects on Small Trucking Companies**

This proposed rule, if implemented, could directly affect U.S. trucking companies operating in the border States of California, Arizona, and Texas. Small Business Administration (SBA) data show that there are approximately 18,000 trucking companies operating in those States, and over 96 percent of those companies are small entities. However, it is unclear how many of those companies would be affected by this proposal.

At present, freight arriving in the Customs territory of the United States by truck from Mexico has to be delivered to customers within the commercial zone of the U.S. cities along the border or else transferred to a U.S. trucking or other shipping company within that zone. U.S. trucking companies would benefit from transporting Mexican poultry from U.S. land border ports to U.S. maritime ports. However, given the anticipated low volume of Mexican exports, this proposed rule would likely not have a significant economic effect on a substantial number of small trucking companies.

**Effects on Small Railroad Companies**

This proposed rule, if implemented, could also affect four U.S. railroad companies that currently transport goods across the U.S.-Mexico border. Two of these railroad companies meet SBA criteria for small entities (fewer than 1,500 employees). Any economic effects on railroad companies, whether small or large, would likely be positive, but such effects are anticipated to be insignificant, given the expected small volume of Mexican exports.

**Effects on U.S. Poultry Exporters**

This proposal could also affect U.S. poultry exporters. Historical data on shipments of Mexican poultry suggest that the poultry would be shipped to

either Japan or the Middle East; but, once again, given the anticipated low volume of Mexican exports, U.S. companies that export poultry and poultry products to these two regions are unlikely to be significantly affected.

**Trade Relations**

This proposal would remove some restrictions on the movement of poultry carcasses, parts, or products (except eggs and egg products) from Mexico and would encourage a positive trading environment between the United States and Mexico by stimulating economic activity and providing export opportunities to Mexican poultry industries.

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

**Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

**Paperwork Reduction Act**

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 98–094–1. Please send a copy of your comments to: (1) Docket No. 98–094–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would amend the regulations to allow poultry carcasses, parts, and products (except eggs and egg products) that are not eligible for entry into the United States to move through the United States via land ports from Mexican States that Mexico considers to be free of exotic Newcastle disease (END), under certain conditions, for export to another country.

Implementing this proposed rule would necessitate the use of several paperwork collection activities, including the completion of an import permit application, the placement of serially numbered seals on product containers, and the forwarding of a written pre-arrival notification to APHIS port personnel.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses).

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average 43 minutes per response.

*Respondents:* Mexican exporters and full-time, salaried veterinarians employed by Mexico's Federal animal health protection service.

*Estimated annual number of respondents:* 15.

*Estimated annual number of responses per respondent:* 37.

*Estimated annual number of responses:* 555.

*Estimated total annual burden on respondents:* 398 hours.

Copies of this information collection can be obtained from: Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

**List of Subjects in 9 CFR Part 94**

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 94 as follows:

## PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would continue to read as follows:

**Authority:** 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

2. In § 94.15, paragraphs (c) and (d) would be redesignated as paragraphs (d) and (e). respectively, and a new paragraph (c) would be added to read as follows:

**§ 94.15 Animal products and materials; movement and handling.**

* * * * *

(c) Poultry carcasses, parts, or products (except eggs and egg products) from Baja California, Baja California Sur, Campeche, Chihuahua, Coahuila, Durango, Nuevo Leon, Quintana Roo, Sinaloa, Sonora, Tamaulipas, or Yucatan, Mexico, that are not eligible for entry into the United States in accordance with the regulations in this part may transit the United States via land ports for immediate export if the following conditions are met:

(1) The person desiring to move the poultry carcasses, parts, or products through the United States obtains a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors (VS Form 16–6). An application for the permit may be obtained from the Animal and Plant Health Inspection Service, Veterinary Services, National Center for Import-Export, 4700 River Road Unit 38, Riverdale, Maryland 20737–1231.

(2) The poultry carcasses, parts, or products are packaged at a Tipo Inspeccion Federal plant in Baja California, Baja California Sur, Campeche, Chihuahua, Coahuila, Durango, Nuevo Leon, Quintana Roo, Sinaloa, Sonora, Tamaulipas, or Yucatan, Mexico, in leakproof containers with serially numbered seals of the Government of Mexico, and the containers remain sealed during the entire time they are in transit across Mexico and the United States.

(3) The person moving the poultry carcasses, parts, or products through the United States notifies, in writing, the Plant Protection and Quarantine Officer at the U.S. port of arrival prior to such

transiting. The notification must include the following information regarding the poultry to transit the United States:

(i) Permit number;

(ii) Times and dates of arrival in the United States;

(iii) Time schedule and route to be followed through the United States; and

(iv) Serial numbers of the seals on the containers.

(4) The poultry carcasses, parts, or products transit the United States under Customs bond and are exported from the United States within the time limit specified on the permit. Any poultry carcasses, parts, or products that have not been exported within the time limit specified on the permit or that have not transited in accordance with the permit or applicable requirements of this part will be destroyed or otherwise disposed of as the Administrator may direct pursuant to section 2 of the Act of February 2, 1903, as amended (21 U.S.C. 111).

* * * * *

(Approved by the Office of Management and Budget under control number 0579–0145)

Done in Washington, DC, this 2nd day of February 2000.

**Bobby R. Acord,**

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

[FR Doc. 00–2778 Filed 2–7–00; 8:45 am]

**BILLING CODE 3410–34–U**

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 50

**[Docket No. PRM–50–69]**

### Westinghouse Electric Company LLC; Receipt of Petition for Rulemaking

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Petition for rulemaking; notice of receipt.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by Westinghouse Electric Company LLC (petitioner). The petition has been docketed by the Commission and has been assigned Docket No. PRM–50–69. The petitioner is requesting that the NRC regulations governing pressure and temperature limits for the reactor pressure vessel be amended to eliminate requirements for the metal temperature of the closure head flange and vessel flange regions. The petitioner believes the elimination of the flange requirement has no impact on Boiling Water Reactors (BWRs) and could improve plant safety in Pressurized Water Reactors (PWRs).

**DATES:** Submit comments by April 24, 2000. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

**ADDRESSES:** Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemakings and Adjudications staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

For a copy of the petition, write: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Documents related to this action are available for public inspection at the NRC Public Document Room (PDR) located at the Gelman Building, 2120 L Street, NW, Washington, DC 20555. Documents created or received at the NRC after November 1, 1999 are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) reference staff at 1–800–397–4209, 202–634–3273, or by email to *pdr@nrc.gov.*

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (*http://ruleforum.llnl.gov*). This site provides the availability to view and upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, 301–415–5905 (e-mail: CAG@nrc.gov).

**FOR FURTHER INFORMATION CONTACT:** David L. Meyer, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–7162 or Toll Free: 1–800–368–5642 or E-mail: *DLM1@NRC.GOV.*

**SUPPLEMENTARY INFORMATION:**

#### Background

The Nuclear Regulatory Commission received a petition for rulemaking dated November 4, 1999, submitted by Westinghouse Electric Company LLC (petitioner). The petitioner is requesting that Table 1 in 10 CFR part 50, appendix G, be amended by removing requirements related to the metal temperature of the closure head flange and vessel flange regions. Specifically, the petitioner is requesting that footnotes 2 and 6 be removed from Table 1. The removal of these footnotes would eliminate requirements that restrict heat-up and cool-down pressure temperature curves.

In support of its petition, the petitioner has attached a Westinghouse document, WCAP–15315, ''Reactor Vessel Closure Head/Vessel Flange Requirements Evaluation for Operating PWR and BWR Plants'' (October 1999). The petitioner believes that this document sets forth the technical basis for the proposed modification, the grounds for and interest in the requested action, and the specific issues and facts that support the petition.

On the basis of the information in WCAP–15315, the petitioner has concluded that the requirements pertaining to the reactor vessel closure head flange in 10 CFR part 50, Appendix G, Table 1, are not necessary and believes that removal of these requirements will have no impact on BWRs and could improve plant safety in PWRs. The petitioner requests that the regulations in 10 CFR part 50 be amended by removing footnotes 2 and 6 in Table 1 of Appendix G that pertain to the reactor vessel closure head flange.

The NRC has determined that the petition meets the threshold sufficiency requirements for a petition for rulemaking under 10 CFR 2.802. The petition has been docketed as PRM–50–69. The NRC is soliciting public comment on the petition for rulemaking.

#### Discussion of the Petition

The petitioner notes that requirements pertaining to the reactor vessel closure head flange are contained in 10 CFR part 50, appendix G, Table 1 entitled, ''Pressure and Temperature Requirements for the Reactor Pressure Vessel.'' These requirements appear in footnotes 2 and 6 of Table 1. These footnotes require that the metal temperature of the closure flange regions must exceed the material unirradiated $RT_{NDT}$ by at least 120° F for normal operation when the pressure exceeds 20 percent of the pre-service hydrostatic test pressure (621 psig for a typical PWR and 300 psig for a typical BWR). The petitioner believes that these requirements are unnecessary and requests that these footnotes be eliminated.

In support of its petition, the petitioner has attached a Westinghouse document, WCAP–15315, ''Reactor Vessel Closure Head/Vessel Flange Requirements Evaluation for Operating PWR and BWR Plants' (October 1999) that it believes sets forth the technical basis for the proposed modification, the grounds for and interest in the requested action, and the specific issues and facts that support the petition. The Westinghouse document indicates that the method used to develop pressure-temperature limits on the reactor vessel closure head flange in NRC requirements is based on fracture toughness data from the mid 1970s. Specifically, the margin of 120° F and the pressure limitation of 20 percent of hydrotest pressure were developed using the $K_{IA}$ fracture toughness curve provided in Appendix G to Section XI of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel (B&PV) Code. The petitioner does not specify the editions of the ASME B&PV Code that contain the $K_{IA}$ or the $K_{IC}$ fracture toughness curves. The petitioner believes that improved knowledge of fracture toughness and other factors affecting the integrity of the reactor vessel have led to the recent change to permit the use of the $K_{IC}$ fracture toughness curve, provided in Appendix A to Section XI of the ASME B&PV Code, in the development of pressure-temperature curves as specified in ASME Code Case N640, ''Alternative Reference Fracture Toughness for Development of P–T Limit Curves for Section XI, Division 1.''

The petitioner also believes the Westinghouse report demonstrates that a typical heat-up curve for both PWRs and BWRs using the $K_{IC}$ curve provides for a much higher allowable pressure through the entire range of temperatures. The petitioner concludes that the higher specified limits for a typical PWR are negated by the current NRC closure flange requirement. The petitioner contends that the Westinghouse report shows that the use of the $K_{IC}$ curve recently adopted by the ASME for flange considerations will lead to the conclusion that the current flange requirement can be eliminated.

The petitioner contends that the Westinghouse report demonstrates that irradiation effects studies lead to the conclusion that the location of the closure flange region is in an area of the reactor where irradiation levels are very low, meaning that the fracture toughness of the closure head flange is not measurably affected. The Westinghouse report indicates that steady state operation stresses in several PWR designs are not very high, but in other designs the stresses are much higher. Loadings are primarily membrane stress with somewhat lower bending stresses for two PWR designs. In other PWR designs, the bending stresses are approximately twice (or more) the membrane stresses. In BWRs, the membrane stress is very similar to that in PWRs, but the bending stresses are higher in BWR designs, due to the larger diameter and smaller thickness.

The report indicates that the relative impact of these stresses is best addressed through a fracture mechanics evaluation that postulates a semi-elliptic surface flaw at the outer surface of the closure head flange. The petitioner believes the report demonstrates that in both BWRs and PWRs, the stress intensity factors and fracture toughness variables at boltup provide a significant margin of safety and concludes that the integrity of the closure head/flange region is not a concern for any operating plant using the $K_{IC}$ fracture toughness curve. The petitioner also believes the report concludes that there are no known mechanisms of degradation in this region other than fatigue and that the calculated design fatigue usage level is so low that flaws are unlikely to initiate in the closure head/flange region.

The Westinghouse document indicates that for PWRs the boltup temperature ranges from 10° F to 51° F, with a nominal boltup temperature of 60° F. For BWRs the boltup temperature using the $K_{IC}$ fracture toughness curve ranges from 10° F to 66° F, with a nominal boltup temperature of 80° F. The petitioner believes that these comparisons make it clear that no additional boltup requirements are necessary and concludes that the requirements in footnotes 2 and 6 of Table 1 in 10 CFR part 50, appendix G can be eliminated.

The Westinghouse report states that an important safety concern is the narrow operating window at low temperatures forced by the closure flange requirement. Because the flange requirement sets a pressure limit of 621 psi for a PWR (20 percent of hydrotest pressure), the pressure-temperature (P–T) limit curve may be superceded by the flange requirement for temperatures below $RT_{NDT}$ + 120° F. The report also states that although this requirement was originally imposed to ensure the integrity of the flange region during boltup, it is no longer a concern as specified in the ''Flange Integrity'' analysis section of the report.

The report indicates that the flange requirement can cause severe operational limitations when instrument uncertainties are added to the lower limit (621 psi) for the Low Temperature Overpressure Protection (LTOP) system of PWRs. Because the minimum pressure required to cool the seals of the main coolant pumps is 325 psi, the operating window between minimum system pressure necessary for seal cooling and maximum system pressure to comply with PT limits on the flange sometimes becomes very small. The report states that if the operator allows the pressure to drop below the pump seal limit, the seals could fail and cause the equivalent of a small break loss of cooling accident (LOCA), a significant safety problem. The petitioner believes that elimination of the flange requirement will significantly widen the operating window for most PWRs as stated in the report, reducing the likelihood of such an occurrence.

The Westinghouse report cites the Byron Unit 1 facility as an example of a PWR that the petitioner believes illustrates how elimination of the flange requirement could improve plant safety. According to the report, Byron has LTOP setpoints significantly below the flange requirement of 621 psi, because of a relatively large instrument uncertainty. The setpoints of the two power-operated relief valves (PORVs) are staggered by about 16 psi to prevent a simultaneous activation. Because the two PORVs have different instrument uncertainties, the higher uncertainty is used for conservatism. The report states that:

> ''Elimination of the flange requirement for Byron Unit 1 would mean that the PORV curve could become level at 604/587 psig, which are the leading/trailing setpoints to protect the PORV downstream piping, through the temperature of the 350° F down to boltup at 60° F. The operating window between the leading PORV and the pump seal limit rises from 121 psig (446–325) to 262 psig (587–325). This change will make a significant improvement in plant safety by reducing the probability of a small LOCA, and easing the burden on operators.''

The report acknowledges that the Byron situation is only one example of the flange requirement's impact. The report also states that although each operating PWR facility will have different parameters, the operational safety will generally be improved by elimination of the flange requirement.

The Westinghouse report further states that elimination of the flange temperature requirement would have no impact on BWRs:

> ''The saturation temperature corresponding to the 300 psig operating pressure (20% of the pre-service hydrostatic test pressure) is 420° F. This is well in excess of the $RT_{NDT}$ + 120° F requirement. Therefore the flange temperature requirements are satisfied regardless of whether they exist or not.

Therefore, elimination of the flange temperature requirement has no impact on BWR flange integrity.''

**The Petitioner's Conclusions**

The petitioner has concluded that the NRC requirements governing pressure and temperature limits for the reactor pressure vessel should be amended to eliminate reactor vessel closure head flange requirements. The petitioner has also concluded that the elimination of the flange requirement has no impact on BWRs and could improve plant safety in PWRs. The petitioner requests that the reactor vessel closure head flange requirement be eliminated from the regulations at 10 CFR part 50, appendix G, Table 1 as presented in its petition for rulemaking.

Dated at Rockville, Maryland, this 1st day of February, 2000.

For the Nuclear Regulatory Commission.

**Annette Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 00–2833 Filed 2–7–00; 8:45 am]

**BILLING CODE 7590–01–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 99–NM–358–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 Series Airplanes

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

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

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes. This proposal would require a one-time review of the maintenance records to determine if tripping of the fuel boost pump circuit breakers has been recorded, repetitive inspections to detect fuel leakage from the fuel boost pump wiring conduits, and corrective actions, if necessary. This proposal also would require replacement of the three single wires inside the metal conduit sleeve of the fuel boost pumps with new wires protected by a polyamide sleeve, which would terminate the repetitive inspections. 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 the fuel boost pump wiring from chafing, which could result in electrical arcing and a possible fuel tank ignition source.

**DATES:** Comments must be received by March 9, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–358–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 Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. 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 99–NM–358–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. 99–NM–358–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on certain Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes. On July 17, 1996, a Boeing Model 747 series airplane was involved in an accident shortly after takeoff from John F. Kennedy International Airport in Jamaica, New York. Subsequent to the accident, the RLD advises that the manufacturer has conducted a Fuel System Safety Program (FSSP) investigation. This investigation revealed that, on an F.28 ''Fellowship'' series airplane, the wiring insulation layers of the fuel boost pumps can be damaged during removal and installation of the wiring, or by chafing within the conduits. Additionally, two separate incidents of arcing have been found in the metal conduits of the wiring of the fuel boost pumps. Circumferential cracks were found in the insulation layering of the fuel boost pump wiring. In some cases, the cracks extended down to the conductor of the wiring. This condition, if not corrected, could result in electrical arcing and a possible fuel tank ignition source.

**Explanation of Relevant Service Information**

The manufacturer has issued Fokker Service Bulletin SBF28/28–046, dated September 1, 1999, which describes procedures for the following:

- Part 1 of the Accomplishment Instructions: A one-time review of the maintenance records to determine if tripping of the fuel boost pump circuit breakers has been reported, and repetitive visual inspections to detect fuel leakage of the fuel boost pumps.
- Part 2, paragraph D., of the Accomplishment Instructions: Corrective actions for tripping of the fuel boost pump circuit breakers. These actions involve performing a resistance check of the wiring, and, if necessary, installing a new or serviceable fuel boost pump and correcting any system problems between the circuit breaker and the main landing gear (MLG) wheel bay connector, and repairing any fuel

leak in the metal conduit of the fuel boost pump. The corrective actions also involve performing one-time inspections (visual and boroscopic) to detect discrepancies (*i.e.,* arcing, chafing, and cracking) of the insulation layers of the wiring and wiring conduits, and replacing the wiring and repairing the wiring conduits.

• Part 2, paragraph E., of the Accomplishment Instructions: Corrective actions in the event that fuel leakage is detected from the fuel boost pump wiring conduits. The corrective actions involve inspecting the pressure bung for serviceability, and, if necessary, installing a new or serviceable pressure bung. Additionally, the corrective actions involve inspecting (visual and boroscopic) to detect discrepancies (*i.e.,* arcing, chafing, and cracking) of the insulation layers of the wiring and wiring conduits, and replacing the wiring and repairing the wiring conduits.

• Part 3 of the Accomplishment Instructions: Replacement of the three single wires inside the metal conduit sleeve of the fuel boost pump with new wires protected by a polyamide sleeve. The replacement also involves performing a visual inspection, and, if necessary, a boroscopic inspection of the boost pump wiring to detect discrepancies (*i.e.,* arcing, chafing, and cracking) of the insulation layers of the wiring and wiring conduits, and replacing the wiring and repairing the wiring conduits. Accomplishment of the replacement eliminates the need for the repetitive inspections.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The RLD classified this service bulletin as mandatory and issued Dutch airworthiness directive BLA 1999–114, dated September 13, 1999, in order to assure the continued airworthiness of these airplanes in the Netherlands.

**FAA's Conclusions**

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, 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 require accomplishment of the actions specified in the service bulletin described previously.

**Cost Impact**

The FAA estimates that 22 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed review of the maintenance records, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the review proposed by this AD on U.S. operators is estimated to be $1,320, or $60 per airplane.

It would take approximately 3 work hours per airplane to accomplish the proposed repetitive inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed inspection by this AD on U.S. operators is estimated to be $3,960, or $180 per airplane, per inspection cycle.

It would take approximately 33 work hours per airplane to accomplish the proposed modification, at an average labor rate of $60 per work hour. Required parts would cost approximately $1,355 per airplane. Based on these figures, the cost impact of the proposed modification by this AD on U.S. operators is estimated to be $73,370, or $3,335 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the 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 a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

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

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Fokker Services B.V:** Docket 99–NM–358–AD.

*Applicability:* Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes having serial numbers 11003 through 11241 inclusive and 11991 through 11994 inclusive, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) 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 the fuel boost pump wiring from chafing, which could result in electrical arcing and a possible fuel tank ignition source, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a one-time inspection of the maintenance records of the airplane to determine if tripping of the fuel boost pump

circuit breakers has been reported within the last 30 days, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF28/28–046, dated September 1, 1999.

(b) If resettable or unresettable tripping of the circuit breaker of the fuel boost pump is reported during the inspection required by paragraph (a) of this AD, or if such tripping is reported at any time subsequent to that inspection: Within 10 days after the date of the inspection or any occurrence, accomplish the applicable repair (including a resistance check and inspections of the wire and conduit for discrepancies), in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF28/28–046, dated September 1, 1999. If any discrepancy is detected during any inspection performed during the repair, prior to further flight, repair in accordance with the service bulletin.

(c) In the event of any resettable or unresettable tripping of the circuit breakers of the fuel boost pump as indicated in paragraph (b) of this AD, the airplane may be operated for a period not to exceed 10 days after the occurrence, provided the circuit breaker of the fuel boost pump and fuel boost pump switch have been properly deactivated and placarded for flightcrew awareness, in accordance with the FAA-approved Master Minimum Equipment List (MMEL).

(d) Within 30 days after the effective date of this AD, perform a general visual inspection to detect signs of fuel leakage from the wiring conduits of the fuel boost pumps, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin F28/28–046, dated September 1, 1999. If any fuel leakage is detected during the inspection, prior to further flight, isolate the fuel leak, and repair in accordance with Part 2 of the Accomplishment Instructions of the service bulletin. Thereafter, repeat the inspection at intervals not to exceed 90 days.

**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 checked.''

(e) Replace the existing three single wires (including inspections) inside the metal conduits of the fuel boost pumps with three twisted wires protected by a polyamide braided wire sleeve, in accordance with Part 3 of the Accomplishment Instructions of Fokker Service Bulletin F28/28–046, dated September 1, 1999, at the time specified in paragraph (e)(1) or (e)(2) of this AD, as applicable. If any discrepancy is detected during any inspection required by this paragraph, prior to further flight, repair in accordance with the service bulletin. Accomplishment of the actions required by this paragraph constitutes terminating action for the actions required by this AD.

(1) For airplanes that have accumulated less than 40,000 total flight hours as of the effective date of this AD: Within 2 years after the effective date of this AD.

(2) For airplanes that have accumulated 40,000 or more total flight hours as of the effective date of this AD: Within 1 year after the effective date of this AD.

**Alternative Methods of Compliance**

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

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

**Special Flight Permits**

(g) 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 4:** The subject of this AD is addressed in Dutch airworthiness directive BLA 1999–114, dated September 13, 1999.

Issued in Renton, Washington, on February 2, 2000.

**Donald L. Riggin,**

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

[FR Doc. 00–2830 Filed 2–7–00; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## 18 CFR Parts 270, 375 and 381

**[Docket No. RM00–6–000]**

## Well Category Determinations

January 27, 2000.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations to reinstate certain regulations involving well category determinations for Internal Revenue Code Section 29 tax credits, but limited to certain well recompletions commenced after January 1,1993. These regulations were deleted by the Commission in Order No. 567.

**DATES:** Comments on the proposed rulemaking are due on or before April 10, 2000.

**ADDRESSES:** File comments on the notice of proposed rulemaking with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments should reference Docket No. RM00–6–000.

**FOR FURTHER INFORMATION CONTACT:**

Marilyn Rand (Technical Information), Office of Pipeline Regulation, 888 First Street, NE, Washington, DC 20426, (202) 208–0444

Jacob Silverman (Advisory Attorney), Office of the General Counsel, 888 First Street, NE, Washington, DC 20426, (202) 208–2078

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.fed.us*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, NE, Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

—CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.

—CIPS can be access using the CIPS link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

—RIMS contains images 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 from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208–2222 (E-Mail to *WebMaster@ferc.fed.us*) or the Public

Reference at (202) 208–1371 (E-Mail to *public.referenceroom@ferc.fed.us*).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

## I. Introduction

The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations to reinstate provisions for well category determinations. With such determinations, natural gas producers may claim tax credits provided for by section 29 of the Internal Revenue Code (Section 29 tax credit).

The Section 29 tax credits are available only for certain categories of high cost gas. In 1999, the United States Court of Appeals for the Tenth Circuit in *True Oil Co. v. Commissioner of Internal Revenue* [1] (*True Oil*), held that, in order to obtain the tax credit, there must be a formal determination under the procedures provided by section 503 of the Natural Gas Policy Act of 1978 (NGPA) that the gas is high cost gas. However, after the January 1, 1993 decontrol of wellhead sales of natural gas by the Wellhead Decontrol Act of 1989 (Decontrol Act),[2] the Commission, in 1994, in Order No. 567,[3] deleted its regulations implementing NGPA ceiling prices, including the well category determination procedures under section 503, even though the tax credit was still available for gas produced through the year 2002. The *True Oil* decision has prompted the Commission to reconsider its prior action. In addition, a number of producers filed a petition requesting the Commission to reinstate the NGPA section 503 well category procedures because at present while producers are entitled to the section 29 tax credit for qualified gas, there is no procedure to obtain the prerequisite determination.[4] The Department of Energy (DOE) filed in support of the producers' petition and requested the Commission to renew the well category section 503 procedures as consistent with the nation's energy policy of increasing the supply of domestically produced natural gas. As a result, the Commission is proposing to reinstate some of these regulations, with modifications, in order to permit qualifying parties to obtain the tax credit provided under section 29 of the Internal Revenue Code (Code). Determinations would be limited to well recompletions commenced after January 1, 1993, and which comply with IRS Revenue Ruling 93–54, as detailed below.

## II. Background

### *A. The NGPA and the Adoption of the Tax Credits*

The NGPA established a system of varying price ceilings for different categories of natural gas. Among other things, section 107(b) authorized the Commission to establish incentive prices for various categories of unconventional natural gas. Section 107(c) of the NGPA specifically identified four types of natural gas deemed to be ''high-cost natural gas'', which were gas from (a) deep wells, (b) geopressurized brine, (c) coal seams, and (d) Devonian shale. In addition, section 107(c)(5) of the NGPA gave the Commission the authority to include in the term ''high-cost natural gas'' any natural gas ''produced under such other conditions as the Commission determines to present extraordinary risks or costs.'' NGPA section 503 set forth the procedures used for determining whether gas qualified as section 107(c) ''high-cost natural gas.'' Under that section the agency having regulatory jurisdiction with respect to the production of the natural gas in question (the jurisdictional agency) [5] makes the initial determination, and submits it to the Commission. The Commission can either affirm, reverse, remand, make a preliminary finding on, or simply take no action, regarding the agency's determination. If the Commission takes no action within 45 days after receipt of the agency's determination, that determination becomes final. Judicial review is available under section 503 only if the Commission remands or reverses the determination.

In Order Nos. 99 and 99–A,[6] the Commission exercised its authority under NGPA sections 107(b) and (c)(5) to define gas produced from tight formations as high-cost gas, and to establish an incentive ceiling price for that gas, and also set forth procedures for the designation of specific portions of formations as tight formations. After the designation of a portion of a formation as a tight formation, in order for production from a specific well to qualify as tight formation gas, the appropriate state or federal jurisdictional agency was required to make a determination that that well was producing gas from the formation which had been found to be a tight formation, and submit its determination to the Commission. In *Williston Basin Interstate Pipeline Co.* v. *FERC*,[7] the Court held that jurisdictional agency tight formation determinations must be reviewed only through the procedural scheme set forth in NGPA section 503.

Two years after passage of the NGPA, Congress enacted section 29 of the Internal Revenue Code as part of the Crude Oil Windfall Profit Tax of 1980. Section 29 allowed taxpayers to claim a credit for qualified fuels (1) which were produced from wells drilled between January 1, 1980 and December 31, 1990,[8] and (2) which were sold before January 1, 2001. The section 29 list of qualified fuels included only the NGPA section 107 (c)(2)-(4) categories, and tight formation gas under section 107(c)(5).[9] Section 29(c)(2)(A) also provided that the determination whether gas falls into a category qualifying for the tax credit ''shall be made in accordance with section 503 of the [NGPA].''

The Natural Gas Wellhead Decontrol Act of 1989 repealed all remaining NGPA price controls on wellhead sales of natural gas, as well as NGPA section 503, effective January 1, 1993. The Senate Committee on Energy and Natural Resources' Report on the 1989 Wellhead Decontrol Act stated, ''The Committee intends that any incomplete section 503 procedures continue to be carried out by the state agencies and the FERC, so that the necessary determination can be made as to sales of gas delivered before contract expiration and decontrol.'' [10] The Senate

[1] 170 F.3d 1294 (10th Cir. 1999).

[2] Pub. L. No. 101–60; 103 Stat. 157 (1989).

[3] Removal of Outdated Regulations Pertaining to the Sales of Natural Gas Production, 59 FR 40240, FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶ 30,999 (1994), Order on Rehearing, 69 FERC ¶¶ 61,055 and 61,042 (1994). A petition to review the deletion of other provisions in these regulation was denied by the Court of Appeals in Hadson Gas System, Inc. v. FERC, 75 F.3d 680 (D.C. Cir. 1996).

[4] The producers consisted of Smith Management Company; Patina Oil & Gas; BP Amoco; Burlington Resources; Vastar Resources, Inc.; Red Willow Production Co.; Cross Timbers Oil Company; Colorado Oil & Gas Association; Coalbed Methane Association of Alabama; Cabot Oil & Gas Corp.; and HS Resources, Inc.

[5] That agency may be either a State or Federal agency.

[6] Regulations Covering High-Cost Natural Gas Produced From Tight Formations, 45 FR 56034, FERC Stats. & Regs., Regulations Preambles 1977–1981 ¶ 30,183 (1980); *reh'g denied,* FERC Statutes and Regulations, Regulations Preambles 1977–1981 ¶ 30,198 (1980) (Order No. 99–A); *aff'd,* Pennzoil Co. v. FERC, 671 F.2d 119 (5th Cir. 1982).

[7] 816 F.2d 777 (D.C. Cir. 1987).

[8] For purposes of the tax credit, the initial drilling had to be started after January 1, 1980, and this date was never changed, although the period was extended in subsequent legislation as described below. Thus, this starting date is assumed throughout.

[9] Deep gas and other categories of gas under section 107 (c)(5) were never eligible for the tax credit.

[10] Similarly, the House Report on the Decontrol Act states, ''the gradual expiration of controls after

Continued

Report also expressly noted that section 29 of the Code provided for tax credits for certain types of fuels which qualify under the NGPA section 503 procedures. The Senate Report stated that approval of the Decontrol Act, which repealed the NGPA sections referenced in section 29, was ''not intended * * * to reflect an adverse judgment by the Committee as to the merits of tax credits for any categories of natural gas production that might be affected by such action.'' [11]

*B. The Commission's Actions After Passage of the Decontrol Act*

In February 1990, before full wellhead price deregulation took effect under the Decontrol Act, the Commission issued Order No. 519, terminating the incentive ceiling price for sales of tight formation natural gas produced from wells spudded or recompleted after May 12, 1990. Shortly thereafter, Congress, in the Revenue Reconciliation Act of 1990, extended the Section 29 tax credit so that it would be available for qualified fuels produced from wells drilled before January 1, 1993, and sold before January 1, 2003. That act also revised the terms of eligibility so that tight formation gas would be eligible for the tax credit even though the price for such gas was no longer regulated. However, that act made no change to the provision of Section 29 (c)(2)(A) that the determination of eligibility for the tax credit shall be made in accordance with NGPA section 503.

In Order No. 523, issued April 25, 1990, the Commission amended its regulations to conform them to the Decontrol Act. [12] In that order the Commission recognized its duty to continue processing requests for well category determinations under NGPA section 503 to allow producers to obtain tax credits, even if the determinations no longer affected the price of the gas. After summarizing the statement in the Senate Report on the Decontrol Act that the Act was not intended to reflect an adverse judgment by the Committee as to the merits of tax credits for decontrolled gas, the Commission stated:

In view of the legislative history noted above which indicates that Congress did not intend the Decontrol Act to limit the availability of tax credits for qualified fuels (footnote), the Commission will continue to process well determinations, until January 1, 1993, in order to allow producers to obtain tax credits that are dependent upon such determinations even if the gas has been otherwise decontrolled.[13]

Congress' decision in the Revenue Reconciliation Act of 1990 to reinstate the tax credit for tight formation gas even though the price for such gas was no longer regulated necessitated certain technical changes in the standards the Commission used to determine whether gas qualified as tight formation gas. On April 9, 1992, the Commission issued Order No. 539,[14] making the necessary technical changes. In addition, Order No. 539 clarified the Commission's statement in Order No. 523 that it would only continue processing well determination requests until December 31, 1992. A concern had been expressed to the Commission that it would not be practical for the Commission to complete the processing of well determination requests with respect to wells drilled through December 31, 1992 by that same date, since ordinarily such requests are not filed until after the well is drilled. The Commission stated that both the House and Senate committee reports on the Decontrol Act had stated that decontrol on January 1, 1993, would not affect proceedings pending on that date. Therefore, the Commission concluded that Congress did not intend that repeal of NGPA Title I and section 503, would terminate the authority of the Commission to process well category applications filed with the jurisdictional agencies on or before December 31, 1992. Accordingly, the order stated that the Commission would continue to process notices of determination which were filed with the jurisdictional agencies by December 31, 1992, and received by the Commission by June 30, 1993.[15]

On July 7, 1992, the Commission issued Order No. 539–A,[16] denying rehearing of Order No. 539. On rehearing, no party contended that the Commission should continue to process well determination requests under NGPA section 503 for wells drilled or recompleted [17] after January 1, 1993. However, parties did seek an extension of the December 31, 1992 date for producers to file applications with applicable jurisdictional agencies for well category determinations for pre-January 1, 1993 wells. The Commission denied that request, explaining that while both the jurisdictional agencies and the Commission have authority to complete the processing of applications for well category determinations under section 503 which were pending on December 31, 1992, there was no authority to commence new proceedings before jurisdictional agencies after that date. The Commission reiterated that the December 31, 1992 deadline was jurisdictional, stating:

In light of the fact that—effective January 1, 1993—decontrol applies to all section 503 procedures carried out by the state agencies and the FERC, the Commission clarifies that the December 31, 1992 and September 30, 1993 deadlines pertain to all NGPA categories, not just applications and determinations under section 107(c)(5).[18]

However, the Commission extended the date by which jurisdictional agencies could submit their determinations to the Commission until September 30, 1993.

On July 12, 1993, the Commission issued Order 539–C,[19] extending until April 30, 1994, the time for jurisdictional agencies to submit their determinations. [20] The Commission explained that the reason for continuing

enactment and before January 1, 1993, and their complete expiration on and after that date, will not affect civil or criminal proceedings pending at the time of decontrol, nor any action or proceeding based on pre-decontrol acts or conduct.''

[11] S. Rep. No. 101–39 at 9 (1989). Senate Committee on Energy and Natural Resources' Report quoted in Order No. 523, *infra* n. 13 at 31,760.

[12] Order Implementing the Natural Gas Wellhead Decontrol Act of 1989, 55 FR 17425, FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶30,887 (1990).

[13] *Id.* at 31,760. The footnote in the quote made reference to a letter from Senator J. Bennett Johnston to Commission Chairman Allday as also supporting this interpretation of the Decontrol Act. The letter was not quoted in the order. Senator Johnston's letter stated:

Until such time as the Internal Revenue Code is amended to provide a new mechanism for qualification for the nonconventional fuels tax credit, we believe that the Commission should continue to make the well category determination procedure available for these purposes. As sponsors of the wellhead decontrol legislation, we believe that this would be consistent with the intent of such legislation. We request that this letter be made part of the record in the rulemaking proceeding.

[14] Qualifying Certain Tight Formation Gas for Tax Credit, 57 FR 13009, FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶30,940 (1992).

[15] The Commission noted in Order No. 539 that a complete application might not be able to be filed with the jurisdictional agency by December 31, 1992. Accordingly, the Commission stated that ''the jurisdictional agencies have the discretion to assign a filing date to an application that is substantially complete and specify a date when a complete application must be filed.'' FERC Stats. & Regs., Regulations Preamble 1991–1996 ¶30,940 n. 41 at 30,488. In Order No. 539–C, the Commission stated the same would be true for recompletions. In all cases, however, the well had to be initially drilled before January 1, 1993.

[16] FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶30,947 (1992).

[17] The Commission has defined a recompletion as any perforation that occurs after reentry of a well. Thus, a perforation that occurs as part of the initial entry of the well is not a recompletion. But, once the well has been initially entered and perforated, and the tool used to perforate has been withdrawn, and the well is subsequently reentered, any subsequent perforations constitute recompletions. Oklahoma Corporation Commission and Oil Conservation Division, 68 FERC ¶61,323 at 62,320 (1994).

[18] FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶30,947 at 30,513 (1992).

[19] FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶30,974 (1993).

to review agency determinations for a transition period, was ''while NGPA Section 107 well category determinations have no price consequence, they are necessary to obtain the Section 29 tax credit.'' [21] However, the Commission reiterated that it ''will not accept determinations where the well was spudded or recompletion commenced on or after January 1, 1993.'' [22]

*C. The Internal Revenue Service's Recompletion Ruling*

As discussed above, section 29 of the Code provides that, in order to qualify for the tax credit, gas must be produced from a well drilled before January 1, 1993. During the period the Commission was issuing the above orders, both the Commission and all the parties appear to have assumed that this provision of Section 29 meant that the tax credit would not be available for wells originally drilled before December 31, 1992, that were recompleted after December 31, 1992. In any event, no party raised the issue whether the Commission's refusal to process well determination requests for wells recompleted after December 31, 1992, would improperly prevent producers from obtaining tax credits for such wells.

On August 16, 1993, a month after the Commission issued Order No. 539–C, the IRS issued Revenue Ruling 93–54,[23] which took a different view of the eligibility of recompletions after January 1, 1993 to receive the Section 29 tax credit. The IRS interpreted the provision of Section 29 that states that gas must be produced from a well drilled before January 1, 1993, as permitting tax credits for non-conventional fuels produced from a well that was drilled before January 1, 1993, through a post-January 1, 1993 recompletion in the well, as long as the recompletion does not involve additional drilling to deepen or extend the well. The IRS reasoned that the drilling deadline in Section 29 referred to the date of the initial drilling of the well, and not to the date of any subsequent recompletion in the portion of the well which had already been drilled.

After the IRS Revenue Ruling 93–54, the Commission received jurisdictional agency determinations for recompletions commenced after January 1, 1993. However, the Commission refused to process those submissions relating to those recompletions on the ground that the Decontrol Act's repeal of NGPA section 503 eliminated the Commission's authority to review well determinations for wells recompleted after December 31, 1992. For example, in *Railroad Commission of Texas,*[24] the Commission returned two well determinations to the jurisdictional agency because they were for well recompletions commenced after January 1, 1993. The Commission observed that regardless of the Commission's action, ''the IRS has the responsibility to determine whether production from a well that has not received a determination under NGPA section 503 is eligible for a tax credit.'' [25] In *Oklahoma Corporation Commission and Oil Conservation Division,*[26] the Commission rejected that part of the jurisdictional agency's determination that related to recompletions after December 31, 1992.

Producers sought review of the Commission's action, and argued to the Court that the Commission had misapplied the Commission's own definition of recompletion, and that by refusing to process these determinations, the Commission was improperly denying them the ability to obtain the Section 29 tax credit they were entitled to because the IRS had stated that such a recompletion could receive the tax credit. In *Marathon Oil Company* versus *FERC,* [27] (*Marathon Oil*) the Court upheld the Commission's refusal to process the post-December 31, 1992 recompletion determinations. The Court stated the IRS was the agency responsible for granting the tax credit, not the Commission. The Court noted that:

> While the IRS might be required to apply FERC's substantive definition of tight formation gas, it does not seem to us obliged to employ the same eligibility limitations that the Commission has adopted. Indeed, a revenue ruling seems to indicate that the IRS will consider recognizing a tax credit for gas from wells that would no longer be eligible to receive a tight formation gas designation from FERC (citing Revenue Ruling 93–54).[28]

The Court added that the Commission has obviously changed its mind as to the necessity of its role regarding tax credits, because the Commission had previously stated it was continuing to process well determinations after section 503 was repealed to enable parties to get the tax credit. [29] The Court concluded since ''the IRS may well simply ignore FERC's determination during its phase-out period'' (*i.e.* the period after January 1, 1993), ''FERC's actions in this case have no necessary legal significance bearing on the IRS' decision whether to grant the tax credit,'' [30] and denied the petitions for review.

The Court in *Marathon* did not directly discuss whether the Commission had the authority to process well determinations for recompletions commenced after the Decontrol Act's effective date. Rather, the Court concluded that there was no injury to the party from the Commission's action of not processing the determination because it did not foreclose the party from obtaining the tax credit from the IRS.

Following the *Marathon* decision, the Commission continued to decline to process jurisdictional agency determinations for post-December 31, 1992 recompletions. However, since it appeared that the IRS would permit the Section 29 credit for such recompletions without any Commission action, there did not seem to be any need for the Commission to reconsider its position.

In addition, on July 29, 1994, the Commission issued Order No. 567,[31] deleting regulations that were no longer required due to the decontrol of wellhead sales of natural gas. Among the regulations the Commission deleted were those in Part 270 through Part 275 of its regulations which set forth eligibility requirements, filing requirements, and the procedures for making well determinations under section 503 of the NGPA. The Commission concluded that those regulations were no longer needed because the Decontrol Act had repealed NGPA section 503 and the deadline for jurisdictional agency determinations to be filed with the Commission had passed.[32]

Thus matters stood from 1994 until the *True Oil* decision changed the legal landscape.

*D. The 10th Circuit's True Oil Decision*

In 1999, in *True Oil* v. *Commissioner of Internal Revenue*,[33] the Tenth Circuit reviewed the IRS's denial of a claim of the Section 29 credit because the producer had not obtained a formal well category determination from the jurisdictional agency or the

[20] *Id.* at 30,858.

[21] *Id.*

[22] *Id.* at n. 12.

[24] 66 FERC ¶61,130 (1994).

[25] *Id.* at n.12, 61,236.

[26] 68 FERC ¶61,323(1994).

[27] 68 F.3d 1376 (D.C. Cir. 1995).

[28] *Id.* at 1379.

[29] *Id.*

[30] *Id.*

[31] *Supra,* n.3.

[32] The Commission stated that rescission of Part 275 was prospective only and any timely filed applications for NGPA well category determination proceedings still pending before the Commission would continue to be subject to the requirements of Part 275.

[33] 170 F.3d 1264 (10th Cir. 1999).

Commission. The well was completed in 1984, but due to an oversight, no well-category determination application was filed with the jurisdictional agency. There was no issue whether the well could have qualified for the tax credit if there had been a determination. On appeal, the producer asserted that the reference to section 503 of the NGPA in section 29(c)(2)(A) merely incorporated the Commission's substantive definitions of tight formation gas. It contended that for purposes of section 29(c)(2)(A), the taxpayer itself can make the initial determination of whether a well is producing from a tight formation by applying those substantive definitions. The IRS denied the tax credit because there had been no well category determination by any authority authorized to make such determination. The Tax Court upheld the IRS, and the 10th Circuit similarly rejected the producer's contention. The Court held that notwithstanding the D.C. Circuit's decision in *Marathon Oil*, certain IRS revenue rulings, and the Commission's last position on the lack of a need for a formal well determination under NGPA section 503 to qualify for the tax credit, ''[a] producer must obtain a formal well-category determination before it can claim the Section 29 Credit.'' [34] The Court stated that, although section 29 has been amended more than once since the repeal of section 503 of the NGPA, Congress has never deleted the reference to section 503 from section 29.

The Court also specifically addressed the potential conflict between (1) the Commission's decision in Order No. 539 not to process well determinations for post-January 1, 1993 recompletions and (2) the IRS' revenue ruling one month later that gas produced from a post-January 1, 1993 recompletion could qualify for tax credits if it was produced in a well initially drilled before January 1, 1993. The producer contended that the IRS' revenue ruling should be interpreted as a finding that a well determination by the Commission was unnecessary for a producer to qualify for a tax credit for post-January 1, 1993 recompletions, since otherwise the revenue ruling would have been meaningless. The Court responded that revenue rulings do not have the force and effect of law and do not control when contrary to statute or the intent of Congress. Therefore, to the extent the revenue ruling could be interpreted to conflict with the requirement in section 29 of the Code for an NGPA section 503 determination, the Court held that it would not give the revenue ruling any weight. The Court then stated:

> While it is apparently true that a well recompleted after January 1, 1993 will not qualify for the Section 29 Credit because it is no longer possible to obtain a well category determination, this court is not at liberty to ignore the plain language of the statute and hold that a well-category determination is not required to claim the Section 29 Credit. It is the responsibility of this court to interpret statutes, not rewrite them.[35]

Thus, under *True Oil*, unless the Commission's NGPA section 503 procedures are available, the Section 29 tax credit cannot be obtained for post-January 1, 1993 recompletions, despite the IRS' revenue ruling that post-January 1, 1993 recompletions can qualify for the tax credit as long as there is no additional drilling to deepen or extend the well.

After the *True Oil* decision, a number of producers, *supra* n.4, filed a petition under Commission Rule 207, 18 CFR § 385.207, requesting that the Commission resume the NGPA section 503 well determination review process. They assert that unless the Commission does so, Congress' will would be thwarted because Congress provided that the producers could claim the Section 29 tax credit for qualified fuels until at least January 1, 2003 but at present there is no procedure to obtain it for gas produced from post-January 1, 1993 recompletions.

## III. Discussion

The Commission proposes to resume processing jurisdictional agency well category determinations for certain recompletions commenced after January 1, 1993, so the Section 29 tax credit can be claimed for natural gas produced from these qualifying wells. Since the agency responsible for ruling on the Section 29 tax credit, the IRS, will permit the tax credit for certain recompletions after January 1, 1993, and in light of the *True Oil* decision requiring Commission action under NGPA section 503 procedures for a producer to obtain the Section 29 tax credit, the Commission believes it can, and should, reinstate those procedures for well recompletions commenced after January 1, 1993, in wells initially drilled before January 1, 1993, until the tax credit ends, which is now scheduled to cease on December 31, 2002. Below, the Commission first discusses its legal authority to resume processing jurisdictional agency well category determinations under NGPA section 503. The Commission then discusses the details of its proposal.

### *A. Legal Authority*

The Commission recognizes that, in Order Nos. 539 and 539–A, the Commission stated that the Decontrol Act had terminated the Commission's authority to make well category determinations under NGPA section 503 with respect to all drilling activity after the effective date of decontrol, namely January 1, 1993. However, the Commission now concludes that Congress, in both the Wellhead Decontrol Act and the Revenue Reconciliation Act of 1990, intended to authorize the Commission to continue to review well category determinations under NGPA section 503 after wellhead decontrol, to the extent such determinations are necessary to permit qualifying producers to receive tax credits under section 29 of the Code.

At the time of Order Nos. 539 and 539–A, the Commission did not have to confront the possibility that its interpretation of the Wellhead Decontrol Act as terminating its authority to review well category determinations with respect to all post-December 31, 1992 ''drilling activity'' would affect the availability of the section 29 tax credit. It was only after Order No. 539–A that the IRS issued Revenue Ruling 93–54, interpreting section 29 of the Code, as amended by the Revenue Reconciliation Act of 1990, as permitting tax credits for post-January 1, 1993 recompletions in wells initially drilled before January 1, 1993, so long as the recompletion does not involve additional drilling to deepen or extend the well. While the Commission continued to refuse to perform well category determinations under NGPA section 503 for post-January 1, 1993 recompletions, the Commission suggested that its refusal to perform well determinations did not necessarily conflict with the IRS's revenue ruling.[36] This was because the Commission believed a formal Commission well determination under NGPA section 503 might not be a prerequisite for a tax credit. Similarly, the D.C. Circuit in *Marathon Oil* concluded that the Commission's refusal to process well category determinations did not injure producers, because producers might obtain the tax credit from the IRS without a formal NGPA section 503 determination from the Commission. In *Marathon Oil*, the jurisdictional agency had made the determination that the gas was from a well that met the tight formation requirement. Thus, neither the Commission nor the D.C. Circuit have thus far had to address the

[34] 170 F.3d at 1305.

[35] *Id.* at 1304.

[36] See 68 FERC ¶ 61,323 at 62,231.

question whether Congress intended to permit the Commission to make NGPA section 503 well category determinations with respect to post-December 31, 1992 drilling activity, where such determinations are a necessary prerequisite to obtaining tax credits Congress authorized in Section 29 of the Internal Revenue Code.

The Tenth Circuit's *True Oil* decision, combined with the IRS' interpretation of section 29 as authorizing tax credits for post-December 31, 1992 recompletions, now squarely presents this question to the Commission. In *True Oil*, the Court held that section 29 of the Internal Revenue Code requires a formal NGPA section 503 determination to obtain the Section 29 tax credit, since Section 29 states that the tight formation determination shall be made in ''accordance with section 503 of the Natural Gas Policy Act of 1978.'' Moreover, in *True Oil*, the Court specifically referred to post-January 1, 1993 recompletions as being subject to its ruling. The Court concluded:

> Although the result of our holding may appear unfair to producers who failed to obtain well-category determinations while they were being issued by FERC or to those producers who recomplete their wells after January 1, 1993, the judiciary is not ''licensed to attempt to soften the clear import of Congress' chosen words whenever a court believes those words lead to a harsh result (citing case).'' [37]

Thus, *True Oil* requires that in order to obtain the Section 29 tax credit the entire section 503 procedure must be followed, including Commission review of jurisdictional agency well determinations.

Therefore, unless the Commission recommences processing of requests for well category determinations under NGPA section 503, producers will be unable to obtain tax credits for gas produced from post-January 1, 1993 recompletions that qualify under Revenue Ruling 93–54. This will be true despite the fact the IRS has interpreted Section 29 of the Code, as amended by the Revenue Reconciliation Act of 1990, as authorizing tax credits for such gas. The Commission defers to the IRS's interpretation of Congress's intent in enacting the current version of section 29 as it applies to recompletions. This is because the IRS is the agency that administers the Code, and is responsible for determining whether the section 29 tax credit should be permitted in a particular situation. In light of the IRS' view that Congress intended its amendment of section 29 of the Internal Revenue Code by the Revenue Reconciliation Act of 1990 to permit tax credits for post-January 1, 1993 recompletions, we believe Congress must also have intended the Commission to continue the NGPA section 503 procedures after the decontrol date for those recompletions. Otherwise, the producers could not obtain the very credits the IRS has found Congress intended to authorize.

This conclusion is buttressed by the legislative history of the Decontrol Act. As the Commission found in Order No. 523, *supra*, that legislative history ''indicates that Congress did not intend the Decontrol Act to limit the availability of tax credits for qualified fuels (footnote) * * * .'' [38] In particular, there is the statement in the Senate Report accompanying the Decontrol Act that refers to the tax credit for qualifying fuels and states that the repeal in the Decontrol Act of NGPA sections referenced in Section 29 of the Code was not intended to reflect any adverse judgment on the merits of the tax credit. Moreover, the Chairman of the Senate Committee involved in the Decontrol Act had written to the Commission that until the Code was amended to provide a new mechanism for qualification for the gas subject to the section 29 tax credit, the Commission should continue to make the section 503 determination.[39] Since that time the Code has not been amended to provide any other mechanism for obtaining a formal determination even though the Section 29 tax credit is available at least through December 31, 2002.

Also, the Revenue Reconciliation Act of 1990 permitted tight formation gas to qualify for tax credits, even though it was no longer subject to NGPA ceiling prices. The Commission accordingly continued to process requests for well category determinations through April 1994 to aid producers in obtaining the tax credits, even though such determinations were no longer necessary to allow the gas to qualify for NGPA ceiling prices. Thus, despite the fact Congress originally enacted the NGPA section 503 well category determination procedures for the purpose of qualifying gas for NGPA ceiling prices, the Commission has previously recognized that those procedures can continue to be used, even where the determination has no significance for purposes of NGPA ceiling prices. This fact also suggests that the Wellhead Decontrol Act's elimination of all such price ceilings as of January 1, 1993, should not be viewed as requiring the Commission to cease well category determinations for tax credit purposes as of that date. Congress had previously unlinked eligibility for the tax credit from the existence of NGPA ceiling prices in 1990, and expanded the tax credit to tight formation gas.

Enabling producers to receive the tax credit would also be consistent with Congress' desire to encourage, enhance, and expand the United States natural gas supply base, allowing legitimately qualified producers to call upon a tax credit associated with developing and producing gas from formations and wells that otherwise might not have been available to supply consumers.

In summary, since the agency responsible for ruling on the Section 29 tax credit, the IRS, will permit the tax credit for certain recompletions after January 1, 1993, and in light of the *True Oil* decision which requires Commission action under NGPA section 503 procedures for a producer to obtain the Section 29 tax credit, the Commission believes it can, and should, reinstate those procedures for well recompletions commenced after January 1, 1993, in wells initially drilled before January 1, 1993, until the tax credit ends, which is now scheduled to cease on December 31, 2002. In light of this, the Commission proposes to reinstate these procedures until the later of June 30, 2003, or six months after the tax credit is no longer available for production from any well should Congress further extend the tax credit.

*B. Details of the Commission's Proposal*

The Commission proposes to accept jurisdictional agency determinations on those post-January 1, 1993 recompletions which satisfy the IRS' definition under Revenue Ruling 93–54, namely, that the recompletion does not involve additional drilling to deepen or extend the well. For this purpose, the Commission proposes to reinstate regulations necessary to (1) define the categories of high cost gas eligible for the tax credit and (2) provide procedures for jurisdictional agencies to file their determinations and the Commission to review those determinations. The Commission's action to provide a mechanism for claiming the section 29 tax credit for gas produced from these recompleted wells should have no consumer price impact. This is because the wellhead ceiling prices were terminated long ago, and therefore the only effect of this proposed rule will be to enable producers to obtain the tax credit. DOE states that the tax credits will help increase the Nation's supply of domestically

[37] 170 F.3d at 1305.

[38] FERC Stats. & Regs., Regulation Preambles 1986–1990 ¶30,887 at 31,760.

[39] *Supra,* n. 13.

produced natural gas by permitting unconventional gas wells to continue to operate. In addition to adding to the nation's natural gas supply, DOE states that continued operation of unconventional gas wells will be important in testing the new generation of petroleum technology.

With respect to the tight formation gas category, the Commission action will be limited to reviewing the jurisdictional agency determinations for qualifying recompletions in already designated tight formations. Well determinations for recompletions in coal seams and Devonian Shale will also be accepted.[40] The Commission proposes not to accept determinations with respect to either initial completions in wells spudded before January 1, 1993, or any pre-1993 recompletions. In Order No. 539, the Commission established deadlines for filing applications involving wells that were spudded and/or recompleted prior to January 1, 1993, and the time has long passed when those applications should have been filed. Also, in their petition, producers have not requested that the Commission accept determinations with regard to wells spudded or recompleted before January 1, 1993. However, parties may comment on this matter. Finally, the substantive rulings that the Commission has made previously concerning well determinations and the qualification under these NGPA section 107 category will continue to govern.

The Commission estimates that there are probably at least 4,000 recompletions that were performed between 1993–1999 for which a determination may be sought under the proposed rule, and that another 1,500 recompletions may occur between 2000–2002, when the tax credit is now scheduled to end.[41] The Commission finds the assistance of the State and Federal agencies to be essential to its ability to process the substantial number of new well category determination requests the Commission anticipates will be filed under the proposed rule. NGPA section 503 requires the jurisdictional agencies to make an initial well category determination, unless, as permitted by section 503(e)(2), the Commission enters into an agreement with a State or Federal agency under which the Commission would make the determinations that would otherwise be made by that agency. The Commission intends not to exercise its discretion to enter into any such agreement. Since the Commission's role in the producing area has virtually been eliminated, the Commission's resources in this area have been substantially reduced. Thus, the Commission must rely upon the jurisdictional agencies to develop the full record in these proceedings, and the Commission will limit its role to reviewing initial determinations made by the jurisdictional agencies. The Commission requests comments from the jurisdictional agencies whether they will make initial determinations under NGPA section 503, if this rule is adopted. If the jurisdictional agencies are not prepared to do this, the Commission may not proceed with the proposed rule.

Accordingly, the Commission is proposing to reinstate those portions of its prior regulations, with appropriate modifications, that are necessary to allow producers to obtain well category determinations solely for tax credit purposes. In general, the proposed regulations retain the definitions, the filing and notice requirements, and the review procedures that the Commission promulgated prior to the termination of the regulations due to the Decontrol Act. The significant changes are identified below.

Proposed § 270.101 contains the necessary definitions to implement well determination procedures to receive determinations for tax credit purposes. Definitions for tight formation gas, coal seam gas and Devonian shale gas, three of the types of gas eligible for tax credits, are included.[42] The Commission is not including a definition for gas produced from geopressured brine since our past experience shows that there is no gas likely to qualify for this category given the Commission's definition of geopressured brine and the current state of technology. Comments on this matter are requested.

Proposed § 270.201 limits the availability of the determination procedures to recompletions commenced after January 1, 1993, in wells initially drilled before that date. As discussed above, this reflects the Commission's decision to limit the determination process to correct the situation caused by the *True Oil* decision, but parties may comment on this matter. Similarly, the Commission is also not proposing any regulations that would allow a jurisdictional agency to designate additional tight formation areas. The designation of additional tight formations would require the Commission to review extensive geologic data. This could place an undue burden on the Commission. Also, it appears likely that most producing formations that qualify as tight formations were designated as such during the decade when such a designation enabled producers to qualify for a higher price ceiling.

Consistent with the Commission's prior NGPA regulations, the Commission is also proposing to revise the delegation authority to the Director of the Office of Markets, Tariffs and Rates (OMTR) or the Director's designee in § 375.307 to include tolling letters advising jurisdictional agencies notices of determination are incomplete. In addition, to facilitate the Commission's review under the reinstated procedures, the Commission is proposing to delegate to the Director of OMTR the authority to issue preliminary findings under the proposed section. However, the Commission is not proposing to delegate the authority to issue a final order to the Director of OMTR.

The Commission is also proposing to revise its regulations by adding § 381.401 to the regulations to specify a filing fee of $115 per well determination. This reflects the last fee ($100) for review of a jurisdictional agency well determination that was in effect prior to the repeal of the determination procedures, adjusted for inflation. It is the Commission's best estimate, at this time, of the cost to the Commission to review well determinations. As in the past, this fee will be revised annually in accordance with § 381.104. In addition, the past billing procedures will apply, whereby the Commission will bill each producer at the end of each billing year based on the number of determinations received during that year for that producer.

The proposed regulations contain no provisions permitting a jurisdictional agency to request alternative filing requirements. The proposed filing requirements are not unduly burdensome and are readily available to producers. However, since the Commission previously approved alternative filing requirements for Devonian shale wells in Michigan based

[40] As explained below, the Commission is not including geopressurized brine gas.

[41] Although the tax credit is scheduled to expire on December 31, 2002, it could be extended.

[42] We note that a new determination will not be required for some recompletions involving Devonian shale gas if there is a prior determination covering the entire gross Devonian age stratigraphic interval penetrated by the wellbore. The Commission will view all natural gas produced from a well to have been previously qualified as Devonian shale production if: (1) the well previously received an affirmative Devonian shale determination that was not reversed or remanded by the Commission; and (2) that determination was based on a gamma ray index test for non-shale footage that spans the entire gross Devonian age stratigraphic interval. In such cases, the Commission sees no reason to re-affirm what has already been established, i.e., that any gas produced from the gross Devonian age stratigraphic interval penetrated by such well qualifies as natural gas produced from Devonian shale within the meaning of section 107(c)(4) of the NGPA.

on unique circumstances, the proposed regulations reflect those previously-approved alternate filing requirements.

The Commission is reinstating and revising FERC Form No. 121, which a producer files with an application for determination. This form, a copy of which is attached, identifies the producer filing the application, the type of determination the producer is seeking, and information identifying the well and the completion location of the well. The Commission is considering whether or not to require producers to file this form electronically, to facilitate the Commission's noticing of determinations and requests comments on this issue.

**IV. Environmental Statement**

The Commission excludes certain actions not having a significant effect on the human environment from the requirement to prepare an environmental assessment or an environmental impact statement.[43] The instant proposed rule reinstates regulations that were previously in effect, and does not substantially change the effect of the underlying legislation or the regulations being revised. Accordingly, no environmental consideration is necessary.

**V. Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires rulemakings to contain either a description and analysis of the effect that the proposed rule will have on small entities or a certification that the rule will not have a significant economic impact on a substantial number of small entities.

In *Mid-Tex Elec. Coop.* v. *FERC,* 773 F.2d 327 (D.C. Cir. 1985), the court found that Congress, in passing the RFA, intended agencies to limit their consideration ''to small entities that would be directly regulated'' by proposed rules. *Id.* at 342. The court further concluded that ''the relevant 'economic impact' was the impact of compliance with the proposed rule on regulated small entities.'' *Id.* at 342.

The instant proposed rule reinstates regulations that were previously in effect, and would enable entities to obtain Internal Revenue Code Section 29 tax credits. There is no reporting requirement, merely the ability to obtain a formal determination that gas qualifies for the tax credit. The Commission certifies that this proposed rule will not have a significant economic impact upon a substantial number of small entities.

**VI. Public Reporting Burden and Information Collection Statement**

The following collections of information pursuant to Part 270 contained in this proposed rulemaking are being submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the Paperwork Reduction Act of 1995.[44] These information collection requirements were previously in effect until the removal of the Commission regulations implementing NGPA section 503 and are now proposed to be reinstated.

Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The burden estimates for complying with this proposed rule are as follows:

Public Reporting Burden: Estimated Annual Burden

| Data collection | Number of respondents | Number of responses per respondent | Hours per response | Total annual hours |
|---|---|---|---|---|
| FERC Form 121 | 1800 | 1 | .25 | 450 |
| FERC–568 | 1800 | 1 | 6.01 | 10818 |

Total Annual Hours for Collection (Reporting + Record keeping) = 11,268.

Based on the Commission's previous experience for processing applications for well determinations and completion of the FERC Form 121, it is estimated that about 1800 filings per year will be made over the next three years at a burden of 6.01 hours per filing for the application, .25 hours per filing for the Form 121, for a total of 11,268 hours under the proposed regulations. These two collections of information were eliminated after passage of the Wellhead Decontrol Act of 1989. The Commission is requesting that OMB reinstate these data collections to their inventory. The total hours associated with the proposed rule will be added to the total hours for the Commission's collections of information as well as to OMB's inventory.

*Information Collection Costs:* The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost for all respondents to be:

*Annualized Capital/Startup Costs:* $201,425.

*Annualized Costs (Operations & Maintenance)* $0.00.

*Total Annualized Costs:* $201,545.

The OMB regulations require OMB to approve certain information collection requirements imposed by agency rule. Accordingly, pursuant to OMB regulations, the Commission is providing notice of its proposed information collections to OMB.

*Title:* FERC Form 121, Application for Maximum Lawful Price under the Natural Gas Policy Act of 1978, FERC–568, Well Category Determinations.

*OMB Control No:* 1902–0038 and 1902–0112.

The applicant shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

*Respondents:* Business or other for profit, including small businesses.

*Frequency of Responses:* On occasion.

*Necessity of the Information:* The proposed rule reinstates the regulations to establish the procedures for the Commission to make determinations under NGPA Section 503. A determination by the Commission will enable producers of natural gas to claim credits for high cost gas as provided for by Section 29 of the Internal Revenue Code. The 10th Circuit held in a recent decision that a formal section 503 determination is required to obtain the Section 29 tax credit. The implementation of these data requirements will help the Commission to carry out its responsibilities under the NGPA.

*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

[43] 18 CFR 380.4.

[44] 44 U.S.C. 3507(d)

requirements. The Commission's Office of Markets, Tariffs, and Rates will use the data submitted by the information collections to determine whether it should affirm, reverse, remand, make a preliminary finding on, or take no action on an initial determination by a jurisdictional agency. The agency's initial determination is as to whether any natural gas produced under extraordinary conditions in terms of risks or costs can be considered as ''high-cost natural gas'' under Section 107(c) of the NGPA. These requirements have been reinstated as a result of the Court's decision to require well determinations in order to obtain Section 29 tax credits. These tax credits are available for qualified fuels through January 1, 2003 unless Congress should extend the program. These requirements conform to the Commission's plan for efficient information collection and management within the natural gas industry.

Interested persons may obtain information on the reporting requirements by contacting the following: 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) 208–2425, email: mike.miller@ferc.fed.us].

For submitting comments concerning the collection of information(s) and the associated burden estimate(s), please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–3087, fax: (202) 395–7285.]

**VII. Public Comment Procedures**

Prior to taking final action on this proposed rulemaking, we are inviting written comments from interested persons. The Commission also is notifying each affected State Commission and is giving reasonable opportunity to each State Commission to present its views for our consideration. All comments in response to this notice should be submitted to the Office of Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, and should refer to Docket No. RM00–6–000. An original and fourteen (14) copies of such comments should be filed with the Commission on or before April 10, 2000.

In addition to filing paper copies, the Commission encourages the filing of comments either on computer diskette or via Internet E-Mail. Comments may be filed in the following formats: WordPerfect 8.0 or lower version, MS Word Office 97 or lower version, or ASCII format.

For diskette filing, include the following information on the diskette label: Docket No. RM00–6–000; the name of the filing entity; the software and version used to create the file; and the name and telephone number of a contact person.

For Internet E-Mail submittal, comments should be submitted to ''comment.rm@ferc.fed.us'' in the following format. On the subject line, specify Docket No. RM00–6–000. In the body of the E-Mail message, include the name of the filing entity; the software and version used to create the file, and the name and telephone number of the contact person. Attach the comments to the E-Mail in one of the formats specified above. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt. Questions on electronic filing should be directed to Brooks Carter at: 202–501–8145, E-Mail address: brooks.carter@ferc.fed.us.

Commenters should take note that, until the Commission amends its rules and regulations, the paper copy of the filing remains the official copy of the document submitted. Therefore, any discrepancies between the paper filing and the electronic filing or the diskette will be resolved by reference to the paper filing.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference room at 888 First Street, NE, Washington DC 20426, during regular business hours. Additionally, comments may be viewed, printed or downloaded remotely via the Internet through FERC's Homepage using the RIMS or CIPS link. RIMS contains all comments but only those comments submitted in electronic format are available on CIPS. User assistance is available at 202–208–2222, or by E-Mail to rimsmaster@ferc.fed.us.

**List of Subjects**

*18 CFR Part 270*

Natural gas, Price controls, Record and recordkeeping requirements.

*18 CFR Part 375*

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

*18 CFR Part 381*

Natural gas, Reporting and recordkeeping requirements.

By direction of the Commission.

**David P. Boergers,**

*Secretary.*

In consideration of the foregoing, the Commission proposes to amend Part 270, Chapter I, Title 18 of the *Code of Federal Regulations,* as follows:

1. Part 270 is added to read as follows:

## PART 270—PROCEDURES GOVERNING WELL DETERMINATIONS FOR TAX CREDIT PURPOSES

### Subpart A—General Definitions

Sec.

§ 270.101 *General definitions*

### Subpart B—Determination by Jurisdictional Agencies

§ 270.201 *Applicability*
§ 270.202 *Definition of determination*
§ 270.203 *Determinations by jurisdictional agencies*
§ 270.204 *Notice to the Commission*

### Subpart C—Requirements for Filing with Jurisdictional Agencies

§ 270.301 *General requirement*
§ 270.302 Occluded natural gas produced from gas seams.
§ 270.303 *Natural gas produced from Devoian Shale*
§ 270.304 *Tight formation gas*
§ 270.306 *Recompletions in Devonian Shale wells in Michigan.*

### Subpart D—Identification of State and Federal Jurisdictional Agencies

§ 270.401 *Jurisdictional agency*

### Subpart E—Procedures for Commission Review of Jurisdictional Agency Determination

§ 270.501 *Publication of Notice from Jurisdictional Agency*
§ 270.502 *Commission review of final determination*
§ 270.503 *Protests to the Commission*
§ 270.504 *Contents of protests to the Commission*
§ 270.505 *Procedure for reopening determinations*
§ 270.506 *Confidentiality*

**Authority:** 15 U.S.C. 717–717w, 3301 *et. seq.*; 42 U.S.C. 7101 *et seq.*; EO 12009, 3 CFR 1978 Comp., p. 142.

### Subpart A—General definitions

#### § 270.101 General definitions.

(a) *NGPA definitions.* Terms defined in the Natural Gas Policy Act of 1978 (NGPA) will have the same meaning for purposes of this subchapter as they have under the NGPA, unless further defined in this subchapter.

(b) *Subchapter H definitions.* For purposes of this part:

(1) *NGPA* means the Natural Gas Policy Act of 1978.

(2) *Surface* location means the point on the Earth's surface from which drilling of a well is commenced except that in the case of a well drilled in permanent surface waters, the Earth's surface means the mean elevation of the surface of the water.

(3) *Jurisdictional agency* means the state or federal agency identified in Subpart D of this part.

(4) *Tight formation gas* means natural gas that a jurisdictional agency has determined to be produced from a designated tight formation.

(5) *Designated tight formation* means the portion of a natural gas bearing formation that was:

(i) Designated as tight formation by the Commission, pursuant to section 501 of the NGPA, or

(ii) Determined to be a tight formation pursuant to section 503 of the NGPA.

(6) *Occluded natural gas produced from coal seams* means naturally occurring natural gas released from entrapment from the fractures, pores and bedding planes of coal seams.

(7) *Natural gas produced from Devonian shale* means natural gas produced from fractures, micropores and bedding planes of shales deposited during the Paleozoic Devonian Period.

(8) *Shales deposited during the Paleozoic Devonian Period* can be defined as either:

(i) The gross Devonian age stratigraphic interval encountered by a well bore, at least 95 percent of which has a gamma ray index of 0.7 or greater; or

(ii) One continuous interval within the gross Devonian age stratigraphic interval, encountered by a well bore, as long as at least 95 percent of the selected Devonian shale interval has a gamma ray index of 0.7 or greater (but if the interval selected is more than 200 feet thick, the bottom and top 100 foot portions must meet the 5 percent test independently).

(9) Gamma ray index means when measuring the Devonian age stratigraphic interval, the gamma ray index at any point is to be calculated by dividing the gamma ray log value at that point by the gamma log value at the shale base line established over the entire Devonian age interval penetrated by the well bore.

## Subpart B—Determinations by Jurisdictional Agencies

### § 270.201 Applicability.

This part applies to determinations of jurisdictional agencies for tight formation gas, occluded natural gas produced from coal seams, and natural gas produced from Devonian shale which is produced through a recompletion commenced after January 1, 1993, in a well the surface drilling of which began after December 31, 1979, and before January 1, 1993, where such gas could not have been produced from any completion location in existence in the well bore before January 1, 1993.

### § 270.202 Definition of determination.

For purposes of this subpart, a determination has been made by a jurisdictional agency when such determination is administratively final before such agency.

### § 270.203 Determinations by jurisdictional agencies.

A jurisdictional agency must make determinations to which this part applies in accordance with procedures applicable to it under the law of its jurisdiction for making such determinations or for making comparable determinations.

### § 270.204 Notice to the Commission.

Within 15 days after making a determination that natural gas qualifies under this part, the jurisdictional agency must give written notice of the determination to the Commission. The notice must include the following:

(a) A list of all participants in the proceeding as well as any persons who submitted or who sought an opportunity to submit written comments (whether or not such persons participated in the proceeding);

(b) A statement indicating whether the matter was opposed before the jurisdictional agency;

(c) A copy of the application together with a copy or description of all other materials upon which the jurisdictional agency relied in the course of making the determination, together with any information which may be inconsistent with the determination.

(d) An explanatory statement, including appropriate factual findings and references, which is sufficient to enable a person examining the notice to ascertain the basis for the determination without reference to information or data not contained in the notice.

## Subpart C—Requirements for Filings With Jurisdictional Agencies

### § 270.301 General requirements.

(a) An application to which this subpart applies may be filed with the jurisdictional agency and signed by any person the jurisdictional agency designates as eligible to make filings with respect to the well for which the application is made.

(b) The documents required by this subpart are the minimum required in support of a request for a determination. The jurisdictional agency may require additional support as it deems appropriate, and may more specifically identify the documents indicated as the minimum required.

(c) Each applicant must pay the fee prescribed in § 381.401 of this chapter. The applicant will be billed annually by the Commission for each jurisdictional agency determination received by the Commission. The applicant must submit the fee, or petition for waiver pursuant to § 381.106, within 30 days following the billing date.

### § 270.302 Occluded natural gas produced from coal seams.

A person seeking a determination that natural gas is occluded natural gas produced from coal seams must file an application with the jurisdictional agency which contains the following items:

(a) FERC Form No. 121;

(b) All well completion reports.

(c) A radioactivity, electric or other log which will define the coal seams.

(d) Evidence to establish that the natural gas was produced from a coal seam;

(e) A statement by the applicant, under oath, that

(1) The gas was produced from a coal seam through a recompletion commenced after January 1, 1993, in a well the surface drilling of which began after December 31, 1979 and before January 1, 1993,

(2) Such gas could not have been produced from any completion location in existence in the well bore before January 1, 1993, and

(3) The applicant has no knowledge of any information not described in the application which is inconsistent with his conclusion.

### § 270.303 Natural gas produced from Devonian shale.

A person seeking a determination that natural gas is produced from Devonian shale shall file an application with the jurisdictional agency which contains the following items:

(a) FERC Form No. 121;

(b) All well completion reports;

(c) A gamma ray log with superimposed indications of the shale base line and the gamma ray index of 0.7 over the Devonian age stratigraphic section designated pursuant to § 270.101(b)(8);

(d) A reference to a standard stratigraphic chart or text establishing that the producing interval is a shale of Devonian age; and

(e) A sworn statement:

(1) Calculating the percentage of footage of the producing interval which

is not Devonian shale as indicated by a Gamma ray index of less than 0.7;

(2) Demonstrating that the percentage of potentially disqualifying non-shale footage for the stratigraphic section selected is equal to or less than 5 percent of the Devonian stratigraphic age interval designated pursuant to § 270.101(b)(7);

(3) Attesting that the natural gas is being produced from Devonian Shale, through a recompletion commenced after December 31, 1979, in a well the surface drilling of which began on or after January 1, 1980 and before January 1, 1993;

(4) Such gas could not have been produced from any completion location in existence in the well bore before January 1, 1993, and

(5) The applicant has no knowledge of any information not described in the application which is inconsistent with his conclusion.

**§ 270.304 Tight formation gas.**

A person seeking a determination that natural gas is tight formation gas must file with the jurisdictional agency an application which contains the following items:

(a) FERC Form No. 121;

(b) All well completion reports;

(c) A map that identifies the geographic location of the well and the geographic location of the post-January 1, 1993, recompletion's completion location in the designated tight formation, along with the geographic boundaries of such designated tight formation, or a location plat identifying the geographic location of the well and the post-January 1, 1993 recompletion's completion location in the designated tight formation, along with a list of the tract (or tracts) of land that comprise such designated tight formation;

(d) A complete copy of the well log, including the log heading identifying the designated tight formation stratigraphically; and

(e) A statement by the applicant, under oath, that:

(1) The natural gas is being produced from a designated tight formation through a recompletion commenced after January 1, 1993, in a well the surface drilling of which began after December 31, 1979 and before January 1, 1993,

(2) Such gas could not have been produced from any completion location in existence in the well bore before January 1, 1993, and

(3) The applicant has no knowledge of any information not described in the application which is inconsistent with his conclusion.

**§ 270.306 Recompletions in Devonian shale wells in Michigan.**

A person seeking a determination that natural gas is being produced from the Devonian Age Antrim shale in Michigan shall file an application which contains the following items:

(a) FERC Form No. 121;

(b) All well completion reports;

(c) A gamma ray log from the closest available well bore (producing or dry hole) that is within a one mile radius of the well for which a determination is sought, with superimposed indications of

(1) The shale base line and the gamma ray index of 0.7 over the Devonian age stratigraphic section penetrated by the well bore; and

(2) The boundary between the Antrim shale and the overlying formation (Berea Sandstone, Ellsworth, Bedford, or Sunbury shales, or their equivalents);

(d) A location plat showing the well for which the determination is sought and the well for which a gamma ray log has been filed;

(e) A mud log from the well for which the determination is sought, with a detailed description of samples taken from 10-foot, or less, intervals throughout the Devonian age stratigraphic section penetrated by the well bore;

(f) A driller's log, or similar report, from the well for which the determination is sought, indicating the general characteristics of the strata penetrated and the corresponding depths at which they are encountered throughout the Devonian age stratigraphic section penetrated by the well bore;

(g) A reference to a standard stratigraphic chart or text establishing that the producing interval is a shale of Devonian age; and

(h) A sworn statement:

(1) Calculating the percentage of footage of the producing interval (or the Antrim Shale in the event the well is a dry hole) in the well for which a gamma ray log was submitted which is not Devonian shall as indicated by a gamma ray index of less than 0.7;

(2) Demonstrating that the percentage of potentially disqualifying non-shale footage for the Devonian age stratigraphic section penetrated by the well bore for which the submitted gamma ray log is equal to or less than 5 percent;

(3) Attesting that the natural gas is being produced from the Devonian Age Antrim Shale, through a recompletion commenced after January 1, 1993, in a well the surface drilling of which began after December 31, 1979 and before January 1, 1993;

(4) Such gas could not have been produced from any completion location in existence in the well bore before January 1, 1993, and

(5) Declaring that the applicant has no knowledge of any information not described in the application which is inconsistent with these conclusions.

## Subpart D—Identification of State and Federal Jurisdictional Agencies

**§ 270.401 Jurisdictional agency.**

(a) *Definition.* With respect to a well the surface location of which is on lands within the boundaries of a State (including Federal lands and offshore State lands), ''jurisdictional agency'' means the Federal or State agency having regulatory jurisdiction with respect to the production of natural gas.

(b) The jurisdictional agency for wells located on Federal lands in each state are:

(1) Alabama—Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.

(2) Alaska, Anchorage District—Assistant District Manager for Mineral Resources, Bureau of Land Management, 4700 East 72nd Avenue, Anchorage, AK 99507.

Alaska, Fairbanks District—Assistant District Manager for Mineral Resources, Bureau of Land Management, North Post Fort Wainwright, Box 1150, Fairbanks, AK 99707.

(3) Arizona, except for the Navaho and Hopi Indian Reservations '' Deputy State Director for Mineral Resources, Bureau of Land Management, P.O. Box 16563, Phoenix, AZ 85011.

Arizona, Navaho and Hopi Indian Reservations '' District Manager, Bureau of Land Management, Albuquerque District Office (NGPA), 435 Montano Road, NE., Albuquerque, NM 87107.

(4) Arkansas—Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.

(5) California, except Naval Petroleum Reserve No. 1 (Elk Hills) and No. 2 (Buena Vista)—Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Division of Mineral Resources (C–920), 2800 Cottage Way, Room E–1827, Sacramento, CA 95825.

(6) Colorado—Deputy State Director for Mineral Resources, Bureau of Land Management, Colorado State Office (CO–920), 2850 Youngfield Street, Lakewood, CO 80215.

(7) Florida and Georgia—Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern

States Office (972), 350 South Pickett Street, Alexandria, VA 22304.

(8) Idaho—Deputy State Director for Mineral Resources, Bureau of Land Management, Idaho State Office (920), 3380 Americana Terrace, Boise, ID 83706.

(9) Illinois, Indiana, and Iowa—Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.

(10) Kansas—Deputy State Director for Mineral Resources, Bureau of Land Management, Colorado State Office (CO–920), 2850 Youngfield Street, Lakewood, CO 80215.

(11) Kentucky, Louisiana, Maryland, Michigan, Mississippi, and Missouri—Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.

(12) Montana—Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Division of Mineral Resources, P.O. Box 36800, Billings, MT 59107.

(13) Nebraska—Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.

(14) Nevada—State Director, Bureau of Land Management, Nevada StateOffice (NV–920), 300 Booth Street, Reno, NV 89520.

(15) New Mexico, Northern New Mexico—District Manager, Bureau of Land Management, Albuquerque District Office (NGPA), 435 Montano Road, NE., Albuquerque, NM 87107.

New Mexico, Southern New Mexico—District Manager, Bureau of Land Management, Roswell District Office (NGPA), P.O. Box 1397, Roswell, NM 88201.

(16) New York and North Carolina—Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.

(17) North Dakota—Chief, Branch of Fluid Minerals, Bureau of Land Management Division of Mineral Resources, P.O. Box 36800, Billings, MT 59107.

(18) Ohio—Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.

(19) Oklahoma, except the Osage Reservation—District Manager, Bureau of Land Management, Tulsa District Office (NGPA), 6136 East 32nd Place, Tulsa, OK 74135.

Oklahoma, the Osage Reservation only—Superintendent, Osage Indian Agency, Bureau of Indian Affairs, U. S. Department of the Interior, Pawhuska, OK 74056.

(20) Oregon—Deputy State Director for Mineral Resources, Bureau of Land Management, Oregon State Office, P.O. Box 2965 Portland, OR 97208.

(21) Pennsylvania and South Carolina—Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.

(22) South Dakota—Chief, Branch of Fluid Minerals, Bureau of Land Management, Division of Mineral Resources, P.O. Box 36800 Billings, MT 59107.

(23) Tennessee—Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.

(24) Texas, east of the 100th Meridian—District Manager, Bureau of Land Management, Tulsa District Office (NGPA), 6136 East 32nd Place, Tulsa, OK 74135.

Texas, west of the 100th Meridian—District Manager, Bureau of Land Management, Roswell District Office (NGPA), P.O. Box 1397, Roswell, NM 88201.

(25) Utah, except for the Navajo and Hopi Indian Reservations—Chief, Branch of Fluid Minerals, Bureau of Land Management, Utah State Office (U–922), 324 South State Street, Suite 301, Salt Lake City, UT 84111.

Utah, the Navajo and Hopi Indian Reservations only—District Manager, Bureau of Land Management, Albuquerque District Office (NGPA), 435 Montano Road, NE., Albuquerque, NM 87107.

(26) Virginia—Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.

(27) Washington—Deputy State Director for Mineral Resources, Bureau of Land Management, Oregon State Office, P.O. Box 2965, Portland, OR 97208.

(28) West Virginia—Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.

(29) Wyoming, excluding Naval Petroleum Reserve No. 3 (Teapot Dome)—Casper District * * * District Manager, Bureau of Land Management, 1701 East E Street, Casper, WY 82601.

Rawlins District * * * District Manager, Bureau of Land Management, P.O. Box 670, Rawlins, WY 82301.

Rock Springs District * * * District Manager, Bureau of Land Management, P.O. Box 1869, Rock Springs, WY 82902.

Worland District * * * District Manager, Bureau of Land Management, P.O. Box 119, Worland, WY 82401.

(c) The jurisdictional agency for wells located on Other lands in each state are:

(1) Alabama—State Oil and Gas Board, P.O. Box O, Tuscaloosa, AL 35486–9780.

(2) Alaska—Department of Natural Resources, Oil & Gas Division, 550 West 7th Avenue, Anchorage, AK 99501.

(3) Arizona—Oil and Gas Conservation Commission, 416 West Congress Street, Suite 100, Tucson, AZ 85701

(4) Arkansas—Oil & Gas Commission, P.O. Box 1472, El Dorado, AR 71730–1472.

(5) California—Department of Conservation, Division of Oil & Gas, 801 K Street, MS24–01, Sacramento, CA 95814.

(6) Colorado—Oil & Gas Conservation Commission, Chancery Building 1120 Lincoln, #801, Denver, CO 80203.

(7) Florida—Administrator Oil and Gas, Bureau of Geology, Department of Natural Resources, 903 West Tennessee Street, Tallahassee, FL 32304.

(8) Georgia—Department of Natural Resources, Geologic & Water Resources Division, 19 Martin Luther King Drive, SW., Atlanta, GA 30334.

(9) Idaho—Idaho Public Utilities Commission, Statehouse Mail, Boise, ID 83720.

(10) Illinois—Department of Natural Resources, Office of Oil & Gas Division, 524 South 2nd Street, Springfield, IL 62701.

(11) Indiana—Department of Natural Resources, Oil & Gas Division, 402 West Washington Street, Room 256, Indianapolis, IN 46204.

(12) Kansas—Kansas Corporation Commission, 1500 SW Arrowhead Road, Topeka, KS 66604

(13) Kentucky Natural Resources Department, 663 Teton Trail, Frankfort, KY 40601.

(14) Louisiana—Department of Natural Resources Conservation, P.O. Box 94275, Baton Rouge, LA 70804.

(15) Maryland—Department of Natural Resources, Tawes State Office Building, Annapolis, MD 21404.

(16) Michigan—Department of Natural Resources, Box 30028, Lansing MI 48909.

(17) Mississippi—State Oil & Gas Board, 500 Graymont Avenue, Suite E, Jackson, MS 39202.

(18) Missouri—Department of Natural Resources Geology and Survey Division, P.O. Box 250, 111 Fairgrounds Road, Rolla, MO 65402.

(19) Montana—Department of Natural Resources and Oil and Gas Conservation Division, 2535 St. John's Avenue, Billings, MT 59102.

(20) Nebraska—Oil & Gas Conservation Commission, Box 399, Sidney, NE 69162.

(21) Nevada—Department of Conservation and Natural Resources, Division of Mineral Resources, Capitol Complex, 201 S. Fall Street, Carson City, NV 89710.

(22) New Mexico—Department of Energy and Minerals and Natural Resources, Oil Conservation Division, 2040 S. Pacheco Street, Sante Fe, NM 87505.

(23) New York—Department of Environmental Conservation, Division of Mineral Resources, 50 Wolf Road, Albany, NY 12233.

(24) North Carolina—Department of Natural Resources and Community Development, 512 North Salisbury Street, Raleigh, NC 27611.

(25) North Dakota—Industrial Commission, State Capitol, 600 East Boulevard Avenue, Department 405, Bismarck, ND 58505.

(26) Ohio—Department of Natural Resources, Division of Oil and Gas, 1930 Belcher Drive, Building D–3, Columbus, OH 43224.

(27) Oklahoma—Corporation Commission, Oil & Gas Conservation Division, P.O. Box 52000, Oklahoma City, OK 73152–2000.

(28) Oregon—Department of Geology & Mineral Industries, 800 N.E. Oregon Street, #28 Portland, OR 97232.

(29) Pennsylvania—Department of Conservation and Natural Resources, P.O. Box 8767, Harrisburg, PA 17105–8767.

(30) South Carolina—South Carolina Public Service Commission, P.O. Drawer 11649, Columbia, SC 29211.

(31) South Dakota—Department of Environment and Natural Resources, Foss Building, 523 East Capitol Avenue, Pierre, SD 57501.

(32) Tennessee—Office of Conservation, Division of Geology, 401 Church Street, Nashville, TN 37243.

(33) Texas—Railroad Commission Oil and Gas Division, P.O. Box 12967, Austin, TX 78711.

(34) Utah—Department of Natrual Resources, Division of Oil, Gas and Mining, P.O. Box 145801 West North Temple, Suite 1210, Salt Lake City, UT 84114–5801.

(35) Virginia—Department of Mines, Minerals & Energy, Division of Mines and Quarries, Oil & Gas Section, P.O. Box 1416, Abingdon, VA 24210.

(36) Washington—Department of Natural Resources, Geology and Earth Resources Division, P.O. Box 47001, Olympia, WA 98504.

(37) West Virginia—Commerce Bureau, Geological and Economic Survey, Oil and Gas Section, P.O. Box 879, Morgantown, WV 26507.

(d) *Federal lands.* For purposes of this section, ''Federal lands'' means

(1) All lands leased under:

(i) The Mineral Lands Leasing Act, as amended, 30 U.S.C. 181 et seq.; and

(ii) The Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. 351 et seq.; and

(2) All Indian lands which are under the supervision of the United States Geological Survey or any successor federal agency (30 CFR Part 221); and

(3) All Indian lands which are under the supervision of the Osage Indian Agency, Bureau of Indian Affairs, U.S. Department of the Interior.

(e) *Divided-interest leases.* Unless an agreement under this paragraph provides otherwise, where a well is located on a divided-interest lease involving Federal (or Indian) and private (or State) ownership:

(1) The Federal jurisdictional agency will make the determination where the majority lease interest is Federal (or Indian);

(2) The State jurisdictional agency will make the determination where the majority lease interest is private (or State); and

(3) The State jurisdictional agency will make the determination where the lease is divided equally.

(f) *Drilling units.* Unless an agreement under paragraph (e) of this section provides otherwise, where a drilling unit is drained by two or more wells, the Federal jurisdictional agency will make the determination if the completion location of the well in question is located on a Federal (or Indian) lease, and the State jurisdictional agency will make the determination if the completion location of the well in question is located on a private (or State) lease.

(g) *Agreements.* If a jurisdictional agency that has jurisdiction over Federal lands enters into an agreement with a jurisdictional agency that has jurisdiction over State lands that either authorizes the State jurisdictional agency to make determinations for wells located on Federal lands or the Federal agency to make determinations for wells located on State lands, such agreement shall be filed with the Commission. Upon the filing of such an agreement, the agency so authorized will be considered to be the jurisdictional agency for wells on the lands subject to the agreement.

## Subpart E—Procedures for Commission Review of Jurisdictional Agency Determinations

### § 270.501 Publication of notice from jurisdictional agency.

(a) Upon receipt of notice of determination by a jurisdictional agency under § 270.204, the Commission will send an acknowledgment to the applicant and will post acknowledgment in the Commission's Public Reference Room and on the Commission's web site. Another source of the information is 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.

(b) The acknowledgment will contain the following:

(1) The date on which the jurisdictional agency notice was received;

(2) Certain information contained in FERC Form No. 121;

(3) A statement that the application and a copy or description of other materials in the record on which such determination was made is available for inspection, except to the extent the material is treated as confidential under § 270.506, at the offices of the Commission; and

(4) A statement that persons objecting to the final determination may, in accordance with this subpart, file a protest with the Commission within 20 days after the date that notice of receipt of a determination is issued by the Commission pursuant to this section.

### § 270.502 Commission review of final determinations.

(a) *Review by Commission.* Except as provided in paragraphs (b), (c) and (d) of this section, a determination submitted to the Commission by a jurisdictional agency will become final 45 days after the date on which the Commission received notice of the determination, unless within the 45 day period, the Commission:

(1) Makes a preliminary finding that:

(i) The determination is not supported by substantial evidence in the record on which the determination was made; or

(ii) The determination is not consistent with information which is contained in the public records of the Commission and which was not part of the record on which the jurisdictional agency made the determination, and

(2) Issues written notice of such preliminary finding, including the reasons for the preliminary finding. Copies of the written notice will be sent to the jurisdictional agency which made the determination, to the persons

identified in the notice under § 270.204 of such determination, and to any persons who have filed a protest.

(b) *Incomplete notice.* Notwithstanding the provisions of paragraph (a) of this section, the 45-day period for Commission review of a determination will not begin if:

(1) The notice forwarded to the Commission pursuant to § 270.204 does not contain all the material specified therein; and

(2) The Commission notifies the jurisdictional agency, within 45 days after the date on which the Commission receives notice of the determination, that the notice is incomplete.

(c) *Withdrawal of notice.* (1) The jurisdictional agency may withdraw a notice of determination by giving notice as specified in paragraph (c)(2) of this section at any time prior to the issuance of a final order with respect to such determination under paragraphs (g)(1) and (g)(2) of this section, or at any time prior to the date such determination becomes final under paragraphs (a) or (g)(4) of this section. Such notice must include the jurisdictional agency's reasons for the withdrawal.

(2) Withdrawal of a notice of determination will take effect at such time as the jurisdictional agency has notified the Commission, and the parties to the proceeding before the agency, of such withdrawal.

(3) Withdrawal of a notice of determination shall nullify such notice of determination.

(d) *Withdrawal of application.* (1) An applicant may withdraw an application for a determination which is before the Commission by giving notice as specified in paragraph (d)(2) of this section at any time prior to the issuance of a final order with respect to such determination under paragraphs (g)(1) and (g)(2) of this section, or at any time prior to the date such determination becomes final under paragraphs (a) or (g)(4) of this section.

(2) Withdrawal of an application will take effect at such time as the applicant has notified the Commission and the jurisdictional agency.

(3) Withdrawal of an application will nullify such application and the notice of determination on such application.

(e) *Public notice.* The Commission will publish notice of the preliminary finding in the **Federal Register** and will post the notice in its Public Reference Room. The notice will set forth the reasons for the preliminary finding.

(f) *Procedures following notice of preliminary finding.* Any state or federal agency or any person may submit, within 30 days after issuance of the preliminary finding, written comments, and request an informal conference with the Commission staff. Any jurisdictional agency, any state agency and any person receiving notice under paragraph (a)(2) of this Section may request an informal conference with the Commission staff. All timely requests for conferences will be granted. Notice of, and permission to attend, such conferences will be given to persons identified in paragraph (a)(2) of this section and to state or federal agencies or persons who submitted comments under this paragraph.

(g) *Final orders.* (1) In any case in which a protest was filed with the Commission pursuant to this subpart and a preliminary finding was issued, the Commission will issue a final order within 120 days after issuance of the preliminary finding.

(2) In any case in which no protest was filed with the Commission pursuant to this subpart, and a preliminary finding was issued, the Commission may issue a final order within 120 days after issuance of the preliminary finding.

(3) A final order issued under paragraphs (g)(1) or (g)(2) will either affirm, reverse, or remand the determination of the jurisdictional agency. Such order will state the specific basis for the Commission's action. Notice of the issuance of such order will be given to the jurisdictional agency, to participants in the proceeding before the jurisdictional agency, and to participants in the proceeding before the Commission under paragraph (d) of this section and under § 270.503.

(4) In the event that the Commission fails to issue a final order within 120 days after issuance of the preliminary finding, the determination of the jurisdictional agency shall become final.

### § 270.503 Protests to the Commission.

(a) *Who may file.* Any person may file a protest with the Commission with respect to a determination of a jurisdictional agency within 20 days after the date that notice of receipt of a determination is issued by the Commission pursuant to § 270.204.

(b) *Grounds.* Protests may be based only on the grounds that the final determination is:

(1) Not supported by substantial evidence;

(2) Not consistent with information which is contained in the public records of the Commission and which was not part of the record on which the determination was made;

(3) Not consistent with information submitted with the protests for inclusion in the public records of the Commission, which information was not part of the record on which the determination was made; or

(4) Not based on an application which complied with the filing requirements set forth in this subpart.

### § 270.504 Contents of protests to the Commission.

Each protest must include:

(a) An identification of the determination protested;

(b) The name and address of the person filing the protest;

(c) A statement of whether or not the person filing the protest participated in the proceeding before the jurisdictional agency, and if not, the reason for the nonparticipation;

(d) A statement of the effect the determination will have on the protestor;

(e) A statement of the precise grounds under § 270.503(f) for the protest, and all supporting documents or references to any information relied on which is in the record on which the determination is based or is in or to be inserted in the public files of the Commission; and

(f) A statement that the protestor has served, in accordance with § 385.2010 of this chapter, a copy of the protest together with all supporting documents on the jurisdictional agency and all persons listed in the notice of determination filed pursuant to § 270.204.

### § 270.505 Procedure for reopening determinations.

(a) *Grounds.* At any time subsequent to the time a determination becomes final pursuant to this subpart, the Commission, on its own motion, or in response to a petition filed by any person aggrieved or adversely affected by the determination, may reopen the determination if it appears that:

(1) In making the determination, the Commission or the jurisdictional agency relied on any untrue statement of material fact; or

(2) There was omitted a statement of material fact necessary in order to make the statements made not misleading, in light of the circumstances under which they were made to the jurisdictional agency or the Commission.

(b) *Contents of petition.* A petition to reopen the determination proceedings must contain the following information, under oath:

(1) The name and address of the person filing the petition;

(2) The interest of the petitioner in the outcome of the determination proceeding;

(3) The statement of material fact that is alleged to be untrue or omitted;

(4) A statement explaining why the outcome of the determination

proceeding would have been different had the statement or omission not occurred; and

(5) Copies of all documents relied on by the petitioner, or references to such documents if they are contained in the public files of the commission.

(c) *Procedures after reopening.* In the event the Commission reopens a determination pursuant to this section it will:

(1) Give notice to the jurisdictional agency and all persons who participated before both that agency and the Commission in the proceedings resulting in the determination in question;

(2) Permit the jurisdictional agency and other persons receiving notice pursuant to paragraph (C)(1) of this section to submit whatever documentary evidence such agency or persons deem relevant; and

(3) Take such other action or hold or cause to be held such proceedings as it deems necessary or appropriate for a full disclosure of the facts.

(d) *Final order of Commission.* Within 150 days after issuance of the notice under paragraph (c)(1) of this section, the Commission shall issue a final order. If the Commission finds that the grounds referred to in paragraph (a) of this section exist, it will vacate the determination.

**§ 270.506 Confidentiality.**

(a) Except as provided in paragraph (b) of this section, the Commission will accord confidential protection to, and not disclose to the public, any information submitted by a jurisdictional agency under § 270.204, if:

(1) The jurisdictional agency, on its own motion or on request of the applicant, afforded such information confidential treatment before the jurisdictional agency; and

(2) The agency order or the applicant's request stated grounds for confidential treatment which fall within one of the exemptions described in paragraphs (1) through (9) of 5 U.S.C. 552(b).

(b) Upon receipt of a request for disclosure of information treated as confidential under paragraph (a), the Commission will determine in accordance with 5 U.S.C. 552 whether the information is exempt. 5 U.S.C. 552(b). If it determines the information is not exempt, the information will be made public. If it determines the information is exempt, the Commission will not make it public unless it determines that its conduct of the proceeding to review the jurisdictional agency determination requires making such information available to the public or to particular parties, subject to conditions (including a protective order) as the Commission may prescribe. Before making any information public under this paragraph, the Commission will provide at least 5 days notice to the person who submitted the information.

## PART 375—THE COMMISSION

3. The authority citation for part 375 continues to read as follows:

**Authority:** 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 42 U.S.C. 7101–7352.

4. § 375.307 paragraph (p) is added to read as follows:

**§ 375.307 Delegation to the Director of the Office of Markets, Tariffs, and Rates**

* * * * *

(p) Take the following actions under the Natural Gas Policy Act of 1978:

(1) Notify jurisdictional agencies within 45 days after the date on which the Commission receives notice of a determination pursuant to § 270.502(b) of this chapter that the notice is incomplete under § 270.204 of this chapter.

(2) Issue preliminary findings under § 270.502(a)(1) of this chapter.

## PART 381—FEES

### Subpart D—Fees Applicable to the Natural Gas Policy Act of 1978

5. The authority citation for part 381 will continue to read as follows:

**Authority:** 15 U.S.C. 717–717W; 16 U.S.C. 791–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

6. Section 381.401 is added to read as follows:

**§ 381.401 Review of jurisdictional agency determinations**

The fee established for review of a jurisdictional agency determination is $115. The fee must be submitted in accordance with subpart A of this part and § 270.301(c) of this chapter.

**Note:** The following form will not appear in the Code of Federal Regulations.

### Attachment—Federal Energy Regulatory Commission Form No. 121 Application for Well Category Determination

1.0 API well number for this well (14 digits maximum. If no API number assigned, leave blank.): _____-_____-_____-_____

2.0 Section 107 determination being sought (check one) is for gas produced from:
____(1) coal seams;
____(2) Devonian shale; or
____(3) a designated tight formation.

3.0 Spud date of this well:
____/____/____ (month/day/year)

4.0 Recompletion commenced: ____/____/____ (month/day/year)

5.0 Measured depth of recompletion: from _____ (top and base, in feet)

6.0 Applicant's name, address and zip code:
Name* _____
Street* _____
City* _____
State _____
Zip Code _____

7.0 Name and identification number of this well, name of reservoir into which well has been recompleted, and location of this well:
Well* _____
Reservoir* _____
Field* _____
County* _____
State* _____

8.0 If applying for determination on a recompletion into a designated tight formation, provide designated tight formation's name and corresponding FERC Designation:
Formation* _____
FERC _____
Designation* _____

9.0 Person responsible for this application:
Name* _____
Title* _____
Signature _____
Phone No. _____

*Signifies that line entry may contain up to 35 letters and/or numbers.

[FR Doc. 00–2367 Filed 2–7–00; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Parts 12 and 113

**RIN 1515–AC43**

### Amended Bond Procedures for Articles Subject to Exclusion Orders Issued by the U.S. International Trade Commission

**AGENCY:** U.S. Customs Service, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes to amend the Customs Regulations to reflect the statutory provisions regarding bond procedures for the entry of articles subject to exclusion orders issued by the U.S. International Trade Commission (''Commission''). This document also proposes to include the text of a new special importation and entry bond in the Customs Regulations. These proposed changes reflect the terms of section 337 of the Tariff Act of 1930, as amended by section 321 of the Uruguay Round Agreements Act. As amended,

section 337 requires that the bond prescribed by the Secretary of the Treasury must be in an amount determined by the Commission to be sufficient to protect the complainant from any injury and that if the Commission later determines that the respondent has violated the provisions of section 337, the bond may be forfeited to the complainant.

**DATES:** Comments must be received on or before April 10, 2000.

**ADDRESSES:** Written comments (preferably in triplicate), regarding both the substantive aspects of this proposal as well as the clarity of the proposed rule and how it may be made easier to understand, may be submitted to and inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, 3rd Floor, Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:** Glen Vereb, Entry Procedures and Carriers Branch, (202) 927–1327.

**SUPPLEMENTARY INFORMATION:**

## Background

*U.S. International Trade Commission Investigations Under Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337)*

Under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), the Commission has the authority to conduct investigations into certain alleged unfair practices in import trade. Most complaints filed under this provision involve allegations of patent infringement, trademark infringement, or misappropriation of trade secrets. The Commission may determine that section 337 has been violated or, during the course of an investigation, that there is reason to believe that section 337 has been violated.

*Exclusion From Entry Into the U.S. of Articles that are the Subject of an Unfair Trade Practice Determination*

If the Commission finds a violation, or reason to believe there is a violation, of section 337, it may direct the Secretary of the Treasury to exclude the subject articles from entry into the U.S.

*Entry Under Bond of Excluded Articles*

During the period the Commission' s exclusion order remains in effect, and prior to the date that the Commission's determination of a violation of section 337 becomes final, articles otherwise excluded may be entered under a single entry bond prescribed by the Secretary of the Treasury.

*Statutory Amendments to Sections 337(e)(1) and (j)(3) Require Amendments to the Customs Regulations*

Certain statutory changes to section 337 of the Tariff Act of 1930 were enacted pursuant to the Uruguay Round Agreements Act (URAA), Pub. L. 103–465, 108 Stat. 4809 (December 8, 1994). Paragraphs (e)(1) and (j)(3) of section 337, as respectively amended by sections 321(a)(3) and (6) of the URAA, provide that articles subject to a Commission exclusion order may be entered under bond prescribed by the Secretary of the Treasury in an amount determined by the Commission to be sufficient to protect the complainant from any injury and that if the Commission later determines that the respondent has violated the provisions of section 337, the bond may be forfeited to the complainant.

Customs has determined that the amendments to section 337 effected by section 321 of the URAA, as described above, require changes to the Customs Regulations. It is Customs view that these amendments also warrant inclusion of the text of a special bond that indemnifies a complainant pursuant to the terms of section 337, as amended.

*Present Regulatory Provisions*

Section 12.39 of the Customs Regulations (19 CFR 12.39) sets forth provisions regarding imported articles involving unfair methods of competition or trade practices. Section 12.39(b)(1) identifies the manner by which such articles may be excluded from entry into the United States. Section 12.39(b)(2) provides that such excluded articles may be entitled to entry under a single entry bond in an amount determined by the Commission.

Section 113.62 of the Customs Regulations (19 CFR 113.62) sets forth basic importation and entry bond conditions. Section 113.62(l) identifies the consequence of default on certain agreements by which merchandise is released conditionally from Customs custody. Section 113.62(l)(1) provides, in pertinent part, that if a principal defaults on an agreement involving merchandise subject to an exclusion order of the Commission under 19 U.S.C. 1337 which has been released before such order becomes final, the obligors agree to pay the amount specified in the order for failure to redeliver such merchandise.

## Explanation of Amendments

The specific regulatory amendments proposed in this document are explained in more detail below.

*Section 12.39*

As mentioned previously, § 12.39(b)(2) provides that during the period the Commission's exclusion order remains in effect, excluded articles may be entered under a single entry bond in an amount determined by the Commission. This document proposes to amend § 12.39(b)(2) to provide that the bond must be in an amount determined by the Commission to be sufficient to protect the complainant from any injury and, if the Commission later determines that the respondent has violated the provisions of section 337, the bond may be forfeited to the complainant. These proposed changes reflect the amendments to sections 337(e)(1) and (j)(3) of the Tariff Act of 1930 enacted pursuant to sections 321(a)(3) and (6) of the URAA. The statutory amendments were enacted to bring Commission practice with respect to bonding requirements into closer conformity with district court practice. ]

It is further proposed that § 12.39(b)(2) be amended by deleting reference to Customs Form (CF) 301 and to the bond conditions set forth in § 113.62. The deletion of these terms reflects the fact that a CF 301 and § 113.62 pertain to basic importation and entry bonds. The single entry bond contemplated by § 12.39(b)(2), as amended, is a special importation and entry bond, not under cover of basic importation and entry bonds because the bond does not inure to the Treasury, but rather to the complainant, in the event of forfeiture.

It is proposed to add two new paragraphs to § 12.39(b)(2) which set forth the procedures for importing merchandise subject to the bonding requirements of sections 337(e)(1) and (j)(3). The first paragraph, (b)(2)(i), requires that a bond, in the amount determined by the Commission and containing the conditions identified in the text of the newly created special importation and entry bond, set forth in appendix B to part 113 of this chapter, be filed with the port director prior to entry. Paragraph (b)(2)(ii) directs that in the event of a forfeiture of this bond, § 210.50(d) of the United States International Trade Commission Regulations, (19 CFR 210.50(d)), will apply.

*Section 113.62*

Section 113.62 is proposed to be amended by striking that portion of the existing introductory paragraph which reads, ''except that a bond taken in the case of merchandise subject to an exclusion order of the International

Trade Commission under 19 U.S.C. 1337 shall be a single entry bond.''

Section 113.62(l)(1) is proposed to be amended by striking that portion of the existing text which reads, ''except that in the case of merchandise subject to an exclusion order of the International Trade Commission under 19 U.S.C. 1337 which has been released before such order becomes final, the obligors agree to pay liquidated damages in the amount specified in the order for failure to redeliver such merchandise.''

These two proposed amendments reflect that § 113.62 is to pertain only to basic importation and entry bonds and that the bond taken in the case of merchandise subject to an exclusion order of the Commission under 19 U.S.C. 1337 will be a special entry bond. Accordingly, all references to the bond taken out in regard to 19 U.S.C. 1337 are proposed to be removed from § 113.62.

*Section 113.74*

It is proposed to create a new provision at § 113.74 which sets forth that a bond to indemnify a complainant under section 337 of the Tariff Act of 1930, as amended, is contained in appendix B to part 113. Section 113.74 would provide that the bond must be filed in accordance with the provisions set forth in § 12.39(b)(2), must be a single entry bond that contains the conditions listed in appendix B to part 113 and, for the forfeiture or return of the bond, the provisions of 19 CFR 210.50(d) will apply. The bond set forth in appendix B to part 113 is, of course, in addition to any other Customs requirements for the importation of merchandise subject to a section 337 exclusion order.

*Appendix B to Part 113*

It is proposed to add an appendix B to part 113 which sets forth the bond conditions for a bond to indemnify a complainant under section 337 of the Tariff Act of 1930, as amended. The introductory paragraph to appendix B to part 113 would state that the provisions contained in §§ 12.39(b)(2) and 113.74 of the Customs Regulations and § 210.50(d) of the U.S. International Trade Commission Regulations will apply.

In consideration of the fact that the regulatory proposals discussed above include documentation requirements for the entry of merchandise covered by a Commission exclusion order, the ''(a)(1)(A)'' list set forth in the appendix to part 163 of the Customs Regulations (19 CFR part 163) will be modified accordingly if these proposed regulatory changes are adopted as a final rule.

**Comments**

Before adopting this proposal as a final rule, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, 3rd Floor, Washington, DC.

**Inapplicability of the Regulatory Flexibility Act and Executive Order 12866**

Because these proposed amendments to the Customs Regulations regarding bond procedures for articles subject to exclusion orders issued by the Commission merely reflect the terms of the statute, pursuant to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is certified that, if adopted, the proposed amendments will not have a significant impact on a substantial number of small entities. Further, these proposed amendments do not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

**Paperwork Reduction Act**

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). Comments on the collection of information should be sent to OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Regulations Branch at the address set forth above. Comments should be submitted within the time frame that comments are due regarding the substance of the proposal.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the information collection burden on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operations, maintenance, and purchase of services to provide information.

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

The collection of information in these proposed regulations is in appendix B to part 113. The information requested is necessary to enable Customs to permit entry under a bond to indemnify a complainant under section 337 of the Tariff Act of 1930, as amended. The likely respondents are individuals or commercial organizations who seek to import merchandise which is the subject of a section 337 exclusion order into the U.S.

*Estimated total annual reporting and/or recordkeeping burden:* 25 hours.

*Estimated average annual burden per respondent/recordkeeper:* 30 minutes.

*Estimated number of respondents and/or recordkeepers:* 50.

*Estimated annual frequency of response:* 2.

Part 178 of the Customs Regulations (19 CFR part 178), which lists the information collections contained in the regulations and control numbers assigned by OMB, will be amended accordingly if this proposal is adopted.

**Drafting Information**

The principal author of this document was Suzanne Karateew, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

**List of Subjects**

*19 CFR Part 12*

Bonds, Customs duties and inspection, Entry of merchandise, Imports, Reporting and recordkeeping requirements, Restricted merchandise, Unfair competition.

*19 CFR Part 113*

Bonds, Customs duties and inspection, Exports, Imports, Reporting and recordkeeping requirements, Surety bonds.

**Proposed Amendments to the Regulations**

For the reasons stated in the preamble, parts 12 and 113 of the Customs Regulations (19 CFR parts 12 and 113) are proposed to be amended as follows:

## PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for part 12 and the specific authority citation for § 12.39 continue to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

Section 12.39 is also issued under 19 U.S.C. 1337, 1623.

* * * * *

2. It is proposed to revise § 12.39(b)(2) to read as follows:

**§ 12.39 Imported articles involving unfair methods of competition or practices.**

* * * * *

(b) * * *

(2) During the period the Commission's exclusion order remains in effect, excluded articles may be entered under a single entry bond in an amount determined by the International Trade Commission to be sufficient to protect the complainant from any injury. On or after the date that the Commission's determination of a violation of section 337 becomes final, as set forth in paragraph (a) of this section, articles covered by the determination will be refused entry. If a violation of section 337 is found, the bond may be forfeited to the complainant under terms and conditions prescribed by the Commission. To enter merchandise that is the subject of a Commission exclusion order, importers must:

(i) File with the port director prior to entry a bond in the amount determined by the Commission that contains the conditions identified in the special importation and entry bond set forth in appendix B to part 113 of this chapter; and

(ii) Comply with the terms set forth in 19 CFR 210.50(d) in the event of a forfeiture of this bond.

* * * * *

## PART 113—CUSTOMS BONDS

1. The general authority citation for part 113 continues to read as follows, and a new authority citation is added for § 113.74:

**Authority:** 19 U.S.C. 66, 1623, 1624.

* * * * *

§ 113.74 also issued under 19 U.S.C. 1337.

2. In § 113.62:

a. The introductory paragraph is proposed to be amended by removing that portion of the text which reads, ''except that a bond taken in the case of merchandise subject to an exclusion order of the International Trade Commission under 19 U.S.C. 1337 shall be a single entry bond''.

b. Paragraph (l)(1) is proposed to be amended by removing the words ''except that in the case of merchandise subject to an exclusion order of the International Trade Commission under 19 U.S.C. 1337 which has been released before such order becomes final, the obligors agree to pay liquidated damages in the amount specified in the order for failure to redeliver such merchandise''.

3. It is proposed that a new § 113.74 be added to read as follows:

**§ 113.74 Bond conditions to indemnify a complainant under section 337 of Tariff Act of 1930, as amended.**

A bond to indemnify a complainant under section 337 of the Tariff Act of 1930, as amended, must contain the conditions listed in appendix B to this part. The bond must be a single entry bond and must be filed in accordance with the provisions set forth in 19 CFR 12.39(b)(2). For the forfeiture or return of this bond, the provisions of 19 CFR 210.50(d) will apply.

4. It is proposed to add appendix B to part 113 to read as follows:

### Appendix B to Part 113—Bond to Indemnify Complainant Under Section 337, Tariff Act of 1930, as Amended

This appendix contains the bond to indemnify a complainant under section 337 of the Tariff Act of 1930, as amended. The provisions contained in §§ 12.39(b)(2) and 113.74 of the Customs Regulations (19 CFR Chapter I) and § 210.50(d) of the U.S. International Trade Commission Regulations (19 CFR Chapter II) apply.

**Bond to Indemnify Complainant Under Section 337, Tariff Act of 1930, as Amended**

_____ as principal and _____ as surety, are held and bound to the complainant of unfair practices or methods of competition in import trade in violation of section 337, Tariff Act of 1930, as amended, in the sum of _____ dollars ($_____), for payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, by these conditions.

Pursuant to the provisions of section 337, Tariff Act of 1930, as amended, the principal and surety recognize that the U.S. International Trade Commission has, according to the conditions described in its order, excluded from, or authorized, entry into the United States of the following merchandise.

The principal and surety recognize that the Commission has excluded that merchandise from entry until its investigation is completed, or until its decision that there is a violation of section 337 becomes final.

The principal and surety recognize that certain merchandise excluded from entry by the Commission was, or may be, offered for entry into the United States while the Commission's prohibition is in effect.

The principal and surety recognize that the principal desires to obtain a release of that merchandise pending a final determination of the merchandise's admissibility into the United States, as provided under section 337, and, for that purpose, the principal and surety execute this stipulation:

If it is determined, as provided in section 337 of the Tariff Act of 1930, as amended, to exclude that merchandise from the United States, then, on notification from the port director of Customs, the principal is obligated to export or destroy under Customs supervision the merchandise released under this stipulation within 30 days from the date of the port director's notification.

The principal and surety agree that if the principal defaults on that obligation, the principal and surety shall pay to the complainant an amount equal to the face value of the bond as may be demanded by him/her under the applicable law and regulations.

Witness our hands and seals this _____ day of _____(month), _____ (year).

(seal) _____
Principal

(seal) _____
Surety

**Raymond W. Kelly,**

*Commissioner of Customs.*

Approved: October 21, 1999.

**John P. Simpson,**

*Deputy Assistant Secretary of the Treasury.*

[FR Doc. 00–2725 Filed 2–7–00; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[REG–208280–86]**

**RIN 1545–AJ57**

## Exclusions From Gross Income of Foreign Corporations

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

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed rules implementing the portions of section 883(a) and (c) of the Internal Revenue Code (Code) that relate to income derived by foreign corporations from the international operation of a ship or ships or aircraft. The proposed rules reflect changes made by the Tax Reform Act of 1986 and subsequent legislative amendments. The proposed rules provide, in general, that a foreign corporation organized in a qualified foreign country and engaged

in the international operation of ships or aircraft shall exclude qualified income from gross income for purposes of United States Federal income taxation, provided that the corporation can satisfy certain ownership and related documentation requirements. The proposed rules explain when a foreign country is a qualified foreign country and what income is considered to be qualified income.

The proposed rules specify how a foreign corporation may satisfy the ownership and related documentation requirements. In addition, the proposed rules describe the information that the foreign corporation must include on its United States income tax return in order to claim an exemption. This document provides notice of a public hearing on these proposed rules.

**DATES:** Written comments must be received by May 8, 2000.

Requests to speak and outlines of topics to be discussed at the public hearing scheduled for Thursday, April 27, 2000, at 10 a.m. must be received by Wednesday, April 5, 2000.

**ADDRESSES:** Send submissions to: CC:DOM:CORP:R (REG–208280–86), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–208280–86), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC.

Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/tax__regs/regslist.html. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed rules, Patricia A. Bray, (202) 622–3880; concerning submissions, the hearing, and/or to be placed on the building access list to attend the hearing, Guy Traynor, (202) 622–7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

## Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the IRS, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collection of information should be received by April 10, 2000. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in §§ 1.883–1, 1.883–2, 1.883–3, 1.883–4, and 1.883–5. The information required in these sections will enable a foreign corporation to determine if it is eligible to exclude its income from the international operation of a ship or ships or aircraft from gross income on its U.S. Federal income tax return. The information required in these sections will also enable the IRS to monitor compliance with the provisions of the proposed regulations with respect to the stock ownership requirements of § 1.883–1(c)(2), and to make a preliminary determination of whether the foreign corporation is eligible to claim such an exemption and is accurately reporting income as required under section 6012.

The collection of information and responses to these collections of information are mandatory. The likely respondents are foreign corporations engaged in the international operation of a ship or ships or aircraft that wish to claim an exemption from U.S. tax under section 883, and certain of their shareholders owning (directly or indirectly) a majority of the value of the shares of such corporations.

*Estimated total annual reporting/recordkeeping burden on corporations:* 1,400 hours.

The estimated annual burden per respondent varies from 30 minutes to eight hours, depending on the circumstances of the foreign corporation, with an estimated average of one hour.

*Estimated number of respondents:* 1,400.

*Estimated annual frequency of responses:* Once.

*Estimated total annual reporting burden on shareholders:* 22,500 hours.

The estimated annual burden per respondent varies from 15 minutes to eight hours, depending on the circumstances of the shareholder or intermediary, with an estimated average of 90 minutes.

*Estimated number of respondents:* 15,000.

*Estimated annual frequency of responses:* Once.

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

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

## Background

Section 883 provides an exemption from gross income for earnings of a foreign corporation derived from the international operation of a ship or ships or aircraft (hereinafter ships or aircraft) if an equivalent exemption from tax is granted by the applicable foreign country to corporations organized in the United States. Section 883 has generally been referred to as the reciprocal exemption provision. Before 1986, section 883 eliminated U.S. tax on earnings from the operation of ships or aircraft derived by foreign persons, including U.S.-controlled foreign corporations, based on whether the country of documentation of the ship or registry of the aircraft provided an exemption to U.S. persons. Section 883 did not require a foreign transportation company to be organized or resident in the country of registration or documentation. Many countries offered various incentives, including no taxation, to non-resident shipping companies that registered ships in that jurisdiction (referred to as flagging-out or documenting ships under flags of convenience). Thus, foreign corporations that documented their

ships in such flag of convenience countries could claim a reciprocal exemption from U.S. income tax.

Congress concluded in 1986 that the reciprocal exemption provisions were not meeting their original goal of reserving the right to tax transportation income to the country of residence of the taxpayer (and therefore to eliminate double taxation). In cases where residents of a country with which the United States might desire a reciprocal exemption used vessels or aircraft documented or registered under another flag, the unilateral U.S. concession provided under prior law left the country of residence little incentive to exempt U.S. shippers. Congress was concerned that U.S.-based transportation companies were at a competitive disadvantage because U.S. companies remained potentially subject to tax by the countries in which their foreign competitors were organized and resident.

Congress amended the reciprocal exemption provisions of section 883 to rectify this situation. Tax Reform Act of 1986, section 1212, Public Law 99–514, ((1986–3 C.B. 1) (the 1986 Act)), as amended by the Technical and Miscellaneous Revenue Act of 1988 (TAMRA), Public Law 100–647 (1988–3 C.B. 1), and by the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239 (1990–1 C.B. 210), (the 1986 Act, as amended). It is now irrelevant under section 883 where a ship is documented or an aircraft is registered. Instead, section 883 provides that a foreign corporation may qualify for the reciprocal exemption only if it is organized in a foreign country that grants corporations organized in the United States an equivalent exemption with respect to income derived from the international operation of ships or aircraft. In addition, more than 50 percent of the value of the stock of the foreign corporation must be owned by individuals who are residents of a foreign country that grants corporations organized in the United States an equivalent exemption. The 50 percent ownership requirement generally does not apply if the corporation is either a qualifying controlled foreign corporation (CFC) or if its stock is primarily and regularly traded on an established securities market in a qualified foreign country or the United States.

Since 1986, the United States and more than 30 foreign countries have entered into reciprocal exemption agreements incorporating the statutory amendments of section 883. In addition, more than 60 countries now provide an equivalent exemption through domestic law or an income tax convention. The current regulations under § 1.883–1, however, have not been amended to reflect the statutory changes enacted since 1986. This document proposes updated rules reflecting the statutory changes.

**Explanation of Provisions**

*General Rule*

Section 1.883–1(a) provides the general rule. A foreign corporation engaged in the international operation of a ship or aircraft shall exclude from its gross income for U.S. Federal income tax purposes any income it derives from the international operation of ships or aircraft if such income is qualified income under paragraph (b) and if the corporation is a qualified foreign corporation under paragraph (c).

Section 1.883–1(b) provides that qualified income is income that is properly includible in an income category described in paragraph (h)(2) of this section and that is the subject of an equivalent exemption granted by the foreign country in which the foreign corporation seeking qualified foreign corporation status is organized.

Section 1.883–1(c)(1) describes the general requirements that a foreign corporation must satisfy to be considered a qualified foreign corporation. A qualified foreign corporation is a corporation, as defined in §§ 301.7701–2(b) and 301.7701–3, that is engaged in the international operation of ships or aircraft and that is organized in a qualified foreign country. A qualified foreign corporation must also satisfy one of the three stock ownership tests described in paragraph (c)(2) of this section as well as the substantiation and reporting requirements described in paragraph (c)(3) of this section.

Paragraph (c)(2) describes the three stock ownership tests. Generally, a foreign corporation must be able to demonstrate and document that more than fifty percent of the value of its stock is owned by qualified shareholders, as determined under § 1.883–4 (qualified shareholder stock ownership test). However, a foreign corporation will not be required to demonstrate that it satisfies the qualified shareholder stock ownership test if it can demonstrate either that its stock is primarily and regularly traded on an established securities market in a qualified foreign country or in the United States, as determined under § 1.883–2 (publicly-traded test), or that it is a qualifying controlled foreign corporation as determined under § 1.883–3 (CFC test).

To satisfy the substantiation and reporting requirements described in paragraph (c)(3) of this section, a foreign corporation must include the information set out in that paragraph in its Form 1120F, ''U.S. Income Tax Return of a Foreign Corporation,'' in such form and manner as the Form 1120F and its accompanying instructions prescribe. The information to be submitted with the return includes information set out in §§ 1.883–2(f), 1.883–3(d) and 1.883–4(e), as applicable, relating to information demonstrating that the foreign corporation satisfies one of the three stock ownership tests. Section 1.883–5(c) provides a transition rule that will require such information to be included in a statement attached to the return until the Form 1120F and its instructions are amended to conform to final regulations under this section.

Paragraph (c)(3)(ii) provides that if the Commissioner requests in writing that the foreign corporation substantiate representations made under paragraph (c)(3)(i) of this section, or under § 1.883–2(f), 1.882–3(d) or 1.883–4(e), the foreign corporation must provide the supporting documentation or substantiation within 60 days following the written request. If the foreign corporation does not provide all of the information requested within the 60 day period but demonstrates that the failure was due to reasonable cause and not willful neglect, the Commissioner may grant the foreign corporation a 30-day extension to provide the supporting documentation or substantiation. Whether a failure to obtain the documentation or substantiation in a timely manner was due to reasonable cause shall be determined by the Commissioner after considering all the facts and circumstances.

Paragraph (c)(4) contains a rule that allows the Commissioner to retain the right to cure any defects in the documentation where the Commissioner is satisfied that the foreign corporation would otherwise be a qualified foreign corporation.

Paragraph (d) defines a *qualified foreign country* as a foreign country that grants an equivalent exemption to corporations organized in the United States for the relevant category of qualified income earned by the foreign corporation seeking qualified foreign corporation status. A foreign country may be a qualified foreign country with respect to one category of income but not with respect to other categories of income.

*Operation of Ships or Aircraft*

Section 1.883–1(e) explains what it means to be engaged in the operation of ships or aircraft for purposes of these proposed rules and provides examples of activities that are not treated as the operation of ships or aircraft. Under the general rule, only a corporation that is an owner, lessor, or lessee of an entire ship or aircraft used to carry cargo or persons for hire can be considered engaged in the operation of ships or aircraft.

The term *operation of ships or aircraft,* which includes the operation of a single ship or aircraft, means: The carrying of cargo or passengers for hire; the time or voyage charter of a ship or the wet lease of an aircraft, as those terms are defined in the regulations; and the bareboat charter of a ship or the dry lease of an aircraft, as those terms are defined in the regulations. The term also includes active participation by a corporation that is otherwise engaged in the operation of ships or aircraft in a pool, partnership, strategic alliance, joint operating agreement or code sharing arrangement, or other joint venture that is itself engaged in the operation of ships or aircraft.

Paragraph (e)(2) provides as examples that activities of the following will not be considered *operation of ships or aircraft:* A non-vessel operating common carrier (an NVOCC); a space or slot charterer; a ship management company; a company that obtains ships crews; a ship's agent; a ship or aircraft broker; a freight forwarder; a travel agent; a tour operator; a pure container leasing company; a passive investor in a shipping or aircraft business; or a concessionaire. The proposed rule also provides the definitions of a number of relevant terms.

*International Operation of Ships or Aircraft*

Section 1.883–1(f) distinguishes international from domestic operation of ships or aircraft. In TAMRA, Congress directed that transportation income derived solely from sources within the United States under section 863(c)(1) should not be granted exemption from U.S. income taxation under section 883. Congress also specified, however, that the reciprocal exemption generally should be available for income from international transport activity that is treated as 50 percent U.S. source income under section 863(c)(2). This is the same type of income on which the gross basis tax of section 887 generally would be imposed. See, S. Rep. No. 100–445, 100th Cong., 2d Sess. 241–242 (1988). However, the reciprocal exemption may not necessarily be available to all types of persons earning that type of income.

To carry out Congress's intent, § 1.883–1(f)(1) defines the term *international operation* to mean the operation of ships or aircraft on voyages or flights that begin or end in the United States and correspondingly end or begin in a foreign country, determined on a passenger-by-passenger or cargo-by-cargo basis, as discussed below. The term specifically excludes a ''cruise to nowhere'' that begins in a U.S. port, travels out into open waters beyond the territorial limits of the United States, and then returns to the U.S. port of origin without touching a foreign port during the voyage. The fact that a ship travels beyond United States territorial limits does not, in itself, constitute international operation of ships or aircraft if there is no stop in a foreign country, as determined under paragraph (f)(2). The same rules apply for aircraft.

Paragraph (f)(2) provides rules for determining the beginning and ending points of a voyage for purposes of the definition of the term *international operation.* Except in the case of a round trip cruise, the carriage of a passenger will be treated as ending at the passenger's final destination even if, en route to the passenger's final destination, a stop is made at a U.S. intermediate point for refueling, maintenance, or other business reasons, provided the passenger does not change aircraft or ships at the U.S. intermediate point. Similarly, carriage of a passenger will be treated as beginning at the passenger's point of origin even if en route to the passenger's final destination, a stop is made at a U.S. intermediate point provided the passenger does not change aircraft or ships at the U.S. intermediate point. Carriage of a passenger will be treated as beginning or ending at a U.S. intermediate point if the passenger changes aircraft or ships at that location. See, H.R. Rep No. 432, 98th Cong., 2d Sess. 1340 (1984); H.R. Rep. No. 861, 98th Cong., 2d Sess. 934 (1984).

The carriage of a passenger on a round trip cruise that begins in the United States and stops at one or more foreign ports for day excursions, maintenance or other business reasons, and returns to the same or another U.S. port will be treated as the international operation of a ship. Pursuant to paragraph (f)(2)(i)(A) such a round trip cruise may also include one or more intermediate stops at a U.S. port or ports for similar purposes.

Carriage of cargo will be treated as ending at the final destination of the cargo even if, en route to that final destination, a stop is made at a U.S. intermediate point, provided that the cargo is transported to its ultimate destination on the same ship or aircraft, or provided the same taxpayer transports the cargo to and from the U.S. intermediate point and the cargo does not pass through customs at the U.S. intermediate point. Similarly, carriage of cargo will be treated as beginning at the cargo's point of origin even if, en route to its final destination, a stop is made at a U.S. intermediate point, provided that the cargo is transported to its ultimate destination on the same ship or aircraft or provided both that the same taxpayer transports the cargo on both legs of the trip and that the cargo does not pass through customs at the U.S. intermediate point. Repackaging, recontainerization, or any other activity involving the unloading of the cargo at the U.S. intermediate point will not change these results. See, H.R. Rep No. 432, 98th Cong., 2d Sess. 1340 (1984); H.R. Rep. No. 861, 98th Cong., 2d Sess. 934 (1984), reprinted in 1984–3 C.B. Vol.2., 1, 188.

Whether income is from international operation is generally to be determined on a passenger-by-passenger and item of cargo-by-item of cargo basis. In the case of income from the bareboat charter of a ship or the dry lease of an aircraft, whether the charter income is derived from international operation is determined by reference to the use of the ship or aircraft by the lowest-tier lessee-operator in the chain of lessees.

A person that is the lessor of a ship under a bareboat charter or of an aircraft under a dry lease will be treated as engaged in the international operation of such ship or aircraft to the extent that the lowest-tier lessee-operator in the chain of ownership uses such ship or aircraft for the international carriage of passengers or cargo for hire during the shorter of the period of the charter or the taxable year. Paragraph (f)(2)(iii) adopts the guidance in section 5.02 of Rev. Proc. 91–12 (1991–1 C.B. 473), for determining the amount of income from the bareboat charter of a ship or the dry lease of an aircraft that is treated as derived from the international operation of the ship or aircraft. The rule provides that a foreign corporation must use a reasonable method for determining the proportion of the charter income that is attributable to such international operation.

One reasonable method, described in § 1.883–1(f)(2)(iii)(A), is based on the proportion of the days in the term of the charter or the taxable year, whichever is shorter, that the ship or aircraft is used in international operation by the lowest tier lessee-operator in its chain of lessees. For this purpose, the number of

days during which the ship or aircraft is not generating transportation income, within the meaning of section 863(c)(2) (for example, days during which the ship or aircraft is out of service while being repaired or maintained) should not be included in the numerator of the ratio. Another reasonable method described in paragraph (f)(2)(iii)(B) is based on the proportion of the gross income of the lowest tier lessee-operator of the ship or aircraft derived from the international operation of the ship or aircraft during the taxable year. An allocation based on the net income of such lessee-operator will not be considered reasonable for this purpose due to the administrative difficulties involved in determining and verifying the proper allocation of the operator's expenses.

*Activities Incidental to International Operations*

Some corporations engaged in the operation of ships or aircraft earn income from activities that are so closely related to the primary activity of operation of ships or aircraft that it is appropriate to exclude income from these activities from taxation under section 883 of the Code. By contrast, in cases where the operator's activities are not so closely related to the primary activity of operation of ships or aircraft, it is not appropriate to exclude the income from such activities from taxation.

The purpose of § 1.883–1(g) is to provide rules for determining when a closely related activity is incidental to the business of the international operation of ships or aircraft. Paragraph (g)(1) provides examples of activities that will be considered incidental to the international operation of ships or aircraft. For example, where a ship operator contracts for the international carriage of cargo or passengers on a second operator's ship, the activity may be incidental to the international operation of a ship by the first operator. Other examples are: the temporary investment of working capital funds; the sale of tickets for international travel by a ship operator for another ship operator, or by an air carrier for another air carrier; the rental by the operator of a ship or aircraft of containers and related equipment used in connection with the international operation of its ship or aircraft; and bareboat charter of ships or aircraft normally operated on international voyages or flights but currently not needed by the operator, and that are used for international voyages or flights by the lessee/charterer.

If an operator enters into a contract that requires a concessionaire to provide services onboard during the international operation of the operator's ship or aircraft and if the operator receives income from such services, then the income of the operator is appropriately treated as incidental to the operation of the ship or aircraft by the operator.

Paragraph (g)(2) provides examples of activities that are not considered incidental to the international operation of ships or aircraft. These examples include: the sale of or arranging for train travel, bus transfers, land tour packages, or port city hotel accommodations within the United States or a foreign country; and the sale of airline tickets by a cruise ship operator or cruise tickets by an air carrier. Further examples include the sale or rental of U.S. real property; treasury activities involving the investment of excess funds or funds awaiting repatriation generated by the operation of ships or aircraft; rental of containers for a domestic leg of transportation in connection with international carriage of cargo; mere passive investment in an enterprise engaged in the international operation of ships or aircraft; services performed by the operator for parties other than passengers, consignors or consignees; or the carriage of passengers or cargo on ships or aircraft on domestic legs, not treated as international operation, either by the foreign operator or by a U.S. member of a joint operating agreement, such as a code sharing arrangement, pooling or alliance.

*Determining Whether a Foreign Country Grants an Equivalent Exemption*

Section 1.883–1(h)(1) addresses the conditions under which a foreign country's exemption of certain categories of income from income tax may constitute an ''equivalent exemption'' within the meaning of section 883 of the Code. A foreign country will be considered to grant an equivalent exemption if: the foreign country generally imposes no tax on income, including income from the international operation of ships or aircraft; the foreign country specifically provides a domestic law exemption from a tax on income from the international operation of ships or aircraft either by statute, decree, or otherwise; or the foreign country provides for a reciprocal exemption by means of an exchange of diplomatic notes or other agreement with the United States. In addition, solely with respect to determining whether a shareholder is a resident of a qualified foreign country in § 1.883–4 (for purposes of the qualified shareholder stock ownership test), the foreign country may provide a reciprocal exemption with respect to income from the international operation of ships or aircraft by means of an income tax convention with the United States. Paragraph (h)(3) of this section discusses under what circumstances an income tax convention will be considered to provide an equivalent exemption.

Whether a foreign country provides an equivalent exemption is determined separately with respect to each of the following categories of income—

(A) Income from the carriage of cargo and passengers;

(B) Time or voyage (full) charter income;

(C) Bareboat charter income;

(D) Incidental bareboat charter income;

(E) Incidental container-related income;

(F) Any other income that is incidental to the business of operating ships or aircraft; or

(G) Gains of the operator from the sale, exchange or other disposition of a ship, aircraft, container or related equipment or other moveable property used by that operator in international operation.

If an equivalent exemption is not granted by the foreign country for a category of income, income in that category cannot be exempted from U.S. tax regardless of whether the foreign country grants an equivalent exemption for other categories of income. Furthermore, an equivalent exemption may be available for income derived from the international operation of ships even though income derived from the international operation of aircraft may not be exempt, and vice versa.

Section 1.883–1(h)(3) contains a special rule regarding income tax conventions. If a foreign corporation is organized in a foreign country that provides an equivalent exemption only through an income tax convention with the United States, the foreign corporation may claim benefits under section 894 and the income tax convention, but not under section 883. See, H.R. Rep. No. 841, 99th Cong., 2d Sess., (1986); Staff of joint Comm. on Taxation, 100th Cong., 1st Sess., General Explanation of the Tax Reform Act of 1986, 931 (1987). If, however, the foreign corporation is organized in a country that offers an equivalent exemption under an income tax convention and also by some other means, such as by a diplomatic note, the foreign corporation may choose annually whether it will claim an

exemption under section 894 and the income tax convention or under section 883 by means of the diplomatic note. Such an election must be made with respect to all income of the foreign corporation from the international operation of ships or aircraft and cannot be made separately with respect to each category of such income. If a foreign corporation elects to be covered under section 883 rather than under the income tax convention, the foreign corporation must satisfy the requirements of this proposed rule, including demonstrating that it satisfies the stock ownership test of paragraph (c)(2) of this section.

Section 1.883–1(h)(4) describes certain foreign residence-based taxation systems that may not satisfy the equivalent exemption requirements of this section. For example, the exemption granted by a foreign country's law or income tax convention must be a complete exemption and not merely a reduction to a non-zero rate of tax levied against corporations organized in the United States engaged in the international operation of ships or aircraft, except in the case of a reduction to a zero rate for an unlimited period of time. An exemption granted by a foreign country's law that reduces the rate of tax to a zero rate for only a limited period of time, such as in the case of a tax holiday, would not be considered a complete exemption for purposes of this rule.

Similarly, many foreign countries impose tax only on the income of ships or aircraft derived from transporting cargoes into, but not out of, the country or vice versa. Such a foreign country will not be treated as granting an equivalent exemption on the non-taxed income. For example, a foreign country that imposes tax only on the transportation of cargo carried out of the country (outbound freight) will not be treated as granting an equivalent exemption for income from the transporting of cargo into that country (inbound freight). Thus, if a corporation organized in such a country derives U.S. source income from voyages that end in the United States, it cannot claim an exemption on the basis of an equivalent exemption granted by the foreign country for inbound freight income. With respect to the carriage of cargo, the foreign country must provide an exemption from tax for income from transporting cargo both inbound and outbound before it will be considered to grant an equivalent exemption.

An equivalent exemption also does not arise where a foreign country only exempts tax on specific types of cargo. Unless a country exempts income from transporting all types of cargo, it will not be considered to grant an equivalent exemption for purposes of this section.

A foreign country that has a territorial tax system will be considered to grant an equivalent exemption only if the tax system treats income from the international operation of ships or aircraft as 100 percent foreign source, and thereby not subject to tax, even if the income is derived from a voyage or flight that begins or ends in that foreign country.

Pursuant to authority provided in section 883(a)(5) of the Code, these rules provide that if a foreign country generally grants an equivalent exemption to corporations organized in the United States, but also imposes a residence-based tax on certain corporations organized in the United States, the foreign country may nevertheless be considered to grant an equivalent exemption and to be a qualified foreign country if the residence-based tax is imposed only on a corporation organized in the United States that is treated as a resident of the other country because its place of management or control, or other comparable standard, is in that foreign country. See, H.R. Rep. No. 247, 101st Cong., 1st Sess. 1415 (1989). If instead the residence-based tax is imposed on a corporation organized in the United States that is not managed and controlled in that foreign country, the foreign country would not be treated as a qualified foreign country and would not grant an equivalent exemption for purposes of this section.

Finally, a foreign country must provide an exemption from tax for all income in a category of income, as defined in paragraph (h)(2) of this section. For example, a country that exempts income from the bareboat charter of passenger aircraft but not the bareboat charter of cargo aircraft does not provide an equivalent exemption for income from bareboat charter of aircraft.

Pursuant to section 872(b)(7), the proposed rule explains in § 1.883–1(i) that a possession of the United States is considered to be a foreign country for purposes of this proposed rule. Thus, a possession on a mirror system is a qualified foreign country and is considered to grant an equivalent exemption to corporations organized in the United States. The term *mirror system* refers to the general applicability of the Code in the possession with the name of the possession substituted for *United States* in the Code where appropriate. Therefore, a qualified foreign corporation that is organized in a possession on a mirror system, and that operates a transportation business between the possession and the United States, could exclude its income from the international operation of ships or aircraft from its gross income for purposes of U.S. Federal income tax and such income could be exempt from U.S. income tax. In cases where a possession is not on a mirror system, the possession may nevertheless be a qualified foreign country if, for example, it provides for an equivalent exemption through its internal law.

Section 1.883–1(j) confirms the rule of section 265(a)(1). If a qualified foreign corporation derives income from a non-exempt activity as well as qualified income, and both are effectively connected with the conduct of a U.S. trade or business, the foreign corporation may not deduct from any income derived from the non-exempt activity any amount otherwise allowable as a deduction from qualified income that is excluded from gross income and exempt under this proposed rule.

*Stock Ownership Tests*

As provided in § 1.883–1(c)(2), a foreign corporation must satisfy one of three stock ownership tests to be considered a qualified foreign corporation. It must demonstrate that more than fifty percent of the value of its stock is owned by qualified shareholders, as determined under § 1.883–4 (qualified shareholder test) or that its stock is primarily and regularly traded on an established securities market in a qualified foreign country or in the United States, as determined under § 1.883–2 (publicly-traded test), or that it is a controlled foreign corporation as determined under § 1.883–3 (CFC test). Separate reporting and documentation requirements apply to each test. A foreign corporation that satisfies the publicly-traded test or the CFC test and its relevant reporting and documentation requirements does not have to comply with the reporting and documentation requirements of the qualified shareholder test.

*The Publicly-Traded Stock Ownership Test*

The branch profits tax rules under § 1.884–5(d) provide the framework for the publicly traded test due to the strong similarities between the statutory language in sections 883(c) and 884(d)(4)(B) and the fact that both statutes were first enacted as part of the Tax Reform Act of 1986. Section 1.883–2(a) provides that a corporation is a publicly-traded corporation if its stock is primarily and regularly traded on one or more established securities markets in any qualified foreign country or in the United States. The proposed rule

generally follows § 1.884–5(d)(2) of the branch profits tax regulations in defining the term *established securities market,* except that the proposed rule does not require the foreign securities exchange to be the principal exchange in a country. In addition, the proposed rule follows § 1.884–5(d)(3) in defining the term *primarily traded,* except that in the proposed rule the corporation's stock may be traded in any qualified foreign country or the United States and is not limited to trading only in the country where the corporation is organized or the United States.

Similarly, the proposed rule follows § 1.884–5(d)(4)(i) in defining the general rule for the term *regularly traded.* Section 1.883–2(d) provides that stock of a foreign corporation is regularly traded if one or more classes of stock of the corporation that, in the aggregate, represent 80 percent or more of the total combined voting power of all classes of stock of such corporation entitled to vote and 80 percent or more of the total value of all classes of stock of such corporation are listed on an established securities market or markets during the taxable year; and, with respect to each class relied on to meet the 80 percent requirement, trades in each such class are effected, other than in de minimis quantities, on such market or markets on at least 60 days during the taxable year (or ⅙ of the number of days in a short taxable year). In addition, the aggregate number of shares in each such class that are traded on such market or markets during the taxable year must be at least 10 percent of the average number of shares outstanding in that class during the taxable year (or, in the case of a short taxable year, a percentage that equals at least 10 percent of the average number of shares outstanding in that class during the short taxable year multiplied by the number of days in the short taxable year, divided by 365).

In addition, if a class of stock of the foreign corporation is traded on an established securities market in the United States, and it is regularly quoted by brokers or dealers making a market in the stock, it can also be treated as meeting the trading requirements, provided that the closely-held exception, described below, does not apply. A broker or dealer makes a market in a stock only if the broker or dealer holds himself out to buy or sell the stock at the quoted price.

A closely-held class of stock, as set out in § 1.883–2(d)(3)(i), cannot be treated as meeting the trading requirements of the publicly-traded stock ownership test. See, § 1.884–5(d)(4)(iii)(A). Section 1.883–2(d)(3)(i) provides that a class of stock is closely held if at any time during the taxable year, one or more 5 percent shareholders own, in the aggregate, 50 percent or more of the value of the outstanding shares of the class of stock at any time during the taxable year. A five percent shareholder is any person who owns at least five percent of the value of the outstanding shares of the class of stock, taking into account stock owned by related persons. See § 1.883–2(d)(3)(iii). See also § 1.884–5(d)(4)(iii)(B).

For this purpose, persons will be treated as related if they are related within the meaning of section 267(b). In determining whether two or more corporations are members of the same controlled group under section 267(b)(3), a person is considered to own stock owned directly by such person, stock owned with the application of section 1563(e)(1), and stock owned with the application of section 267(c). Further, in determining whether a corporation is related to a partnership under section 267(b)(10), a person is considered to own the partnership interest owned directly by such person and the partnership interest owned with the application of section 267(e)(3).

The closely-held test in this proposed rule differs in one significant respect from the rule in the branch profits tax regulations. The proposed rule allows the foreign corporation to look through the five percent shareholders of the closely-held class to the ultimate owners and to demonstrate that such owners are qualified shareholders, provided no shares of stock in the chain of ownership are issued in bearer form. In the proposed rule, a class of stock of a foreign corporation that is otherwise regularly traded but is also closely-held will be treated as regularly traded if the foreign corporation demonstrates that more than 50 percent of the value of that class of stock is owned, or is treated as owned by applying the rules of attribution contained in § 1.883–4(c), by qualified shareholders for more than half of the days of the taxable year. The requirements for being treated as a qualified shareholder are described in § 1.883–4(b). Under this rule, an individual cannot be treated as a qualified shareholder if any corporation in the relevant chain of ownership issues stock in bearer form.

Thus, a foreign corporation with a class of stock that is closely-held may nevertheless count that class as regularly traded provided that the foreign corporation is able to establish that more than 50 percent of the value of the entire class of stock is owned (for example, through a partnership, trust or holding company) by persons who would themselves be qualified shareholders. The branch profits tax regulations do not treat a closely-held class of stock as regularly traded if 50 percent or more of the value of the closely-held block is owned by one or more 5 percent shareholders who are not qualifying shareholders, as defined in § 1.884–5(b)(1) and those regulations do not permit the foreign corporation to look beyond the 5 percent shareholders to the owners. The IRS is considering whether to make conforming changes to § 1.884–5(d)(4)(iii).

Paragraph (d)(4) is similar to § 1.884–5(d)(4)(iv) and provides that trades between related persons described in section 267(b), as modified by § 1.883–2(d)(3)(iii), and trades conducted in order to meet the regularly traded requirements are disregarded. A class of stock shall not be treated as meeting the trading requirements if there is a pattern of trades conducted to meet such requirements. For example, trades between two persons that occur several times during the taxable year may be treated as an arrangement or a pattern of trades conducted to meet the trading requirements of paragraph (d) of this section.

Section 1.883–2(d)(5) provides an example to illustrate the application of the rules regarding regularly traded stock and the closely-held exception.

Section 1.883–2(e) provides that a foreign corporation relying on the publicly-traded stock ownership test to establish that it satisfies the stock ownership test of § 1.883–1(c)(2) must substantiate that it meets such requirements. The proposed rule requires, for example, that if a class of stock of a foreign corporation is closely-held within the meaning of paragraph (d)(3)(i), then the foreign corporation must obtain an ownership statement from each qualified shareholder upon whom it relies to meet the exception to the closely-held test. The ownership statements are described in § 1.883–4(d). In addition, the foreign corporation must maintain and provide to the Commissioner upon request a list of its shareholders of record and any other relevant information.

Section 1.883–2(f) describes the information that the foreign corporation must include in its Form 1120F in order to rely on the publicly-traded stock ownership test to satisfy the stock ownership test of § 1.883–1(c)(2).

*Controlled Foreign Corporation Stock Ownership Test.*

Section 1.883–3 provides rules that a foreign corporation must follow if the foreign corporation relies on this section to satisfy the stock ownership test of

§ 1.883–1(c)(2). A controlled foreign corporation (CFC) satisfies the stock ownership test of § 1.883–1(c)(2) if it is organized in a qualified foreign country, satisfies the income inclusion test of paragraph (b) of this section, and satisfies the documentation and reporting requirements of paragraphs (c) and (d) of this section, respectively (the CFC test). For purposes of these proposed rules, a CFC that fails the income inclusion test may only satisfy the stock ownership test of § 1.883–1(c)(2) if the CFC demonstrates that it meets either the publicly traded test of § 1.883–2 or the qualified shareholder test of § 1.883–4.

To satisfy the income inclusion test of paragraph (b), the foreign corporation must be a CFC as defined in section 957(a) if such section were applied without regard to section 318(a)(4). In addition, more than 50 percent of the CFC's subpart F income (as defined in section 952) derived from the international operation of ships or aircraft must be included, pursuant to section 951, in the gross income of one or more U.S. citizens, individual residents of the United States or domestic corporations for the taxable years of such persons in which the taxable year of the CFC ends. This additional requirement was included in order to prevent inappropriate extension of benefits under section 883. The rule is illustrated by two examples.

Paragraph (c) provides that a CFC relying on this section to satisfy the stock ownership test of § 1.883–1(c)(2) must establish all the facts necessary to satisfy the Commissioner that it qualifies under the CFC stock ownership test. To meet this requirement with respect to the income inclusion test, the CFC must obtain the documentation described in paragraph (c)(2). This documentation includes a copy for the taxable year of the Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations (if otherwise required to be filed) prepared by or on behalf of any U.S. shareholder that is a partnership, estate or trust. In addition, the documentation must include a written statement from each such U.S. shareholder that is a partnership, estate or trust providing the name, address, taxpayer identification number and percentage of interest in the U.S. shareholder held by each partner, beneficiary or other interest owner that is a U.S. citizen, individual resident of the United States or domestic corporation.

Finally, paragraph (d) explains that if a CFC is relying on this section to satisfy the stock ownership test of § 1.883–1(c)(2), it must include certain additional information in its Form 1120F for the taxable year, along with the information required to be included in its return by § 1.883–1(c)(3). This additional information is set out in paragraph (d) and should be current as of the end of the corporation's taxable year.

*Qualified Shareholder Stock Ownership Test*

Section 1.883–4(a) provides that a foreign corporation shall satisfy the stock ownership test of § 1.883–1(c)(2) if more than 50 percent of its stock (by value) is owned, or treated as owned by applying the attribution rules of paragraph (c) of this section, for at least half of the number of days in the foreign corporation's taxable year by one or more qualified shareholders. In addition, a foreign corporation must meet the substantiation and reporting requirements of paragraphs (d) and (e) of this section (qualified shareholder stock ownership test).

Paragraph (b)(1) of this section explains that a shareholder is a qualified shareholder only if the shareholder meets certain criteria. First, the shareholder must be a resident in a country that offers an equivalent exemption for the same type of income as that earned by the foreign corporation. Second, the shareholder must not own its interest in the foreign corporation through bearer shares either directly or by applying the attribution rules of paragraph (c) of this section. Third, the shareholder must provide to the foreign corporation the documentation required in paragraph (d) of this section and the foreign corporation must meet the reporting requirements of paragraph (e) of this section with respect to such shareholder. Finally, the shareholder must be described in one of the following categories of qualified shareholders—

(A) An individual who is not a beneficiary of a pension fund, as described in paragraph (E), and who is a resident of a qualified foreign country, as determined under paragraph (b)(2);

(B) The government of a qualified foreign country (or a political subdivision or local authority of such country);

(C) A foreign corporation that is organized in a qualified foreign country and meets the publicly traded rules of § 1.883–2;

(D) A not-for-profit organization described in paragraph (b)(4) of this section that is not a pension fund as defined in paragraph (b)(5) of this section and that is organized in a qualified foreign country; or

(E) A beneficiary of a pension fund (as defined in paragraph (b)(5)(iv) of this section) administered in or by a qualified foreign country (whose residency is determined under paragraph (d)(3)).

Paragraph (b)(2) of this section explains when an individual is a resident of a qualified foreign country for purposes of this proposed rule. An individual is a resident of a qualified foreign country only if the individual is fully liable to tax as a resident in such country (for example, an individual who is liable to tax only on a remittance basis in a foreign country may not be treated as a resident of that country), and in addition, either: (1) The individual's tax home, within the meaning of paragraph (b)(2)(ii) of this section, is within that qualified foreign country 183 days or more of the taxable year; or (2) the individual is treated as a resident of a qualified foreign country based on special rules pursuant to paragraphs (d)(3) of this section.

Paragraph (b)(2)(ii) explains that for purposes of this section an individual's tax home is considered to be located at the individual's regular or principal (if more than one regular) place of business. If the individual has no regular or principal place of business because of the nature of his business (or lack of a business), then the individual's tax home is located at his regular place of abode in a real and substantial sense. If an individual has no regular or principal place of business and no regular place of abode in a real and substantial sense in a qualified foreign country for 183 days or more of the taxable year, that individual does not have a tax home for purposes of this section and, therefore, is not a qualified shareholder unless either a special rule in paragraphs (d)(3)(ii) through (v) of this section applies or the individual demonstrates that he is fully liable to tax as a resident in such country. If further guidance is needed to determine the tax home of an individual for the purpose of determining whether the individual is a qualified shareholder under this paragraph, the proposed rule anticipates that the foreign corporation would look to published guidance under section 911(d)(3), with the exception of guidance relating to the treatment of itinerants.

Paragraph (b)(3) provides that a shareholder otherwise described in paragraph (b)(1) of this section may be a resident of a foreign country that provides an equivalent exemption for the category of income at issue through an income tax convention with the

United States. If the shareholder relies on the convention to demonstrate that the country of residence provides an equivalent exemption and the convention has a requirement in the shipping and air transport article other than residence, such as place of registration or documentation of the ship or aircraft, or in the limitation on benefits article, such as a percentage of resident ownership, the shareholder is not a qualified shareholder unless the corporation seeking qualified foreign corporation status would satisfy any such additional requirement if it were organized in such foreign country. The proposed rule offers two examples to illustrate this rule.

Paragraph (b)(4) explains the requirements for a not-for-profit organization to be a qualified shareholder. This rule generally follows the rules in the first paragraph of § 1.884–5(b)(1)(iv) of the branch profits tax regulations. Similarly, paragraph (b)(5) explains the requirements that a pension fund must satisfy in order for its beneficiaries to be qualified shareholders. The proposed rule addresses both government and non-government pension funds and defines the term beneficiary of a pension fund. This paragraph generally follows § 1.884–5(b)(8)(i) through (iii) of the branch profits tax regulations.

Paragraph (c) of this section contains the rules for determining constructive ownership for purposes of applying the stock ownership test of § 1.883–1(c)(2) and the qualified shareholder stock ownership test of paragraph (a) of this section. Paragraph (c)(1) provides that stock owned by or for a corporation, partnership, trust, estate, or mutual insurance company or similar entity shall be treated as owned proportionately by its shareholders, partners, beneficiaries, grantors, or other interest holders as provided in paragraphs (c)(2)through (6) of this section. The proportionate interest rules of this paragraph apply successively upward through a chain of ownership, and a person's proportionate interest shall be computed for the relevant days or period that is taken into account in determining whether a foreign corporation satisfies the requirements of paragraph (a) of this section. Stock treated as owned by a person by reason of this paragraph shall be treated as actually owned by such person for purposes of this section. An owner of an interest in an association taxable as a corporation shall be treated as a shareholder of such association for purposes of this paragraph (c).

Paragraph (c)(2) explains that a partner shall be treated as having an interest in stock of a foreign corporation owned by a partnership in proportion to the least of three distributive shares: The partner's percentage distributive share of the partnership's dividend income from the stock; the partner's percentage distributive share of gain from disposition of the stock by the partnership; or the partner's percentage distributive share of the stock (or proceeds from the disposition of the stock) upon liquidation of the partnership. This rule generally follows the constructive ownership rules in § 1.884–5(b)(2)(ii) of the branch profits tax regulations. It differs, however, because all qualified shareholders that are partners in a partnership and that are residents of, or organized in, the same qualified foreign country shall be treated as one partner. Thus, the percentage distributive shares of dividend income, gain and liquidation rights of all qualified shareholders that are partners in a partnership and that are residents of, or organized in, the same qualified foreign country are aggregated prior to determining the least of the three percentages set out in paragraph (c)(2)(i) of this section. This divergence was necessary because one country may be a qualified foreign country while another may not and it is necessary for the foreign corporation to identify the value of the stock owned by residents of each country. Several examples illustrate the rules of this paragraph.

Paragraph (c)(3) of this section provides rules for determining the owners of stock owned by or for a trust or estate. These rules generally adopt the rules of § 1.884–5(b)(2)(iii) of the branch profits tax regulations. Similarly, paragraphs (c)(4) and (5) provide rules for determining the owners of stock owned by corporations that issue stock and by mutual insurance companies and similar entities, respectively. These rules adopt the rules of § 1.884–5(b)(2)(iv) and (v) of the branch profits tax regulations, respectively.

Paragraph (c)(6) explains how to compute the beneficial interests of individuals in non-government pension funds. This rule differs from the rule in § 1.884–5(b)(8)(iv) of the branch profits tax regulations in that the proposed rule provides that stock held by a non-government pension fund shall be considered owned by the beneficiaries of the fund equally on a pro-rata basis if certain conditions are met. For example, the trustees, directors or other administrators of the pension fund must have no knowledge, and no reason to know, that a pro-rata allocation of interests of the fund to all beneficiaries would differ significantly from an actuarial allocation of interests in the fund (or, if the beneficiaries' actuarial interest in the stock held directly or indirectly by the pension fund differs from the beneficiaries's actuarial interest in the pension fund, that a pro-rata allocation of interests of the fund to all beneficiaries would differ significantly from the actuarial interests computed by reference to the beneficiaries' actuarial interest in the stock).

The branch profits tax regulations determine such beneficial interests on an actuarial basis. The other conditions that must be satisfied generally follow those set out in § 1.884–5(b)(8)(iv).

Paragraph (d)(1) provides that a foreign corporation that relies on this section to satisfy the ownership requirements of § 1.883–1(c)(2), must establish all the facts necessary to satisfy the Commissioner that more than 50 percent of the value of its shares is owned, or treated as owned by applying paragraph (c) of this section, by qualified shareholders. A foreign corporation cannot meet this requirement with respect to any stock issued in bearer form. A shareholder that holds shares in the foreign corporation either directly or indirectly in bearer form cannot be a qualified shareholder.

Paragraph (d)(2)(i) provides that, except as provided in paragraph (d)(3), a person may only be a qualified shareholder if for the relevant period, the person completes an ownership statement, which is described in paragraph (d)(4) of this section. In the case of a person owning stock in the foreign corporation indirectly through one or more intermediaries (including mere legal owners or recordholders acting as nominees), each intermediary in the chain of ownership between that person and the foreign corporation seeking qualified foreign corporation status must also complete an intermediary ownership statement, which is described in paragraph (d)(4)(v). In addition, the foreign corporation must receive such ownership statements and retain them with the corporate books and records until the close of statute of limitations for the taxable year to which the statements relate.

The ownership statements required in paragraph (d)(2)(i) remain valid until the earlier of the last day of the third calendar year following the year in which the ownership statement is signed or the day that a change of circumstance occurs that makes any information on the ownership statement incorrect. For example, an ownership statement signed on September 30,

2000, remains valid through December 31, 2003, unless circumstances change that make the information of the statement no longer correct.

Paragraph (d)(3) contains special rules for determining the residence of certain shareholders. These rules are intended to simplify and reduce the effort needed by the foreign corporation and its intermediary shareholders to obtain the documentation required to substantiate whether the foreign corporation satisfies the qualified shareholder stock ownership test. If one of these special rules applies, the foreign corporation is not required to obtain an ownership statement from the individual owners covered by that rule.

Paragraph (d)(3)(ii) provides a special rule for registered shareholders owning less than one percent of widely-held corporations. This rule is adopted from § 1.884–5(b)(3)(iii) of the branch profits tax regulations. A foreign corporation with at least 250 registered individual shareholders, that is not a publicly-traded corporation, as described in § 1.883–2, (a widely-held corporation), may not be required to obtain an ownership statement from an individual shareholder owning less than one percent of the widely-held corporation at all times during the taxable year. If such widely-held foreign corporation is the foreign corporation seeking qualified foreign corporation status, or an intermediary that meets the documentation requirements of paragraphs (d)(4)(v)(A) and (B) of this section, relating to ownership statements from widely-held intermediaries with registered shareholders owning less that one percent of such intermediary, the widely-held foreign corporation may treat the address of record in its ownership records as the residence of any less than one percent individual shareholder if the individual's address of record is not a non-residential address, such as a post office box or in care of a financial intermediary or stock transfer agent and the officers and directors of the widely-held corporation neither know nor have reason to know that the individual does not reside at that address.

Paragraph (d)(3)(iii) provides special rules for pension funds. An individual who is a beneficiary of a government pension fund shall be treated as a resident of the country in which the pension fund is administered if the pension fund satisfies the documentation requirements of paragraphs (d)(4)(v)(A) and (C)(*1*) of this section, relating to ownership statements from pension funds. An individual who is a beneficiary of a non-government pension fund having more than 100 beneficiaries shall be treated as a resident of the country of the beneficiary's address as it appears on the records of the fund, provided it is not a nonresidential address, such as a post office box or an address in care of a financial intermediary, and provided none of the trustees, directors or other administrators of the pension fund know, or have reason to know, that the beneficiary is not an individual resident of such foreign country. This rule applies only if the non-government pension fund satisfies the documentation requirements of paragraphs (d)(4)(v)(A) and (C)(*2*) of this section.

Paragraph (d)(3)(iv) provides a special rule for publicly-traded corporations owning a direct or indirect interest in the foreign corporation seeking qualified foreign corporation status. Any stock in a foreign corporation seeking qualified foreign corporation status that is owned by a publicly traded corporation will be treated as owned by a person resident in the country where the publicly traded corporation is organized if the foreign corporation receives the statement described in paragraph (d)(4)(iii) of this section from the publicly-traded shareholder along with copies of any relevant ownership statements that the publicly traded shareholder relies on to satisfy the exception to the closely-held class of stock rule of § 1.883–2(d)(3)(ii).

Finally, paragraph (d)(3)(v) provides a special rule for not-for-profit organizations. For purposes of meeting the ownership requirements of paragraph (a) of this section, a not-for-profit organization may rely on the addresses of record of its individual beneficiaries and supporters to determine where such persons are resident, provided that: The addresses of record are not nonresidential addresses such as a post office box or in care of a financial intermediary; the officers, directors or administrators or the organization do not know or have reason to know that the individual beneficiaries or supporters do not reside at that address; and the foreign corporation seeking qualified foreign corporation status receives the statement required in paragraph (d)(4)(iv) of this section from the not-for profit organization.

Paragraph (d)(4) describes the information that must be obtained by a corporation seeking qualified foreign corporation status for each taxable year if the foreign corporation relies on § 1.883–4 to meet the stock ownership requirements of § 1.883–1(c)(2), or to demonstrate that it is not a closely-held corporation. Treasury and the IRS solicit comments with respect to the appropriateness of these information requirements.

Paragraph (d)(4)(i) provides that an ownership statement from an individual shareholder is a written statement signed under penalties of perjury stating certain general information about a shareholder's ownership interest and country of residence. Paragraph (d)(4)(ii) provides additional information that must be included if the shareholder is a foreign government. Paragraph (d)(4)(iii) provides additional information that must be included if the shareholder is a publicly traded corporation. Paragraph (d)(4)(iv) provides additional information that must be included if the shareholder is a not-for-profit organization.

The foreign corporation seeking qualified foreign corporation status must obtain an intermediary ownership statement from each intermediary standing in the chain of ownership between it and the qualified shareholders upon whom it relies to meet the qualified shareholder stock ownership test. Paragraph (d)(4)(v) provides that an intermediary ownership statement is a written statement signed under penalties of perjury by the intermediary (if the intermediary is an individual) or a person who would be authorized to sign a tax return on behalf of the intermediary (if the intermediary is not an individual) stating certain general information about the intermediary's ownership interest and residence. Paragraph (d)(4)(v)(B) provides additional information that must be included if the shareholder is a widely-held intermediary with registered shareholders owning less than one percent of the widely-held intermediary. Paragraph (d)(4)(v)(C) provides additional information that must be included if the shareholder is a pension fund. This paragraph describes the information to be included in the intermediary ownership statement by both government and non-government pension funds and provides that the determinations required to be made under this paragraph (d)(4)(v)(C) shall be made using information shown on the records of the pension fund for a date during the foreign corporation's taxable year to which the determination is relevant.

Paragraph (d)(5) requires the foreign corporation seeking qualified foreign corporation status to retain the documentation described in paragraphs (d)(3) and (4) of this section until the expiration of the statute of limitations for the taxable year of the foreign corporation to which the documentation

relates. Such documentation must be made available for inspection by the Commissioner at such place as the Commissioner may request.

A foreign corporation relying on the ownership requirements of this section to demonstrate that it is a qualified foreign corporation for purposes of § 1.883–1(c)(2) must provide the information described in paragraph (e) in addition to the information required in § 1.883–1(c)(3) to be included in its Form 1120F for each taxable year. The information should be current as of the end of the corporation's taxable year. This information is to be based on an analysis of the ownership records of the foreign corporation, as well as on the ownership statements and other documentation that are obtained from its shareholders.

**Proposed Effective Dates**

The effective date provisions for the proposed rule are contained in § 1.883–5. The proposed rule applies to taxable years of the foreign corporation ending 30 days or more after the date the proposed rule is published as a final regulation in the **Federal Register**. When the regulation is final, taxpayers may rely on all the provisions of this section for guidance and may elect to apply all such substantive provisions for any open taxable year beginning after December 31, 1986, and ending before the date the final regulation is effective. Such election will be applicable for the year of the election and for all subsequent taxable years. However, in no event will § 1.883–1(c)(3) (relating to the substantiation and reporting required to be treated as a qualified foreign corporation) or §§ 1.883–2(f), 1.883–3(d) and 1.883–4(e) (relating to additional information to be included in the return to demonstrate whether the foreign corporation satisfies one of three stock ownership tests) apply to any taxable years ending prior to the effective date of this regulation.

Section 1.883–1(c)(3) (relating to the substantiation and reporting required to be treated as a qualified foreign corporation) requires that certain information be included in the foreign corporation's Form 1120F, ''U.S. tax Return of Foreign Corporation.'' Sections 1.883–2(f), 1.883–3(d) and 1.883–4(e) (relating to information to be included to demonstrate whether the foreign corporation satisfies one of three stock ownership tests) require that additional information also be included in such return. When this regulation becomes generally applicable, and until the taxable year for which the Form 1120F and its instructions are revised to conform to this regulation and the foreign corporation seeking qualified foreign corporation status is otherwise directed by such instructions, the information required in § 1.883–1(c)(3) and § 1.883–2(f), 1.883–3(d) or 1.883–4(e), as applicable, must be included in a written statement signed under penalties of perjury by a person authorized to sign the return, attached to the Form 1120F, and filed with the return.

**Special Analysis**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. An initial regulatory flexibility analysis has been prepared as required for the collection of information in this notice of proposed rulemaking under 5 U.S.C. 603. The analysis is set forth in this preamble under the heading ''Initial Regulatory Flexibility Analysis.''

**Initial Regulatory Flexibility Analysis**

This initial analysis is prepared pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). The objective of the proposed regulations is to provide guidance to foreign corporations engaged in the international operation of a ship or ships or aircraft. This guidance will enable the foreign corporation to determine if it is eligible to exclude its income from these activities from gross income for purposes of its United States Federal income tax. The legal basis for these requirements is section 883. The IRS and Treasury are not aware of any Federal rules that duplicate, overlap, or conflict with the proposed regulations.

The documentation and reporting requirements of the proposed regulations enable the IRS to identify those taxpayers that may or may not be eligible to claim a reciprocal exemption. In addition, analysis of the required shareholder documentation will enable the foreign corporation to correctly file its U.S. Federal income tax return.

There are approximately 1,400 foreign corporations that operate a ship or ships or aircraft on voyages or flights to or from the United States annually. These foreign corporations all have an obligation to file a U.S. Federal income tax return, regardless of whether they are entitled to a reciprocal exemption. However, many of those corporations are organized in qualified foreign countries and may be eligible to exempt their income from the international operation of a ship or ships or aircraft from U.S. tax. Because it is impossible to determine at this time which of these foreign corporations satisfies the ownership requirements of the proposed rule, an estimate of the number of small entities that would be affected by these regulations is unavailable. A foreign corporation that complies with the documentation requirements of these proposed rules should have the information necessary to determine with certainty whether it is eligible for an equivalent exemption. This, in turn, is expected to create the additional benefits of increasing compliance with the filing requirements of the Internal Revenue Code and enabling the IRS to confirm whether the foreign corporation is entitled to an exemption.

None of the significant alternatives considered in drafting these regulations would have significantly altered the economic impact of the collections of information on small entities. In considering the significant alternatives that would be permissible under the Code and would enable the IRS to ensure compliance with the Code, the IRS and Treasury concluded that the alternatives generally would impose equal or greater burdens.

**Comments and Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be made available for public inspection and copying.

A public hearing has been scheduled for April 27, 2000, at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Ave., NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to this hearing. Persons who wish

to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by April 5, 2000. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

**Drafting Information**

The principal author of these proposed regulations is Patricia A. Bray of the Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

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

Income taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

## PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

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

Section 1.883–1 is also issued under 26 U.S.C. 883.

Section 1.883–2 is also issued under 26 U.S.C. 883.

Section 1.883–3 is also issued under 26 U.S.C. 883.

Section 1.883–4 is also issued under 26 U.S.C. 883.

Section 1.883–5 is also issued under 26 U.S.C. 883. * * *

**Par. 2.** Section 1.883–0 is added to read as follows:

### § 1.883–0 Outline of major topics.

This section lists the major paragraphs contained in §§ 1.883–1 through 1.883–5.

*§ 1.883–0 Outline of major topics.*

*§ 1.883–1 Exclusion of income from the international operation of ships or aircraft.*

(a) General rule.
(b) Qualified income.
(c) Qualified foreign corporation.
(1) General rule.
(2) Stock ownership tests.
(3) Substantiation and reporting requirements.
(i) General rule.
(ii) Further documentation.
(4) Commissioner's discretion to cure defects in documentation.
(d) Qualified foreign country.
(e) Operation of ships or aircraft.
(1) General rule.
(2) Activities not considered operation of ships or aircraft.
(3) Definitions.
(i) Full charter.
(ii) Time charter.
(iii) Voyage charter.
(iv) Wet lease.
(v) Bareboat charter.
(vi) Dry lease.
(vii) Space or slot charter.
(viii) Nonvessel operating common carrier (NVOCC).
(ix) Code sharing arrangements.
(f) International operation.
(1) General rule.
(2) Determining whether income is from international operation.
(i) International carriage of passengers.
(A) In general.
(B) Round trip travel on cruise ships.
(ii) International carriage of cargo.
(iii) Bareboat charter of ships or aircraft used in international operations.
(A) Ratio based on use.
(B) Ratio based on gross income.
(g) Activities incidental to the international operation of ships or aircraft.
(1) General rule.
(2) Activities not considered incidental to the international operation of ships or aircraft.
(h) Equivalent exemption.
(1) General rule.
(2) Determining equivalent exemptions for each category of income.
(3) Special rule with respect to income tax conventions.
(4) Exemptions not qualifying as equivalent exemptions.
(i) General rule.
(ii) Reduced tax rate or time limited exemption.
(iii) Inbound or outbound freight tax.
(iv) Exemptions for limited types of cargo.
(v) Territorial tax systems.
(vi) Countries that tax on a residence basis.
(vii) Exemptions within categories of income.
(i) Treatment of possessions.
(j) Expenses related to exempt income not deductible from non-exempt income.

*§ 1.883–2 Treatment of publicly-traded corporations.*

(a) General rule.
(b) Established securities market.
(1) General rule.
(2) Exchanges with multiple tiers.
(3) Computation of dollar value of stock traded.
(4) Over-the-counter market.
(5) Discretion to determine that an exchange does not qualify as an established securities market.
(c) Primarily traded.
(d) Regularly traded.
(1) General rule.
(2) Classes of stock traded on a domestic established securities market treated as meeting trading requirements.
(3) Closely-held classes of stock not treated as meeting trading requirements.
(i) General rule.
(ii) Exception.
(iii) Treatment of related persons.
(4) Anti-abuse rule.
(5) Example.
(e) Substantiation that a foreign corporation is publicly-traded.
(i) In general.
(ii) Availability and retention of documents for inspection.
(f) Reporting requirements.

*§ 1.883–3 Treatment of controlled foreign corporations.*

(a) General rule.
(b) Special rule for CFC's with certain entity shareholders.
(1) Income inclusion test.
(2) Examples.
(c) Substantiating CFC stock ownership.
(1) In general.
(2) Documentation from certain U.S. shareholders.
(3) Availability and retention of documents for inspection.
(d) Reporting requirements.

*§ 1.883–4 Qualified shareholder stock ownership test.*

(a) General rule.
(b) Qualified shareholder.
(1) General rule.
(2) Residence of individual shareholders.
(i) General rule.
(ii) Tax home.
(3) Certain income tax convention restrictions applied to shareholders.
(i) Application of restrictions.
(ii) Examples.
(4) Not-for-profit organizations.
(5) Pension funds.
(i) Pension fund defined.
(ii) Government pension funds.
(iii) Non-government pension funds.
(iv) Beneficiary of a pension fund.
(c) Rules for determining constructive ownership.
(1) General rules for attribution.
(2) Partnerships.
(i) General rule.
(ii) Partners resident in same country.
(iii) Examples.
(3) Trusts and estates.
(i) Beneficiaries.
(ii) Grantor trusts.
(4) Corporations that issue stock.
(5) Mutual insurance companies and similar entities.
(6) Computation of beneficial interests in non-government pension funds.
(d) Substantiation of stock ownership.
(1) General rule.
(2) Application of general rule.
(i) Ownership statements.
(ii) Three-year period of validity.
(3) Special rules.
(i) Determining residence of certain shareholders.
(ii) Special rule for registered shareholders owning less than one percent of widely-held corporations.
(iii) Special rules for beneficiaries of pension funds.
(A) Government pension fund.
(B) Non-government pension fund.
(iv) Special rule for stock owned by publicly-traded corporations.

(v) Special rule for not-for-profit organizations.
(4) Ownership statements from shareholders.
(i) Ownership statements from individuals.
(ii) Ownership statements from foreign governments.
(iii) Ownership statements from publicly-traded corporate shareholders.
(iv) Ownership statements from not-for-profit organizations.
(v) Ownership statements from intermediaries.
(A) General rule.
(B) Ownership statements from widely-held intermediaries with registered shareholders owning less than one percent of such widely-held intermediary.
(C) Ownership statements from pension funds.
(*1*) Ownership statements from government pension funds.
(*2*) Ownership statements from non-government pension funds.
(*3*) Time for making determinations.
(5) Availability and retention of documents for inspection.
(e) Reporting requirements.

*§ 1.883–5 Effective date.*

(a) General rule.
(b) Election for retroactive application.
(c) Transition rule.

**PAR. 3.** Section 1.883–1 is revised to read as follows:

**§ 1.883–1 Exclusion of income from the international operation of ships or aircraft.**

(a) *General rule.* A foreign corporation shall exclude from its gross income for U.S. tax purposes any income it derives from the international operation of ships or aircraft if such income is qualified income under paragraph (b) of this section and if the corporation is a qualified foreign corporation under paragraph (c) of this section. See paragraph (e) of this section for the definition of the term *operation of ships or aircraft* and see paragraph (f) of this section for the definition of the term *international operation.*

(b) *Qualified income.* Qualified income is income from the international operation of ships or aircraft that—

(1) Is properly includible in any of the income categories described in paragraph (h)(2) of this section; and

(2) Is the subject of an equivalent exemption, as described in paragraph (h) of this section, granted by the qualified foreign country in which the foreign corporation seeking qualified foreign corporation status is organized. See paragraph (d) of this section for the definition of the term *qualified foreign country.*

(c) *Qualified foreign corporation*—(1) *General rule.* A qualified foreign corporation is a corporation, as defined in §§ 301.7701–2(b) and 301.7701–3 of this chapter, that is engaged in the international operation of ships or aircraft and that is organized in a qualified foreign country. To be a qualified foreign corporation the corporation must also satisfy one of the three stock ownership tests described in paragraph (c)(2) of this section and satisfy the substantiation and reporting requirements described in paragraph (c)(3) of this section. A corporation may be a qualified foreign corporation with respect to one category of qualified income but may not be with respect to another category of income. See paragraph (h)(2) of this section for a discussion of categories of qualified income.

(2) *Stock ownership tests.* To be a qualified foreign corporation the foreign corporation generally must demonstrate and document that more than fifty percent of the value of its stock is owned by qualified shareholders, as determined in § 1.883–4 (qualified shareholder stock ownership test). However, a foreign corporation will not be required to demonstrate that it satisfies the qualified shareholder stock ownership test if it can demonstrate either that its stock is primarily and regularly traded on an established securities market in a qualified foreign country or in the United States, as determined under § 1.883–2 (publicly-traded test), or that it is a controlled foreign corporation as determined under § 1.883–3 (CFC test).

(3) *Substantiation and reporting requirements*—(i) *General rule.* To be a qualified foreign corporation, a foreign corporation must include the following information in its Form 1120F, ''U.S. Income Tax Return of a Foreign Corporation,'' in the manner that the Form 1120F and its accompanying instructions prescribes—

(A) The corporation's name and address (including mailing code);

(B) The corporation's U.S. taxpayer identification number;

(C) The foreign country in which the corporation is organized;

(D) The applicable authority for an equivalent exemption, (e.g., a citation to either a statute in the country where the corporation is organized or a diplomatic note between the foreign country where the corporation was organized and the United States that provides an equivalent exemption, or to Rev. Rul. 97–31 (1997–1 C.B. 703) (see § 601.601(d)(2) of this chapter), if the foreign country is included in Part II or III of the Table of countries that currently provide an equivalent exemption);

(E) The category or categories of qualified income for which an exemption is being claimed;

(F) A reasonable estimate of the amount of each category of U.S. source qualified income for which the exemption is claimed;

(G) Any other information required under § 1.883–2(f), 1.883-3(d), or 1.883–4(e); and

(H) Any other specified information.

(ii) *Further documentation.* If the Commissioner requests in writing that the foreign corporation substantiate representations made under paragraph (c)(3)(i) of this section, or under § 1.883–2(f), 1.882–3(d) or 1.883–4(e), the foreign corporation must provide the supporting documentation or substantiation within 60 days following the written request. If the foreign corporation does not provide all of the information requested within the 60 day period but demonstrates that the failure was due to reasonable cause and not willful neglect, the Commissioner may grant the foreign corporation a 30-day extension to provide the supporting documentation or substantiation. Whether a failure to obtain the documentation or substantiation in a timely manner was due to reasonable cause shall be determined by the Commissioner after considering all the facts and circumstances.

(4) *Commissioner's discretion to cure defects in documentation.* The Commissioner retains the discretion to cure any defects in the documentation where the Commissioner is satisfied that the foreign corporation would otherwise be a qualified foreign corporation.

(d) *Qualified foreign country.* A qualified foreign country is a foreign country that grants to corporations organized in the United States an equivalent exemption, as described in paragraph (h) of this section, for the category of qualified income earned by the foreign corporation seeking qualified foreign corporation status. A foreign country may be a qualified foreign country with respect to one category of income but not with respect to another category of income, as described in paragraph (h)(2) of this section.

(e) *Operation of ships or aircraft*—(1) *General rule.* Only a corporation that is an owner, lessor or lessee of an entire ship or aircraft used to carry cargo or passengers for hire can be considered engaged in the operation of ships or aircraft. The term *operation of ships or aircraft,* which includes the operation of a single ship or aircraft, means—

(i) Carriage of passengers or cargo for hire;

(ii) Time or voyage charter of a ship, or wet lease of an aircraft (full charter), as defined in paragraph (e)(3) of this section;

(iii) Bareboat charter of a ship, or dry lease of an aircraft, as defined in paragraph (e)(3) of this section; or

(iv) Active participation by a foreign corporation that is otherwise engaged in the operation of ships or aircraft in a pool, partnership, strategic alliance, joint operating agreement, code sharing or other joint venture, that is itself engaged in the operation of ships or aircraft.

(2) *Activities not considered operation of ships or aircraft.* A corporation that is not engaged in any of the activities described in paragraph (e)(1) of this section shall not be considered engaged in the operation of ships or aircraft. Examples of activities that do not constitute activities described in paragraph (e)(1) of this section include—

(i) The activities of a nonvessel-operating common carrier (NVOCC), as defined in paragraph (e)(3)(viii) of this section;

(ii) Space or slot charter, as defined in paragraph (e)(3)(vii) of this section;

(iii) Ship management;

(iv) Obtaining crews for ships or aircraft not operated by the corporation;

(v) The activities of a ship's agent;

(vi) Ship or aircraft brokering;

(vii) Freight forwarding;

(viii) The activities of travel agents and tour operators;

(ix) Rental by a container leasing company of containers and related equipment for inland transportation;

(x) Passive investment in an enterprise, including a pool, partnership, strategic alliance, joint operating agreement, or other joint venture, engaged in the international operation of ships or aircraft; or

(xi) The activities of a concessionaire.

(3) *Definitions*—(i) *Full charter.* Full charter (or full rental) means a time charter or a voyage charter of a ship or a wet lease of an aircraft.

(ii) *Time charter.* A time charter is a contract for the use of a ship or aircraft for a specific period of time during which the owner/lessor of the ship or aircraft retains control of the navigation and management of the ship or aircraft (*e.g.,* the owner/lessor continues to be responsible for the crew, supplies, repairs and maintenance, fees and insurance, charges, commissions and other expenses connected with the use of the ship or aircraft).

(iii) *Voyage charter.* A voyage charter is a contract similar to a time charter except that the ship or aircraft is chartered for a specific voyage or flight rather than for a specific period of time.

(iv) *Wet lease.* When a time charter or voyage charter involves an aircraft, it is referred to, in both cases, as a wet lease.

(v) *Bareboat charter.* A bareboat charter is a contract for the use of aircraft whereby the charterer/lessee is in complete possession, control, and command of the ship or aircraft and performs functions normally performed by the owner/lessor of the ship or aircraft. For example, the charterer/lessee is responsible for the navigation and management of the ship or aircraft, the crew, supplies, repairs and maintenance, fees, insurance, charges, commissions and other expenses connected with the use of the ship or aircraft. The owner/lessor of the ship bears none of the expense or responsibility of operation of the ship or aircraft.

(vi) *Dry lease.* When a bareboat charter involves an aircraft, it is referred to as a dry lease.

(vii) *Space or slot charter.* A space or slot charter is a contract for use of a certain amount of space (but less than all of the space) on a ship or aircraft, and may be on a time or voyage basis. When used in connection with passenger aircraft this may be referred to as the sale of block seats.

(viii) *Nonvessel operating common carrier (NVOCC).* A nonvessel operating common carrier is an entity that holds itself out to the public as providing transportation for hire, assumes responsibility or has liability by law for safe transportation of shipments and arranges in its own name with underlying carriers for the performance of such transportation. An NVOCC is distinguishable from a charterer/lessee in that a charterer/lessee hires and has control of all or part of a vessel. An NVOCC is merely a customer of the ocean common carrier. Where an NVOCC consolidates shipments and holds itself out to the public as providing transportation for hire, its services and liabilities are comparable to that of a freight forwarder.

(ix) *Code-sharing arrangements.* Code sharing is an arrangement in which one air carrier puts its identification code on the flight of another carrier. This allows the first carrier to hold itself out as providing service in markets where it does not operate or where it operates infrequently. Code sharing can range from a very limited agreement involving only one market, to alliances between international carriers involving agreements on joint marketing, baggage handling, one-stop check-in service and sharing of frequent flyer awards.

(f) *International operation*—(1) *General rule.* The term *international operation* means operation of ships or aircraft, as defined in paragraph (e) of this section, on voyages or flights that begin or end in the United States, as determined in paragraph (f)(2) of this section, and correspondingly end or begin in a foreign country. The term does not include a voyage or flight that begins and ends in the United States even if the voyage or flight contains a segment extending beyond the territorial limits of the United States with no stop in a foreign country. Operation of ships or aircraft beyond the territorial limits of the United States does not, in itself, constitute international operation of ships or aircraft.

(2) *Determining whether income is from international operation.* Whether income is derived from the international operation of ships or aircraft is determined on a passenger-by-passenger basis (as provided in paragraph (f)(2)(i) of this section) and item of cargo-by-item of cargo basis (as provided in paragraph (f)(2)(ii) of this section). In the case of the bareboat charter of a ship or the dry lease of an aircraft, whether the charter income is derived from international operation is determined by reference to the use of the ship or aircraft by the lowest-tier operator in the chain of lessees (as provided in paragraph (f)(2)(iii) of this section).

(i) *International carriage of passengers*—(A) *In general.* Except in the case of a round trip cruise, income from the carriage of a passenger will be income from the international operation of ships or aircraft if the passenger is carried between a beginning point in the United States and an ending point in a foreign country and vice versa. Carriage of a passenger will be treated as ending at the passenger's final destination even if, en route to the passenger's final destination, a stop is made at an intermediate point for refueling, maintenance, or other business reasons, provided the passenger does not change aircraft or ships at the intermediate point. Similarly, carriage of a passenger will be treated as beginning at the passenger's point of origin even if, en route to the passenger's final destination, a stop is made at an intermediate point and the passenger does not change aircraft or ships at the intermediate point. Carriage of a passenger will be treated as beginning or ending at a U.S. or foreign intermediate point if the passenger changes aircraft or ships at that intermediate point.

(B) *Round trip travel on cruise ships.* In the case of the carriage of a passenger on a round trip cruise that begins in the United States, stops at a foreign intermediate port for shore excursions, refueling, maintenance, or other business reasons, and returns to the same or another U.S. port, the carriage of such passenger on the round trip cruise will be treated as international

operation of a ship under paragraph (f)(2)(i)(A) of this section. Such a round trip cruise may also include one or more intermediate stops at a U.S. port or ports for similar purposes.

(ii) *International carriage of cargo.* Income from the carriage of cargo will be income from the international operation of ships or aircraft if the cargo is carried between a beginning point in the United States and an ending point in a foreign country or vice versa. Carriage of cargo will be treated as ending at the final destination of the cargo even if, en route to that final destination, a stop is made at a U.S. intermediate point, provided that the cargo is transported to its ultimate destination on the same ship or aircraft. If the cargo is transferred to another ship or aircraft, the carriage of the cargo may nevertheless be treated as ending at its final destination if the same taxpayer transports the cargo to and from the U.S. intermediate point and the cargo does not pass through customs at the U.S. intermediate point. Similarly, carriage of cargo will be treated as beginning at the cargo's point of origin, even if en route to its final destination, a stop is made at a U.S. intermediate point, provided that the cargo is transported to its ultimate destination on the same ship or aircraft. If the cargo is transferred to another ship or aircraft, the carriage of the cargo may nevertheless be treated as beginning at the point of origin if the same taxpayer transports the cargo to and from the U.S. intermediate point and the cargo does not pass through customs at the U.S. intermediate point. Repackaging, recontainerization, or any other activity involving the unloading of the cargo at the U.S. intermediate point will not change these results if the same taxpayer transports the cargo to and from the U.S. intermediate point and the cargo does not pass through customs at the U.S. intermediate point.

(iii) *Bareboat charter of ships or aircraft used in international operations.* If a qualified foreign corporation bareboat charters a ship or dry leases an aircraft to a lessee and the lowest tier lessee-operator in the chain of ownership uses such ship or aircraft for the international carriage of passengers or cargo for hire, as described in paragraphs (f)(2)(i) and (ii) of this section, the qualified foreign corporation may exclude the proportion of the bareboat charter income attributable to such international operation of the ship or aircraft. The foreign corporation must use a reasonable method for determining the proportion of the charter income that is attributable to such international operation. Two reasonable methods for determining the amount of charter income attributable to the international operation of the ship or aircraft are the following:

(A) *Ratio based on use.* Multiply the annual charter amount attributable to use of the ship or aircraft by a lessee by a ratio, the numerator of which is the total number of days of uninterrupted travel on voyages or flights of such ship or aircraft between the United States and the farthest point or points where cargo or passengers are loaded en route to, or discharged en route from, the United States, and the denominator of which is the total number of days in the smaller of the taxable year or the particular charter period. For this purpose, the number of days during which the ship or aircraft is not generating transportation income, within the meaning of section 863(c)(2), for example while the ship or aircraft is out of service while being repaired or maintained, should not be included in the numerator of the ratio.

(B) *Ratio based on gross income.* Multiply the annual charter amount attributable to the use of the ship or aircraft by the lessee by a ratio, the numerator of which is the U.S. source gross transportation income (USSGTI as that term is defined in section 887(b)) earned from the operation of the vessel or aircraft by the lowest tier lessee-operator, and the denominator of which is the total gross income of such lessee-operator from the operation of the ship or aircraft during the smaller of the taxable year or the term of the charter, if such information is available. An allocation based on the net income of such lessee-operator will not be considered reasonable for this purpose.

(g) *Activities incidental to the international operation of ships or aircraft*—(1) *General rule.* Certain activities of an operator of ships or aircraft are so closely related to the primary activity of operation of ships or aircraft that they are considered incidental to such operations. Income from these incidental activities is eligible for the reciprocal exemption under this section. Examples of activities of a foreign corporation engaged in the international operation of ships or aircraft that may be considered incidental to such operation include—

(i) Contracting for the international carriage of cargo or passengers, as defined in paragraph (f) of this section, using a space or slot charter, alliance, code sharing or similar arrangement, on ships or aircraft operated by another carrier;

(ii) Temporary investment of working capital funds;

(iii) Sale of tickets for an international voyage by a ship operator for another ship operator;

(iv) Sale of tickets for an international flight by an air carrier for another air carrier;

(v) Rental of containers in connection with the international carriage of goods by sea by the operator of a ship or by air by the operator of an aircraft;

(vi) Contracting with concessionaires for performance of services onboard during the international operation of the operator's ship or aircraft as the case may be; or

(vii) Bareboat charter of ships or aircraft normally used by the operator in international operation but currently not needed, if the ship or aircraft is used by the lessee for international voyages or flights.

(2) *Activities not considered incidental to the international operation of ships or aircraft.* Examples of activities that are not considered to be incidental to the international operation of ships or aircraft by an operator include—

(i) The sale of or arranging for train travel, bus transfers, land tour packages, or port city hotel accommodations within the United States or a foreign country, or the sale of airline tickets by a cruise ship operator or cruise tickets by an air carrier;

(ii) The sale or rental of real property;

(iii) Treasury activities involving the investment of excess funds or funds awaiting repatriation generated by the operation of ships or aircraft;

(iv) Rental of containers for a domestic leg of transportation in connection with international carriage of cargo;

(v) Passive investment in an enterprise engaged in the international operation of ships or aircraft;

(vi) Services performed for parties other than passengers, consignors or consignees, such as ground services at ports or airports or ship or aircraft maintenance; or

(vii) The carriage of passengers or cargo on ships or aircraft on domestic legs, not treated as international operation under paragraph (f) of this section, either by the foreign operator or by a U.S. operator that is a member with the foreign operator in a pool, partnership, strategic alliance, joint operating agreement, code sharing or other joint venture, that is itself engaged in the operation of ships or aircraft.

(h) *Equivalent exemption*—(1) *General rule.* A foreign country grants an equivalent exemption when it exempts from taxation income from the

international operation of ships or aircraft derived by corporations organized in the United States. Whether a foreign country provides an equivalent exemption must be determined separately with respect to each category of income, as provided in paragraph (h)(2) of this section. However, an equivalent exemption may be available for income derived from the international operation of ships even though income derived from the international operation of aircraft may not be exempt, and vice versa. For rules regarding shareholders resident in a foreign country that offers an exemption under an income tax convention, see § 1.883–4(b)(3). An equivalent exemption may exist where the foreign country—

(i) Generally imposes no tax on income, including income from the international operation of ships or aircraft;

(ii) Specifically provides a domestic law tax exemption for income derived from the international operation of ships or aircraft, either by statute, decree, or otherwise; or

(iii) Exchanges diplomatic notes with the United States, or enters into an agreement with the United States, that provides for a reciprocal exemption under section 883.

(2) *Determining equivalent exemptions for each category of income.* Whether a foreign country grants an equivalent exemption is determined separately with respect to each category of income listed in paragraphs (h)(2)(i) through (vii) of this section and is determined separately with respect to income from the operation of ships and income from the operation of aircraft. Where an exemption is unavailable in the foreign country for a particular category of income, a foreign corporation organized in that country shall not be permitted to exempt that category of income from U.S. tax under this section, even though the foreign country may grant an equivalent exemption for other categories of income. An equivalent exemption may be available for income derived from the international operation of ships even though income derived from the international operation of aircraft may not be exempt, and vice versa. A separate determination of whether a foreign country grants an equivalent exemption must be made for each of the following categories of income—

(i) Income from the carriage of cargo and passengers (operating income);

(ii) Time or voyage (full) charter income (or full rental);

(iii) Bareboat charter income (or bareboat rental);

(iv) Incidental bareboat charter income (or incidental bareboat rental);

(v) Incidental container-related income;

(vi) Income incidental to the operation of ships or aircraft other than incidental income described in paragraphs (h)(2)(iv) and (v) of this section; and

(vii) Capital gains of the operator from the sale, exchange or other disposition of a ship, aircraft, container or related equipment or other moveable property used by that operator in the international operation of ships or aircraft.

(3) *Special rule with respect to income tax conventions.* If a corporation is organized in a foreign country that provides an equivalent exemption only through an income tax convention with the United States, the foreign corporation must satisfy the terms of that convention before it can receive a benefit under the convention and the foreign corporation may not claim an exemption under section 883. If, however, the corporation is organized in a foreign country that offers an equivalent exemption under an income tax convention and also by some other means, such as by diplomatic note or domestic law, the foreign corporation may choose annually whether it will claim benefits under section 894 and the income tax convention or an exemption under section 883. This choice will apply with respect to all income of the corporation from the international operation of ships or aircraft and the choice cannot be made separately with respect to different categories of such income. If a foreign corporation bases its claim for an exemption on section 883 rather than the income tax convention, the foreign corporation must satisfy all of the requirements under this regulation to qualify for an exemption from U.S. income tax. See § 1.883–4(b)(3) for rules regarding shareholders resident in a foreign country that offers an equivalent exemption under a treaty.

(4) *Exemptions not qualifying as equivalent exemptions—(i) General rule.* Exemptions provided to corporations organized in the United States by certain foreign countries may not satisfy the equivalent exemption requirements of this section.

(ii) *Reduced tax rate or time limited exemption.* The exemption granted by the foreign country's law or income tax convention must be a complete exemption. The exemption may not constitute merely a reduction to a non-zero rate of tax levied against corporations organized in the United States engaged in the international operation of ships or aircraft or a temporary reduction to a zero rate of tax for only a limited period of time, such as in the case of a tax holiday.

(iii) *Inbound or outbound freight tax.* With respect to the carriage of cargo, the foreign country must provide an exemption from tax for income from transporting freight both inbound and outbound before it will be considered to grant an equivalent exemption. A foreign country that imposes tax only on outbound freight will not be treated as granting an equivalent exemption for income from transporting freight inbound into that country.

(iv) *Exemptions for limited types of cargo.* A foreign country must provide an exemption from tax for income from transporting all categories of cargo before it will be considered to grant an equivalent exemption. For example, if a foreign country were generally to impose tax on income from the international carriage of cargo but to provide a statutory exemption for income from transporting agricultural products, the foreign country would not be considered to grant an equivalent exemption with respect to income from the international carriage of cargo and passengers and would not be a qualified foreign country with respect to that type of income.

(v) *Territorial tax systems.* A foreign country with a territorial tax system will be treated as granting an equivalent exemption if it treats income from the international operation of ships or aircraft derived by a U.S. corporation as 100 percent foreign source and thereby not subject to tax, even if the income is derived from a voyage or flight that begins or ends in that foreign country.

(vi) *Countries that tax on a residence basis.* A foreign country that generally provides an equivalent exemption to corporations organized in the United States but also imposes a residence-based tax on certain corporations organized in the United States, may nevertheless be considered to grant an equivalent exemption if the residence-based tax is imposed only on a corporation organized in the United States that maintains its center of management and control or other comparable attributes in that foreign country. If the residence-based tax is imposed on corporations organized in the United States and engaged in the international operation of ships or aircraft that are not managed and controlled in that foreign country, the foreign country shall not be treated as a qualified foreign country and shall not be considered to grant an equivalent exemption for purposes of this section.

(vii) *Exemptions within categories of income.* A foreign country must provide

an exemption from tax for all income in a category of income, as defined in paragraph (h)(2) of this section. For example, a country that exempts income from the bareboat charter of passenger aircraft but not the bareboat charter of cargo aircraft does not provide an equivalent exemption. However, an equivalent exemption may be available for income derived from the international operation of ships even though income derived from the international operation of aircraft may not be exempt, and vice versa.

(i) *Treatment of possessions.* A possession of the United

States will be considered to grant an equivalent exemption and will be treated as a qualified foreign country if it is on a mirror system. The term *mirror system* refers to the general applicability in the possession of the Internal Revenue Code of 1986, as amended, with the name of the possession substituted for ''United States'' where appropriate. If a possession does not use a mirror system, the possession may nevertheless be a qualified foreign country if, for example, it provides for an equivalent exemption through its internal law.

(j) *Expenses related to exempt income not deductible from non-exempt income.* If a qualified foreign corporation derives income from the international operation of ships or aircraft as well as from a non-exempt activity, and that income is effectively connected with the conduct of a trade or business within the United States, the foreign corporation may not deduct from income derived from a non-exempt activity, any amount otherwise allowable as a deduction from qualified shipping or aircraft income if that income is excluded under this proposed rule. See section 265(a)(1).

**Par. 4.** Sections 1.883–2 through 1.883–5 are added to read as follows:

**§ 1.883–2 Treatment of publicly-traded corporations.**

(a) *General rule.* A foreign corporation shall satisfy the stock ownership test of § 1.883–1(c)(2) if it is considered a publicly-traded corporation and satisfies the substantiation and reporting requirements of paragraphs (e) and (f) of this section. To be considered a publicly-traded corporation, the stock of the foreign corporation must be primarily traded and regularly traded on one or more established securities markets, as those terms are defined in paragraphs (b), (c), and (d) of this section, in the United States or any qualified foreign country.

(b) *Established securities market*—(1) *General rule.* For purposes of this section, the term *established securities market* means, for any taxable year—

(i) A foreign securities exchange that is officially recognized, sanctioned, or supervised by a governmental authority of the country in which the market is located, and has an annual value of shares traded on the exchange exceeding $1 billion during each of the three calendar years immediately preceding the beginning of the taxable year;

(ii) A national securities exchange that is registered under section 6 of the Securities Act of 1934 (15 U.S.C. 78f);

(iii) A United States over-the-counter market, as defined in paragraph (b)(4) of this section;

(iv) Any exchange designated under a Limitation On Benefits article in a United States income tax convention; and

(v) Any other exchange that the Secretary may designate by regulation or otherwise.

(2) *Exchanges with multiple tiers.* If an exchange in a foreign country has more than one tier or market level on which stock may be separately listed or traded, each such tier shall be treated as a separate exchange.

(3) *Computation of dollar value of stock traded.* For purposes of paragraph (b)(1)(i) of this section, the value in U.S. dollars of shares traded during a calendar year shall be determined on the basis of the dollar value of such shares traded as reported by the International Federation of Stock Exchanges located in Paris, or, if not so reported, then by converting into U.S. dollars the aggregate value in local currency of the shares traded using an exchange rate equal to the average of the spot rates on the last day of each month of the calendar year.

(4) *Over-the-counter market.* An over-the-counter market is any market reflected by the existence of an interdealer quotation system. An interdealer quotation system is any system of general circulation to brokers and dealers that regularly disseminates quotations of stocks and securities by identified brokers or dealers, other than by quotation sheets that are prepared and distributed by a broker or dealer in the regular course of business and that contain only quotations of such broker or dealer.

(5) *Discretion to determine that an exchange does not qualify as an established securities market.* The Commissioner may determine that a securities exchange that otherwise meets the requirements of this paragraph (b) of this section does not qualify as an established securities market, if—

(i) The exchange does not have adequate listing, financial disclosure, or trading requirements (or does not adequately enforce such requirements); or

(ii) There is not clear and convincing evidence that the exchange ensures the active trading of listed stocks.

(c) *Primarily traded.* For purposes of this section, stock of a corporation is primarily traded on one or more established securities markets, as defined in paragraph (b) of this section, if, with respect to each class of stock described in paragraph (d)(1)(i) of this section (relating to classes of stock relied on to meet the regularly traded test)—

(1) The number of shares in each such class that are traded during the taxable year on all established securities markets in that country exceeds.

(2) The number of shares in each such class that are traded during that year on established securities markets in any other single foreign country.

(d) *Regularly traded*—(1) *General rule.* For purposes of this section, stock of a corporation is regularly traded on one or more established securities markets, as defined in paragraph (b) of this section, if—

(i) One or more classes of stock of the corporation that, in the aggregate, represent 80 percent or more of the total combined voting power of all classes of stock of such corporation entitled to vote and of the total value of the stock of such corporation are listed on such market or markets during the taxable year; and

(ii) With respect to each class relied on to meet the 80 percent requirement of paragraph (d)(1)(i) of this section—

(A) Trades in each such class are effected, other than in *de minimis* quantities, on such market or markets on at least 60 days during the taxable year (or 1/6 of the number of days in a short taxable year); and

(B) The aggregate number of shares in each such class that are traded on such market or markets during the taxable year are at least 10 percent of the average number of shares outstanding in that class during the taxable year (or, in the case of a short taxable year, a percentage that equals at least 10 percent of the average number of shares outstanding in that class during the taxable year multiplied by the number of days in the short taxable year, divided by 365).

(2) *Classes of stock traded on a domestic established securities market treated as meeting trading requirements.* A class of stock that is traded during the taxable year on an established securities market located in the United States shall

be considered to meet the trading requirements of paragraph (d)(1)(ii) of this section if the stock is regularly quoted by dealers making a market in the stock. A dealer makes a market in a stock only if the dealer regularly and actively offers to, and in fact does, purchase the stock from, and sell the stock to, customers who are not related persons (as defined in section 954(d)(3)) with respect to the dealer in the ordinary course of a trade or business.

(3) *Closely-held classes of stock not treated as meeting trading requirement*—(i) *General rule.* Except as provided in paragraph (d)(3)(ii) of this section, a class of stock of a foreign corporation listed on an established securities market or markets and otherwise meeting the trading requirements of paragraph (d)(1)(ii) of this section shall not be treated as meeting the trading requirements of paragraph (d)(1)(ii) of this section (or the requirements of paragraph (d)(2) of this section) for a taxable year if, at any time during the taxable year, one or more persons who own at least 5 percent of the value of the outstanding shares of the class of stock (5 percent shareholders as determined under paragraph (d)(3)(iii) of this section) own, in the aggregate, 50 percent or more of the value of the shares.

(ii) *Exception.* Notwithstanding the general rule of paragraph (d)(3)(i) of this section, a closely-held class of stock that otherwise satisfies the trading requirements of paragraph (d)(1)(ii) of this section may be treated as meeting such trading requirements if the foreign corporation can establish that more than 50 percent of the value of the outstanding shares of the class of stock is owned, or treated as owned under § 1.883–4(c), by persons who are qualified shareholders, within the meaning of § 1.883–4(b), for more than half the number of days during the taxable year. In addition, such persons may not own their interests in the foreign corporation either directly or by applying the attribution rules of § 1.883–4(c) through bearer shares. Further, the foreign corporation must obtain from such persons the relevant documentation described in § 1.883–4(d).

(iii) *Treatment of related persons.* Solely for purposes of determining whether a person is a 5 percent shareholder, persons related within the meaning of section 267(b) shall be treated as one person. In determining whether two or more corporations are members of the same controlled group under section 267(b)(3), a person is considered to own stock owned directly by such person, stock owned with the application of section 1563(e)(1), and stock owned with the application of section 267(c). Further, in determining whether a corporation is related to a partnership under section 267(b)(10), a person is considered to own the partnership interest owned directly by such person and the partnership interest owned with the application of section 267(e)(3).

(4) *Anti-abuse rule.* Trades between related persons described in section 267(b), as modified by paragraph (d)(3)(iii) of this section, and trades conducted in order to meet the requirements of paragraph (d)(1) of this section (the trading rule) shall be disregarded. A class of stock shall not be treated as meeting the trading requirements of paragraph (d)(1) of this section if there is a pattern of trades conducted to meet the requirements of paragraph (d)(1) of this section. For example, trades between two persons that occur several times during the taxable year may be treated as an arrangement or a pattern of trades conducted to meet the trading requirements of paragraph (d)(1)(ii) of this section.

(5) *Example.* The closely-held class of stock rule in paragraph (d)(3) is illustrated by the following example:

*Example.*

Closely-held exception— (i)*Facts.* X is a corporation organized in a qualified foreign country. X has one class of stock that is listed and primarily traded on an established securities market in the qualified foreign country. The class of stock of X also meets the trading requirements of paragraph (d)(1)(ii) of this section. However, the founding family owns 60 percent of that class of stock through Hold Co. The remaining 40 percent is not owned by any 5 percent shareholder. Some of the family members are U.S. residents, while the remaining family members are residents of the qualified foreign country. Individuals A and B are members of the founding family and each owns 10 percent of the stock of Hold Co.

(ii) *Analysis.* Because Hold Co owns 60 percent of the class of stock, Hold Co is a 5 percent shareholder and the class of stock will not be regularly traded unless X can prove, applying the attribution rules of § 1.883–4(c), that more than 50 percent of the stock of X is owned, or treated as owned under § 1.883–4(c), by residents of a qualified foreign country. If X can demonstrate that more than 50 percent of the stock held by Hold Co is owned by qualified shareholders, X can meet this burden and the stock of X will be regularly traded because the exception in paragraph (d)(3)(ii) of this section would apply.

(e) *Substantiation that a foreign corporation is publicly traded*—(1) *In general.* A foreign corporation that relies on the publicly traded test of this section to establish that it is a qualified foreign corporation for purposes of § 1.883–1(c)(2) must substantiate that the stock of the foreign corporation is primarily and regularly traded on an established securities market. If one of the classes of stock on which the foreign corporation relies to meet this test is closely-held within the meaning of paragraph (d)(3)(i) of this section, the foreign corporation must obtain an ownership statement described in § 1.883–4(d) from each qualified shareholder and intermediary that it relies upon to satisfy the exception to the closely-held class of stock rule, but only to the extent such statement would be required if the foreign corporation were relying on the qualified shareholder test of § 1.883–4 with respect to those shares of stock. The foreign corporation must also maintain and provide to the Commissioner upon request a list of its shareholders of record and any other relevant information known to the foreign corporation.

(2) *Availability and retention of documents for inspection.* The documentation described in paragraph (e)(1) of this section must be retained by the corporation seeking qualified foreign corporation status (the foreign corporation) until the expiration of the statute of limitations for the taxable year of the foreign corporation to which the documentation relates. Such documentation must be made available for inspection by the Commissioner at such time and such place as the Commissioner may request in writing.

(f) *Reporting requirements.* A foreign corporation relying on this section to satisfy the stock ownership requirements of § 1.883–1(c)(2) must provide the following information that is current as of the end of the corporation's taxable year, in addition to the information required in § 1.883–1(c)(3) to be included in its Form 1120F for the taxable year—

(1) The name of the country in which the stock is primarily traded;

(2) The name of the established securities market or markets on which that the stock is listed;

(3) A description of each class of stock relied upon to meet the requirements of paragraph (d) of this section, including the number of shares issued and outstanding as of the close of the taxable year;

(4) For each class of stock relied upon to meet the requirements of paragraph (d) of this section, if one or more 5 percent shareholders, as defined in paragraph (d)(3)(i) of this section, own in the aggregate 50 percent or more of the value of the outstanding shares of that class of stock at any time during the taxable year, state—

(i) The name and address of each 5 percent shareholder of that class of stock and each related person whose stock is treated as owned by the 5 percent shareholder;

(ii) For each qualified shareholder of the closely-held class of stock upon whom the corporation intends to rely to satisfy the exception to the closely-held class of stock rule of paragraph (d)(3)(ii) of this section—

(A) The name of each such shareholder;

(B) The percentage of the total value of the stock held by each such shareholder;

(C) The address of record of each such shareholder;

(D) The country of residence of each such shareholder, determined under § 1.883–4(b)(2) (residence of individual shareholders) or § 1.883–4(d)(3) (special rules for residence of certain shareholders);

(E) The portion of the taxable year of the foreign corporation during which the requisite ownership in the closely-held block of stock by qualified shareholders was satisfied;

(5) The percentage of the value of the class of stock represented by the widely-held block of stock; and

(6) Any other specified information.

**§ 1.883–3 Treatment of controlled foreign corporations.**

(a) *General rule.* A foreign corporation that is a controlled foreign corporation (CFC), as defined in section 954(a), satisfies the stock ownership test of § 1.883–1(c)(2) if it meets the income inclusion test in paragraph (b)(1) of this section and satisfies the substantiation and reporting requirements of paragraphs (c) and (d) of this section, respectively (the CFC test). A CFC that fails the income inclusion test of paragraph (b)(1) of this section may not satisfy the stock ownership test of § 1.883–1(c)(2) unless the CFC demonstrates that it meets either the publicly traded test of § 1.883–2 or the qualified shareholder test of § 1.883–4.

(b) *Special rule for CFCs with certain entity shareholders*— (1) *Income inclusion test.* For purposes of these proposed rules, a CFC will not be considered to satisfy the requirements of paragraph (a) of this section unless—

(i) Such corporation would be a CFC as defined in section 957(a) if such section were applied without regard to section 318(a)(4); and

(ii) More than 50 percent of the CFC's subpart F income (as defined in section 952) derived from the international operation of ships or aircraft is includible, pursuant to section 951, in the gross income of one or more U.S. citizens, individual residents of the United States or domestic corporations for the taxable years of such persons in which the taxable year of the CFC ends.

(2) *Examples.* The income inclusion test of this paragraph

(b) is illustrated in the following examples:

*Example 1.* CFC earns U.S. source income from the international operation of aircraft that is not effectively connected with the conduct of a U.S. trade or business. CFC is organized in a qualified foreign country. CFC is not a publicly traded corporation and all of its U.S. shareholders, as defined in section 951(b), are domestic partnerships. All of the partners in those domestic partnerships are citizens and residents of foreign countries. Thus, the CFC fails the income inclusion test of paragraph (b)(1) of this section because no amount of the CFC's relevant subpart F income is includible in the gross income of one or more U.S. citizens, individual residents of the United States or domestic corporations. Therefore the CFC must satisfy the rules of § 1.883–4, regarding the qualified shareholder stock ownership test, in order to satisfy the stock ownership test of § 1.883–1(c)(2) and be considered a qualified foreign corporation.

*Example 2.* Ship Co is a CFC organized in a qualified foreign country and is not a publicly traded corporation. Corp A, a domestic corporation, owns 50 percent of the value of the stock of Ship Co. X, a domestic partnership, owns the remaining 50 percent of the value of the stock of Ship Co. A U.S. citizen is a partner owning a 20 percent interest in X. Individual partners owning 80 percent of X are citizens and residents of foreign countries. There are no special allocations of partnership income. Ship Co satisfies the income inclusion test of paragraph (b)(1) of this section because 60 percent (50% + (20% × 50%)) of the subpart F income would be includible in the gross income of U.S. citizens or individual residents of the United States or domestic corporations. If Ship Co satisfies the substantiation and reporting requirements of paragraphs (c) and (d) of this section, respectively and the reporting requirements of § 1.883–1(c)(3), it will be a qualified foreign corporation.

(c) *Substantiating CFC stock ownership*—(1) *In general.* A CFC relying on this section to satisfy the stock ownership test of § 1.883–1(c)(2) must establish all the facts necessary to satisfy the Commissioner that it qualifies under the CFC test. For purposes of the income inclusion test of paragraph (b)(1) of this section, if the CFC has one or more U.S. shareholders that are domestic partnerships, estates, or trusts, the proportionate interest of the subpart F income of the CFC will not be treated as includible in the gross income of any partner, beneficiary or other interest owner of such U.S. shareholder that is a U.S. citizen, resident of the United States or a domestic corporation unless the CFC obtains the documentation described in paragraph (c)(2) of this section.

(2) *Documentation from certain U.S. shareholders*—(i) *In general.* A CFC can only meet the documentation requirements of paragraph (c)(1) of this section if the CFC obtains the following documentation from each U.S. shareholder that is a partnership, estate or trust, with respect to the taxable year of the entity which ends with or within the taxable year of the CFC—

(A) A copy of the Form 5471, ''Information Return of U.S. Persons With Respect to Certain Foreign Corporations,'' if required to be filed with the U.S. shareholder's return and with the Internal Revenue Service Center, Philadelphia PA 19255;

(B) A written statement, signed under penalties of perjury by a person authorized to sign the U.S. Federal tax return of the U.S. shareholder, providing the following information with respect to each U.S. citizen, individual resident of the United States or domestic corporation that is a partner, beneficiary or other interest owner of each such U.S. shareholder and upon whom the CFC intends to rely to satisfy the income inclusion test of paragraph (b)(1) of this section—

(1) The name, address (if not a non-residential address, such as a post office box or in care of a financial intermediary or stock transfer agent), and taxpayer identification number;

(2) The interest owner's proportionate interest in the U.S. shareholder that reflects that owner's share of subpart F income required to be included in income on such interest owner's U.S. Federal income tax return;

(3) The percentage of the vote and the percentage of the value of shares of the CFC owned by each such interest owner; and

(C) Any other specified information.

(ii) *Availability and retention of documents for inspection.* The documentation described in paragraph (c)(2)(i) of this section must be retained by the corporation seeking qualified foreign corporation status (the CFC) until the expiration of the statute of limitations for the taxable year of the CFC to which the documentation relates. Such documentation must be made available for inspection by the

Commissioner at such place as the Commissioner may request in writing.

(d) *Reporting requirements.* A foreign corporation that relies on the CFC test of this section to satisfy the stock ownership test of § 1.883–1(c)(2), must provide the following information in addition to the information required in § 1.883–1(c)(3) to be included in its Form 1120F for the taxable year. The information must be current as of the end of the corporation's taxable year and must include the following—

(1) The name, address in the corporate records (if that address is not a non-residential address such as a post office box or in care of a financial intermediary or stock transfer agent) and taxpayer identification number of each U.S. shareholder of the CFC;

(2) The percentage of the value of the shares of the CFC that is owned by each U.S. shareholder, as defined in section 957(a) if such section were applied without regard to section 318(a)(4);

(3) If one or more of the U.S. shareholders is a domestic partnership, estate or trust, the name, address, taxpayer identification number and percentage of the vote and the percentage of the value of shares of the CFC owned by each interest owner of each such U.S. shareholder that is a U.S. citizen, individual resident of the United States or a domestic corporation; and

(4) Any other specified information.

**§ 1.883–4 Qualified shareholder stock ownership test.**

(a) *General rule.* A foreign corporation shall satisfy the stock ownership test of § 1.883–1(c)(2) if more than 50 percent of its stock (by value) is owned, or treated as owned by applying the attribution rules of paragraph (c) of this section, for at least half of the number of days in the foreign corporation's taxable year by one or more qualified shareholders. In addition, a foreign corporation must meet the substantiation and reporting requirements of paragraphs (d) and (e) of this section.

(b) *Qualified shareholder*—(1) *General rule.* A shareholder is a qualified shareholder only if the shareholder—

(i) Is a resident of a country that offers an equivalent exemption for the same type of income (as described in § 1.883–1(h)(2)), as that earned by the foreign corporation and for which the foreign corporation is seeking an exemption;

(ii) Does not own its interest in the foreign corporation through bearer shares either directly or by applying the attribution rules of paragraph (c) of this section;

(iii) Provides to the foreign corporation the documentation required in paragraph (d) of this section and the foreign corporation meets the reporting requirements of paragraph (e) of this section with respect to such shareholder; and

(iv) Is described in one of the following categories of qualified shareholders—

(A) An individual not described in paragraph (b)(1)(iv)(E) of this section (whose residency is determined under paragraph (b)(2) of this section);

(B) The government of a qualified foreign country (or a political subdivision or local authority of such country);

(C) A foreign corporation that is organized in a qualified foreign country and meets the publicly traded rules of § 1.883–2;

(D) A not-for-profit organization described in paragraph (b)(4) of this section that is not a pension fund as defined in paragraph (b)(5) of this section and that is organized in a qualified foreign country; or

(E) A beneficiary of a pension fund (as defined in paragraph (b)(5)(iv) of this section) administered in or by a qualified foreign country (whose residency is determined under paragraph (d)(3)(iii) of this section).

(2) *Residence of individual shareholders*—(i) *General rule.* An individual not described in paragraph (b)(1)(iv)(E) of this section is a resident of a qualified foreign country only if the individual is fully liable to tax as a resident in such country (*e.g.,* an individual who is liable to tax on a remittance basis in a foreign country will not be treated as a resident of that country) and, in addition—

(A) The individual's tax home, within the meaning of paragraph (b)(2)(ii) of this section, is within that qualified foreign country for 183 days or more of the taxable year; or

(B) The individual is treated as a resident of a qualified foreign country based on special rules pursuant to paragraph (d)(3) of this section.

(ii) *Tax home.* For purposes of this section, an individual's tax home is considered to be located at the individual's regular or principal (if more than one regular) place of business. If the individual has no regular or principal place of business because of the nature of his business (or lack of a business), then the individual's tax home is located at his regular place of abode in a real and substantial sense. If an individual has no regular or principal place of business and no regular place of abode in a real and substantial sense in a qualified foreign country for 183 days or more of the taxable year, that individual does not have a tax home for purposes of this section.

(3) *Certain income tax convention restrictions applied to shareholders*—(i) *Application of restrictions.* A shareholder otherwise described in paragraph (b)(1) of this section may be a resident of a foreign country that provides an equivalent exemption for the category of income at issue through an income tax convention with the United States. If the shareholder relies on the convention to demonstrate that the country of residence provides an equivalent exemption and the convention has a requirement in the shipping and air transport article other than residence, such as place of registration or documentation of the ship or aircraft, or in the limitation on benefits (LOB) article, such as a percentage of resident ownership, the shareholder is not a qualified shareholder unless the corporation seeking qualified foreign corporation status would satisfy any such additional requirement if it were organized in such foreign country.

(ii) *Examples.* The rules of this paragraph (b)(3) are illustrated by the following examples:

*Example 1.* LOB article requiring additional Country B ownership. Ship Co is organized in Country A. Country A provides an equivalent exemption through a diplomatic note. Eighty percent of the value of the shares of Ship Co is owned by a resident of Country B. Country B provides an equivalent exemption only through an income tax convention with the United States. The limitation on benefits article in the income tax convention between the United States and Country B requires that more than 75 percent of the value of the shares of a Country B corporation must be owned by residents of Country B before such corporation could receive benefits under the income tax convention. In accordance with paragraph (b)(3) of this section, in order for the Country B resident to be a qualified shareholder, Ship Co must meet the LOB requirements of the United States/Country B income tax convention applied as if Ship Co were a Country B corporation. Because 80 percent of the value of the shares of Ship Co is owned by a resident of Country B, this requirement is satisfied and the Country B shareholder may be a qualified shareholder.

*Example 2.* 2Income tax convention requiring registration of ship. Ship Co is organized in Country X and owned entirely by residents of Country Y. Country X's domestic law grants an equivalent exemption to shipping corporations organized in the United States. Country Y grants an equivalent exemption for shipping income through an income tax convention between the United States and Country Y. Article 8 of the income tax convention provides that the exemption will apply only if the ships are registered in

the contracting state of the taxpayer's country of residence. Ship Co owns a ship registered in Country Y and a ship registered in Country Z. In accordance with paragraph (b)(3) of this section, in order for the Country Y resident to be a qualified shareholder, Ship Co must meet the flagging requirements of the United States/Country Y income tax convention applied as if Ship Co were a Country Y corporation. Thus, the Country Y shareholders may be qualified shareholders with respect to income earned by the ship registered in Country Y but not with respect to the income earned by the ship registered in Country Z. Thus, if Ship Co otherwise satisfies the requirements of this proposed rule, Ship Co may exclude its income derived from the international operation of the ship registered in Country Y from gross income for purposes of its United States income tax, but may not exclude its income from the international operation of the ship registered in Country Z.

(4) *Not-for-profit organizations.* A not-for-profit organization is a qualified shareholder if it meets the following requirements—

(i) It is a corporation, association taxable as a corporation, trust, fund, foundation, league or other entity operated exclusively for religious, charitable, educational, or recreational purposes, and not organized for profit;

(ii) It is generally exempt from tax in its country of organization by virtue of its not-for-profit status; and

(iii) Either—

(A) More than 50 percent of its annual support is expended on behalf of persons described in paragraph (b)(1)(i) of this section (see paragraph (d)(3)(v) of this section for rules regarding the residence of individual beneficiaries); or

(B) More than 50 percent of its annual support is derived from persons described in paragraph (b)(1)(i) of this section (see paragraph (d)(3)(v) of this section for rules regarding the residence of individual supporters).

(5) *Pension funds*—(i) *Pension fund defined.* The term pension fund shall mean a government pension fund or a non-government pension fund, as those terms are defined, respectively, in paragraph (b)(5)(ii) and paragraph (b)(5)(iii) of this section, that is a trust, fund, foundation, or other entity that is established exclusively for the benefit of employees or former employees of one or more employers, the principal purpose of which is to provide retirement, disability, and death benefits to beneficiaries of such entity and persons designated by such beneficiaries in consideration for prior services rendered.

(ii) *Government pension funds.* A government pension fund is a pension fund that is a controlled entity of a foreign sovereign within the principles of § 1.892–2T(c)(1) (relating to pension funds established for the benefit of employees or former employees of a foreign government).

(iii) *Non-government pension funds.* A non-government pension fund is a pension fund that—

(A) Is administered in a foreign country and is subject to supervision or regulation by a governmental authority (or other authority delegated to perform such supervision or regulation by a governmental authority) in such country;

(B) Is generally exempt from income taxation in its country of administration;

(C) Has 100 or more beneficiaries; and

(D) The trustees, directors or other administrators of which pension fund provide the documentation required in paragraph (d) of this section.

(iv) *Beneficiary of a pension fund.* The term *beneficiary of a pension fund* shall mean any person who has made contributions to a pension fund, as that term is defined in paragraph (b)(5)(i) of this section, or on whose behalf contributions have been made, and who is currently receiving retirement, disability, or death benefits from the pension fund or can reasonably be expected to receive such benefits in the future, whether or not the person's right to receive benefits from the fund has vested. See paragraph (c)(6) of this section for rules regarding the computation of stock ownership through non-government pension funds.

(c) *Rules for determining constructive ownership*—(1) *General rules for attribution.* For purposes of applying the exception to the closely-held test of § 1.883–2(d)(3)(ii) and paragraph (a) of this section, stock owned by or for a corporation, partnership, trust, estate, or mutual insurance company or similar entity shall be treated as owned proportionately by its shareholders, partners, beneficiaries, grantors, or other interest holders as provided in paragraphs (c)(2)through (6) of this section. The proportionate interest rules of this paragraph (c) shall apply successively upward through a chain of ownership, and a person's proportionate interest shall be computed for the relevant days or period that is taken into account in determining whether a foreign corporation satisfies the requirements of paragraph (a) of this section. Stock treated as owned by a person by reason of this paragraph (c) shall be treated as actually owned by such person for purposes of this section. An owner of an interest in an association taxable as a corporation shall be treated as a shareholder of such association for purposes of this paragraph (c).

(2) *Partnerships*—(i) *General rule.* A partner shall be treated as having an interest in stock of a foreign corporation owned by a partnership in proportion to the least of—

(A) The partner's percentage distributive share of the partnership's dividend income from the stock;

(B) The partner's percentage distributive share of gain from disposition of the stock by the partnership; or

(C) The partner's percentage distributive share of the stock (or proceeds from the disposition of the stock) upon liquidation of the partnership.

(ii) *Partners resident in the same country.* For purposes of this paragraph, all qualified shareholders that are partners in a partnership and that are residents of, or organized in, the same qualified foreign country shall be treated as one partner. Thus, the percentage distributive shares of dividend income, gain and liquidation rights of all qualified shareholders that are partners in a partnership and that are residents of, or organized in, the same qualified foreign country are aggregated prior to determining the least of the three percentages set out in paragraph (c)(2)(i) of this section. For the meaning of the term *resident,* see paragraph (b)(2) of this section.

(iii) *Examples.* The rules of paragraph (c)(2)(ii) of this section are illustrated by the following examples:

*Example 1. Stock held solely by qualified shareholders through a partnership.* Country X grants an equivalent exemption. A and B are individual residents of Country X and are qualified shareholders within the meaning of paragraph (b)(1) of this section. A and B are the sole partners of Partnership P. P's only asset is the stock of Corporation Z, a Country X corporation seeking a reciprocal exemption under this section. A's distributive share of P's income and gain on the disposition of P's assets is 80 percent, but A's distributive share of P's assets (or the proceeds therefrom) on P's liquidation is 20 percent. B's distributive share of P's income and gain is 20 percent and B is entitled to 80 percent of the assets (or proceeds therefrom) on P's liquidation. Under the attribution rules of paragraph (c)(2)(ii) of this section, A and B will be treated as a single partner owning in the aggregate 100 percent of the stock of Z owned by P.

*Example 2. Stock held by both qualified and non-qualified shareholders through a partnership.* Assume the same facts as in *Example 1*

except that C, an individual who is not a resident of a qualified foreign country, is also a partner in P and that C's distributive share of P's income is 60 percent. The distributive shares of A and B are the same as in *Example 1* except that A's distributive share of income is 20 percent. Under the attribution rules of paragraph (c)(2)(ii) of this section, qualified shareholders A and B will be treated as a single partner owning in the aggregate 40 percent of the stock of Z owned by P (*i.e.,* the lowest aggregate percentage of A and B's distributive shares of dividend income (40 percent), gain (100 percent), and liquidation rights (100 percent) with respect to the Z stock). Thus, Z fails to satisfy the ownership requirements of paragraph (a) of this section.

*Example 3. Stock held through tiered partnerships.* Country X grants an equivalent exemption. A and B are individual residents of Country X and are qualified shareholders within the meaning of paragraph (b)(1) of this section. A and B are the sole partners of Partnership P. P is a partner in Partnership P1, which owns the stock of Corporation Z, a Country X corporation seeking a reciprocal exemption under this section. Assume that P's distributive share of the dividend income, gain and liquidation rights with respect to the Z stock held by P1 is 40 percent. Assume that of the remaining partners of P1 only D is a qualified shareholder. D's distributive share of P1's dividend income and gain is 15 percent; D's distributive share of P1's assets on liquidation is 25 percent. Under the attribution rules of paragraph (c)(2)(ii) of this section, A and B, treated as a single partner, will own 40 percent of the Z stock owned by P1 (100 percent X 40 percent) and D will be treated as owning 15 percent of the Z stock owned by P1 (the least of D's dividend income (15 percent), gain (15 percent), and liquidation rights (25 percent) with respect to the Z stock). Thus, 55 percent of the Z stock owned by P1 is treated as owned by qualified shareholders.

(3) *Trusts and estates*—(i) *Beneficiaries.* In general, an individual shall be treated as having an interest in stock of a foreign corporation owned by a trust or estate in proportion to the individual's actuarial interest in the trust or estate, as provided in section 318(a)(2)(B)(i), except that an income beneficiary's actuarial interest in the trust will be determined as if the trust's only asset were the stock. The interest of a remainder beneficiary in stock will be equal to 100 percent minus the sum of the percentages of any interest in the stock held by income beneficiaries. The ownership of an interest in stock owned by a trust shall not be attributed to any beneficiary whose interest cannot be determined under the preceding sentence, and any such interest, to the extent not attributed by reason of this paragraph (c)(3)(i), shall not be considered owned by a beneficiary unless all potential beneficiaries with respect to the stock are qualified shareholders. In addition, a beneficiary's actuarial interest will be treated as zero to the extent that someone other than the beneficiaries is treated as owning the stock under paragraph (c)(3)(ii) of this section. A substantially separate and independent share of a trust, within the meaning of section 663(c), shall be treated as a separate trust for purposes of this paragraph (c)(3)(i), provided that payment of income, accumulated income or corpus of a share of one beneficiary (or group of beneficiaries) cannot affect the proportionate share of income, accumulated income or corpus of another beneficiary (or group of beneficiaries).

(ii) *Grantor trusts.* A person is treated as the owner of stock of a foreign corporation owned by a trust to the extent that the stock is included in the portion of the trust that is treated as owned by the person under sections 671 through 679 (relating to grantors and others treated as substantial owners).

(4) *Corporations that issue stock.* A shareholder of a corporation that issues stock shall be treated as owning stock of a foreign corporation that is owned by such corporation on any day in a proportion that equals the value of the stock owned by such shareholder to the value of all stock of such corporation. If, however, there is an agreement, express or implied, that a shareholder of a corporation will not receive distributions from the earnings of stock owned by the corporation, the shareholder will not be treated as owning that stock owned by the corporation.

(5) *Mutual insurance companies and similar entities.* Stock held by a mutual insurance company, mutual savings bank, or similar entity (including an association taxable as a corporation that does not issue stock interests) shall be considered owned proportionately by the policy holders, depositors, or other owners in the same proportion that such persons share in the surplus of such entity upon liquidation or dissolution.

(6) *Computation of beneficial interests in non-government pension funds.* Stock held by a pension fund shall be considered owned by the beneficiaries of the fund equally on a pro-rata basis if—

(i) The pension fund meets the requirements of paragraph (b)(5)(iii) of this section;

(ii) The trustees, directors or other administrators of the pension fund have no knowledge, and no reason to know, that a pro-rata allocation of interests of the fund to all beneficiaries would differ significantly from an actuarial allocation of interests in the fund (or, if the beneficiaries' actuarial interest in the stock held directly or indirectly by the pension fund differs from the beneficiaries's actuarial interest in the pension fund, the actuarial interests computed by reference to the beneficiaries' actuarial interest in the stock);

(iii) Either—

(A) Any overfunding of the pension fund would be payable, pursuant to the governing instrument or the laws of the foreign country in which the pension fund is administered, only to, or for the benefit of, one or more corporations that are organized in the country in which the pension fund is administered, individual beneficiaries of the pension fund or their designated beneficiaries, or social or charitable causes (the reduction of the obligation of the sponsoring company or companies to make future contributions to the pension fund by reason of overfunding shall not itself result in such overfunding being deemed to be payable to or for the benefit of such company or companies); or

(B) The foreign country in which the pension fund is administered has laws that are designed to prevent overfunding of a pension fund and the funding of the pension fund is within the guidelines of such laws; or

(C) The pension fund is maintained to provide benefits to employees in a particular industry, profession, or group of industries or professions and employees of at least 10 companies (other than companies that are owned or controlled, directly or indirectly, by the same interests) contribute to the pension fund or receive benefits from the pension fund; and

(iv) The trustees, directors or other administrators provide the relevant documentation as required in paragraph (d) of this section.

(d) *Substantiation of stock ownership*—(1) *General rule.* A foreign corporation that relies on this section to satisfy the ownership requirements of § 1.883–1(c)(2), must establish all the facts necessary to satisfy the Commissioner that more than 50 percent of the value of its shares is owned, or treated as owned applying paragraph (c) of this section, by qualified shareholders. A foreign

corporation cannot meet this requirement with respect to any stock that is issued in bearer form. A shareholder that holds shares in the foreign corporation either directly or indirectly in bearer form cannot be a qualified shareholder.

(2) *Application of general rule*—(i) *Ownership statements.* Except as provided in paragraph (d)(3) of this section, a person shall only be treated as a qualified shareholder of a foreign corporation if—

(A) For the relevant period, the person completes an ownership statement described in paragraph (d)(4) of this section or has a valid ownership statement in effect under paragraph (d)(2)(ii) of this section;

(B) In the case of a person owning stock in the foreign

corporation indirectly through one or more intermediaries (including mere legal owners or recordholders acting as nominees), each intermediary in the chain of ownership between that person and the foreign corporation seeking qualified foreign corporation status completes an intermediary ownership statement described in paragraph (d)(4)(v) of this section or has a valid intermediary ownership statement in effect under paragraph (d)(2)(ii) of this section; and

(C) The foreign corporation seeking qualified foreign corporation status obtains the statements described in paragraphs (d)(2)(i)(A) and (B) of this section.

(ii) *Three-year period of validity.* The ownership statements required in paragraph (d)(2)(i) of this section shall remain valid until the earlier of the last day of the third calendar year following the year in which the ownership statement is signed, or the day that a change of circumstance occurs that makes any information on the ownership statement incorrect. For example, an ownership statement signed on September 30, 2000, remains valid through December 31, 2003, unless circumstances change that make the information of the statement no longer correct.

(3) *Special rules*—(i) *Determining residence of certain shareholders.* A foreign corporation seeking qualified foreign corporation status or an intermediary that is a direct or indirect shareholder of such foreign corporation may determine the residence of certain shareholders, for purposes of paragraph (b)(2)(i)(B) of this section, under one of the following special rules, in lieu of obtaining the ownership statements required in paragraph (d)(2)(i) of this section from such shareholders.

(ii) *Special rule for registered shareholders owning less than one percent of widely-held corporations.* A foreign corporation with at least 250 registered individual shareholders, that is not a publicly-traded corporation, as described in § 1.883–2, (a widely-held corporation), may not be required to obtain an ownership statement from an individual shareholder owning less than one percent of the widely-held corporation at all times during the taxable year. If such widely-held foreign corporation is the foreign corporation seeking qualified foreign corporation status, or an intermediary that meets the documentation requirements of paragraphs (d)(4)(v)(A) and (B) of this section, the widely-held foreign corporation may treat the address of record in its ownership records as the residence of any less than one percent individual shareholder if—

(A) The individual's address of record is not a non-residential address, such as a post office box or in care of a financial intermediary or stock transfer agent; and

(B) The officers and directors of the widely-held corporation neither know nor have reason to know that the individual does not reside at that address.

(iii) *Special rule for beneficiaries of pension funds*—(A) *Government pension fund.* An individual who is a beneficiary of a government pension fund, as defined in paragraph (b)(5)(ii) of this section, shall be treated as a resident of the country in which the pension fund is administered if the pension fund satisfies the documentation requirements of paragraphs (d)(4)(v)(A) and (C)(*1*) of this section.

(B) *Non-government pension fund.* An individual who is a beneficiary of a non-government pension fund, as described in paragraph (b)(5)(iii) of this section, shall be treated as a resident of the country of the beneficiary's address as it appears on the records of the fund, provided it is not a nonresidential address, such as a post office box or an address in care of a financial intermediary, and provided none of the trustees, directors or other administrators of the pension fund know, or have reason to know, that the beneficiary is not an individual resident of such foreign country. The rules of this paragraph (d)(3)(iii)(B) shall apply only if the non-government pension fund satisfies the documentation requirements of paragraphs (d)(4)(v)(A) and (C)(*2*) of this section.

(iv) *Special rule for stock owned by publicly-traded corporations.* Any stock in a foreign corporation seeking qualified foreign corporation status that is owned by a publicly-traded corporation will be treated as owned by an individual resident in the country where the publicly-traded corporation is organized if the foreign corporation receives the statement described in paragraph (d)(4)(iii) of this section from the publicly-traded intermediary and copies of any relevant ownership statements from shareholders of the publicly traded corporation relied on to satisfy the exception to the closely-held class of stock rule of § 1.883–2(d)(3)(ii) as required in paragraph (d)(2)(i) of this section.

(v) *Special rule for not-for-profit organizations.* For purposes of meeting the ownership requirements of paragraph (a) of this section, a not-for-profit organization may rely on the addresses of record of its individual beneficiaries and supporters to determine the residence of an individual beneficiary or supporter, within the meaning of paragraph (b)(2)(i)(B) of this section, to the extent required under paragraph (b)(4) of this section, provided that—

(A) The addresses of record are not nonresidential addresses such as a post office box or in care of a financial intermediary;

(B) The officers, directors or administrators or the organization do not know or have reason to know that the individual beneficiaries or supporters do not reside at that address; and

(C) The foreign corporation seeking qualified foreign corporation status receives the statement required in paragraph (d)(4)(iv) of this section from the not-for-profit organization.

(4) *Ownership statements from shareholders*—(i) *Ownership statements from individuals.* An ownership statement from an individual is a written statement signed by the individual under penalties of perjury stating—

(A) The individual's name, permanent address, and country where the individual is fully liable to tax as a resident, if any;

(B) If the individual was not a resident of the country for the entire taxable year of the foreign corporation seeking qualified foreign corporation status, state each of the foreign countries in which the individual resided and the dates of such residence during the taxable year of such foreign corporation;

(C) If the individual directly owns stock in the corporation seeking qualified foreign corporation status, the name of the corporation, the number of shares in each class of stock of the corporation that are so owned, and the period of time during the taxable year of

the foreign corporation during which the individual owned the stock;

(D) If the individual directly owns an interest in a corporation, partnership, trust, estate or other intermediary that directly or indirectly owns stock in the corporation seeking qualified foreign corporation status, the name of the intermediary, the number and class of shares or amount and nature of the interest of the individual in such intermediary, and the period of time during the taxable year of the corporation seeking qualified foreign corporation status during which the individual held such interest;

(E) To the extent known by the individual, a description of the chain of ownership through which the individual owns stock in the corporation seeking qualified foreign corporation status, including the name and address of each intermediary standing between the intermediary described in paragraph (d)(4)(i)(D) of this section and the foreign corporation and whether this interest is owned either directly or indirectly through bearer shares; and

(F) Any other specified information.

(ii) *Ownership statements from foreign governments.* An ownership statement from a government that is a qualified shareholder is a written statement—

(A) Signed by either—

(*1*) An official of the governmental authority, agency or office who has supervisory authority with respect to the government's ownership interest and who is authorized to sign such a statement on behalf of the authority, agency or office; or

(*2*) The competent authority of the foreign country (as defined in the income tax convention between the United States and the foreign country);

(B) That provides—

(*1*) The title of the official signing the statement;

(*2*) The name and address of the government authority, agency or office that has supervisory authority;

(*3*) The information described in paragraphs (d)(4)(i)(C) through (F) of this section (substituting ''government'' for ''individual'') with respect to the government's direct or indirect ownership of stock in the corporation seeking qualified resident status; and

(C) Any other specified information.

(iii) *Ownership statements from publicly-traded corporate shareholders.* An ownership statement from a publicly-traded corporation that is a direct or indirect owner of the corporation seeking qualified foreign corporation status is a written statement, signed under penalties of perjury by a person that would be authorized to sign a tax return on behalf of the shareholder corporation containing the following information—

(A) The name of the country in which the stock is primarily traded;

(B) The name of the established securities market or markets on which that the stock is listed;

(C) A description of each class of stock relied upon to meet the requirements of § 1.883–2(d)(1), including the number of shares issued and outstanding as of the close of the taxable year;

(D) For each class of stock relied upon to meet the requirements of § 1.883–2(d)(1), if one or more 5 percent shareholders, as defined in § 1.883–2(d)(3)(i), own in the aggregate 50 percent or more of the value of the outstanding shares of that class of stock at any time during the taxable year, state—

(*1*) The name and address of each 5 percent shareholder and of each related person whose stock is treated as owned by the 5 percent shareholder;

(*2*) For each qualified shareholder upon whom the corporation intends to rely to satisfy the exception to the closely-held class of stock rule of § 1.883–2(d)(3)(ii)—

(*i*) The name of each such shareholder;

(*ii*) The percentage of the total outstanding shares of that class owned by such shareholder;

(*iii*) The address of record of such shareholder;

(*iv*) The country of residence of such shareholder, determined under paragraph (b)(2) or (d)(3) of this section; and

(E) The information described in paragraphs (d)(4)(i)(C) through (F) of this section (substituting ''publicly-traded corporation'' for ''individual'') with respect to the publicly-traded corporation's direct or indirect ownership of stock in the corporation seeking qualified resident status; and

(F) Any other specified information.

(iv) *Ownership statements from not-for-profit organizations.* An ownership statement from a not-for-profit organization (other than a pension fund as defined in paragraph (b)(5) of this section) is a written statement signed by a person authorized to sign a tax return on behalf of the organization under penalties of perjury stating—

(A) The name, permanent address, and principal location of the activities of the organization (if different from its permanent address);

(B) The information described in paragraphs (d)(4)(i)(C) through (F) of this section (substituting ''not-for-profit organization'' for ''individual'');

(C) A representation that the not-for-profit organization satisfies the requirements of paragraph (b)(4) of this section; and

(D) Any other specified information.

(v) *Ownership statements from intermediaries*—(A) *General rule.* The foreign corporation seeking qualified foreign corporation status under the shareholder stock ownership test must obtain an intermediary ownership statement from each intermediary standing in the chain of ownership between it and the qualified shareholders on whom it relies to meet this test. An intermediary ownership statement is a written statement signed under penalties of perjury by the intermediary (if the intermediary is an individual) or a person who would be authorized to sign a tax return on behalf of the intermediary (if the intermediary is not an individual) containing the following information—

(*1*) The name, address, country of residence, and principal place of business (in the case of a corporation or partnership) of the intermediary and, if the intermediary is a trust or estate, the name and permanent address of all trustees or executors (or equivalent under foreign law), or the name and permanent address of place of administration of the intermediary (if a pension fund);

(*2*) The information described in paragraphs (d)(4)(i)(C) through (F) (substituting ''intermediary'' for ''individual'');

(*3*) If the intermediary is a nominee for a shareholder or another intermediary, the name and permanent address of the shareholder, or the name and principal place of business of such other intermediary;

(*4*) If the intermediary is not a nominee for a shareholder or another intermediary, the name and country of residence (within the meaning of paragraph (b)(2) of this section) and the proportionate interest in the intermediary of each direct shareholder, partner, beneficiary, grantor, or other interest holder (or if the direct holder is a nominee, of its beneficial shareholder, partner, beneficiary, grantor, or other interest holder) which the foreign corporation seeking qualified foreign corporation status intends to rely on to satisfy the requirements of paragraph (a) of this section, as well as an ownership statement from such person and the period of time during the taxable year for which the interest in the intermediary was owned by the shareholder, partner, beneficiary, grantor or other interest holder. For

purposes of this paragraph (d)(4)(v)(A), the proportionate interest of a person in an intermediary is the percentage interest (by value) held by such person, determined using the principles for attributing ownership in paragraph (c) of this section;

(*5*) If the intermediary is a widely-held corporation with registered shareholders owning less than one percent of the stock of such widely-held corporation, the statement set out in paragraph (d)(4)(v)(B) of this section, relating to ownership statements from widely-held intermediaries with registered shareholders owning less than one percent of such widely-held intermediaries;

(*6*) If the intermediary is a pension fund, within the meaning of paragraph (b)(5) of this section, the statement set out in paragraph (d)(4)(v)(C) of this section, relating to ownership statements from pension funds; and

(*7*) Any other specified information.

(B) *Ownerships statements from widely-held intermediaries with registered shareholders owning less than one percent of such widely-held intermediary.* An ownership statement from an intermediary that is a corporation with at least 250 individual shareholders, but that is not a publicly-traded corporation within the meaning of § 1.883–2, and that relies on paragraph (d)(3)(ii) of this section, relating to the special rule for registered shareholders owning less than one percent of widely-held corporations, must provide the following information in addition to the information required in paragraph (d)(4)(v)(A) of this section—

(*1*) The aggregate proportionate interest by country of residence in the widely-held corporation of such registered shareholders or other interest holders whose address of record is not a non-residential address, such as a post office box or in care of a financial intermediary or stock transfer agent; and

(*2*) A representation that the officers and directors of the widely-held intermediary neither know nor have reason to know that the individual shareholder does not reside at his or her address of record in the corporate records; and

(*3*) Any other specified information.

(C) *Ownership statements from pension funds*—(*1*) *Ownership statements from government pension funds.* A government pension fund (as defined in paragraph (b)(5)(ii) of this section) that relies on paragraph (d)(3)(iii) of this section, relating to the special rules for pension funds, generally must provide the documentation required in paragraph (d)(4)(v)(A) of this section and, in addition, the government pension fund must also provide the following information—

(*i*) The name of the country in which the plan is administered;

(*ii*) A representation that the fund is established exclusively for the benefit of employees or former employees of a foreign government, or employees or former employees of a foreign government and non-governmental employees or former employees that perform or performed governmental or social services;

(*iii*) A representation that the funds that comprise the trust are managed by trustees who are employees of, or persons appointed by, the foreign government;

(*iv*) A representation that the trust forming part of the pension plan provides for retirement, disability, or death benefits in consideration for prior services rendered;

(*v*) A representation that the income of the trust satisfies the obligations of the foreign government to the participants under the plan, rather than inuring to the benefit of a private person; and

(*vi*) Any other specified information.

(*2*) *Ownership statement from non-government pension funds.* The trustees, directors, or other administrators of the non-government pension fund, as defined in paragraph (b)(5)(iii) of this section, that rely on paragraph (d)(3)(iii) of this section, relating to the special rules for pension funds, generally must provide the pension fund's intermediary ownership statement described in paragraphs (d)(4)(v)(A) of this section, and, in addition, the non-government pension fund must also provide the following information—

(*i*) The of the country in which the pension fund is administered;

(*ii*) A representation that the pension fund is subject to supervision or regulation by a governmental authority (or other authority delegated to perform such supervision or regulation by a governmental authority) in such country, and, if so, the name of the governmental authority (or other authority delegated to perform such supervision or regulation);

(*iii*) A representation that the pension fund is generally exempt from income taxation in its country of administration;

(*iv*) The number of beneficiaries in the pension plan;

(*v*) The aggregate percentage interest of beneficiaries by country of residence based on addresses shown on the books and records of the fund, provided the addresses are not nonresidential addresses, such as a post office box or an address in care of a financial intermediary, and provided none of the trustees, directors or other administrators of the pension fund know, or have reason to know, that the beneficiary is not a resident of such foreign country;

(*vi*); A representation that the pension fund meets the requirements of paragraph (b)(5)(iii) of this section;

(*vii*) A representation that the trustees, directors or other administrators of the pension fund have no knowledge, and no reason to know, that a pro-rata allocation of interests of the fund to all beneficiaries would differ significantly from an actuarial allocation of interests in the fund (or, if the beneficiaries' actuarial interest in the stock held directly or indirectly by the pension fund differs from the beneficiaries's actuarial interest in the pension fund, the actuarial interests computed by reference to the beneficiaries' actuarial interest in the stock);

(*viii*) Either—

(*A*) Any overfunding of the pension fund would be payable, pursuant to the governing instrument or the laws of the foreign country in which the pension fund is administered, only to, or for the benefit of, one or more corporations that are organized in the country in which the pension fund is administered, individual beneficiaries of the pension fund or their designated beneficiaries, or social or charitable causes (the reduction of the obligation of the sponsoring company or companies to make future contributions to the pension fund by reason of overfunding shall not itself result in such overfunding being deemed to be payable to or for the benefit of such company or companies); or

(*B*) The foreign country in which the pension fund is administered has laws that are designed to prevent overfunding of a pension fund and the funding of the pension fund is within the guidelines of such laws; or

(*C*) The pension fund is maintained to provide benefits to employees in a particular industry, profession, or group of industries or professions and employees of at least 10 companies (other than companies that are owned or controlled, directly or indirectly, by the same interests) contribute to the pension fund or receive benefits from the pension fund; and

(*ix*) Any other specified information.

(*3*) *Time for making determinations.* The determinations required to be made under this paragraph (d)(4)(v)(C) shall be made using information shown on the records of the pension fund for a date during the foreign corporation's

taxable year to which the determination is relevant.

(5) *Availability and retention of documents for inspection.* The documentation described in paragraphs (d)(3) and (4) of this section must be retained by the corporation seeking qualified foreign corporation status (the foreign corporation) until the expiration of the statute of limitations for the taxable year of the foreign corporation to which the documentation relates. Such documentation must be made available for inspection by the Commissioner at such time and place as the Commissioner may request in writing.

(e) *Reporting requirements.* A foreign corporation relying on the qualified shareholder test of this section to demonstrate that it is a qualified foreign corporation for purposes of § 1.883–1(c)(2) must provide the following information in addition to the information required in § 1.883–1(c)(3) to be included in its Form 1120F for each taxable year. The information should be current as of the end of the corporation's taxable year. The information must include the following—

(1) A representation that more than 50 percent of the value of the outstanding shares of the corporation is owned (or treated as owned by reason of paragraph (c) of this section) by qualified shareholders for the category of income for which the exemption is claimed;

(2) With respect to each individual qualified shareholder owning 5 percent or more of the foreign corporation, applying the attribution rules of paragraph (c) of this section, and relied upon to meet the 50 percent ownership test of paragraph (a) of this section, the name and address, as represented on each such individual's ownership statement;

(3) With respect to all qualified shareholders relied upon to satisfy the 50 percent ownership test of paragraph (a) of this section, the total percentage of the value of the outstanding shares owned, applying the attribution rules of paragraph (c) of this section, by all qualified shareholders resident in a qualified foreign country, by country; and

(4) Any other required documentation.

**§ 1.883–5 Effective date.**

(a) *General rule.* Sections 1.883–1 through 1.883–4 apply to taxable years of the foreign corporation ending 30 days or more after the date these regulations are published as final regulations in the **Federal Register**.

(b) *Election for retroactive application.* When §§ 1.883–1 through 1.883–4 become generally applicable, taxpayers may rely on all the provisions of §§ 1.883–1 through 1.883–4 for guidance and may elect to apply all such substantive provisions for any open taxable year of the foreign corporation beginning after December 31, 1986, and ending less than 30 days after the date these regulations are published as final regulations in the **Federal Register**. However, such election is not required to be applied with respect to § 1.883–1(c)(3) (relating to the substantiation and reporting required to be treated as a qualified foreign corporation) or §§ 1.883–2(f), 1.883–3(d) and 1.883–4(e) (relating to additional information to be included in the return to demonstrate whether the foreign corporation satisfies one of three stock ownership tests). Such election will be applicable for the year of the election and for all subsequent taxable years.

(c) *Transition rule.* For taxable years of the foreign corporation ending 30 days or more after the date these regulations are published as final regulations in the **Federal Register**, and until such time as the Form 1120F and its instructions are revised to conform to §§ 1.883–1 through 1.883–4, the information required in § 1.883–1(c)(3) and § 1.883–2(f), 1.883–3(d) or 1.883–4(e), as applicable, must be included on a written statement signed under penalties of perjury by a person authorized to sign the return, attached to the Form 1120F, and filed with the return.

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

[FR Doc. 00–1899 Filed 2–7–00; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[REG–103882–99]**

**RIN 1545–AX06**

### Depletion; Treatment of Delay Rental

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

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed amendments conforming regulations relating to delay rental to the requirements of section 263A relating to capitalization and inclusion in inventory of costs of certain expenses. Changes to the applicable law were made by the Tax Reform Act of 1986 and the Technical and Miscellaneous Revenue Act of 1988. The proposed regulations provide the public with guidance concerning the application of section 263A to delay rental.

**DATES:** Written comments must be received by May 8, 2000. Outlines of topics to be discussed at the public hearing scheduled for May 26, 2000, at 10 a.m. must be received by May 5, 2000.

**ADDRESSES:** Send submissions to: CC:DOM:CORP:R (REG–103882–99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–103882–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax__regs/regslist.html. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulation, Brenda M. Stewart, (202) 622–3120; concerning submissions and the hearing, LaNita Van Dyke, (202) 622–7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

#### Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 612 to conform them to the requirements of section 263A. Section 263A was enacted by the Tax Reform Act of 1986, Public Law 99–514 (100 Stat. 2085), and amended by the Technical and Miscellaneous Revenue Act of 1988, Public Law 100–647 (102 Stat. 3342).

#### Explanation of Provisions

Under the terms of a lease of mineral property, the lessee acquires, for a stated term, the right and obligation to obtain production of minerals from the property. A lease may provide that for each year that the lessee fails to make efforts to obtain production, the lessee must pay a ''delay rental'' to the lessor.

Section 1.612–3(c)(1) of the final regulations defines a delay rental as an amount paid for the privilege of deferring development of the property

and which could have been avoided by abandonment of the lease, or by commencement of development operations, or by obtaining production. Section 1.612–3(c)(2) of the final regulations provides that since a delay rental is in the nature of rent, it is ordinary income to the payee and not subject to depletion. The payor may at his election deduct the delay rental as an expense, or charge it to depletable capital account under section 266.

Section 263A was enacted subsequent to the issuance of § 1.612–3(c) of the final regulations. The uniform capitalization rules of section 263A generally require the capitalization of all direct costs and certain indirect costs properly allocable to property produced by the taxpayer. Capitalization may be required even though production (development) has not yet begun. § 1.263A–2(a)(3)(ii). In some situations, a delay rental may be required to be capitalized under section 263A. Accordingly, the proposed regulation clarifies that subsequent to the enactment of section 263A, the payor of a delay rental may elect to expense currently the delay rental or charge it to depletable capital account under section 266 to the extent that the delay rental is not required to be capitalized under section 263A and the regulations thereunder.

**Special Analyses**

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

**Comments and Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (a signed original and eight copies) to the IRS. The IRS and Treasury request comments on the clarity of the proposed regulations and they may be made easier to understand. All comments will be made available for public inspection and copying.

A public hearing has been scheduled for May 26, 2000, at 10 a.m. in room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments (a signed original and eight (8) copies) by May 8, 2000. The outline of topics to be discussed at the hearing must be received by May 5, 2000.

A period of 10 minutes will be allotted for each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

**Drafting Information**

The principal author of this proposed regulation is Brenda M. Stewart of the Office of Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, other personnel from the IRS and Treasury Department participated in its development.

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

Income taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

## PART 1—INCOME TAX

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

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

**Par. 2.** In § 1.612–3, the second sentence of paragraph (c)(2) is removed and two sentences are added in its place to read as follows:

**§ 1.612–3 Depletion; treatment of bonus and advanced royalty.**

* * * * *

(c) * * *

(2) * * * To the extent the delay rental is not required to be capitalized under section 263A and the regulations thereunder, the payor may at his election deduct such amount or under section 266 and the regulations thereunder, charge it to depletable capital account. The second sentence of this paragraph (c)(2) applies to delay rentals paid with respect to leasing transactions entered into on or after the date these regulations are published as final regulations in the **Federal Register**.

* * * * *

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

[FR Doc. 00–2730 Filed 2–7–00; 8:45 am]

BILLING CODE 4830–01–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[CA–237–0221; FRL–6534–5]**

## Approval and Promulgation of State Implementation Plans; California—South Coast

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a state implementation plan (SIP) revision by the State of California to provide for attainment of the ozone national ambient air quality standard (NAAQS) in the Los Angeles-South Coast Air Basin Area (South Coast). EPA is proposing to approve the SIP revision under provisions of the Clean Air Act (CAA) regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas.

**DATES:** Comments must be received on or before March 9, 2000.

**ADDRESSES:** Written comments should be addressed to: Dave Jesson (AIR–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, or jesson.david@epa.gov. The rulemaking docket for this notice is available for public inspection during normal business hours at EPA's Region IX office. A reasonable fee may be charged for copying parts of the docket.

Copies of the SIP materials are also available for inspection at the following locations:

California Air Resources Board, 2020 L Street, Sacramento, California

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

The SIP materials are also electronically available at: http://www.aqmd.gov/aqmp/

**FOR FURTHER INFORMATION CONTACT:** Dave Jesson at (415) 744–1288.

**SUPPLEMENTARY INFORMATION:** This section provides background information on the South Coast ozone plan, applicable Clean Air Act requirements, and EPA's proposed action on the plan.

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## I. Background

### *A. What is the ozone problem in the South Coast?*

In 1999 the South Coast had the largest number of ozone violations in the country, and trailed only the Houston area in terms of the peak ozone concentration.[1] The South Coast in 1999 recorded 43 days with 1-hour levels at or above the 0.12 parts per million (ppm) NAAQS for ozone. In 1998, the South Coast had the worst ozone levels in the nation, experiencing 12 days with Stage I smog alerts, when 1-hour concentrations reach 0.20 ppm.[2]

Ozone causes serious health problems, particularly in children, by damaging lung tissue and sensitizing the lungs to other irritants. Even at very low levels, ozone can cause acute respiratory problems; aggravate asthma; cause temporary decreases in lung capacity of 15 to 20 percent in healthy adults, cause inflammation of lung tissue; lead to hospital admissions and emergency room visits; and impair the body's immune system defenses, making people more susceptible to respiratory illnesses, including bronchitis and pneumonia.

### *B. What Clean Air Act Requirements Apply to this Plan?*

The CAA was substantially amended in 1990 to establish new planning requirements and attainment deadlines for the NAAQS. Under CAA section 107(d)(1)(C) of the Act, areas designated nonattainment prior to enactment of the 1990 amendments, including the South Coast, were designated nonattainment by operation of law.

Under CAA section 181(a), each ozone area designated nonattainment under section 107(d) was also classified by operation of law as either marginal, moderate, serious, severe, or extreme, based on air quality monitoring data. An ozone area with a design value at or above 0.280 ppm was classified as extreme. The South Coast was the only area so classified. Section 181(a) sets attainment deadlines for each class of area. The attainment date for an extreme area is as expeditiously as practicable but no later than November 15, 2010 (20 years after enactment of the CAA Amendments).

CAA section 172 contains general requirements applicable to SIPs for nonattainment areas. Section 182 sets out additional air quality planning requirements for ozone nonattainment areas. The most fundamental of these nonattainment area provisions applicable to the South Coast is the requirement that the State submit by November 15, 1994, a SIP demonstrating how the area would attain the ozone NAAQS by the CAA deadline and how the area would achieve reductions of precursor emissions of 15 percent for the first 6 years and 9 percent for each 3-year period until attainment (rate-of-progress or ROP). This demonstration must be based upon enforceable measures to expeditiously achieve emission reductions leading to emissions at or below the level predicted to result in attainment throughout the nonattainment area.

We have issued a ''General Preamble'' describing our preliminary views on how we intend to act on SIPs submitted under Title I of the Act. See generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992). You should refer to the General Preamble for a more detailed discussion of our interpretations of Title I requirements. In this proposed rulemaking action, we apply these policies to the South Coast ozone SIP submittal, taking into consideration the specific factual issues presented.

### *C. What Action Have we Taken on Previous South Coast Ozone Plans?*

#### 1. Final approval of the 1994 Ozone SIP

SCAQMD adopted an ozone plan on September 9, 1994, as part of the 1994 South Coast Air Quality Management Plan (AQMP). The California Air Resources Board (CARB) supplemented the SCAQMD plan with State measures and submitted it as a proposed revision to the California SIP on November 15, 1994. On July 10, 1996, CARB submitted

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[1] The 1999 air quality information is preliminary data from EPA's Aerometric Information Retrieval System (AIRS). For a description of the boundaries of the Los Angeles-South Coast Air Basin, see 40 CFR 81.305. The nonattainment area includes all of Orange County and the more populated portions of Los Angeles, San Bernardino, and Riverside Counties.

[2] In 1998, the areas with the highest peak 1-hour ozone concentrations were: South Coast .244 ppm, Houston .230 ppm, Southeast Desert (the area immediately to the east of the South Coast) .202 ppm, San Joaquin Valley .194 ppm, Ventura County .174 ppm, San Diego County .164 ppm. An area exceeds the 1-hour ozone standard each time an ambient air quality monitor records a 1-hour average concentration above 0.124 ppm. An area is violating the standard if, over a consecutive 3-year period, more than 3 exceedances are expected to occur at any one monitor. Ground-level ozone is formed when emissions of nitrogen oxides (NOx) and volatile organic compounds (VOCs) react in the presence of sunlight. NOx and VOCs are referred to as precursors of ozone. California air quality agencies generally use the term ''reactive organic gas'' (ROG) instead of VOC.

an extensive revision to the South Coast control measure adoption schedule to adjust for slippage in the plan's initial implementation. On January 8, 1997 (62 FR 1150), we finalized approval of the South Coast ozone plan, including the ozone portions of the 1994 South Coast AQMP, as amended in 1996, and the State measures (''1994 ozone SIP''). [3] The plan also contained ''Federal measures,'' which the State wished us to adopt and implement in order to reduce emissions from mobile sources. [4]

2. Proposed Partial Approval and Partial Disapproval of the 1997 Ozone Revision

SCAQMD adopted a completely revised plan on November 15, 1996, and the California Air Resources Board (CARB) submitted the revision on February 5, 1997. The 1997 revision was not federally required for ozone, but was adopted by SCAQMD to address, in a comprehensive and consistent fashion, federal and state requirements for particulate matter, carbon monoxide, and nitrogen dioxide (NO2), and state requirements for an ozone plan update. [5]

On January 12, 1999 (64 FR 1770), we proposed to find that the revised plan met the CAA section 110(a)(1) procedural requirements for adoption following public notice and hearings. We also proposed to approve the baseline and projected emissions inventory updates under CAA sections 172(c)(3) and 182(a)(1).

Because CAA section 110(l) does not allow us to approve a SIP revision that interferes with any applicable CAA requirement concerning attainment and reasonable further progress or any other requirement of the Act, we proposed to disapprove the 1997 ozone plan as not meeting: (1) the control measure requirements of CAA sections 172(c)(6), and 182(e)(5); (2) the attainment demonstration requirements of CAA section 182(c)(2)(A); and (3) the quantitative milestones and reasonable further progress requirements of CAA section 182(c)(2)(A).

Our proposed disapproval of these provisions was based on our findings that:

(1) the control measures in the 1997 ozone plan were an impermissible relaxation of the 1994 ozone SIP, inasmuch as the plan relaxed, abandoned, or postponed approximately 30 short-term SCAQMD measures, and did not show that this revision meets the expeditious attainment test;

(2) the 1997 ozone plan was inconsistent with the intent of CAA section 182(e)(5), in that it increased, rather than reduced, the proportion of needed SCAQMD reductions that are assigned to conceptual, new-technology measures;

(3) the plan relied on unlawful assignments to the Federal Government to achieve a portion of the reductions needed for attainment; and

(4) the plan relied on commitments to adopt by the end of 1998 23 measures, of which SCAQMD had adopted less than 10, and we may not approve a plan that is not being implemented.

Since our proposed action in this document is an action on both the 1997 ozone plan and the 1999 Amendment to it, we are withdrawing the January 12, 1999 proposed partial approval and partial disapproval of the 1997 ozone plan. Therefore, if you submitted comments on our January 12, 1999 proposal and believe that those comments are relevant to our proposed action on the 1999 ozone plan, you will need to resubmit your comments within the public comment period for today's proposed action.

3. Final Approval of a 1999 State Update to the South Coast Ozone SIP

On July 23, 1999 (64 FR 39923), we approved an update to the South Coast 1994 ozone SIP, reporting on implementation of CARB's control measures in the 1994 SIP and the contribution from Federal mobile source controls undertaken as part of the Public Consultative Process. We also updated our own commitment and approved a new CARB commitment to adopt by December 31, 2001, control measures needed to achieve any additional reductions which are determined to be appropriate for CARB. Please consult this final approval document and our proposed approval (64 FR 30276, June 7, 1999) for more details on the update, the ''Federal measures,'' the Public Consultative Process on national mobile source measures, and our associated consent decree in *Coalition for Clean Air, et al.* vs. *SCAQMD, CARB, and USEPA*, No. CV 97–6916 HLH (C.D. CA.).

*D. What are the Changes in the New Plan?*

SCAQMD adopted an amendment to the 1997 plan on December 10, 1999, to update the District's control measures and to address the deficiencies that formed the basis for our proposed disapproval. The 1999 amendment adds new SCAQMD control measures, revises existing SCAQMD measures, and amends the reasonable further progress, attainment demonstration, and stationary source emissions budget portions of the 1997 plan. [6] The 1999 amendment does not change the emission inventories, modeling, non-SCAQMD control measures, and the non-ozone portions of the 1997 plan. In this proposed rulemaking, we refer to the 1997 plan as amended in 1999 as ''the revised ozone plan.'' If we approve this revised ozone plan, it will replace the 1994 ozone SIP except for that portion of the SIP that consists of State control measures and EPA's commitment.

1. Control Measure Revisions

The 1999 amendment adds commitments to adopt 8 short-term stationary source control measures, 4 of which are new control measures and 4 of which implement portions of the 1997 plan's long-term control measures. The revised ozone plan now includes 26 short- and intermediate-term control measures and 4 long-term measures. Along with 17 regulations adopted after the 1994 ozone SIP was submitted, these control measure commitments completely replace all SCAQMD control measure commitments in the SIP and greatly reduce the amount of the attainment demonstration dependent upon long-term conceptual measures. SCAQMD long-term VOC control measures in the 1994 ozone SIP were assigned credit for a reduction of 180 tpd; in the 1999 amendment, the long-term reductions amount to only 28 tpd. [7] Neither the 1997 plan nor the 1999 amendment changes the State control measures in the 1994 ozone SIP.

[3] We approved some of the State and SCAQMD measures in the plan earlier. See particularly 60 FR 43379 (August 21, 1995).

[4] In response to this ''assignment,'' we established a Public Consultative Process to identify the best options for achieving further emission reductions from mobile source controls, at least to the extent they are needed for attainment of the ozone NAAQS in the South Coast. In connection with the establishment of this process, both EPA and CARB made commitments regarding appropriate future emission reductions. Please see EPA's final approval of the 1994 ozone SIP for a discussion of the ''Federal measures'' and our rationale, at that time, for establishing the Public Consultative Process (62 FR 1152–5, 1184–6). See also section I.C.3 below.

[5] We approved the CO and NO2 portions of the submittal on April 21, 1998 (63 FR 19661) and July 24, 1998 (63 FR 39747), respectively.

[6] The ''attainment demonstration'' includes both the control measures and air quality modeling showing that the control measures are sufficient to reduce emissions to levels where violations of the NAAQS would not occur. The 1999 amendment does not change the modeling in the 1997 plan, which we continue to find approvable, but does add new control measures, thus allowing us to propose in this document approval of the plan with respect to both the control measure and the attainment demonstration requirements of the Act.

[7] Unless otherwise indicated, when we speak of emission reductions in this document we refer to reductions in the attainment year (2010), net of growth.

2. Technical Revisions

Although SCAQMD did not revise the baseline emissions inventory included in the 1997 plan, the 1999 amendment revises the District's control measures portion of the plan, adding new measures and accelerating adoption and implementation dates of measures in the 1997 plan. Since these changes amend the plan's scheduled emission reductions, the 1999 amendment revises the 1997 plan's stationary source emissions budgets for VOC and $NO_X$. The 1999 amendment also presents new rate-of-progress calculations.

*E. What Further Revisions Are Planned in the Future?*

While the revised ozone plan represents more current and accurate information than was used in the 1994 ozone SIP, SCAQMD and CARB consider the new plan to be an interim update. A comprehensive ozone plan revision is scheduled for adoption and submittal as a SIP revision in 2001. This future revision will use new emission inventories and modeling, and it will include a revised control strategy if needed to provide for expeditious attainment.

**II. Review of the Revised Ozone Plan**

*A. Did SCAQMD and CARB Meet the CAA Procedural Requirements?*

SCAQMD has satisfied applicable requirements for reasonable public notice and hearing prior to adoption of the 1997 plan and the 1999 amendment. SCAQMD conducted public workshops and public hearings prior to the adoption of the 1997 plan on November 15, 1996 (Governing Board Resolution No. 96–23), and before adoption of the 1999 amendment on December 10, 1999 (Governing Board Resolution 99–35). On January 23, 1997, CARB adopted the 1997 plan (Resolution No. 97–1) following public notice, and CARB submitted the plan to us on February 5, 1997. After public notice, CARB adopted the 1999 amendment at a public hearing on January 27, 2000, and the State indicates its intent to submit the amendment promptly as a SIP revision. Assuming that the State makes this submittal, we believe that the submittal will have met the procedural requirements of CAA sections 110(a) and (l).

*B. Do the Revised Baseline and Projected Emissions Inventories Meet CAA Requirements?*

As discussed in our proposed approval of the emissions inventory in the 1997 plan (64 FR 1774–7), the revised and updated emissions inventory conforms to our guidance documents. Please see that notice for further details regarding the inventories, the socio-economic forecasts underlying the projected inventories, and our emissions inventory guidance documents. The 1999 amendment makes no changes to these inventory summaries, which are included in Chapter 3 and Appendix III of the 1997 plan.

CARB has prepared draft revisions to the motor vehicle emissions factors. Once the new factors are adopted by the State, the responsible agencies will begin the process of revising the plan to reflect the new emissions data. The State has also recently prepared a new offroad mobile source emissions model, and local agencies are revising the regional growth and control effectiveness data. These updates and enhancements will improve emissions information for the comprehensive 2001 plan revision.

Because the methodologies used to prepare the inventories in the revised ozone plan are acceptable, we propose to approve the plan revision with respect to the emissions inventory requirements of CAA sections 172(c)(3) and 182(a)(1).

*C. Is the Modeled Attainment Demonstration Consistent With Modeling Guidelines?*

The attainment demonstration in the revised ozone plan employs the Urban Airshed Model (UAM) with the Carbon Bond IV mechanism. The UAM analysis uses 4 episodes in 1987, including a September 7–9 episode with a peak ozone concentration of 0.33 ppm.

The 1994 ozone SIP analysis used a more severe episode, June 5–7, 1985, which had a peak concentration of 0.36 ppm. For the revised ozone plan, SCAQMD modeled the 1985 episode but did not show attainment with all control measures, and the episode was dropped for purposes of the attainment demonstration. SCAQMD based its decision not to use the 1985 episode on the age of the episode and the District's contention that the episode reflects meteorological conditions that rarely occur in the area. This is consistent with our current modeling guidance.[8]

On November 18, 1998, the SCAQMD submitted a weight of evidence analysis for the June 1985 episode.[9] A copy of this analysis has been placed in the docket for this rulemaking. The analysis addresses our current modeling guidance and argues for elimination of the 1985 episode under a weight of evidence approach. Attachment B to the SCAQMD correspondence addresses the acceptability of the remaining 4 episodes as a basis for an attainment demonstration. SCAQMD provides evidence that the episodes are representative of the types of meteorological episodes expected in the South Coast when high ozone concentrations occur. The evidence examines the episodes based on the deviation index (Horie CART analysis) and the Chu-Cox methodology for assessing episode frequency.

The model performance for the 1987 episode shows a high systematic bias, e.g., ozone underprediction of 44 percent for June 24, 40 percent for June 25, 47 percent for September 8, and 38 percent for September 9. SCAQMD showed that this underprediction is significantly reduced if motor vehicle VOC emissions are doubled, in which case underprediction becomes 24 percent for June 24, 19 percent for June 25, 2 percent for September 8, and 3 percent for September 9. CARB's draft revisions to the motor vehicle factors support this inventory adjustment. Because the model performance falls within an acceptable range of accuracy after these adjustments to the inventory and because the modeling otherwise conforms to our guidance, we propose to approve the modeling analysis.

More accurate and comprehensive UAM analyses will soon be possible, based on the Southern California Ozone Study (SCOS), for which an extensive field study was completed in the summer of 1997 and continued, in limited form, through the summer of 1998. SCAQMD and CARB intend to complete a new modeling analysis using updated emission inventories and SCOS modeling, as part of a comprehensive ozone SIP revision to be submitted in 2001. We strongly endorse this effort to update and enhance the technical foundation of the attainment demonstration. This revised SIP will be important to ensure that emission reduction target levels and control measures are sufficient to provide for attainment within the South Coast, and to establish a technically improved basis for making adjustments to the control strategy to achieve efficient and expeditious attainment.

[8] Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS, EPA–454/B–95–007 (1996).

[9] Letter from Barry R. Wallerstein, SCAQMD Executive Officer, to Felicia Marcus, Regional Administrator, EPA Region IX, Attachment A.

*D. Do the Control Measures Meet CAA Requirements?*

1. What Are the Applicable CAA Requirements?

The CAA requires that SIPs include enforceable control measures sufficient to meet rate-of-progress milestones and provide the reductions needed for attainment by the applicable CAA deadline. Where it is infeasible for a state to accomplish the necessary regulatory adoption in the short term, we have recognized that this requirement can be satisfied, to some extent, by enforceable commitments to adopt regulations in the future, since these commitments can be enforced in court by EPA or citizens.

In view of the magnitude of reductions required in the South Coast and the fact that SCAQMD and CARB have already adopted in regulatory form more stringent measures than are included in most other SIPs, we approved the 1994 ozone SIP despite its heavy reliance on commitments to adopt regulations. See 62 FR 1155–7, 1177–82. Over the past 5 years following adoption of the 1994 ozone SIP, SCAQMD rule adoptions and attainment demonstration revisions have reduced the dependence of the plan on SCAQMD commitments, which now amount to 84 tpd of VOC and $NO_X$, compared to well over 400 tpd in the 1994 ozone SIP.

2. How Does the Revised Ozone Plan Address These Requirements?

a. Control Measures Already Adopted

Following submittal of the 1994 ozone SIP, SCAQMD adopted rules projected to reduce VOC emissions by over 150 tpd by 2010. These rules fulfill many of the control measure commitments in both the 1994 and 1997 plans. The table below entitled ''Table 1—SCAQMD Rules Adopted between November 1994 and September 1999'' lists the rules with projected emission reduction levels. If these levels are not actually achieved by the rules, the SCAQMD enforceably commits to revise the rules or adopt new rules to provide for compensating reductions.[10]

TABLE 1.—SCAQMD RULES ADOPTED BETWEEN NOVEMBER 1994 AND SEPTEMBER 1999

| Control measure | Rule No. | Title | Adoption date | Implementation dates | 2010 reductions in tpd VOC |
|---|---|---|---|---|---|
| CTS–C | 1171 | Solvent Cleaning Operations | 1996 | 1999 | 26.8 |
| CTS–02H | 1107 | Metal Parts and Products | 1998 | 1999 | 8.8 |
| CTS–02M | 1145 | Plastic, Rubber, Glass Coatings | 1997 | 1998 | 1.2 |
| CTS–02N | 1122 | Solvent Degreasers | 1997 | 1999 | 48.1 |
| CTS–07 | 1113 | Architectural Coatings—Phase I | 1996 | 1998–2008 | 14.8 |
| CTS–07 | 1113 | Architectural Coatings—Phase II | 1999 | 2002–06 | 16.5 |
| CMB–02B | 1146.2 | Small Boilers and Process Heaters | 1998 | 2000–06 | 4.2 $NO_X$ |
| FUG–01 | 462 | Organic Liquid Transfer | 1995 | 1999 | 0.8* |
| FUG–02 | 1176 | Sumps and Wastewater Separators | 1996 | 1997 | 5.0* |
| PRC–03 | 1138 | Restaurant Operations | 1997 | 1999 | 0.2 |
| RFL–02 | 461 | Gasoline Dispensing Facilities | 1995 | 1998 | 3.7* |
| | 1104 | Wood Flat Stock Coating Operations | 1998 | 2000 | negligible |
| | 1136 | Wood Products Coatings | 1996 | 2005 | 7.9* |
| | 1124 | Aerospace Assembly and Component Manufacturing Operations. | 1996 | 2002 | 0.2* |
| | 1130.1 | Screening Printing Operations | 1996 | 2003 | 0.1* |
| | 1168 | Adhesive Applications | 1998 | 2003 | 1.3* |
| CTS–07 | 1113 | Architectural Coatings | 1999 | 2002–6 | 18.5* |
| Total Reductions of VOC. | | | | | 153.9 |
| Total Reductions of $NO_X$. | | | | | 4.2 |

*Reductions incorporated in baseline inventory.

In addition to these rules, SCAQMD also adopted 3 rule revisions in October and November 1999, implementing plan measures and contributing additional emission reductions as shown: CTS–02C (Phase 2)—Further Emission Reductions from Solvent Cleaning Operations (Rule 1171)—11 tpd VOC (with an additional 16 tpd subject to technology assessment in the future); CTS–08—Further Emission Reductions from Industrial Coating and Solvent Operations (Rule 1130)—2 tpd VOC; and CMB–06—Emission Standards for New Commercial and Residential Water Heaters (Rule 1121)—7.6 tpd $NO_X$.

b. Short and Intermediate-term Control Measure Commitments

As discussed above, the revised ozone plan now includes commitments to adopt 26 short- and intermediate-term control measures. The plan describes each control measure in detail, identifying 1993 baseline emissions from the source category, projected 2006 and 2010 emissions, 2006 and 2010 emission reductions, control cost effectiveness, methods and technologies of control, rule compliance, implementation schedule, implementing agency, and control measure history, including an explanation of changes in the measures in successive plan updates. The table labeled ''Table 2—Short- and Intermediate-Term Control Measure Commitments'' indicates for each control measure the dates of rule adoption and implementation and the

[10] ''The District is committed to adopt Table 2–1 measures unless these measures or a portion thereof are found infeasible and other substitute measures that can achieve equivalent reductions in the same adoption/implementation timeframes are adopted. Findings of infeasibility will be made at a regularly scheduled meeting of the District Board with proper public notification. For purposes of SIP commitment, infeasibility means the proposed control technology is not reasonably likely to be available by the implementation date in question, or achievement of the emission reductions by that date is not cost effective. The District acknowledges that this commitment is enforceable under Section 304(f) of the federal Clean Air Act.'' 1999 Amendment, page 2–18. Table 2–1, which is labeled ''Revised AQMP Short- and Intermediate-Term Control Measures, Implementing Agency, Adoption Date and Implementation Period,'' contains the complete list of SCAQMD commitments for short- and intermediate-term control measures, as also shown in Table 2 of this document.

emission reductions projected to occur by 2006 and 2010.

TABLE 2—SHORT-AND INTERMEDIATE-TERM CONTROL MEASURE COMMITMENTS (IN TONS PER SUMMER DAY OF VOC OR ($NO_X$))

| Control measure No. | Control measure title | Implementing agency | Adoption date | Implementation date | Emission reductions | |
|---|---|---|---|---|---|---|
| | | | | | 2006 | 2010 |
| CTS–02(P2) | Further Emission Reductions from Solvent Cleaning Operations—Rule 1171*. | SCAQMD | 1999 | 2002 | 10.6 | 11.0 |
| CTS–02E | Emission Reductions from Adhesives—Rule 1168. | SCAQMD/CAR B | 2000 | 2007–2008 | 0.0 | 1.3 |
| CTS–02O | Emission Reductions from Solvent Usage—Rule 442*. | SCAQMD | 2000 | 2002 | 1.1 | 1.0 |
| CTS–07(P 3) | Further Emission Reductions from Architectural Coatings and Cleanup Solvents—Rule 1113. | SCAQMD | 2003 | 2006–2008 | 3.1 | 9.8 |
| CTS–08 | Further Emission Reductions from Industrial Coating and Solvent Operations (Phases 1 and 2)*. | SCAQMD | 2002<br>2003 | 2004–2008<br>2005–2008 | 2.4 | 5.0 |
| CTS–09 | Further Emission Reductions from Large Solvent and Coating Sources (Phases 1 and 2). | SCAQMD | 2000<br>2002 | 2003–2004<br>2005–2006 | | 4.0<br>3.0 |
| FUG–03 | Further Emission Reductions from Floating Roof Tanks—Rule 463. | SCAQMD | TBD | TBD | TBD | TBD |
| FUG–04 | Further Emission Reductions from Fugitive Sources—Rule 1121. | SCAQMD | | | | |
| FUG–05 | Further Emission Reductions from Large Fugitive VOC Sources (Phases 1, 2, and 3)*. | SCAQMD | 2001<br>2002<br>2003 | 2003–2006<br>2004–2007<br>2005–2008 | | 1.0<br>1.0<br>1.0 |
| FUG–06 | Control of Methanol Emissions from Refinery Hydrogen Plan Vents. | SCAQMD | 2000 | 2001–2003 | 0.8 | 0.8 |
| RFL–02(P2) | Further Emission Reductions from Gasoline Dispensing Facilities—Rule 461. | SCAQMD/CAR B2000 | 2000 | 2001–2002 | 2.0 | 2.0 |
| CMB–06 | Emission Standards for New Commercial and Residential Water Heaters—Rule 1121. | SCAQMD | 1999 | 2002–2005 | (3.6) | (7.6) |
| PRC–03(P2) | Further Emission Reductions from Restaurant Operations. | SCAQMD | 2000 | 2001 (new) 2003 (retr ofit). | 0.9 | 0.9 |
| PRC–06 | Further Emission Reductions from Industrial Processes*. | SCAQMD | 2001 | 2004–2007 | 1.9 | 3.0 |
| MSC–01 | Promotion of Lighter Color Roofing and Road Materials and Tree Planting Programs. | SCAQMD/Loc al Govt | TBD | TBD | Air quality benefit from lowering ambient temperature | |
| MSC–03 | Promotion of Catalyst-Surface Coating Technology Programs. | SCAQMD | TBD | TBD | Conversion of ambient ozone and CO into Oxygen and $CO^2$ | |
| WST–01 | Emission Reductions from Livestock Waste. | SCAQMD | 2002 | 2004 | 3.3 | 3.3 |
| WST–02 | Emission Reductions from Composting. | SCAQMD | 2001 | 2004–2006 | TBD | TBD |
| WST–03 | Emission Reductions from Waste Burning (implemented through MOUs). | SCAQMD/Local Fire Agencies. | | 2002 | Air quality benefit but no emission reduction | |
| WST–04 | Disposal of Materials Containing Volatile Organic Compounds. | SCAQMD | 2000 | 2002 | 0.7 | 0.8 |
| FSS–04 | Emission Charges of $5,000 per Ton of VOC for Stationary Sources Emitting over 10 Tons per Year. | SCAQMD | TBD | TBD | TBD | TBD |
| FLX–01 | Intercredit Trading Program | SCAQMD | TBD | TBD | Promotion of advanced pollution control technology | |
| Total Reductions of VOC | | | | | 26.8 | 48.1 |
| Total Reductions of $NO_X$ | | | | | 3.6 | 7.6 |

*SCAQMD commits to achieve the reductions shown but identifies a potential for greater emission reductions from these control measures (Table 2–4, 1999 Amendment). Any reductions achieved from these measures beyond the amount of the commitment will reduce the long-term measure commitment, shown in Table 4, below.

SCAQMD commits to meet the adoption dates, implementation dates, and emission reduction targets, unless a measure, in whole or in part, is determined to be infeasible. Should that be the case, SCAQMD commits to achieve equivalent reductions on the same schedule through substitute controls.

Recognizing that such control strategy adjustments may be necessary and that development and implementation of regulations may achieve actual emission reductions that do not match those projected, SCAQMD included in the revised plan an additional enforceable commitment to achieve emission reduction targets in future years (1999 Amendment, pp. 2–18 and 2–19). This complementary commitment is shown below in the table titled ''Table 3—Emission Reduction Commitments.'' In order to ensure expeditious progress, SCAQMD commits to achieve these emission reductions even if control measures are determined to be infeasible.

TABLE 3.—EMISSION REDUCTION COMMITMENTS

[In tons per day for 2010 Planning Inventory.]

| Year | Based on adoption date | | Based on implementation date* | |
|---|---|---|---|---|
| | VOC | $NO_x$ | VOC | $NO_x$ |
| 1999 | 11.0 | 7.6 | ..... | ..... |
| 2000 | 10.0 | ..... | ..... | ..... |
| 2001 | 4.0 | ..... | ..... | ..... |
| 2002 | 9.3 | ..... | 14.8 | ..... |
| 2003 | 13.8 | ..... | 0.9 | ..... |
| 2004 | ..... | ..... | 7.3 | ..... |
| 2005 | ..... | ..... | ..... | ..... |
| 2006 | ..... | ..... | 4.0 | ..... |
| 2007 | ..... | ..... | 4.0 | ..... |
| 2008 | ..... | ..... | 17.1 | ..... |
| Total | 48.1 | 7.6 | 48.1 | 7.6 |

*Represents the final, full implementation date; typically, a rule contains multiple implementation dates.

The 1999 amendment provides the following clarification on the ''currency'' that will be used in determining emission reduction progress under the revised ozone plan: ''For purpose of tracking the progress in emission reductions, the baseline emissions for the year 2010 planning inventory (summer inventory for ozone) in the 1997 AQMP will be used, regardless of any subsequent new inventory information that reflects more recent knowledge. This is to assure that the same ''currency'' is used in measuring progress as was used in designing the AQMP. This will provide a fair and equitable measurement of progress. Therefore, whether progress is measured by emission reductions or by remaining emissions for a source category provides no material difference.'' (Page 2–16) We propose to accept the use of this approach for determinations of compliance with emission reduction commitments associated with the control measures in the revised ozone plan.

The new or amended control measure commitments in the revised ozone plan replace 31 control measure commitments contained in the 1994 ozone SIP. These measures are listed in the table below labeled ''Table 4—Measures Deleted from the 1994 Ozone SIP.''

TABLE 4.—MEASURES DELETED FROM THE 1994 OZONE SIP

| Control measure No. | Control measure title |
|---|---|
| CTS–A | Electronic Components |
| CTS–C | Solvent Cleaning |
| CTS–D | Marine/Pleasure Craft Coatings |
| CTS–E | Adhesives |
| CTS–F | Motor Vehicle Non-Assembly Coating |
| CTS–G | Paper/Fabric/Film Coatings |
| CTS–H | Metal Parts/Product Coatings |
| CTS–I | Graphic Arts/Screen Printing |
| CTS–J | Wood Products Coatings, |
| CTS–K | Aerospace/Component Coatings |
| CTS–L | Automotive Assembly Operations |
| CTS–07 | Architectural Coatings |
| FUG–01 | Organic Liquid Transfer |
| FUG–02 | Active Draining of Liquid Products |
| FUG–04 | Fugitive Emissions of VOCs |
| RFL–02 | Gasoline Dispensing Facilities |
| RFL–03 | Pleasure-Boat Fueling Operations |
| CMB–02F | Internal Combustion Engines |
| CMB–05 | Clean Stationary Fuels |
| PRC–02 | Bakeries |
| PRC–03 | Restaurant Operations |
| WST–01 | Livestock Waste |
| WST–03 | Waste Burning |
| WST–04 | Disposal of Materials Containing VOCs |

TABLE 4.—MEASURES DELETED FROM THE 1994 OZONE SIP—Continued

| Control measure No. | Control measure title |
|---|---|
| ISR–01 | Special Events Centers |
| ISR–02 | Shopping Centers |
| ISR–03 | Registration and Commercial Vehicles |
| ISR–04 | Airport Ground Access |
| ISR–05 | Trip Reduction for Schools |
| ADV–CTS–02 | Advanced Technology—Coatings |

Appendix A of the 1999 Amendment presents SCAQMD's reasons for replacing these control measures.

c. Long-Term Control Measure Commitments

Section 182(e)(5) of the Act allows an extreme ozone nonattainment area additional time, if necessary, beyond the November 15, 1994 ozone SIP submittal deadline, to develop, adopt, and submit some of the specific regulations and programs needed to achieve attainment. The CAA allows us to approve plans based on long-term measures if the State demonstrates that the measures are not needed to meet ROP requirements during the first 10 years and if the State has submitted enforceable commitments to adopt contingency measures to be implemented if the long-term measures do not achieve planned reductions.

None of the long-term measures in the revised ozone plan are scheduled for implementation during the period 1990–2000, and the plan meets CAA requirements for ROP without reliance on the long-term measures, which are needed only for attainment. The revised ozone plan identifies additional measures beyond those credited with reductions toward ROP or attainment, to be scheduled for adoption and implementation in the future. The plan also provides a range of additional emission reductions from several of the short- and intermediate-term measures that may contribute additional emission reductions creditable against all or part of the long-term measure commitments. In addition, the 1999 Amendment includes SCAQMD commitments to submit semi-annual progress reports on meeting the District's commitments, and to hold annual workshops on identifying new controls to minimize, and potentially eliminate, reliance on long-term measures.

Because of SCAQMD's success in accelerating long-term control measures, there remain in the revised ozone plan only 28 tpd of VOC assigned to this special category of measures, which is authorized for extreme ozone areas under CAA section 182(e)(5). The table entitled ''Table 5—Long-Term Control Measures'' displays SCAQMD's long-term measure commitments in the revised ozone plan.

TABLE 5—LONG—TERM CONTROL MEASURES

[2010 VOC reduction in tons per summer day]

| Control measure | Title | Adoption date | Implementation date | Emission reductions |
|---|---|---|---|---|
| ADV–CLNG | Solvent Cleaning and Degreasing Operations | 2003–4 | 2005 | 16 |
| ADV–CTS | Miscellaneous Industrial Coating and Solvent Operations | 2003–5 | 2006–10 | 6 |
| ADV–FUG | Fugitive Emissions | 2003–5 | 2006–10 | 5 |
| ADV-PRC | Industrial Process Operations | 2003–5 | 2006–10 | 1 |
| Total reductions | | | | 28 |

3. Does the revised ozone plan meet the CAA requirements for control measures?

a. Short- and intermediate-term control measure commitments

In our proposed action on the 1997 ozone plan, we proposed to disapprove the near-term control measures because: (1) SCAQMD had already failed to adopt many of the measures by the scheduled date; (2) the control measures represented an impermissible relaxation of the 1994 ozone SIP; and (3) the SIP included unlawful assignments of control measures to the Federal government (64 FR 1775–7). SCAQMD has remedied the first deficiency and is currently on schedule with regard to the commitments in the revised ozone plan. The recently adopted rules and the short-and intermediate-term control measure commitments, as revised in the 1999 Amendment, cure the second deficiency by accelerating emission reduction progress beyond the level set out in the 1997 plan and thereby eliminating our concern regarding backsliding from the 1994 ozone SIP. The third deficiency was remedied by our recent rulemaking concluding the Public Consultative Process (64 FR 39923, July 23, 1999).

We now propose to approve, under CAA section 110(k)(3), the enforceable SCAQMD commitments to adopt and implement the short-and intermediate-term control measures, and to implement those measures that have already been adopted in regulatory form, by the dates specified to achieve the emission reductions shown above in Tables 1, 2, and 3. We are proposing to assign credit to these measures for purposes of the attainment demonstration in the revised ozone plan. We propose to approve SCAQMD's commitment to achieve the overall emission reduction schedule in Table 3, which provides the basis for allowing alternative or revised measures to substitute for those identified in Table 2, so long as SCAQMD continues to meet the Table 3 schedule for adopting and implementing regulations to achieve specific levels of emissions reduction. Finally, we propose to approve the deletion of the 31 control measures from the 1994 ozone SIP, listed above in Table 4.

b. Long-Term Measure Commitments

In our proposed action on the 1997 ozone plan, we proposed to disapprove the long-term control measures because the 1997 plan increased the proportion of reductions assigned to the long-term category, and we believed that CAA section 182(e)(5) did not authorize us to approve SIP revisions that postpone SIP

commitments in the near-term and shift the balance of the SIP toward more distant and less specific commitments (64 FR 1777). The revised ozone plan remedies this deficiency by dramatically reducing the emission reductions assigned to this category.

We therefore propose to approve, as meeting CAA section 182(e)(5), the SCAQMD commitments to adopt and implement the long-term control measures in Table 4, and we propose to assign the emission reductions from these measures to the attainment demonstration in the revised ozone plan. As mentioned above, however, SCAQMD may satisfy all or a part of its long-term control measure obligations by adopting near-and intermediate-term control measures that achieve more emission reductions than assigned to these measures in Table 2.

*E. Does the plan show reasonable further progress?*

1. What are the applicable CAA requirements?

CAA sections 182(c)(2) and (e) require that extreme area ozone SIPs include quantitative milestones that are to be achieved every 3 years until attainment, and that demonstrate reasonable further progress (RFP) toward attainment by the applicable date. CAA section 171(a) of the Act defines RFP as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.''

For ozone areas classified as serious or above, section 182(c)(2) requires that the SIP must provide for reductions in ozone-season, weekday VOC emissions of at least 3 percent per year net of growth averaged over each consecutive 3-year period beginning in 1996 until the attainment date. This is in addition to the 15 percent reduction over the first 6-year period required by CAA section 182(b)(1) for areas classified as moderate and above.

2. How Does the Revised Ozone Plan Address These Requirements?

The revised ozone plan shows reductions consistent with the 3 percent per year rate of progress requirement for 1997–1999 and 2000–2002 through use of VOC emission reductions from currently adopted regulations. For 2003–2005, 2006–2008, and 2009–2010 milestone periods, however, the plan does not have enough creditable VOC reductions to meet the milestones, and must substitute NOx reductions, as allowed by CAA section 182(c)(2)(C). As shown below in the table entitled ''Table 6—Rate-of-Progress Plan,'' NOx substitution accounts for 3.6 percent of the required 9 percent reduction between 2003–2005; 8.5 percent between 2006–2008; and 0.5 percent between 2009–2010.

TABLE 6.—RATE-OF-PROGRESS PLAN

[Emissions Rounded to Nearest Ton per Day]

| | 1999 | | 2002 | | 2005 | | 2008 | | 2010 | |
|---|---|---|---|---|---|---|---|---|---|---|
| | VOC | $NO_x$ | VOC | $NO_x$ | VOC | $NO_x$ | VOC | $NO_x$ | VOC | $NO_x$ |
| Adjusted 1990 Base Year ..... | 1527 | 1472 | 1515 | 1472 | 1510 | 1472 | 1509 | 1472 | 1509 | 1472 |
| Required Percent Reduction ..... | 24 | 0 | 9 | 0 | 5.4 | 3.6 | 0.5 | 8.5 | 0.5 | 8.5 |
| Required Reductions .... | 367 | 0 | 136 | 0 | 82 | 53 | 8 | 125 | 8 | 81 |
| Emissions Target ..... | 1161 | 1472 | 1012 | 1472 | 926 | 1419 | 917 | 1294 | 909 | 1213 |
| Emissions (Adopted Rules) ..... | 982 | 956 | 946 | 859 | 918 | 797 | 913 | 764 | 909 | 751 |
| Emissions (Counting Reductions from Commitments) .. | 939 | 935 | 826 | 815 | 708 | 695 | 587 | 609 | 414 | 530 |

The 1999 Amendment significantly increases VOC reductions in all interim milestone years, compared to the 1997 ozone plan.

3. Does the Revised Ozone Plan Meet the CAA Requirements?

As shown by Table 6, the revised ozone plan meets the ROP requirements based entirely on fully adopted regulations. Taking into account reductions from SCAQMD and CARB enforceable commitments, implementation of the plan should result in reductions in excess of the minimum ROP requirement (compare the last line in Table 6 to the emissions target for each milestone year). This is appropriate, given the enormous reductions required for this area to reach attainment.

Compliance with the milestone and RFP provisions of the Act requires that all of the creditable emission reductions be approved as enforceable parts of the SIP (General Preamble, April 16, 1992, at 57 FR 13517). Because we proposed to disapprove the control measure provisions in the 1997 ozone plan, we also proposed to disapprove the plan with respect to the CAA section 182(c)(2) quantitative milestone and reasonable further progress requirements. As discussed above, however, we now propose to approve the control measures in the revised ozone plan, and therefore propose to approve the new plan as meeting the quantitative milestone and RFP requirements of CAA section 182(c)(2).

*F. Does the Plan Provide for Attainment?*

1. What are the Applicable CAA Requirements?

CAA sections 182(c)(2)(A) and (e) require that ozone SIPs for areas classified as extreme demonstrate attainment of the ozone NAAQS by the applicable deadline—in the case of the South Coast, as expeditiously as practicable but not later than November 15, 2010. CAA section 181(a)(1). The demonstration must be based upon photochemical grid modeling or any other analytical method determined to be at least as effective.

2. How Does the Revised Ozone Plan Address These Requirements?

As discussed above, the modeling approach in the revised ozone plan is consistent with our modeling guidelines. The modeling analysis shows that attainment of the ozone NAAQS will require reducing ozone precursors to the following summer day levels: 413 tpd VOC and 530 tpd $NO_X$. These levels are frequently called the ''carrying capacity'' of the area. The enforceable emission reductions in the revised ozone plan will reduce 2010 baseline emissions to these attainment levels, as shown in the table entitled ''Table 7—Ozone Attainment Demonstration.''

TABLE 7.—OZONE ATTAINMENT DEMONSTRATION

[In tons per summer day]

| | VOC | $NO_X$ |
|---|---|---|
| 1990 baseline emissions | 1733 | 1472 |
| 2010 baseline emissions (assuming reductions from all rules adopted as of 9/96) | 839 | 727 |
| Plan reductions from baseline | 426 | 197 |
| 2010 emissions assuming reductions from plan implementation | 413 | 530 |
| Carrying capacity | 413 | 530 |
| Percent reduction from 1990 baseline emissions | 76% | 64% |

3. Does the Revised Ozone Plan Meet the CAA Requirements?

The revised ozone plan includes enforceable measures and commitments that will achieve the ozone precursor reductions needed to reach attainment, as established in a modeling analysis consistent with our guidelines. Moreover, the stringent new measures, aggressive implementation schedules, and accelerated progress in the revised ozone plan also meet the expeditious attainment requirement of CAA section 181(a). We therefore propose to approve the attainment demonstration under CAA section 182(c)(2).

*G. Are the emissions budgets approvable?*

1. Motor vehicle emissions budgets

Attainment demonstration submittals must specify the maximum motor vehicle emissions allowed in the attainment year and demonstrate that this emissions level, when considered with emissions from all other sources, is consistent with attainment. In order for us to find the budget adequate and approvable, the submittal must meet the conformity adequacy requirements of 40 CFR 93.118(e)(4) and be approvable under all pertinent SIP requirements.

The motor vehicle emissions caps defined by this and other plans when they are approved into the SIP are used to determine the conformity of transportation plans, programs, and projects to the SIP, as described by CAA section 176(c)(2)(A). For more detail on this part of the conformity requirements see 40 CFR 93.118. For transportation conformity purposes, the cap on motor vehicle emissions is known as the motor vehicle emissions budget. The budget must reflect all of the motor vehicle control measures contained in the attainment demonstration (40 CFR 93.118(e)(4)(v)).

The motor vehicle emissions budgets in the revised ozone plan for 2010 are 80.7 tpd VOC and 277.8 tpd $NO_X$. These budgets were developed using the State's EMFAC7G motor vehicle emissions factors. We propose to approve the budgets as consistent with all of the adequacy criteria of 40 CFR 93.118(e)(4), including consistency with the 2010 baseline emissions inventory, the motor vehicle control measure emission reductions used in the attainment demonstration, and the reductions needed for attainment.

In the near future, CARB is expected to issue refinements to the emissions factors for use in transportation conformity determinations. The refinements would more accurately reflect emission reductions associated with the State's motor vehicle inspection and maintenance (I/M) program and other motor vehicle controls.[11] These refinements must be used in conformity determinations, in accordance with our transportation conformity regulations, which require use of the most current and accurate information (40 CFR 93.110(e), 122(a)(2)). Subsequent budgets will reflect these changes and any new or modified control measures.

2. General Conformity Emissions Budgets

CAA section 176(c)(1) provides that ''No department, agency, or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which does not conform to an implementation plan. . . .'' This provision establishes requirements for ''general conformity,'' as distinct from ''transportation conformity,'' discussed above.[12] General conformity must be based on the most recent estimates of emissions in the federally approved SIP.

The revised ozone plan establishes new emissions budgets for ROP milestone years for each source category. The budgets appear in Table 4–9 of Appendix V of the 1997 ozone revision, and are modified by Table 2–6 of the 1999 Amendment, which reduces the stationary source VOC emissions consistent with the new and accelerated SCAQMD control measures in the 1999 Amendment. The emissions budgets as revised by the 1999 Amendment appear below in the table entitled ''Table 8—Emissions Budgets by Milestone Year.''

[11] The updated emission reductions which, among other things, would reflect more accurately the I/M program as compared to the 1994 submittal, are necessary in the case of I/M to account for a legislative change to the program in 1997.

[12] For more details on the general conformity requirements, you should consult 40 CFR 51.850–51.860 and 40 CFR part 93.

TABLE 8.—EMISSIONS BUDGETS BY MILESTONE YEAR

[In tons per day]

| Year | Stationary | | Onroad | | Nonroad | | Total | |
|---|---|---|---|---|---|---|---|---|
| | VOC | $NO_x$ | VOC | $NO_x$ | VOC | $NO_x$ | VOC | $NO_x$ |
| 1999 | 435.2 | 115.7 | 354.0 | 526.8 | 137.3 | 292.6 | 938.6 | 935.1 |
| 2002 | 402.4 | 96.7 | 273.1 | 447.1 | 125.1 | 270.7 | 826.1 | 814.5 |
| 2005 | 334.4 | 91.4 | 206.0 | 369.1 | 116.6 | 234.0 | 707.6 | 694.5 |
| 2008 | 305.1 | 91.4 | 145.4 | 310.1 | 106.7 | 209.2 | 587.4 | 609.0 |
| 2010 | 267.6 | 88.3 | 80.7 | 277.8 | 65.1 | 164.3 | 413.6 | 530.4 |

Final approval of the revised ozone plan would establish these budgets for purposes of general conformity under CAA section 176(c)(1), replacing the budgets in the 1994 ozone SIP. Thus, projects requiring general conformity determinations may be able to show that emissions from the project are specifically included in the revised ozone plan's attainment demonstration (see, 40 CFR 93.158(a)(1)).

*H. What are the implications of EPA's proposed plan approval?*

If we finalize the proposed approval of the revised ozone plan, this plan would replace and supersede the 1994 ozone SIP with the exception of the State control measures for mobile sources, consumer products, and pesticides, and EPA's commitment. These State measures remain unchanged from those approved as part of the 1994 ozone SIP. Final approval would also set new emissions budgets for purposes of conformity.

Our final approval would also make enforceable the SCAQMD commitments to adopt and implement the control measures and regulations listed above in Tables 1, 2, and 5, to achieve the specified emissions reductions, computed consistently with the assumptions in the plan's emissions inventory. Similarly, final plan approval would make enforceable the SCAQMD commitment to achieve the overall emission reduction schedule in Table 3, and this would create the possibility of SCAQMD control measure adjustments and substitutions under the approved SIP, so long as the emission reduction obligations of Table 3 are met.[13]

As discussed in section I.E. above, CARB and SCAQMD intend to adopt and submit a comprehensive revision to the ozone plan in 2001. This new plan will use an entirely new UAM attainment analysis, updated and corrected baseline and projected emissions information, and updates to the control measures to reflect the current status of the measures and any changes to the measures that may be required to meet the emission reduction needs in the new attainment demonstration or to ensure that the SIP emission reduction commitments are met. We strongly support the timely completion of this new comprehensive revision to refine and enhance the technical foundations of the attainment demonstration and update the control measures, as necessary.

[13] Once a substitute control measure has been adopted as a regulation and submitted as a SIP revision, we will undertake formal rulemaking, with opportunity for public comment, on the regulation.

## III. Administrative Requirements

*A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

*B. Executive Order 13132*

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

*C. Executive Order 13045*

Executive Order 13045, entitled 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 E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

*D. Executive Order 13084*

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, 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 the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected 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 rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

*E. Regulatory Flexibility Act*

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

*F. Unfunded Mandates*

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

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

*G. 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.

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 52**

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental regulations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: January 28, 2000.

**Nora L. McGee,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 00–2827 Filed 2–7–00; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

**[Docket No. NH040–7167b; FRL–6532–3]**

## Approval and Promulgation of State Plans for Designated Facilities and Pollutants: New Hampshire; Plan for Controlling Emissions From Existing Hospital/Medical/Infectious Waste Incinerators

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) proposes to approve the Sections 111(d)/129 State Plan submitted by the New Hampshire Department of Environmental Services (DES) on June 2, 1999. This State Plan is for carrying out and enforcing provisions that are at least as protective as the Emissions Guidelines (EG) applicable to certain existing Hospital/Medical/Infectious Waste Incinerator (HMIWI) units in accordance with sections 111 and 129 of the Clean Air Act. The New Hampshire DES submitted the Plan to satisfy certain Federal Clean Air Act requirements. In the Final Rules Section of the **Federal Register**, EPA is approving the New Hampshire State Plan submittal as a direct final rule without a prior proposal. EPA is doing this because the Agency views this action as a noncontroversial submittal and anticipates that it will not receive any significant, material, and adverse comments. A detailed rationale for the approval is set forth in the direct final rule elsewhere in this **Federal Register**. If EPA does not receive any significant, material, and adverse comments to this action, then the approval will become final without further proceedings. If EPA receives adverse comments, the direct final rule will be withdrawn and EPA will address all public comments received in a subsequent final rule based on this proposed rule. EPA will not begin a second comment period.

**DATES:** EPA must receive comments in writing by March 9, 2000.

**ADDRESSES:** You should address your written comments to: Mr. Brian Hennessey, Acting Chief, Air Permits Unit, Office of Ecosystem Protection, U.S. EPA, One Congress Street, Suite 1100 (CAP), Boston, Massachusetts 02114–2023.

Copies of documents relating to this proposed rule are available for public inspection during normal business hours at the following locations. The

interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency, Air Permits Unit, Office of Ecosystem Protection, Suite 1100 (CAP), One Congress Street, Boston, Massachusetts 02114–2023.

New Hampshire Department of Environmental Services, Air Resources Division, 6 Hazen Drive, P.O. Box 95, Concord, New Hampshire 03301–0095, (603) 271–1370.

**FOR FURTHER INFORMATION CONTACT:** John Courcier, Office of Ecosystem Protection (CAP), EPA-New England, Region 1, Boston, Massachusetts 02203, (617) 918–1659, or by e-mail at *courcier.john@epa.gov.* While the public may forward questions to EPA via e-mail, it must submit comments on this proposed rule according to the procedures outlined above.

**SUPPLEMENTARY INFORMATION:** See the information provided in the Direct Final action of the same title which is found in the Rules Section of this **Federal Register**.

Dated: January 20, 2000.

**Mindy S. Lubber,**

*Acting Regional Administrator, Region 1.*

[FR Doc. 00–2473 Filed 2–7–00; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

## 44 CFR Part 67

**[Docket No. FEMA–7314]**

## Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

**ADDRESSES:** The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

**FOR FURTHER INFORMATION CONTACT:** Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

**National Environmental Policy Act**

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

**Regulatory Flexibility Act**

The Associate Director for Mitigation certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

**Regulatory Classification**

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

**Executive Order 12612, Federalism**

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

**Executive Order 12778, Civil Justice Reform**

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

**List of Subjects in 44 CFR Part 67**

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

## PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376. *§ 67.4*

**§ 67.4 [Amended]**

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| Hawaii ..... | City and County of Honolulu. | Moanalua Stream ..... | Approximately 250 feet downstream of Moanalua Road. | *12 | *12 |
| | | | Approximately 180 feet upstream of Jarrett White Road. | None | *29 |
| | | Manaika Stream ..... | At confluence with Moanalua Stream ..... | None | *12 |
| | | | Approximately 260 feet upstream of Mahole Street. | None | *35 |
| | | Waiawa Stream ..... | At Middle Loch ..... | None | *3 |
| | | | Approximately 4,400 feet upstream of confluence with Panakauahi Gulch. | None | *63 |
| | | Overflow of Waiawa Stream. | At Middle Loch ..... | None | *4 |
| | | | Approximately 2,600 feet upstream from Middle Loch. | None | *16 |
| | | Panakauahi Gulch ..... | At confluence with Waiawa Stream ..... | None | *44 |
| | | | Approximately 800 feet upstream of Cane Haul Road. | None | *97 |
| | | Flow along Cane Haul Road. | At convergence point with Panakauahi Gulch. | None | *52 |
| | | | At divergence point from Panakauahi Gulch. | None | *93 |
| | | Split flow of Waiawa Stream. | At Middle Loch ..... | None | *3 |
| | | | Approximately 870 feet upstream of Waipulani Avenue. | None | *11 |
| Maps are available for inspection at the Planning and Zoning Department, 650 S. King Street, Honolulu, Hawaii. | | | | | |
| Send comments to The Honorable Jeremy Harris, Mayor, City and County of Honolulu, 530 S. King Street, Honolulu, Hawaii 96813. | | | | | |
| South Dakota ..... | Jefferson (City) Union County. | Big Sioux River ..... | Approximately 200 feet northwest of intersection of Lincoln Street with the Burlington Northern Railroad. | None | *EL113 |
| | | | Approximately 1,150 feet southeast of intersection of Lincoln Street with the Burlington Northern Railroad. | None | *EL113 |
| Maps are available for inspection at City Hall, 208 Main Street, Jefferson, South Dakota. | | | | | |
| Send comments to The Honorable Tom Brandt, Mayor, City of Jefferson, P.O. Box 276, Jefferson, South Dakota 57038. | | | | | |

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: January 28, 2000.

**Michael J. Armstrong,**

*Associate Director for Mitigation.*

[FR Doc. 00–2804 Filed 2–7–00; 8:45 am]

**BILLING CODE 6718–04–P**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 67

**[Docket No. FEMA–7310]**

### Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

**ADDRESSES:** The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

**FOR FURTHER INFORMATION CONTACT:** Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *matt.miller@fema.gov.*

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

**National Environmental Policy Act**

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

**Regulatory Flexibility Act**

The Associate Director for Mitigation certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

**Regulatory Classification**

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

**Executive Order 12612, Federalism**

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

**Executive Order 12778, Civil Justice Reform**

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

**List of Subjects in 44 CFR Part 67**

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

## PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376. *§ 67.4*

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

**§ 67.4 [Amended]**

| State | City/town/county | Source of flooding | Location | # Depth in feet above ground. *Elevation in feet. (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| Arizona ..... | Santa Cruz County (Unincorporated Areas). | Tubac Creek ..... | At confluence with Santa Cruz River ..... | None | *3,192 |
| | | | Approximately 0.35 mile (1,850 feet) upstream of Interstate 19. | None | *3,263 |
| | | Tubac Creek North Channel. | At confluence with Santa Cruz River ..... | None | *3,189 |
| | | | At divergence from Tubac Creek approximately 680 feet upstream of Calle De Olivas. | None | *3,251 |
| | | Tributary 1 of Tubac Creek. | At confluence with Tubac Creek ..... | None | *3,213 |
| | | | At approximately 0.229 mile (1,210 feet) upstream of Interstate 19. | None | *3,250 |

| State | City/town/county | Source of flooding | Location | # Depth in feet above ground. *Elevation in feet. (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| | | Tributary 2 of Tubac Creek. | At confluence with Tubac Creek ..... | None | *3,195 |
| | | | Immediately downstream of East Frontage Road. | None | 3,222 |
| Maps are available for inspection at Floodplain Administrator, 2150 N. Congress Drive, Nogales, Arizona. | | | | | |
| Send comments to The Honorable Dennis Miller, County Manager, 2150 N. Congress Drive, Nogales, Arizona 85621. | | | | | |
| Iowa ..... | Johnston (City) Polk County. | Beaver Creek ..... | Approximately 1,550 feet above its confluence with Des Moines River. | None | *805 |
| | | | At NW 70th Avenue ..... | *822 | *824 |
| Maps are available for inspection at City Hall, 6221 Merle Hay Road, Johnston, Iowa. | | | | | |
| Send comments to The Honorable Dallas Patterson, Mayor, City of Johnston, P.O. Box 410, Johnston, Iowa 50131. | | | | | |
| Iowa ..... | Urbandale (City) Polk County. | Beaver Creek ..... | Approximately 1,000 feet upstream of Merle Hay Road. | *800 | *811 |
| | | | Approximately 3,600 feet upstream of Merle Hay Road. | *810 | *812 |
| Maps are available for inspection at Community Development Department, City Hall, 3315 70th Street, Urbandale, Iowa. | | | | | |
| Send comments to The Honorable Brad Zaun, Mayor, City of Urbandale, 3315 70th Street, Urbandale, Iowa 50322. | | | | | |
| Louisiana ..... | Tangipahoa Parish (Unincorporated Areas). | Ponchatoula Creek ..... | At Old Genessee Road ..... | None | *54 |
| | | | Approximately 1,100 feet from confluence with Ponchatoula Creek Tributary 2. | None | *60 |
| | | Ponchatoula Creek Tributary 1. | At confluence with Ponchatoula Creek .... | None | *55 |
| | | | Approximately 3,300 feet upstream from confluence with Ponchatoula Creek. | None | *57 |
| | | Ponchatoula Creek Tributary 2. | At confluence with Ponchatoula Creek .... | None | *58 |
| | | | Approximately 2,200 feet upstream from confluence with Ponchatoula Creek. | None | *60 |
| Maps are available for inspection at Parish Permit Office, 15481 Club Deluxe Road, Hammond, Louisiana. | | | | | |
| Send comments to The Honorable Gordon Burgess, Parish President, P.O. Box 215, Amite, Louisiana 70422. | | | | | |
| Louisiana ..... | Village of Tickfaw (Tangipahoa Parish). | Ponchatoula Creek ..... | Approximately 2,950 feet downstream from Highway 442. | None | *60 |
| | | | At Niccio Road ..... | None | *65 |
| | | Ponchatoula Creek Tributary 1. | Approximately 1,100 feet downstream from the Illinois Central Gulf Railroad. | None | *57 |
| | | | Approximately 3,000 feet upstream from State Highway 442. | None | *63 |
| | | Ponchatoula Creek Tributary 2. | Approximately 1,800 feet downstream from Chapel Road. | None | *60 |
| | | | At Chapel Road ..... | None | *61 |
| Maps are available for inspection at City Hall, 50081 Highway 51, Tickfaw, Louisiana. | | | | | |
| Send comments to The Honorable Anthony Lamonte, Mayor, Village of Tickfaw, P.O. Box 249, Tickfaw, Louisiana 70466. | | | | | |
| Louisiana ..... | West Baton Rouge Parish and Incorporated Areas. | Lateral 1–C ..... | At the confluence with the Gulf Intracoastal Waterway. | *9 | *9 |
| | | | At intersection with Interstate 10 ..... | *11 | *10 |
| | | | At intersection with State Highway 986 .... | *17 | *16 |
| | | Oaks Avenue Canal ..... | At the confluence with the Gulf Intracoastal Waterway. | None | *10 |
| | | | Just upstream of LeBlanc Road ..... | None | *19 |
| | | Oaks Avenue Canal Tributary No. 1. | At the confluence with Oaks Avenue Canal. | None | *10 |
| | | | Just upstream of South Jefferson Avenue | None | *25 |
| Maps are available for inspection at Parish Zoning Office, 880 North Alexander, Port Allen, Louisiana. | | | | | |
| Send comments to The Honorable Ted Denster, Parish President, P.O. Box 757, Port Allen, Louisiana 70767. | | | | | |
| Maps are available for inspection at City Hall, 750 N. Jefferson Avenue, Port Allen, Louisiana. | | | | | |
| Send comments to The Honorable Marilyn Robertson, Mayor, City of Port Allen, 750 N. Jefferson Avenue, Port Allen, Louisiana 70767. | | | | | |
| Missouri ..... | Creve Coeur (City) St. Louis County. | Monsanto Sunswept Creek. | Approximately 950 feet downstream of Private Bridge. | *531 | *532 |

| State | City/town/county | Source of flooding | Location | # Depth in feet above ground. *Elevation in feet. (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| | | | Just upstream of Chilton Lane | None | *561 |
| Maps are available for inspection at City Hall, 300 North New Ballas Road, Creve Coeur, Missouri. | | | | | |
| Send comments to The Honorable Annette Kolis-Mandel, Mayor, City of Creve Coeur, 300 North New Ballas Road, Creve Coeur, Missouri 63141. | | | | | |
| Missouri | Des Peres (City) St. Louis County. | Des Peres Creek | At confluence with Sugar Creek | *448 | *450 |
| | | | Approximately 450 feet upstream of Hospital Drive. | *460 | *459 |
| | | Sugar Creek | Approximately 1,150 feet downstream of Old Dougherty Ferry Road. | *445 | *446 |
| | | | Just upstream of Interstate 270 | *463 | *462 |
| Maps are available for inspection at City Hall, 12325 Manchester Road, Des Peres, Missouri. | | | | | |
| Send comments to The Honorable Sharon Burkhardt, Mayor, City of Des Peres, 12325 Manchester Road, Des Peres, Missouri 63131. | | | | | |
| Missouri | Frontenac (City) St. Louis County. | Deer Creek | Just upstream of Lindbergh Boulevard | *523 | *524 |
| | | | Approximately 3,300 feet upstream of Spoede Road. | *541 | *542 |
| | | Monsanto Sunswept Creek. | Approximately 400 feet downstream of Glen Abbey Road. | *527 | *528 |
| | | | Approximately 180 feet upstream of Glen Abbey Road. | *527 | *528 |
| Maps are available for inspection at City Hall, 10555 Clayton Road, Frontenac, Missouri. | | | | | |
| Send comments to The Honorable Mark C. Brennan, Mayor, City of Frontenac, 10555 Clayton Road, Frontenac, Missouri 63131. | | | | | |
| Missouri | Kirkwood (City) St. Louis County. | Sugar Creek | Just upstream of Interstate 270 | *463 | *462 |
| | | | Approximately 150 feet upstream of Interstate 270. | *463 | *462 |
| Maps are available for inspection at City Hall, 139 South Kirkwood Road, Kirkwood, Missouri. | | | | | |
| Send comments to The Honorable Marge Schramm, Mayor, City of Kirkwood, 139 South Kirkwood Road, Kirkwood, Missouri 63122. | | | | | |
| Missouri | St. Louis County (Unincorporated Areas). | Grand Glaize Creek | Approximately 400 feet upstream of Dougherty Ferry Road. | *441 | *442 |
| | | | Approximately 3,000 feet upstream of Dougherty Ferry Road. | *445 | *446 |
| Maps are available for inspection at the Department of Planning, 41 South Central Avenue, Clayton, Missouri. | | | | | |
| Send comments to The Honorable Buzz Westfall, St. Louis County Executive, 41 South Central Avenue, Clayton, Missouri 63105. | | | | | |
| Missouri | Valley Park (City) St. Louis County. | Grand Glaize Creek | Grand Glaize Creek. | | |
| Maps are available for inspection at City Hall, 320 Benton Street, Valley Park, Missouri. | | | | | |
| Send comments to The Honorable Daniel Adams, Mayor, City of Valley Park, City Hall, 320 Benton Street, Valley Park, Missouri 63088. | | | | | |
| Missouri | Westwood (Village) St. Louis County. | Deer Creek | Approximately 3,300 feet upstream of Spoede Road. | *541 | *542 |
| | | | Approximately 4,500 feet upstream of Spoede Road. | None | *549 |
| Maps are available for inspection at 9 Westwood Country Club Ground Road, Westwood, Missouri. | | | | | |
| Send comments to The Honorable Phillip Isserman, Chairman, Board of Trustees, Village of Westwood, 9 Westwood Country Club Gardens, Westwood, Missouri 63131. | | | | | |
| Nevada | Washoe County and Incorporated Areas. | Golden Valley Wash | Approximately 2,180 feet upstream of Tholl Drive. | None | 4,981 |
| | | | Approximately 2,700 feet upstream of Spearhead Way. | None | *5,176 |
| | | Hidden Valley Wash | Approximately 1,800 feet upstream of its confluence with Steamboat Creek. | None | *4,442 |
| | | | Approximately 3,420 feet upstream of Parkway Drive. | None | *4,647 |
| | | Sun Valley Wash | At the Sun Valley Flood Control Detention Dam. | *4,445 | *4,548 |
| | | | At East 7th Avenue | None | *4,725 |
| | | Sun Valley Wash Split Flow. | At convergence with Sun Valley Wash | None | 4,647 |

| State | City/town/county | Source of flooding | Location | # Depth in feet above ground. *Elevation in feet. (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| | | | At divergence from Sun Valley Wash ..... | None | *4,695 |
| Maps are available for inspection at Washoe County Engineering Department, 1001 E. 9th Street, Reno, Nevada. | | | | | |
| Send comments to The Honorable Jim Galloway, Commission Chairman, P.O. Box 11130, Reno, Nevada 89520. | | | | | |
| Maps are available for inspection at Engineering Department, 431 Prater Way, Sparks, Nevada. | | | | | |
| Send comments to The Honorable Tony Armstrong, Mayor, City of Sparks, 431 Prater Way, Sparks, Nevada 89431. | | | | | |
| North Dakota ..... | Fargo (City) Cass County. | County Drain 45 ..... | At County Road 14 (52nd Avenue) ..... | None | *893 |
| | | | Approximately 2,800 feet upstream of 19th Avenue. | None | *894 |
| Maps are available for inspection at City Hall, 200 N. 3rd Street, Fargo, North Dakota. | | | | | |
| Send comments to The Honorable Bruce Furness, Mayor, City of Fargo, 200 N. 3rd Street, Fargo, North Dakota 58102. | | | | | |
| North Dakota ..... | Harwood (City) Cass County. | Sheyenne River ..... | At U.S. Highway 81 ..... | None | *891 |
| | | | Approximately 7,600 feet upstream from County Highway 22. | None | *894 |
| | | County Drain 40/45 ..... | Approximately 3,600 feet downstream from County Highway 22. | None | *890 |
| | | | Approximately 1,200 feet upstream from County Drain 40/45 split. | None | *897 |
| Maps are available for inspection at City Hall, 202 Dakota Avenue, Harwood, North Dakota. | | | | | |
| Send comments to The Honorable Garry Roth, Mayor, City of Harwood, 108 Lind Boulevard, Harwood, North Dakota 58042. | | | | | |
| North Dakota ..... | Reed (Township) Cass County. | Sheyenne River ..... | Approximately 7,400 feet downstream of County Road 17. | *893 | *894 |
| | | | At 52nd Avenue ..... | *895 | *896 |
| | | | Approximately 1,600 feet upstream of its confluence with County Drain 21. | *898 | *898 |
| | | County Drain 21 ..... | At confluence with the Sheyenne River ... | *898 | *898 |
| | | | Approximately 900 feet upstream of its confluence with the Sheyenne River. | None | *898 |
| | | County Drain 45 ..... | Approximately 5,800 feet downstream of 52nd Avenue. | None | *893 |
| | | | At County Road 20 ..... | None | *893 |
| | | Maple River ..... | At its confluence with the Sheyenne River | None | *897 |
| | | | Approximately 480 feet upstream of its confluence with the Sheyenne River. | None | *897 |
| Maps are available for inspection at City Hall, 7420 40th Avenue North, Fargo, North Dakota. | | | | | |
| Send comments to The Honorable Gene Johnson, Mayor, Reed Township, 7420 40th Avenue North, Fargo, North Dakota 58103. | | | | | |
| North Dakota ..... | Reiles Acres (City) Cass County. | County Drain 45 ..... | Approximately 5,400 feet downstream from 32nd Avenue. | None | *893 |
| | | | Approximately 3,000 feet upstream from 32nd Avenue. | None | *893 |
| Maps are available for inspection at 3348 45th Street N.W., Reiles Acres, North Dakota. | | | | | |
| Send comments to The Honorable David Baumann, Mayor, City of Reiles Acres, 3545 46th Street N.W., Fargo, North Dakota 58108. | | | | | |
| North Dakota ..... | West Fargo (City) Cass County. | Sheyenne River ..... | Approximately 8,700 feet downstream from 19th Avenue. | None | *898 |
| | | | At confluence with County Drain 2 ..... | None | *899 |
| | | County Drain 21 ..... | Approximately 1,400 feet downstream from Township Road. | *898 | *898 |
| | | | At divergence of County Drain 21 outlet structure. | None | *899 |
| Maps are available for inspection at City Hall, 800 4th Avenue East, West Fargo, North Dakota. | | | | | |
| Send comments to The Honorable David Stedman, Mayor, City of West Fargo, 800 4th Avenue East, West Fargo, North Dakota 58078. | | | | | |
| South Dakota ..... | North Sioux (City) Union County. | Big Sioux River ..... | Approximately 5,900 feet downstream from Military Road. | *1,100 | *1,101 |
| | | | Approximately 7,425 feet upstream from the Chicago Milwaukee St. Paul and Pacific Railroad. | *1,109 | *1,108 |
| | | Big Sioux River Split at Interstate 29. | Approximately 50 feet downstream from Westshore Drive. | None | *1,109 |
| | | | At divergence from Big Sioux River ..... | None | *1,110 |
| Maps are available for inspection at City Hall, 301 Military Road, North Sioux City, South Dakota. | | | | | |

| State | City/town/county | Source of flooding | Location | # Depth in feet above ground. *Elevation in feet. (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| Send comments to The Honorable Lieser Hallwas, Mayor, P.O. Box 338 North Sioux City, South Dakota 57049. | | | | | |
| South Dakota | Union County (Unincorporated Areas). | Big Sioux River | At mouth of Big Sioux River | *1,090 | *1,090 |
| | | | At Interstate 29 | None | *1,094 |
| | | | At State Route 48 | None | *1,143 |
| | | | Approximately 1,800 feet downstream of Westshore Drive. | None | *1,108 |
| | | Big Sioux River Split at Interstate 29. | At divergence from Big Sioux River | None | *1,110 |
| Maps are available for inspection at Union County Planning and Zoning Office, 209 East Main, Elk Point, South Dakota. | | | | | |
| Send comments to The Honorable Roger Boldenow, Chairman, Union County Commissioners, County Courthouse, 209 East Main Street, Elk Point, South Dakota 57025. | | | | | |
| Texas | Gillespie County and Incorporated Areas. | Baron's Creek | Approximately 4,000 feet upstream of U.S. Highway 290. | *1,611 | *1,611 |
| | | | Approximately 4,200 feet upstream of U.S. Highway 290. | *1,611 | *1,612 |
| | | | Downstream of East Main Street | *1,649 | *1,650 |
| | | Stream FB–1 | At confluence with Baron's Creek | *1,641 | *1,641 |
| | | | Approximately 1,500 feet upstream of confluence with Baron's Creek. | *1,646 | *1,647 |
| | | | Approximately 1,950 feet upstream of Lower Crabapple Road. | None | *1,780 |
| | | Town Creek | Approximately 60 feet downstream of Edison Street. | *1,710 | *1,710 |
| | | | Approximately 200 feet upstream of Schubert Road. | *1,712 | *1,711 |
| | | | Approximately 2,150 feet upstream of Morse Street. | None | *1,751 |
| | | Pedernales River | At Gillespie/Blanco County Line | None | *1,398 |
| | | | Approximately 3,100 feet upstream of Cellemar Lane. | None | *1,473 |
| | | Salt Branch | At confluence with Pedernales River | None | *1,442 |
| | | | Approximately 4,300 feet upstream of Highway 290. | None | *1,473 |
| | | Stream SB–1 | At confluence with Salt Branch | None | *1,444 |
| | | | Approximately 5,800 feet upstream of Highway 290. | None | *1,465 |
| | | Split Flow #1 | At convergence with Pedernales River | None | *1,422 |
| | | | At divergence from Pedernales River | None | *1,435 |
| Maps are available for inspection at City Hall, 126 W. Main Street, Fredericksburg, Texas. | | | | | |
| Send comments to The Honorable Linda Langerhans, Mayor, City of Fredericksburg, P.O. Box 111, Fredericksburg, Texas 78624. | | | | | |
| Maps are available for inspection at Gillespie County Floodplain Department, 101 West Main, Unit #9, Fredericksburg, Texas. | | | | | |
| Send comments to The Honorable Mark Stroeher, County Judge, 101 West Main, Unit #9, Fredericksburg, Texas 78624. | | | | | |
| Texas | Tom Green County (Unincorporated Areas). | Red Arroyo | Just downstream of eastbound Route 67 | None | *1,888 |
| | | | Approximately 1,300 feet upstream of earthen lake dam. | None | *1,987 |
| | | Stream RA–1 | At confluence with Red Arroyo | None | *1,897 |
| | | | Just downstream of O.C. Fisher Dam spillway. | None | *1,928 |
| | | Stream RA–2 | At confluence with Red Arroyo | None | *1,898 |
| | | | Just upstream of Arden Road | None | *1,941 |
| | | Goodfellow Draw | 120 feet downstream of Stock Tank Dam | None | *1,805 |
| | | | 790 feet upstream of Stock Tank Dam | None | *1,810 |
| Maps are available for inspection at the Public Health Building, Two City Hall Plaza, San Angelo, Texas. | | | | | |
| Send comments to The Honorable Michael D. Brown, Judge, Tom Green County, County Courthouse, 112 West Beauregard Street, San Angelo, Texas 76902. | | | | | |
| Washington | Whatcom County and Incorporated Areas. | Johnson Creek | At the confluence with Sumas River | None | *38 |
| | | | Approximately 1,500 feet upstream of South Pass Road. | None | *85 |

| State | City/town/county | Source of flooding | Location | # Depth in feet above ground. *Elevation in feet. (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| | Whatcom County Incorporated Areas (Cont'd). | Nooksack River | At Bellingham Bay | None | *8 |
| | | | Approximately 600 feet downstream of Burlington Northern Railroad, at the confluence with South Fork. | *226 | *222 |
| | | Nooksack River Right Overbank Divided Flow. | At Lummi Bay | None | *8 |
| | | | Approximately 800 feet upstream of River Road. | None | *26 |
| | | Middle Fork Nooksack River. | At the confluence with North Fork Nooksack River. | None | *284 |
| | | | Approximately 11,500 feet upstream of the confluence of Canyon Creek. | None | *406 |
| | | North Fork Nooksack River. | At the confluence with South Fork Nooksack River. | None | *222 |
| | | | Approximately 35,600 feet (7 miles) upstream from Mosquito Lake Road. | None | *466 |
| | | South Fork Nooksack River. | At the confluence with North Fork Nooksack River. | *226 | *222 |
| | | | Approximately 7,400 feet upstream of Saxon Road. | *386 | *385 |
| | | South Fork Nooksack River Divided Flow. | At Burlington Northern Railroad | None | *246 |
| | | | At Acme Road | None | *280 |
| | | Samish River | Approximately 2,900 feet downstream of Wickersham Road at the County Boundary. | None | *267 |
| | | | At Burlington Northern Railroad | None | *311 |
| | | Squalicum Creek | Approximately 200 feet upstream of Chicago, Milwaukee, St. Paul and Pacific Railroad. | None | *127 |
| | | | Approximately 2,000 feet upstream of Dewey Road. | None | *206 |
| | | Sumas River | Approximately 1,700 feet downstream of Jones Road at the International Boundary. | None | *34 |
| | | | Approximately 1,000 feet upstream of Massey Road. | None | *93 |
| | | Sumas River Left Overbank Divided Flow. | Approximately 200 feet downstream of Telegraph Road. | None | *56 |
| | | | Approximately 6,300 feet upstream of Kadin Road. | None | *69 |
| | | Terrell Creek | Approximately 500 feet downstream of Alderson Road. | None | *8 |
| | | | At Helweg Road | None | *10 |

Maps are available for inspection at Whatcom County Public Works Department, Division of Engineering, 5280 NW Drive, Suite C, Bellingham, Washington.

Send comments to The Honorable Pete Kremen, County Executive, 311 Grand Avenue #108, Bellingham, Washington 98225.

Maps are available for inspection at the Community Development Department, 210 Lottie Street, Bellingham, Washington.

Send comments to The Honorable Mark Asmundson, Mayor, City of Bellingham, 210 Central Avenue, Bellingham, Washington 98225.

Maps are available for inspection at City Hall, 111 W. Main Street, Everson, Washington.

Send comments to The Honorable Gena Tolle, Mayor, P.O. Box 315, Everson, Washington 98247.

Maps are available for inspection at the Planning Department, 5694 2nd Avenue, Ferndale, Washington.

Send comments to The Honorable Yvonne Goldsmith, Mayor, City of Ferndale, 5694 2nd Avenue, Ferndale, Washington 98248.

Maps are available for inspection at the Planning Department 2828 Kwina Road, Bellingham, Washington.

Send comments to The Honorable Tim Ballew, Tribal Chair, City of Lummi Indian Nation, 2626 Kwina Road, Bellingham, Washington 98226.

Maps are available for inspection at the Planning Department, 323 Front Street, Lynden, Washington.

Send comments to The Honorable Daryl Brennick, Mayor, City of Lynden, 323 Front Street, Lynden, Washington 98264.

Maps are available for inspection at City Hall, 103 W. Madison Street, Nooksack, Washington 98276.

Send comments to The Honorable James S. Ackerman, Mayor, City of Nooksack, P.O. Box 4265, Nooksack, Washington 98276.

Maps are available for inspection at City Hall, 433 Cherry Street, Sumas, Washington 98295.

Send comments to The Honorable Don Peterson, Mayor, City of Sumas, P.O. Box 9 Sumas, Washington 98295.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: January 28, 2000.

**Michael J. Armstrong,**

*Associate Director for Mitigation.*

[FR Doc. 00–2805 Filed 2–7–00; 8:45 am]

**BILLING CODE 6718–04–P**

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 46 CFR Parts 110 and 111

**[USCG–1999–6096]**

**RIN 2115–AF89**

## Marine Shipboard Electrical Cable Standards

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to amend its electrical engineering regulations for merchant vessels by adding alternate cable standards that are equivalent to the existing standards. Our intent is to revise requirements that create an unwarranted difference between domestic rules and international standards for marine cable.

**DATES:** Comments and related material must reach the Docket Management Facility on or before May 8, 2000.

**ADDRESSES:** To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–1999–6096), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

You may inspect the material proposed for incorporation by reference at room 1300, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–0658. Copies of the material are available as indicated in the ''Incorporation by Reference'' section of this preamble.

**FOR FURTHER INFORMATION CONTACT:** For questions on this proposed rule, call Ms. Dolores Mercier, Project Manager, Office of Design and Engineering Standards (G–MSE), Coast Guard, telephone 202–267–0658. For questions on viewing or submitting material to the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

**SUPPLEMENTARY INFORMATION:**

*Request for Comments*

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–1999–6096), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

**Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

**Background and Purpose**

Since the last revision of our electrical engineering regulations in 46 CFR chapter I, subchapter J, (62 FR 23894, May 1, 1997), we have received a number of letters concerning the construction requirements in 46 CFR 111.60–1 and 111.60–3 for cable used on merchant vessels. Sections 111.60–1 and 111.60–3 allow the use of cables meeting certain industry standards listed in those sections. The letters suggest that there are other cable standards beside those listed in the two sections that would provide a level of performance and safety equivalent to the listed standards. The Coast Guard reviewed these standards and found them to be equivalent. Therefore, the purpose for this notice of proposed rulemaking is to gather your comments on whether you agree that these standards do provide an equivalent level of performance and safety for cable used on merchant vessels. The Coast Guard completed equivalency determinations on UL 1309 (1995); IEC 92–350, 1988, amendment 1 (1994); and IEC 92–353 (1995–01). We believe that these standards offer an equivalent level of performance and safety to those standards already listed. These equivalency determinations have been placed in the public docket for the rulemaking.

In the text of the Transportation and Infrastructure Committee report accompanying HR 820, the committee stated that the Coast Guard should undertake a formal rulemaking process before deciding whether IEC 92–350, IEC 92–353, and UL 1309 are approved for use.

The Coast Guard encourages public comment on all aspects of this rulemaking initiative.

*Discussion of Proposed Rule*

The title and edition of the standards referred to in this discussion are found in proposed § 110.10–1(b) or in existing 46 CFR 110.10–1(b).

*Proposed § 111.60–1(a)*

This paragraph would be amended to allow the use of marine shipboard cable meeting UL 1309, IEC 92–350, or IEC 92–353, as well as cable meeting one of the standards presently listed.

*Proposed § 111.60–1(b)*

This paragraph would be amended to specify the flammability requirements for cable meeting IEC 92–350 or IEC 92–353.

*Proposed § 111.60–1(c)*

This paragraph would be amended to also allow the use of type T/N cable as listed in UL 1309.

*Proposed § 111.60–3(a)*

This paragraph would be amended to allow the use of marine shipboard cable meeting UL 1309, IEC 92–350, or IEC 92–353, as well as cable meeting one of the standards presently listed.

*Proposed § 111. 60–3(b)*

This paragraph would be amended to also allow the use of type T/N cable as listed in UL 1309.

This rulemaking is intended to further reduce the regulatory burden on the industry, eliminate misinterpretation of the regulations by all affected parties, and bring the regulations in line with the current technology in the industry as well as with standards accepted by the international maritime community.

**Incorporation by Reference**

Material proposed for incorporation by reference appears in 46 CFR 110.10–1(b). You may inspect this material at U.S. Coast Guard Headquarters where indicated under **ADDRESSES**. Copies of the material are available from the sources listed in § 110.10–1(b).

Before publishing a final rule, we will submit this material to the Director of the Federal Register for approval of the incorporation by reference.

**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. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). We expect 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.

The proposed rule would provide a greater choice in the type of shipboard cables by allowing the use of cables made to standards other than those specified in the current regulations. This should increase the number of choices for vessel owners without increasing costs. In addition, it might benefit vessel owners by enhancing competition within the cable industry.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises 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.

As discussed in the Regulatory Evaluation section of this preamble, there are no costs associated with it this proposed rule. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

**Collection of Information**

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

**Federalism Summary Impact Statement**

We have analyzed this proposed rule under Executive Order 13132, Federalism. This rule would amend the regulations on vessel design and construction. In particular, it would provide vessel owners with additional options in the choice of cable used on their vessels.

It is well settled that States are precluded from regulating in the categories of vessel design, construction, and equipment—categories that are reserved for regulation by the Coast Guard under 46 U.S.C. 3306 and 3703(a). See *Ray* v. *Atlantic Richfield Co.*, 435 U.S. 151 (1978), which clearly evidences Congressional intent to preempt State law, because the exercise of State authority would conflict with the exercise of Federal authority under Federal statute. Also see *International Association of Independent Tank Vessel Owners (Intertanko)* v. *Locke*, 148 F.3d 1053 (9th Cir. 1998). Further, it is the position of the United States that all of the categories covered in 46 U.S.C. 3306 and 3703(a), 7101, and 8101 (e.g., design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels) are within the field foreclosed from State regulation. See the Brief for the United States at 26, *United States* v. *Locke; Intertanko* v. *Locke* (Nos. 98–1701 and 98–1706) (cert. granted 120 S. Ct. 133), available in LEXIS, Genfed Library, Briefs file. This entire rule falls into the field encompassed by 46 CFR 3306 and 3703(a), where, by operation of law, State regulation is precluded. For this reason, consultation under section 6 of the Executive Order would not be meaningful and, therefore, is unnecessary.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

**Taking of Private Property**

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

**Environment**

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraphs (34)(d) and (e), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. This rule concerns the equipping of, and carriage requirements for, vessels. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

**List of Subjects**

*46 CFR Part 110*

Incorporation by reference, Reporting and recordkeeping requirements, Vessels.

*46 CFR Part 111*

Vessels.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR parts 110 and 111 as follows:

## PART 110—GENERAL PROVISIONS

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

**Authority:** 33 U.S.C. 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.45, 1.46; § 110.01–2 also issued under 44 U.S.C. 3507.

2. In § 110.10–1(b), in the entries for ''International Electrotechnical Commission'' and ''Underwriters Laboratories, Inc.,'' revise the introductory text and add, in numerical order, new standards IEC 92–350, IEC 92–353, and UL 1309 to read as follows:

**§ 110.10–1 Incorporation by reference.**

* * * * *

(b) * * *

* * * * *

| | |
|---|---|
| *International Electrotechnical Commission (IEC),* 3 Rue de Varembe, Geneva, Switzerland. (Also available from ANSI.). | |
| * * * * * | |
| IEC 92–350, Electrical Installations in Ships, Part 350: Low Voltage Shipboard Power Cables—General Construction and Test Requirements, 1988 amendment 1 (1994). | 111.60–1 |
| * * * * * | |
| IEC 92–353, Electrical Installations in Ships, Part 353: Single and Multicore Non-radial Field Power Cables with Extruded Solid Insulation for Rated Voltages 1kV and 3kV, 1995–01. | 111.60–1; 111.60–3 |
| * * * * * | |
| *Underwriters Laboratories, Inc. (UL),* 12 Laboratory Drive, Research Triangle Park, NC 27709–3995.. | |
| * * * * * | |
| UL 1309, Standard for Marine Shipboard Cables, 1995. | 111.60–1; 111.60–3 |
| * * * * * | |

## PART 111—ELECTRIC SYSTEMS—GENERAL REQUIREMENTS

3. The authority citation for part 111 continues to read as follows:

**Authority:** 46 U.S.C. 3306, 3703; 49 CFR 1.46.

4. In § 111.60–1, revise paragraphs (a) and (b) and the introductory text of paragraph (c) to read as follows:

**§ 111.60–1 Cable construction and testing.**

(a) Each marine shipboard cable must meet all of the construction and identification requirements of either IEEE Std 45, IEC 92–3, IEC 92–350, IEC 92–353, UL 1309, MIL–C–24640A, or MIL–C–24643A and the respective flammability test contained in them and be of a copper stranded type.

**Note to Paragraph (a):** MIL–C–915 cable is acceptable only for repairs and replacements in kind. MIL–C–915 cable is no longer acceptable for alterations, modifications, conversions, or new construction. (See § 110.01–3 of this chapter).

(b) Each cable constructed to IEC 92–3 or IEC 92–353 must meet the flammability requirements of IEC 332–3, Category A.

(c) Electrical cable that has a polyvinyl chloride insulation with a nylon jacket (Type T/N) must meet UL 1309 or, must meet the requirements for polyvinyl chloride insulated cable in section 18 of IEEE Std 45, except—

* * * * *

5. In § 111.60–3, revise paragraphs (a) and (b) to read as follows:

**§ 111.60–3 Cable application.**

(a) Cable constructed in accordance with IEEE Std 45 must meet the cable application provisions of section 19 of IEEE Std 45. Cable constructed in accordance with IEC 92–3, IEC 92–353, or UL 1309 must meet the provisions of section 19 of IEEE Std 45, except 19.6.1, 19.6.4, and 19.8. Cable constructed in accordance with IEC 92–3 and IEC 92–353 must comply with the ampacity values of IEC 92–352, Table 1.

(b) Type T/N cables must meet section 19 of IEEE Std 45 for Type T insulation or the provisions listed in UL 1309.

* * * * *

Dated: February 2, 2000.

**Joseph J. Angelo,**

*Acting Assistant Commandant for Marine Safety and Environmental Protection.*

[FR Doc. 00–2821 Filed 2–7–00; 8:45 am]

BILLING CODE 4910–15–U

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 1

**[WT Docket No. 97–82; FCC 99–384]**

### Communication Between Applicants in Commission Spectrum Auctions

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to amend the regulation of the Federal Communications Commission (FCC) regarding communications between applicants in FCC spectrum auctions. The Commission proposes to require any auction applicant that makes or receives a prohibited communication of bids or bidding strategies to report promptly such a communication to the Commission. The information reported to the FCC would facilitate the Commission's monitoring and investigation of unlawful activity during Commission spectrum auctions.

**DATES:** Comments are due on or before April 10, 2000. Reply comments are due on or before June 7, 2000. Written comments by the public on the proposed information collections are due April 10, 2000. The Office of Management and Budget (OMB) must submit written comments on the proposed information collection(s) on or before April 10, 2000.

**ADDRESSES:** An original and four copies of each filing must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, TW–A306, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. If you want each Commissioner to receive a copy of your comments, you must file an original plus eleven copies. Alternatively, comments and reply comments may be filed with the FCC using the Commission's Electronic Comment Filing System (''ECFS''), via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (May 1, 1998).

In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Virginia Huth, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to *vhuth@omb.eop.gov*.

**FOR FURTHER INFORMATION CONTACT:** Richard Arsenault, Commercial Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, 418–0920, or via the Internet at *rarsenau@fcc.gov.* For additional information concerning the information collection(s) contained in this document, contact Judy Boley at 202–418–0214, or via the Internet at *jboley@fcc.gov*.

**SUPPLEMENTARY INFORMATION:** 1. In the subject Notice of Proposed Rulemaking (NPRM), the FCC proposes to amend its regulation, 47 CFR 1.2105(c)(1), regarding communications between applicants in FCC spectrum auctions. The Commission proposes to amend

§ 1.2105(c)(1) to require any auction applicant that makes or receives a communication of bids or bidding strategies prohibited by § 1.2105(c)(1) to report promptly such a communication to the Commission. The Commission also proposes to amend § 1.2105(c)(1) to reflect a recent clarification that the rule prohibits an auction applicant from discussing another applicant's bids or bidding strategies even if the first applicant does not discuss its own bids or bidding strategies. *See Western PCS BTA 1 Corporation,* Memorandum Opinion and Order at paragraphs 7 through 9, FCC 99–385 (released December 13, 1999). Lastly, the Commission seeks comment regarding whether other changes to § 1.2105(c)(1) may be warranted at this time.

2. The proposed rules are not major rules for the purposes of Executive Order 12866. As required by the Regulatory Flexibility Act, the FCC certifies that the proposed rules will not have a significant impact on small business entities. The NPRM contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. The Commission, as part of its continuing effort to reduce paperwork burdens, invites OMB, the general public, and other Federal agencies to comment on the information collection(s) contained in the NPRM, as required by the PRA. Public and agency comments are due April 10, 2000. OMB notification of action is due April 10, 2000. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

3. Parties who chose to file comments or reply comments on the NPRM using the Commission's ECFS system, should include their full name, postal service mailing address, and the applicable docket or rulemaking number on the transmittal screen. Parties may also submit an electronic comment by Internet e-mail. To obtain filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Parties who choose to file by paper should also submit their comments on diskette. A 3.5-inch diskette formatted in an IBM compatible format using Microsoft Word for Windows or compatible software Diskettes should be submitted to: Richard Arsenault, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th Street, SW., Room 4–A234, Washington, DC 20554. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number in this case—WT Docket No. 97–82), type of pleading (comments or reply comments), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036.

*OMB Control Number:* 3060–XXXX.

*Title:* Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures

*Form No.:* None.

*Type of Review:* New collection.

*Respondents:* Individuals or households; business or other for-profit; not-for-profit institutions; and/or state, local or tribal governments.

*Number of Respondents:* 25.

*Estimated Time Per Response:* 8 hours.

*Total Annual Burden:* 200 hours

*Total Annual Costs:* $40,000.

*Needs and Uses:* Section 1.2105(c)(1) of the Commission's rules provides that ''all [auction] applicants are prohibited from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies. . . .'' 47 CFR 1.2105(c)(1). The Commission's experience enforcing § 1.2105(c)(1) over the past five years, however, indicates that, on occasion, some auction applicants engage in communications prohibited by the rule. In the NPRM, we seek comment on amending § 1.2105(c) to require anyone who makes or receives a communication of bids or bidding strategies prohibited under § 1.2105(c)(1) to report promptly such a communication to the Commission. This amendment is intended to deter parties from engaging in prohibited conduct and thereby enhance the competitiveness and fairness of our spectrum auctions. The information reported to the FCC would facilitate the Commission's monitoring and investigation of unlawful activity during Commission spectrum auctions.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–2766 Filed 2–7–00; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**RIN 1018–AF92**

## Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Spectacled Eider

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the spectacled eider (*Somateria fischeri*), a threatened species listed pursuant to the Endangered Species Act of 1973, as amended (Act). Proposed designation of critical habitat for the spectacled eider includes areas on Alaska's North Slope and adjacent marine waters; the Yukon-Kuskokwim Delta (Y–K Delta) and adjacent marine waters; and Norton Sound, Ledyard Bay, and the Bering Sea between St. Lawrence and St. Matthew Islands. These areas total 193,054 square kilometers ($km^2$) (74,539 square miles ($mi^2$)) or 19,305,400 hectares (ha) (47,704,500 acres).

If this proposal is made final, Federal agencies proposing actions that may affect the areas designated as critical habitat must consult with us on the effects of the proposed actions, pursuant to section 7(a)(2) of the Act. Section 4 of the Act requires us to consider economic and other impacts of specifying any particular area as critical habitat. We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designation. We may revise this proposal to incorporate or address new information received during the comment period.

**DATES:** We will accept comments from all interested parties until May 8, 2000. Public hearing requests must be

received in writing at the address below by March 24, 2000. We will publish the dates and locations of any public hearings in the **Federal Register** and appropriate local newspapers at least 15 days prior to the first hearing.

**ADDRESSES:** Send your comments and other materials on this proposal to Ann G. Rappoport, Field Supervisor, Anchorage Field Office, U.S. Fish and Wildlife Service, 605 West 4th Avenue, Room G–61, Anchorage, AK 99501. The complete file for this rule is available for inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Ann G. Rappoport, Field Supervisor, at the above address (telephone 907/271–2787 or toll-free 800/272–4174; facsimile 907/271–2786).

**SUPPLEMENTARY INFORMATION:**

## Background

### *Description*

The spectacled eider is a large sea duck, 52–56 centimeters long (20–22 inches). Sea ducks, waterfowl that spend at least part of their lives at sea, are a subgroup of the subfamily Anatinae, family Anatidae. The spectacled eider is one of three species in the genus *Somateria* found in the United States. The species was first described by Brandt in 1847 as *Fuligula fischeri,* then later placed in the genera *Lampronetta* and *Arctonetta,* and finally under *Somateria* (American Ornithologist's Union 1983). Within each subfamily, taxonomists group the waterfowl species into tribes, but while Delacour and Mayr (1945) originally placed the eiders (Tribe Somaterini) in a separate tribe from other sea ducks (Tribe Mergini), Johnsgard (1960) and others have grouped them together under Tribe Mergini.

In the winter and spring, adult males are in breeding plumage with a black chest, white back, and pale green head with a long sloping forehead and black-rimmed white spectacle-like patches around the eyes. During the late summer and fall, males are mottled brown. Females and juveniles are mottled brown year-round with pale brown eye patches. Spectacled eiders are diving ducks that spend most of the year in marine waters where they primarily feed on bottom-dwelling molluscs and crustaceans.

### *Geographic Range*

In the United States, spectacled eiders historically nested discontinuously from the Nushagak Peninsula of southwestern Alaska north to Barrow and east nearly to the Canadian border. Today two breeding populations remain in Alaska. The remainder of the species breeds in Arctic Russia. This entire species, including the Arctic Russian population, is listed under the Act as threatened wherever it occurs.

On the Y–K Delta, spectacled eiders breed mostly within 15 kilometers (km) (9.3 miles (mi)) of the coast from Kigigak Island north to Kokechik Bay (Service 1996), with smaller numbers nesting south of Kigigak Island to Kwigillingok and north of Kokechik Bay to the mouth of Uwik Slough. The coastal fringe of the Y–K Delta is the only subarctic breeding habitat where spectacled eiders occur at high density (3.0–6.8 birds/km$^2$ (Service 1996). Nesting on the Y–K Delta is restricted to areas dominated by low wet-sedge and grass marshes with numerous small shallow water bodies. Nests are rarely more than 190 meters (m) (680 feet (ft)) from water and are usually within a few meters of a pond or lake.

On Alaska's North Slope, nearly all spectacled eiders breed north of 70° latitude between Icy Cape and the Shaviovik River. Within this region, most spectacled eiders occur between Cape Simpson and the Sagavanirktok River (Service 1996). Spectacled eiders on the North Slope occur at low densities (0.03–0.79 birds/km$^2$, Larned and Balogh 1997) within about 80 km (50 mi) of the coast. During pre-nesting and early nesting, they occur most commonly on large shallow productive thaw lakes generally with convoluted shorelines or small islands (Larned and Balogh 1997). Such shallow water bodies with emergent vegetation and low islands or ridges appear to be important as eider nesting and brood-rearing habitat on the arctic coastal plain (Derksen *et al.* 1981, Warnock and Troy 1992, Andersen *et al.* 1998).

Within the United States, spectacled eiders molt in Norton Sound and Ledyard Bay. There, they congregate in large, dense flocks that are particularly susceptible to disturbance and contamination. For several weeks during the molting period (late July through October), each bird is flightless. However, there is no time in which all birds are simultaneously flightless (Petersen *et al.* 1999).

Norton Sound is located along the western coast of Alaska between the Y–K Delta and the Seward Peninsula. It is the principal molting and staging area for females nesting on the Y–K Delta (Petersen *et al.* 1999), probably the most imperiled of the three breeding populations. Some Y–K Delta male spectacled eiders, presumably subadult males, also molt in Norton Sound (Petersen *et al.* 1999). As many as 4,030 spectacled eiders have been observed in Norton Sound at one time (Larned *et al.* 1995a). Spectacled eiders molted in the same portion of eastern Norton Sound each year from 1993 to 1997. Charles Lean (Alaska Department of Fish and Game (ADFG), Nome, pers. comm. 1999) reported seeing large flocks in this same area in August and September from 1982 to 1990, suggesting that this area has a history of consistent use by molting spectacled eiders. Spectacled eiders arrive in eastern Norton Sound at the end of July and depart in mid-October (Petersen *et al.* 1999). Although overall benthic biomass (quantity of organisms living on the sea floor) in this area is thought to be lower than in other parts of Norton Sound, the abundance of large gastropods (*e.g.,* snails, which are presumably a spectacled eider food item) is higher in this area than elsewhere (Springer and Pirtle 1997).

Ledyard Bay is one of the primary molting grounds for female spectacled eiders breeding on the North Slope, and most female birds molting here are from the North Slope (Petersen *et al.* 1999). Satellite telemetry data suggest that male spectacled eiders from the North Slope appear to molt and stage in equal numbers in Ledyard Bay and the two primary molting areas in Russia, Mechigmenskiy Bay and the Indigirka-Kolyma Delta (Petersen *et al.* 1999). Aerial surveys in September 1995 found 33,192 spectacled eiders using Ledyard Bay. Most were concentrated in a 37-km (23-mi) diameter circle with their distribution centered 67 km (42 mi) southwest of Point Lay and 41 km (25 mi) offshore (Larned *et al.* 1995b).

During winter, spectacled eiders congregate in exceedingly large and dense flocks in openings in the pack ice in the central Bering Sea between St. Lawrence and St. Matthew Islands (Larned *et al.* 1995c). Spectacled eiders from all three known breeding populations use this wintering area (Service 1999); no other wintering areas are currently known. Larned and Tiplady (1999) estimated the entire wintering population, and perhaps the worldwide population, of spectacled eiders at 374,792 birds (95 percent Confidence Interval = 371,278–378,305). Because nearly all individuals of this species may spend each winter occupying an area of ocean less than 50 km (31 mi) in diameter, they may be particularly vulnerable to chance events during this time.

### *Population Status*

Between the 1970s and 1990s, spectacled eiders on the Y–K Delta declined by 96 percent, from 48,000 pairs to fewer than 2,500 pairs in 1992

(Stehn *et al.* 1993). Based upon surveys conducted during the past few years, the Y–K Delta breeding population is estimated to be about 4,000 pairs.

The breeding population on the North Slope is currently the largest breeding population of spectacled eiders in North America. The most recent population estimate, uncorrected for aerial detection bias, is 9,488 (± 1,814 birds) (Larned *et al.* 1999). However, because this breeding area is so much larger than that on the Y–K Delta, the density of spectacled eiders on the North Slope is markedly lower than on the Y–K Delta; 0.03–0.79 vs. 3.0–6.8 birds/km$^2$, respectively (Larned and Balogh 1997, Service 1996). North Slope eiders have no clear population trend (Larned *et al.* 1999).

We do not know the size of the nonbreeding segment of any population. Presumably, nonbreeding birds remain at sea year round until they attempt to breed at age two or three. We do not know which areas at sea are important to nonbreeding spectacled eiders.

**Previous Federal Action**

On December 10, 1990, we received a petition from James G. King, dated December 1, 1990, to list the spectacled eider as an endangered species and to designate critical habitat on the Yukon Delta National Wildlife Refuge (YDNWR) and the National Petroleum Reserve-Alaska (NPR–A). We convened a workshop on February 6 and 7, 1991, to review existing information and develop priorities and recommendations for future studies of both spectacled and Steller's eiders. We published a 90-day finding on April 25, 1991, that the petition had presented substantial information indicating that the requested action may be warranted (56 FR 19073).

On February 12, 1992, a 12-month finding was signed, determining that listing was warranted. On May 8, 1992, we published a proposed rule to list the spectacled eider as a threatened species throughout its range (57 FR 19852). Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. We proposed that it was not prudent to designate critical habitat for the spectacled eider because there was no demonstrable benefit that could be shown at that time (50 CFR 424.12). We solicited comments from all interested parties during an extended comment period (160 days). This extended comment period was intended to accommodate foreign scientists, whose comments may not have been received during the normal 90-day period, and Alaskan Natives, who spend substantial portions of each year away from their homes engaged in subsistence activities. We particularly sought comments concerning threats to spectacled eiders, their distribution and range, whether critical habitat should be designated, and activities that might impact spectacled eiders. Notice of the proposed rule was sent to appropriate State agencies, Alaska Native regional corporations, borough and local governments, Federal agencies, foreign countries, scientific organizations, and other interested parties with a request for information that might contribute to the development of a final rule.

After a review of all comments received in response to the proposed rule, we published the final rule to list the spectacled eider as threatened without critical habitat on May 10, 1993 (58 FR 27474). Only 5 of the 24 comments received specifically addressed critical habitat designation. Of these, one supported and four opposed the ''not prudent'' determination. Those that opposed the ''not prudent'' finding recommended that critical habitat be designated, at least for nesting areas. They also felt that we should have considered and provided information on possible marine critical habitat. In our final rule to list the spectacled eider as threatened, we maintained that designation of critical habitat was not prudent because no demonstrable overall benefit could be shown at that time (50 CFR 424.12).

We initiated recovery planning for the spectacled eider in 1993. The Spectacled Eider Recovery Team was formed, consisting of seven members and four consultants with a variety of expertise in spectacled eider biology, conservation biology, population biology, marine ecology, Native Alaskan culture, and wildlife management. The Recovery Team and its consultants developed the Spectacled Eider Recovery Plan, which we approved on August 12, 1996. The Recovery Plan established the recovery criteria that must be met prior to the delisting of spectacled eiders. The plan also identified the actions that are needed to assist in the recovery of spectacled eiders. Additionally, since this species was listed as threatened, new information has become available concerning the spectacled eiders' wintering habitat, and we also now have a better delineation of its breeding habitat.

On March 10, 1999, the Southwest Center for Biological Diversity and the Christians Caring for Creation filed a lawsuit in Federal District Court in the Northern District of California against the Secretary of the Department of the Interior for failure to designate critical habitat for five species in California and two in Alaska. These species include the Alameda whipsnake (*Masticophis lateralis euryxanthus*), the zayante band-winged grasshopper (*Trimerotropis infantilis*), the Morro shoulderband snail (*Helmintholglypta walkeriana*), the arroyo southwestern toad (*Bufo microscaphus californicus*), the San Bernardino kangaroo rat (*Dipodomys merriami parvus*), the spectacled eider, and the Steller's eider (*Polysticta stelleri*). Subsequently, the Federal Government entered into a settlement agreement with the plaintiffs whereby we agreed to readdress the prudency of designating critical habitat for spectacled eiders. If, upon consideration of existing data and public comments we determine that designating critical habitat is prudent, we agreed to submit a proposed rule to the **Federal Register** for publication by February 1, 2000, and a final rule by December 1, 2000. If we determine that designation of critical habitat is not prudent, we have agreed to submit a notice of this finding to the **Federal Register** for publication by August 1, 2000.

In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent (*e.g., Natural Resources Defense Council* v. *U.S. Department of the Interior*, 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions and the availability of new information concerning the species' recovery and habitat needs, we recognized the value in reexamining the question of whether critical habitat for the spectacled eider would be prudent.

Due to the vast and remote nature of this species' distribution, we are making our initial critical habitat delineations with the best available scientific and commercial information available, but we also recognize that we do not have complete information on the distribution of this species at all times of the year. Thus, if additional information becomes available on the biology and distribution of the species, we may reevaluate our critical habitat designation, including proposing additional critical habitat or proposing deletion or boundary refinement of existing critical habitat.

**Critical Habitat**

Critical habitat is defined in section 3 of the Act as (i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection, and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. ''Conservation'' is defined in section 3(3) of the Act as all methods and procedures that are necessary to bring an endangered or threatened species to the point at which listing under the Act is no longer necessary.

Section 4(b)(2) of the Act requires that we base critical habitat proposals upon the best scientific and commercial data available, after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude any area from critical habitat designation if the benefits of such exclusion outweigh the benefits of including such area as part of the critical habitat, provided the exclusion will not result in the extinction of the species (section 4(b)(2) of the Act).

Critical habitat receives protection under section 7 of the Act with regard to actions carried out, funded, or authorized by Federal agencies. Section 7 requires conferences on Federal actions that are likely to result in the adverse modification or destruction of proposed critical habitat. Once finalized, Federal agencies must ensure that any action they carry out, fund, or authorize will not result in destruction or adverse modification of the critical habitat. Aside from the added protection that may be provided under section 7, the Act does not provide other forms of legal protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal action, critical habitat designation has no regulatory implications for actions conducted on non-Federal lands that lack a Federal nexus.

Section 7(a)(2) of the Act requires Federal agencies to consult with us to ensure that any action authorized, funded, or carried out is not likely to jeopardize the continued existence of a threatened or endangered species, or result in the destruction or adverse modification of critical habitat. ''Jeopardize the continued existence'' (of a species) is defined as an appreciable reduction in the likelihood of survival and recovery of a listed species. ''Destruction or adverse modification'' (of critical habitat) is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for the survival and recovery of the listed species for which critical habitat was designated. Thus, the definitions of ''jeopardy'' to the species and ''adverse modification'' of critical habitat are nearly identical (50 CFR 402.02). Therefore, a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species.

Designating critical habitat does not, in itself, lead to recovery of a listed species. Designation does not create a management plan, establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), set aside areas as preserves, or directly affect areas not designated as critical habitat. Specific management recommendations for critical habitat are most appropriately addressed in section 7 consultations for specific projects, or through recovery planning.

Designation of critical habitat can help focus conservation activities for a listed species by identifying areas, both occupied and unoccupied, that contain or could contain the habitat features (primary constituent elements described below) that are essential for the conservation of that species. Designation of critical habitat alerts the public as well as land-managing agencies to the importance of these areas.

*Prudency Finding*

In the absence of a finding that critical habitat would increase threats to a species, if critical habitat designation would provide any benefits, then a prudent finding is warranted. In the case of this species, designation of critical habitat may provide some benefits. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. Raising the profile of the lands and waters within our proposed critical habitat boundary may also be beneficial to the species because it may increase the degree to which Federal agencies fulfill their responsibilities under section 7(a)(1) of the Act (to use their authorities to carry out programs for the conservation of listed species). Designating critical habitat may also provide some educational or informational benefits.

We do not have specific evidence of taking, vandalism, collection, or trade in this species that might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree of threat to this species of taking or other human activity. Therefore, we propose that critical habitat is prudent for the spectacled eider.

After reviewing the best scientific and commercial data available, we propose to withdraw the previous finding that designation of critical habitat for the spectacled eider is not prudent, and we propose to designate critical habitat on the Y–K Delta and adjacent marine waters, on the North Slope of Alaska and adjacent marine waters, in eastern Norton Sound and Ledyard Bay, and in the Bering Sea between St. Lawrence and St. Matthew Islands.

*Primary Constituent Elements*

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, when we determined which areas to propose as critical habitat, we considered those physical and biological features that are essential to the conservation of the species (primary constituent elements) and that may require special management considerations or protection. These include, but are not limited to, the following: space for individual and population growth, and for normal behavior; food, water, air, light, minerals or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

*Selection of Areas for the Critical Habitat Designation*

Areas meeting the definition of critical habitat for spectacled eiders are those areas that contain or could contain the primary constituent elements and that may require special management considerations or protection.

Section 3(5)(C) of the Act generally requires that not all areas that can be occupied by a species be designated as critical habitat. Therefore, not all areas containing the primary constituent elements are necessarily essential to the conservation of the species. However, unless we have information to support designating only a subset of that habitat, we may designate all or most of the areas occupied by the species. Geographic areas that contain one or more of the primary constituent elements, but that are not included within critical habitat boundaries, may still be important to a species' conservation and may be considered under other parts of the Act or other conservation laws and regulations, such as the Migratory Bird Treaty Act, Clean Water Act, and Fish and Wildlife Coordination Act.

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12), we used the best scientific information available to determine areas that are essential for the survival and recovery of the species. This information included data from radio telemetry, satellite telemetry, satellite imagery, aerial surveys, ground plot surveys, ground-based biological investigations, and site-specific species information. We have reviewed available information that pertains to the habitat requirements and preferences of this species. We have reviewed the approach of the appropriate local, State, Native, and Federal agencies in managing for the conservation of spectacled eiders and have reviewed the recovery tasks outlined in the Spectacled Eider Recovery Plan. We will initiate public meetings in representative communities adjacent to and within the areas proposed as critical habitat. We anticipate that these meetings and comments received through the public review process will provide us with additional information to use in our decision making process, and in assessing the potential economic impact of designating critical habitat for the species.

The regulations for designating critical habitat require that designations include areas outside the geographical area presently occupied by the species only when a designation limited to its current range would be inadequate to ensure the conservation of the species (50 CFR 424.12 (e)). The regulations further specify that critical habitat cannot be designated within foreign countries or in other areas outside of United States jurisdiction (50 CFR 424.12(h)).

In summary, the proposed critical habitat areas described below constitute our best assessment of the areas needed for the species' conservation using the best available scientific and commercial data available. We put forward this proposal acknowledging that we have incomplete information regarding breeding ground habitat preferences, distribution of preferred breeding ground habitats, migration corridors, offshore staging areas, marine habitats used by nonbreeding birds during the breeding season, the extent of the Ledyard Bay molting area, marine diet, and distribution of preferred prey items at sea. As new information accrues, we may reevaluate which areas warrant critical habitat designation.

**Proposed Critical Habitat**

The approximate area of proposed critical habitat by land ownership is shown in Table 1. Proposed critical habitat includes spectacled eider habitat throughout the species' range in the United States. Lands proposed are under private, State, Native, and Federal ownership. Lands proposed as critical habitat have been divided into eight Critical Habitat Units, which are part of larger areas described below.

TABLE 1.—HECTARES OF LAND AND MARINE WATERS PROPOSED AS CRITICAL HABITAT, WHICH ARE OCCUPIED BY THE SPECTACLED EIDER, SUMMARIZED BY PRIVATE, STATE, FEDERAL AND NATIVE GOVERNMENT OWNERSHIP.

[Hectare figures and percentages are preliminary estimates only. Hectare figures are rounded to the nearest 100. Subsequent information gathering and analysis may result in substantial changes to the data in this table.]

| Location | Federal | | State | | Native | | Private non-native | | Total |
|---|---|---|---|---|---|---|---|---|---|
| | Hectares | Percent | Hectares | Percent | Hectares | Percent | Hectares | Percent | |
| Y–K Delta (land) ..... | 225,200 | 48.8 | 0.0 | 0.0 | 234,300 | 50.7 | 2,300 | 0.5 | 461,800 |
| Y–K Delta (marine) ..... | 1,496,400 | 88.6 | 192,100 | 11.4 | 0.0 | 0.0 | 0.0 | 0.0 | 1,688,500 |
| North Slope (land) ..... | 2,467,300 | 76.3 | 472,100 | 14.6 | 291,000 | 9.0 | 3,200 | 0.1 | 3,233,600 |
| North Slope (marine) ..... | 2,170,500 | 83.2 | 438,300 | 16.8 | 0.0 | 0.0 | 0.0 | 0.0 | 2,608,800 |
| Norton Sound (marine) ..... | 1,491,200 | 85.2 | 259,000 | 14.8 | 0.0 | 0.0 | 0.0 | 0.0 | 1,750,200 |
| Ledyard Bay (marine) ..... | 2,043,000 | 94.2 | 125,800 | 5.8 | 0.0 | 0.0 | 0.0 | 0.0 | 2,168,800 |
| Wintering Area (marine) ..... | 7,290,200 | 98.6 | 103,500 | 1.4 | 0.0 | 0.0 | 0.0 | 0.0 | 7,393,700 |
| Total .... | 17,183,800 | 89.0 | 1,590,800 | 8.2 | 525,300 | 2.7 | 5,500 | <.1 | 19,305,400 |

*Yukon-Kuskokwim Delta*

The Y–K Delta areas proposed as critical habitat comprise 75 townships and adjacent marine waters within 40 km (25 mi) of the coast, for a combined area of 21,503 $km^2$ (8,302 $mi^2$) or 2,150,300 ha (5,313,500 acres). The known primary constituent elements of spectacled eider critical habitat on the Y–K Delta include open water, low wet sedge, grass marsh, dwarf shrub/graminoid (consisting of grasses and sedges) meadow, high and intermediate graminoid meadow, mixed high graminoid meadow/dwarf shrub uplands, and areas adjacent to open water, low wet sedge and grass marsh

habitats. The habitat also includes all marine waters, its associated aquatic flora and fauna in the water column, and the underlying benthic community (the organisms living on the sea floor).

The Y–K Delta breeding population declined 96 percent between the 1970s and 1992 (Stehn *et al.* 1993). To what extent the breeding range of the birds has been constricted is unknown. Therefore, we have included as proposed critical habitat, with few exceptions, all townships within which observations of spectacled eiders were made during annual aerial surveys of breeding waterfowl from 1993 to 1999. We also included a few adjacent townships that shared physiographic characteristics of those townships containing eiders. These surveys were designed primarily to detect changes in goose populations, and may not have been designed optimally for documenting eider distribution; some townships were inadequately surveyed for the presence of eiders. Transect spacing throughout the survey area ranged from 1 to 16 miles. Approximately 60 percent of the townships included in our proposed critical habitat for the Y–K Delta fall within the YDNWR boundaries. The remaining 40 percent is primarily Native-owned land, but is not considered under the Alaska National Interest Lands Conservation Act to be a reservation. Lastly, we have also included marine waters within 40 km (25 mi) of those areas we have proposed on land.

We excluded townships near Uwik Slough on the northern edge of the Yukon River Delta. Although a few eider sightings have been made there during the past 7 years, habitat preference analysis indicates these areas are less favored by the species (as eiders occurred there in much lower densities than we would have expected had the birds been randomly distributed across the coastal zone). We therefore believe that this portion of the Y–K Delta is not essential for the species' conservation.

The spectacled eider recovery plan sets forth several recovery goals that, if met, would allow us to consider delisting the species. An example recovery goal is that three annual surveys indicate at least 10,000 breeding pairs are present on a breeding area. The Y–K Delta breeding population of spectacled eiders cannot reasonably be expected to reach established recovery goals (Service 1996) in the absence of the area on the Y–K Delta within which the current remnant population occurs. Indeed, adverse modification of this habitat would probably result in the loss of this population, which would represent a loss of a significant portion of the species' range, thus precluding eventual recovery of the species. Therefore, we believe that the entire area under consideration meets the definition of critical habitat as being essential to the conservation of the species.

At least a portion of the spectacled eiders breeding on the Y–K Delta migrate south along the coast from somewhere north of Cape Romanzoff (Brian McCaffery, YDNWR, pers. comm. 1998). Little else is known of Y–K Delta spectacled eider spring migration routes or habitat use. Aerial surveys off the coast of the Y–K Delta suggest use of the area by spectacled eiders, primarily adult males, during late June and early July (Dau 1987). Satellite telemetry confirms the use of these offshore waters by post-breeding spectacled eiders (Petersen *et al.* 1999). Therefore, we believe that marine waters within 40 km (25 mi) of the proposed Y–K Delta terrestrial critical habitat areas are essential to the conservation of the species.

*North Slope*

The 402 proposed townships and proposed marine areas on the North Slope total approximately 58,424 $km^2$ (22,558 $mi^2$) or 5,842,400 ha (14,436,800 acres) in area. The primary constituent elements within this area include all deep water bodies, all water bodies that are part of basin wetland complexes; all permanently flooded wetlands and water bodies containing either *Carex aquatilis, Arctophila fulva,* or both; all habitat immediately adjacent to these habitat types; and all marine waters, the associated marine aquatic flora and fauna in the water column, and the underlying marine benthic community.

Unlike on the Y–K Delta, we have no evidence that a population decline has occurred on the North Slope due to our complete lack of historical data. The North Slope contains the largest breeding population of spectacled eiders in North America. Therefore, this geographic area is essential to the conservation of the species. Absent trend information, it is impossible to know how much land on the North Slope is essential for conservation of the species. Erring in favor of conservation of the species, we believe that, with eight exceptions, those townships in which spectacled eider observations were made during annual systematic aerial surveys of breeding eiders from 1992 to 1998 are essential to the species' conservation. We also chose to include as critical habitat several townships that were near to and within the same physiographic strata as townships with spectacled eiders observations. We believe that the entire area under consideration meets the definition of critical habitat as being essential to the conservation of the species.

We have excluded from this group eight townships at which eiders that we considered to be outliers were observed (one observation at each township). In all cases, these observations were on the periphery of the species occupied breeding range, and were disjunct from the contiguous breeding area used by the vast majority of North Slope eiders.

The aerial surveys that we relied upon in establishing critical habitat boundaries were flown during early to mid-June, when spectacled eiders were about to nest or had recently initiated nesting. Transect lines were flown at 5-mile intervals, covered a 400-m (1,312-ft) swath, and sampled about 4 percent of suitable spectacled eider breeding habitat. The survey repeats the same complete set of survey lines every 4 years.

About 75 percent of the terrestrial portion of the North Slope proposed critical habitat unit is managed by the Bureau of Land Management (BLM) as the NPR–A. BLM recently conducted an oil and gas lease sale for the Northeast Planning Area of the NPR–A. Approximately 18 percent of the Northeast Planning Area that is currently available for lease is within the boundary of proposed spectacled eider critical habitat. The Teshekpuk Lake Surface Protection Area is a portion of the Northeast Planning Area within the NPR–A that is unavailable for leasing for a period of at least 10 years. This entire surface protection area is within the boundary of the proposed spectacled eider critical habitat.

Also part of the North Slope designation are marine areas in the Beaufort sea. Our information on the importance of the Beaufort Sea to migrating spectacled eiders, in both spring and fall, is very limited. Only one spectacled eider was observed among 420,000 eiders migrating past point Barrow during spring (Woodby and Divoky 1982) suggesting that either the timing of this survey was not concurrent with spectacled eider spring migration, or spectacled eiders do not migrate along the Beaufort Sea coast in spring. Little else is known of North Slope spectacled eider spring migration routes.

Beaufort Sea seaduck and waterbird surveys flown from shore to 81 km (50 mi) offshore during June, July, August, and September 1999, resulted in the sighting of only two groups of fewer than four spectacled eiders (Bill Larned, Service, MBM, pers. comm. 1999; TERA

1999). No spectacled eiders were observed on these offshore surveys during June and July, nor were spectacled eiders sighted on surveys of the near shore lagoon areas and within bays. However, aerial survey biologists concede that eider species in summer plumage are exceedingly difficult to discern from one another on aerial surveys. Nine groups of unknown eiders were observed in the vicinity of Harrison Bay between August 31 and September 2, 1999. Aerial observers suspect that spectacled eider family groups use the waters offshore of the Colville River Delta and west, and within Harrison Bay during the summer (Bill Larned, Service, MBM, pers. comm. 1999). Satellite telemetry supports this belief. Most satellite-tagged post-nesting female spectacled eiders from Prudhoe Bay used Harrison Bay briefly (5 of 13 tagged birds were detected there once from satellite telemetry data that is acquired every 3 days, another 5 of 13 were detected there twice, resulting in a mean residence time of at least 4 days) (TERA 1999). Thus, it seems that spectacled eiders nesting near to or, presumably, east of Prudhoe Bay make use of the Beaufort Sea, especially those waters near Harrison Bay. Satellite telemetry indicates that molt migration and fall migration of North Slope eiders takes place in the offshore waters of the Beaufort and Chukchi Seas (Peterson *et al.* 1999). We believe that the Beaufort and Chukchi Seas is probably important habitat to eiders that nest west of Prudhoe Bay, as well. Satellite telemetry indicates post-breeding spectacled eiders use the Beaufort and Chukchi Seas out to 40 km (25 mi) (Peterson *et al.* 1999). Therefore, we believe that waters of the Beaufort and Chukchi Seas within 40 km (25 mi) of the mainland are essential to the conservation of the species.

**Norton Sound**

The area of this proposed parcel in eastern Norton Sound east of the line connecting Uwik Slough on the northern edge of the Yukon River Delta to Priest Rock on the northern shore of Norton Sound is approximately 17,502 km$^2$ (6,758 mi$^2$) or 1,750,200 ha (4,324,800 acres). As stated earlier, Norton Sound is the principal, and perhaps only, molting area for breeding female spectacled eiders from the Y–K Delta (Petersen *et al.* 1999). As many as 4,030 spectacled eiders have been observed in one portion of eastern Norton Sound at one time (Larned *et al.* 1995a). Use of this area by molting eiders has been documented regularly from 1982 to 1999 (Charles Lean, Alaska Department of Fish and Game, Nome, pers. comm. 1999; Bill Larned, Service, MBM, pers. comm. 1999; Petersen *et al.* 1999). The area is used by spectacled eiders from mid-July until the end of October (Petersen *et al.* 1999).

Primary constituent elements of this habitat include the marine waters, associated marine aquatic flora and fauna in the water column, and the underlying marine benthic community. Energy needs of waterfowl during molt are high (Hohman *et al.* 1992). The benthic biomass in the portion of Norton Sound that spectacled eiders inhabit apparently meets the high metabolic needs for the many birds that molt there. Indeed, the abundance of large gastropods is higher in this area than elsewhere in Norton Sound (Springer and Pirtle 1997). Therefore, we consider this habitat to be essential to the conservation of the species.

*Ledyard Bay*

We propose to designate as critical habitat for spectacled eiders waters within Ledyard Bay between Cape Lisburne and Icy Cape west to 167°00′W. The area of this parcel totals approximately 21,688 km$^2$ (8,374 mi$^2$) or 2,168,800 ha (5,359,200 acres). Ledyard Bay is located along the western coast of Alaska between Cape Lisburne and Point Lay. It is one of the primary molting grounds for female spectacled eiders breeding on the North Slope, and most female birds molting here are from the North Slope (Petersen *et al.* 1999). Male spectacled eiders from the North Slope appear to molt and stage in equal numbers in Ledyard Bay and the two primary molting areas in Russia: Mechigmenskiy Bay and the Indigirka-Kolyma Delta (Petersen *et al.* 1999). The area is used by eiders from early July through mid-October (Petersen *et al.* 1999).

Primary constituent elements of the Ledyard Bay molting area include the marine waters, associated aquatic flora and fauna in the water column, and the underlying benthic community. As stated earlier, the energy needs of birds during molt is high. Due to the importance of the benthic biomass in this area to spectacled eiders during molt, we believe that Ledyard Bay is essential to the conservation of the species. Spectacled eiders molting in Ledyard Bay may be particularly susceptible to disturbance because they occur in dense concentrations and are flightless for several weeks. Aerial surveys in September 1995, found 33,192 spectacled eiders primarily concentrated in a 37 km (23 mi) diameter circle in Ledyard Bay (Larned *et al.* 1995b). A single ill-timed oil-spill in this area could harm thousands of eiders.

*Wintering Area*

We are proposing to designate as critical habitat those waters between St. Lawrence and St. Matthew Islands that are used by spectacled eiders during late fall, winter, and early spring. No portion of St. Lawrence Island or Russia is included in this parcel. The area of this parcel is approximately 73,937 km$^2$ (28,547 mi$^2$) or 7,393,700 ha (18,270,200 acres). Spectacled eiders typically winter south and southwest of St. Lawrence Island in the central Bering Sea; they wintered in the same place in 4 of 5 years since the discovery of their wintering area. In the 1 year when they are known to have wintered elsewhere, they were found further south and east between St. Lawrence and St. Matthew Islands. Prior to the formation of sea ice in the area, spectacled eiders inhabit waters directly south of Powooiliak Bay, St. Lawrence Island, moving farther off shore as winter progresses. Spectacled eiders from all three main breeding populations (Y–K Delta, North Slope, and Arctic Russia) concentrate within a 50-km (31-mi) diameter circle in small openings in the sea ice (Service 1999). The location of this area changes slightly among years and perhaps within years. Distribution of wintering eiders overlapped for the surveys conducted in late winter of 1996–1999, but was far removed from that area in 1995 (Larned and Tiplady 1999). The most recent estimate of the number of spectacled eiders wintering in this area is 374,792 (±3,514) birds (Larned and Tiplady 1999). Most, perhaps all, of the worldwide population of spectacled eiders congregates for several months in this small portion of the central Bering Sea. The primary constituent elements of this habitat include the marine waters, associated aquatic flora and fauna in the water column, and underlying benthic community. Because this area receives such intensive use by the species, and because wintering spectacled eiders are not known to use any other habitat, we believe that this area is essential to the conservation of this species.

*Summary*

We propose designation of critical habitat on the North Slope and marine waters within 40 km (25 mi) of the coast; on the Y–K Delta and marine waters within 40 km (25 mi) of the coast; in Norton Sound, Ledyard Bay, and the waters between St. Lawrence and St. Matthew Islands. We believe all of these areas meet the definition of critical habitat in that they contain

physical or biological elements essential for the conservation of the species and may require special management considerations or protection. Designation of these areas will highlight the conservation needs of the species, and perhaps increase the degree to which Federal agencies fulfill their responsibilities under section 7(a)(1) of the Act.

In accordance with the regulations implementing the listing provisions of the Act (50 CFR 424.12(h)), we have not proposed any areas outside the jurisdiction of the United States (*e.g.,* within Russian jurisdiction or international waters).

Spectacled eiders formerly bred on the Seward Peninsula, St. Lawrence Island, and elsewhere between the Y–K Delta and North Slope. We have a recent record of a single spectacled eider nest on St. Lawrence Island (Shawn Stephensen, Service, pers. comm. 1998). We have no other recent breeding records outside of the previously discussed breeding areas. In addition, we are unaware of any reports suggesting that these formerly occupied habitats are essential to the conservation of the species. Because we believe the areas within our proposed critical habitat boundaries encompass all of the existing eider breeding range in Alaska that is essential to the conservation of the species, we therefore believe that the breeding areas we have proposed are sufficient to support the recovery of these populations of spectacled eiders. Consequently, we have not proposed as critical habitat areas on St. Lawrence Island or outside of the species' current breeding range.

We are unaware of other parts of the United States within the range of the spectacled eider that are essential to the conservation of the species. We believe currently available information supports designating critical habitat only in those areas that we have proposed. Should additional information on the value of any marine area to spectacled eiders become available, we will consider that information in our critical habitat decision making process.

**Available Conservation Measures**

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protections required by Federal agencies and the prohibitions against certain activities involving listed species are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed or critical habitat is subsequently designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us.

Section 7(a)(4) of the Act and regulations at 50 CFR 402.10 require Federal agencies to confer with us on any action that is likely to result in destruction or adverse modification of proposed critical habitat. Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated. Consequently, as a result of this proposal, some Federal agencies may wish to request conferencing with us on actions for which formal consultation has been completed. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain a biological opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no significant new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). We may also prepare a formal conference report to address the effects on proposed critical habitat from issuance of an incidental take permit, under section 10(a)(1)(B) of the Act.

Activities on Federal lands that may affect the spectacled eider or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit or license from a Federal agency (*e.g.,* a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act for wetland fill), would also be subject to the section 7 consultation process. Federal actions not affecting the species, as well as actions on non-Federal lands that are not federally funded, permitted, or licensed would not require section 7 consultation.

Section 4(b)(8) of the Act requires us to describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for both the survival and recovery of the spectacled eider is appreciably reduced. We note that such activities are also likely to jeopardize the continued existence of the species. Such activities that may have the potential to destroy or adversely modify critical habitat for spectacled eiders include, but are not limited to: (1) Commercial fisheries, (2) oil exploration and development, and (3) petroleum product transport.

The specific types of activities that have required section 7 consultation include but are not limited to: (1) Construction and installation of facilities and roads associated with oil and gas development; (2) village growth and upkeep, such as housing developments, road building and maintenance, and airport improvements; (3) wastewater discharge from communities and oil development facilities; and (4) commercial fisheries. Designation of critical habitat for spectacled eiders notifies the Army Corps of Engineers, other permitting agencies, and the public that Clean Water Act section 404 nationwide permits and other authorizations for activities with these designated critical habitat areas must comply with section 7 consultation requirements. For each section 7 consultation, we review the direct and indirect effects of the proposed projects on spectacled eiders.

TABLE 2.—ACTIVITIES POTENTIALLY AFFECTED BY SPECTACLED EIDER LISTING AND CRITICAL HABITAT DESIGNATION

| Categories of activities | Activities involving a Federal action potentially affected by species listing only [1] | Additional activities involving a Federal action potentially affected by critical habitat designation [2] |
|---|---|---|
| Federal Activities Potentially Affected [3]. | Activities that the Federal Government carries out such as scientific research, land surveys, law enforcement, oil spill response, resource management, and construction/expansion of physical facilities. | None. |
| Private Activities Potentially Affected [4]. | Activities that also require a Federal action (permit, authorization, or funding) such as scientific research, commercial fishing, sport and subsistence hunting, shipping and transport of fuel oil and gasoline to villages, and village maintenance, construction and expansion. | None. |

[1] This column represents impacts of the final rule listing the spectacled eider (May 10, 1993) (58 FR 27474) under the Endangered Species Act.
[2] This column represents the impacts of the critical habitat designation above and beyond those impacts resulting from listing the species.
[3] Activities initiated by a Federal agency.
[4] Activities initiated by a private entity that may need Federal authorization or funding.

In instances where we have consulted on projects and a Federal action agency has retained discretionary authority over the action, we will notify the agency of this proposal and will, when requested, render a conference opinion on their action as it relates to spectacled eider critical habitat prior to publication of a final critical habitat determination.

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, contact the Field Supervisor, Ecological Services Anchorage Field Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species/Permits, 405 West 4th Street, Room G–62, Anchorage, AK 99501 (telephone 907–271–2888, facsimile 907–271–2786).

Although we are proposing critical habitat throughout much of the North American portion of the spectacled eider's range and anticipate that doing so will be beneficial to the species, this action is not meant to imply that little is currently being done to ensure the species' survival. On the contrary, tremendous strides have been made in recent years in our understanding of the species and in ways to assist it in its recovery.

For example, shortly after we learned that spent lead shot was affecting birds, we launched a public relations campaign throughout remote bush communities where lead shot was often not recognized to be a hazard. We later offered to swap boxes of steel shot for subsistence hunters' existing stores of lead shot in an effort to reduce future lead deposition. We designed field projects to minimize disturbance of the birds, and enforced the laws prohibiting harvest of this species. Posters, flyers, and fact sheets have been distributed throughout rural Alaska, and we regularly air radio spots reminding hunters that spectacled eiders need their help and that they are not legal quarry. We also attend meetings of the Waterfowl Conservation Committee, a committee comprising elders from Native communities throughout the region that cooperatively manage subsistence waterfowl harvest on the Y–K Delta.

**Economic Analysis**

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial data available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species. Although we could not identify any incremental effects of this proposed critical habitat designation above those impacts of listing, we will conduct an economic analysis to further evaluate this finding. We will conduct the economic analysis for this proposal prior to a final determination. When the draft economic analysis is completed, we will announce its availability with a notice in the **Federal Register**, and we will reopen the comment period for 30 days at that time to accept comments on the economic analysis or further comment on the proposed rule.

**Public Comments Solicited**

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of spectacled eiders and habitat, and what habitat is essential to the conservation of the species and why;

(3) Current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Information on threats of take of spectacled eiders by humans that may result from critical habitat designation; and

(5) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on native villages.

(6) Economic and other potential values associated with designating critical habitat for the spectacled eider such as those derived from non-consumptive uses (*e.g.,* hiking, camping, bird-watching, ''existence values,'' and reductions in administrative costs).

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand including answers to questions such as the following: (1) Are the requirements in the document clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the

description of the proposed rule in the ''Supplementary Information'' section of the preamble helpful in understanding the document? (5) What else could we do to make the proposed rule easier to understand?

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In certain circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. 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.

**Peer Review**

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule immediately following publication in the **Federal Register** to these peer reviewers. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the 90-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

**Public Hearings**

The Act provides for one or more public hearings on this proposal, if requested. We intend to schedule three public hearings on this proposal. We will announce the dates, times, and places of those hearings in local newspapers at least 15 days prior to the first hearing.

**Required Determinations**

*1. Regulatory Planning and Review*

In accordance with Executive Order 12866, this action was submitted for review by the Office of Management and Budget.

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. The Spectacled eider was listed as a threatened species in 1993. Between the Fiscal Years 1997–2000 we have conducted 108 section 7 consultations with other Federal agencies to ensure that their actions would not jeopardize the continued existence of the spectacled eider. The areas proposed for critical habitat are currently occupied by the spectacled eider. Under the Endangered Species Act, critical habitat may not be adversely modified by a Federal agency action; it does not impose any restrictions on non-Federal entities unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency. Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with the species and its needs, we conclude that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as ''jeopardy'' under Act. Accordingly, the designation of currently occupied areas as critical habitat does not have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. Non-Federal persons that do not have a Federal ''sponsorship'' of their actions are not restricted by the designation of critical habitat (they continue to be bound by the provisions of the Act concerning ''take'' of the species).

b. This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the spectacled eider since the listing in 1993. The prohibition against adverse modification of critical habitat is not expected to impose any additional restrictions to those that currently exist because all proposed critical habitat is occupied. Because of the potential for impacts on other Federal agency actions, we will continue to review this proposed action for any inconsistencies with other Federal agency actions.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and as discussed above we do not anticipate that the adverse modification prohibition (from critical habitat determination) will have any incremental effects because all proposed critical habitat is occupied.

d. The proposed rule follows the requirements for determining critical habitat contained in the Endangered Species Act.

*2. Regulatory Flexibility Act*

In the economic analysis, we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, this rule is not expected to result in any restrictions in addition to those currently in existence. As indicated on Table 1 (see Proposed Critical Habitat Designation section) we have proposed land and marine waters, which are occupied by the spectacled eider, and summarized by Private, State, Federal and Native government ownership. Within these areas, activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for both the survival and recovery of the spectacled eider is appreciably reduced. We note that such activities are also likely to jeopardize the continued existence of the species. Such activities that may have the potential to destroy or adversely modify critical habitat for spectacled eiders include, but are not limited to: (1) Commercial fisheries, (2) oil exploration and development, and (3) petroleum product transport. Many of these activities sponsored by Federal agencies within the proposed critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed under Regulatory Planning and Review above, these actions are currently required to comply with the listing protections of the Act, and the designation of critical habitat is not anticipated to have any additional effects on these activities. For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current restrictions concerning take of the species remain in

effect and this rule has no additional restrictions (See Table 2 under Available Conservation Measures above).

*3. Small Business Regulatory Enforcement Fairness Act*

In the economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions in the economic analysis, or any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

*4. Unfunded Mandates Reform Act*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will only be affected to the extent that any Federal funds, permits or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed in section 1, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated.

b. This rule will not produce a Federal mandate of $100 million or greater in any year, *i.e.,* it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

*5. Takings*

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease the current restrictions on private property concerning take of the spectacled eider. Due to the prohibition against take of the species both within and outside of the designated areas, and the fact that critical habitat provides no incremental restrictions, we do not anticipate that property values should be affected by the critical habitat designation. Additionally, critical habitat designation does not preclude development of habitat conservation plans and issuance of incidental take permits. Landowners in areas that are included in the designated critical habitat will continue to have opportunity to utilize their property in ways consistent with the survival of the spectacled eider.

*6. Federalism*

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. The designation of critical habitat in areas currently occupied by the spectacled eider imposes no additional restrictions to those currently in place, and therefore has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas protected are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species specifically identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long range planning (rather than waiting for case by case section 7 consultations to occur).

*7. Civil Justice Reform*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We designate critical habitat in accordance with the provisions of the Endangered Species Act and plan public hearings on the proposed designation during the comment period. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the spectacled eider.

*8. Paperwork Reduction Act*

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required.

*9. National Environmental Policy Act*

We have determined that we do not need to prepare Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969 (NEPA), in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** in October 1983 (48 FR 49244).

*10. Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2:

We understand that we must relate to federally recognized Tribes on a Government-to-Government basis. Secretarial Order 3206 American Indian Tribal Rights, Federal-Tribal Trust Responsibilities and the Endangered Species Act states that ''Critical habitat shall not be designated in such areas [an area that may impact Tribal trust resources] unless it is determined essential to conserve a listed species. In designating critical habitat, the Service shall evaluate and document the extent to which the conservation needs of a listed species can be achieved by limiting the designation to other lands.'' While this Order does not apply to the State of Alaska, we recognize our responsibility to inform affected Native Corporations, and regional Native governments of this proposal. Subsequent to this proposal, we will coordinate with the Native communities and analyze the need to designate critical habitat on Native lands; and consult with other bureaus and offices of the Department about the potential effects of this rule on Indian tribes.

**References Cited**

A complete list of all references cited in this proposed rule is available upon request from the Ecological Services Anchorage Field Office (see **ADDRESSES** section).

**Author**

The primary authors of this document are Greg Balogh and Terry Antrobus (see **ADDRESSES** section).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Proposed Regulation Promulgation**

For the reasons given in the preamble, we propose to amend 50 CFR part 17 as set forth below:

**PART 17—[AMENDED]**

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

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544: 16 U.S.C. 4201–4245: Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. In § 17.11 (h) revise the entry for spectacled eider under ''BIRDS'' to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| * | * | * | * | * | * | * | |
| BIRDS | | | | | | | |
| * | * | * | * | * | * | * | |
| Eider, spectacled ..... | Somateria ..... (=*Arctonetta,* =*Lampronetta,*) *fischeri.* | USA (AK); Russia ... | Entire ..... | T | 503 | 17.95(b) | NA |
| * | * | * | * | * | * | * | |

3. In § 17.95 add critical habitat for the spectacled eider (*Somateria fischeri*) under paragraph (b) in the same alphabetical order as this species occurs in § 17.11 (h) to read as follows:

**§ 17.95 Critical habitat—Fish and wildlife.**

* * * * *

(b) *Birds.*

* * * * *

*Spectacled Eider (Somateria fischeri)*

1. Critical habitat units are depicted for the Yukon-Kuskokwim Delta and adjacent marine waters, North Slope and adjacent marine waters, Ledyard Bay, Norton Sound, and the Bering Sea between St. Lawrence and St. Matthew Islands for reference only. The areas in critical habitat are described below.

2. Within these areas, the primary constituent elements are those habitat components that are essential for the primary biological needs of feeding, nesting, brood rearing, roosting, molting, migrating and wintering. The primary constituent elements on the Y–K Delta include open water; low wet sedge; grass marsh; dwarf shrub/graminoid meadow; high and intermediate graminoid meadow; mixed high graminoid meadow/dwarf shrub uplands; areas adjacent to open water, low wet sedge and grass marsh; and all marine waters, associated marine aquatic flora and fauna in the water column, and the underlying marine benthic community. Primary constituent elements on the North Slope include all marine waters, associated marine aquatic flora and fauna in the water column, and the underlying marine benthic community; all deep water bodies; all water bodies that are part of basin wetland complexes; all permanently flooded wetlands and water bodies containing either *Carex aquatilis, Arctophila fulva,* or both; and all habitat immediately adjacent to these habitat types. Primary constituent elements for the Norton Sound Unit, the Ledyard Bay Unit and the Wintering Unit include all marine waters, associated marine aquatic flora and fauna in the water column, and the underlying marine benthic community.

3. Critical habitat does not include existing human structures.

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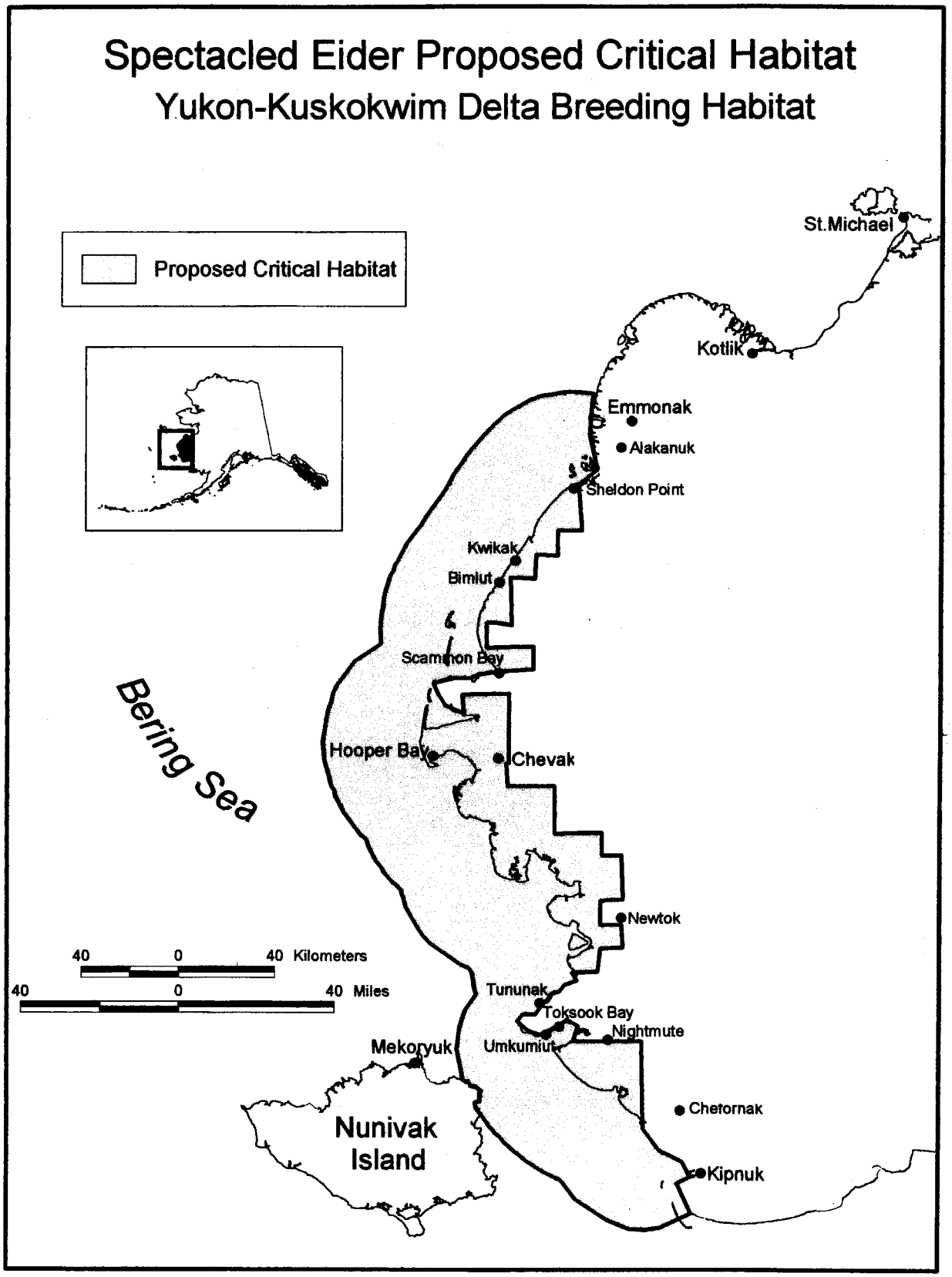


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Unit 1. North Y–K Delta Unit

Seward Meridian: T28N, R86W; T28N, R85W; T27N, R86W; T27N, R85W; T26N, R87W; T26N, R86W; T25N, R88W; T25N, R87W; T24N, R90W; T24N, R89W; T23N, R90W; T23N, R89W; T22N, R90W; T21N, R90W; T21N, R89W; T21N, R88W; and all marine waters of the Bering Sea within 40 kilometers (25 miles) of the above area.

Unit 3. Central Y–K Delta Unit

Seward Meridian: T19N, R91W; T19N, R90W; T18N, R93W; T18N, R92W; T18N, R91W; T18N, R90W; T17N, R93W; T17N, R92W; T17N, R91W; T17N, R90W; T16N, R94W; T16N, R93W; T16N, R92W; T16N, R91W; T15N, R93W; T15N, R92W; T15N, R91W; T15N, R90W; T15N, R89W; T14N, R93W; T14N, R92W; T14N, R91W; T14N, R90W; T14N, R89W; T13N, R91W; T13N, R90W; T13N, R89W; T13N, R88W; T13N, R87W; T12N, R92W; T12N, R91W; T12N, R90W; T12N, R89W; T12N, R88W; T12N, R87W; T11N, R91W; T11N, R90W; T11N, R89W; T11N, R88W; T11N, R87W; T10N, R90W; T10N, R89W; T10N, R88W; T9N, R89W; T9N, R88W; T9N, R87W; T8N, R90W; T8N, R89W; and all marine waters of the Bering Sea within 40 kilometers (25 miles) of the above area.

Unit 4. South Y–K Delta Unit

Seward Meridian: T4N, R91W; T4N, R90W; T4N, R89W; T4N, R88W; T3N, R91W; T3N, R90W; T3N, R89W; T3N, R88W; T2N, R89W; T2N, R88W; T1N, R88W; and all marine waters of the Bering Sea within 40 kilometers (25 miles) of the above area.

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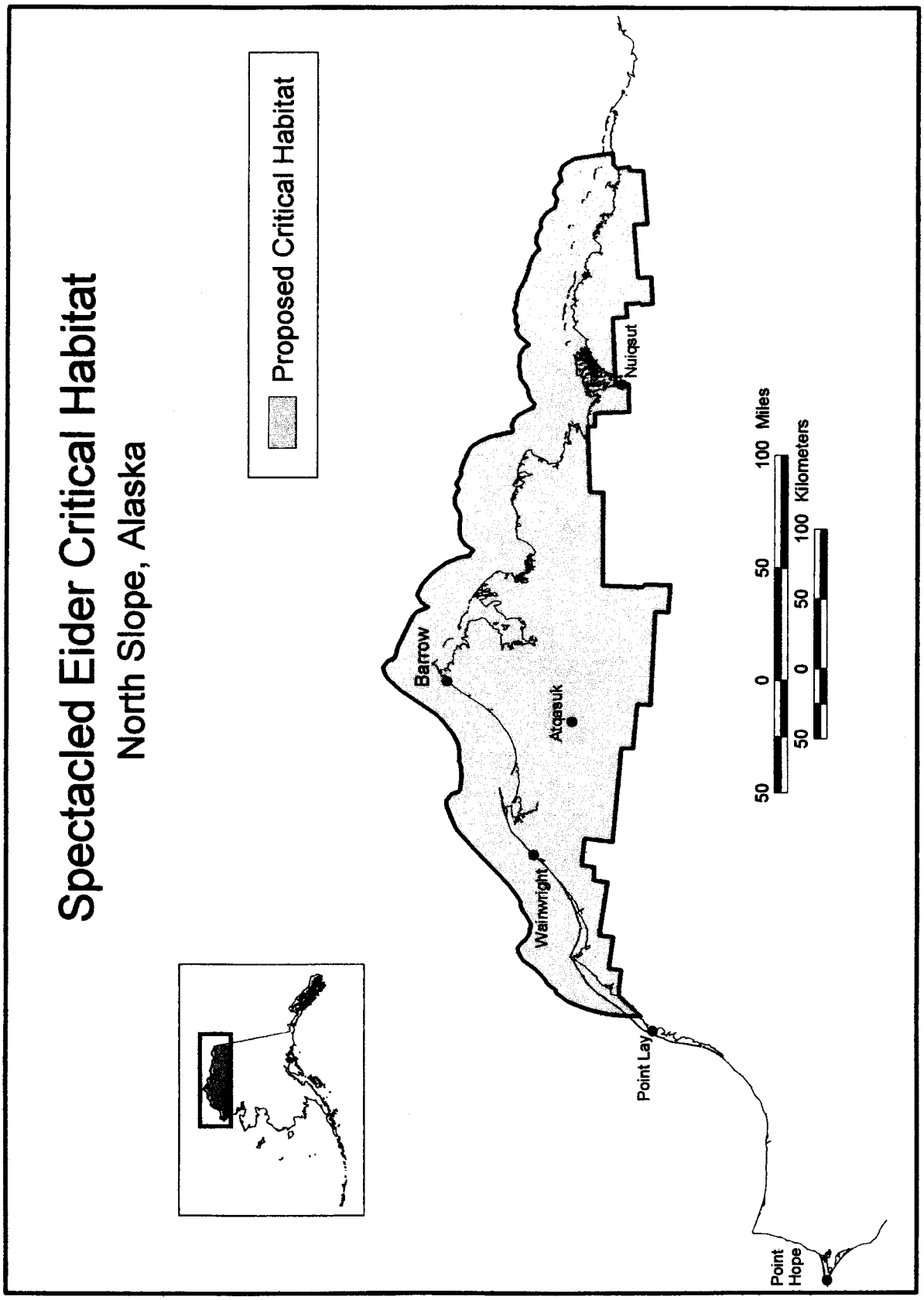


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Unit 5. North Slope Unit

Umiat Meridian: T23N, R18W; T23N, R17W; T22N, R19W; T22N, R18W; T22N, R17W; T22N, R16W; T22N, R15W; T21N, R20W; T21N, R19W; T21N, R18W; T21N, R17W; T21N, R16W; T21N, R15W; T21N, R14W; T21N, R13W; T21N, R12W; T20N, R21W; T20N, R20W; T20N, R19W; T20N, R18W; T20N, R17W; T20N, R16W; T20N, R15W; T20N, R14W; T20N, R13W; T20N, R12W; T20N, R11W; T19N, R21W; T19N, R20W; T19N, R19W; T19N, R18W; T19N, R17W; T19N, R16W; T19N, R15W; T19N, R14W; T19N, R13W; T19N, R12W; T19N, R11W; T19N, R10W; T18N, R23W; T18N, R22W; T18N, R21W; T18N, R20W; T18N, R19W; T18N, R18W; T18N, R17W; T18N, R16W; T18N, R15W; T18N, R14W; T18N, R13W; T18N, R12W; T18N, R11W; T18N, R10W; T18N, R8W; T18N, R7W; T18N, R6W; T18N, R5W; T18N, R4W; T18N, R3W; T18N, R2W; T17N, R30W; T17N, R29W; T17N, R28W; T17N, R27W; T17N, R26W; T17N, R25W; T17N, R24W; T17N, R23W; T17N, R22W; T17N, R21W; T17N, R20W; T17N, R19W; T17N, R18W; T17N, R17W; T17N, R16W; T17N, R15W; T17N, R14W; T17N, R13W; T17N, R12W; T17N, R11W; T17N, R10W; T17N, R9W; T17N, R8W; T17N, R7W; T17N, R6W; T17N, R5W; T17N, R4W; T17N, R3W; T17N, R2W; T17N, R1W; T16N, R31W; T16N, R30W; T16N, R29W; T16N, R28W; T16N, R27W; T16N, R26W; T16N, R25W; T16N, R24W; T16N, R23W; T16N, R22W; T16N, R21W; T16N, R20W; T16N, R19W; T16N, R18W; T16N, R17W; T16N, R16W; T16N, R15W; T16N, R14W; T16N, R13W; T16N, R12W; T16N, R11W; T16N, R10W; T16N, R9W; T16N, R8W; T16N, R7W; T16N, R6W; T16N, R5W; T16N, R4W; T16N, R3W; T16N, R2W;

T15N, R32W; T15N, R31W; T15N, R30W; T15N, R29W; T15N, R28W; T15N, R27W; T15N, R26W; T15N, R25W; T15N, R24W; T15N, R23W; T15N, R22W; T15N, R21W; T15N, R20W; T15N, R19W; T15N, R18W; T15N, R17W; T15N, R16W; T15N, R15W; T15N, R14W; T15N, R13W; T15N, R12W; T15N, R11W; T15N, R10W; T15N, R9W; T15N, R8W; T15N, R7W; T15N, R6W; T15N, R5W; T15N, R4W; T15N, R3W; T15N, R2W; T14N, R33W; T14N, R32W; T14N, R31W; T14N, R30W; T14N, R29W; T14N, R28W; T14N, R27W; T14N, R26W; T14N, R25W; T14N, R24W; T14N, R23W; T14N, R22W; T14N, R21W; T14N, R20W; T14N, R19W; T14N, R18W; T14N, R17W; T14N, R16W; T14N, R15W; T14N, R14W; T14N, R13W; T14N, R12W; T14N, R11W; T14N, R10W; T14N, R9W; T14N, R8W; T14N, R7W; T14N, R6W; T14N, R5W; T14N, R4W; T14N, R3W; T14N, R2W; T14N, R1W; T14N, R1E; T14N, R2E; T13N, R34W; T13N, R33W; T13N, R32W; T13N, R31W; T13N, R30W; T13N, R29W; T13N, R28W; T13N, R27W; T13N, R26W; T13N, R25W; T13N, R24W; T13N, R23W; T13N, R22W; T13N, R21W; T13N, R20W; T13N, R19W; T13N, R18W; T13N, R17W; T13N, R16W; T13N, R15W; T13N, R14W; T13N, R13W; T13N, R12W; T13N, R11W; T13N, R10W; T13N, R9W; T13N, R8W; T13N, R7W; T13N, R6W; T13N, R5W; T13N, R4W; T13N, R3W; T13N, R2W; T13N, R1W; T13N, R1E; T13N, R2E; T13N, R4E; T13N, R5E; T13N, R6E; T13N, R7E; T13N, R8E; T13N, R9E; T13N, R10E; T13N, R11E; T13N, R12E; T13N, R13E; T12N, R35W; T12N, R34W; T12N, R33W; T12N, R32W; T12N, R31W; T12N, R30W; T12N, R29W; T12N, R28W; T12N, R27W; T12N, R26W; T12N, R25W; T12N, R24W; T12N, R23W; T12N, R22W; T12N, R21W; T12N, R20W; T12N, R19W; T12N, R18W; T12N, R17W; T12N, R16W; T12N, R15W; T12N, R14W; T12N, R13W; T12N, R12W; T12N, R11W; T12N, R10W; T12N, R9W; T12N, R8W; T12N, R7W; T12N, R6W; T12N, R5W; T12N, R3E; T12N, R4E; T12N, R5E; T12N, R6E; T12N, R7E; T12N, R8E; T12N, R9E; T12N, R10E; T12N, R11E; T12N, R12E; T12N, R13E; T12N, R14E; T12N, R15E; T12N, R16E; T11N, R40W; T11N, R39W; T11N, R37W; T11N, R36W; T11N, R35W; T11N, R34W; T11N, R33W; T11N, R30W; T11N, R29W; T11N, R28W; T11N, R27W; T11N, R26W; T11N, R25W; T11N, R24W; T11N, R23W; T11N, R22W; T11N, R21W; T11N, R20W; T11N, R19W; T11N, R18W; T11N, R17W; T11N, R16W; T11N, R15W; T11N, R14W; T11N, R13W; T11N, R12W; T11N, R3E; T11N, R4E; T11N, R5E; T11N, R6E; T11N, R7E; T11N, R8E; T11N, R9E; T11N, R10E; T11N, R11E; T11N, R12E; T11N, R13E; T11N, R14E; T11N, R15E; T11N, R16E; T11N, R17E; T10N, R40W; T10N, R39W; T10N, R38W; T10N, R37W; T10N, R36W; T10N, R35W; T10N, R34W; T10N, R30W; T10N, R29W; T10N, R28W; T10N, R27W; T10N, R26W; T10N, R25W; T10N, R24W; T10N, R23W; T10N, R22W; T10N, R21W; T10N, R20W; T10N, R19W; T10N, R18W; T10N, R17W; T10N, R16W; T10N, R15W; T10N, R14W; T10N, R13W; T10N, R12W; T10N, R3E; T10N, R4E; T10N, R10E; T10N, R11E; T10N, R12E; T10N, R13E; T10N, R14E; T10N, R15E; T10N, R16E; T10N, R17E; T10N, R18E; T10N, R19E; T9N, R41W; T9N, R40W; T9N, R39W; T9N, R38W; T9N, R23W; T9N, R22W; T9N, R21W; T9N, R20W; T9N, R19W; T9N, R18W; T9N, R17W; T9N, R16W; T9N, R15W; T9N, R14W; T9N, R13W; T9N, R12W; T9N, R11E; T9N, R12E; T9N, R13E; T9N, R14E; T9N, R15E; T9N, R16E; T9N, R17E; T9N, R18E; T9N, R19E; T9N, R20E; T8N, R42W; T8N, R41W; T8N, R20W; T8N, R19W; T8N, R18W; T8N, R17W; T8N, R16W; T8N, R15W; T8N, R14W; T8N, R13W; T8N, R12W; T8N, R11E; T8N, R12E; T8N, R17E; T8N, R18E; T8N, R19E; T8N, R20E; T7N, R13W; T7N, R12W; and all marine waters of the Beaufort and Chukchi Seas within 40 kilometers (25 miles) of the above area.

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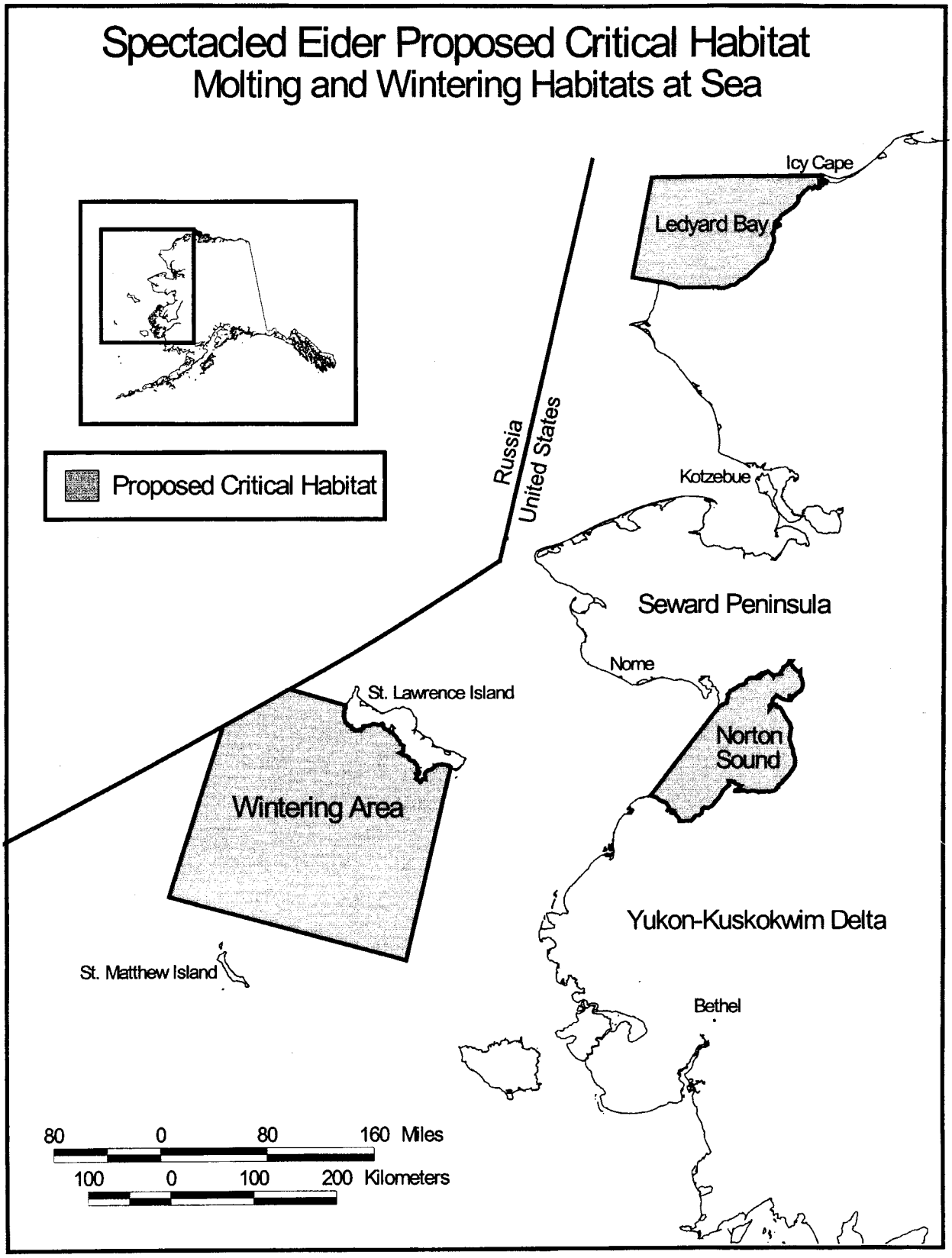


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Unit 6. Norton Sound Unit

The area east of a great circle route connecting the east bank of the mouth of Uwik Slough, on the northern edge of the Yukon River Delta, to Priest Rock, on the northern shore of Norton Sound (a great circle route connecting the geographic coordinates 63°15′ N × 164°09′ W and 64°19′ N × 162°47′ W).

Unit 7. Ledyard Bay Unit

The area bound by the following description: from Cape Lisburne (68°5′ N × 166°11′ W) along the mean low tide line of the Alaska coast north and east to Icy Cape (70°18′ N × 161°54′ W); from Icy Cape west along 70°18′ N to 70°18′ N × 167°00′ W; south from 70°18′ N × 167°00′ W along 167°00′ W to 68°52′ N × 167°00′ W, and from 68°52′ N × 167°00′ W east along 68°52′ N back to Cape Lisburne.

Unit 8. Wintering Area Unit

The area bound by the following description: from 61°00′ N × 174°30′ W east along that latitude to 61°00′ N × 169°00′ W, north along 169°00′ W longitude to the south shore of St. Lawrence Island (at approximately 63°12′ N × 169°00′ W), west and north along the mean low tide line of the south shore of St. Lawrence Island to 63°30′ N × 171°48′ W, west to the U.S.-Russia border at 63°30′ N × 173°16.2′ W, southwest along the U.S.-Russia Border to 62°56.4′ N × 174°30′ W, south along 174°30′ W to 61°00′ N × 174°30′ W.

* * * * *

Dated: January 28, 2000.

**Stephen C. Saunders,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 00–2608 Filed 2–7–00; 8:45 am]

BILLING CODE 4310–55–P

# Notices

Federal Register
Vol. 65, No. 26
Tuesday, February 8, 2000

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

### Cooperative State Research, Education, and Extension Service

### Food and Agricultural Sciences National Needs Graduate Fellowship Grants Program for Fiscal Year 2000; Request for Proposals and Request for Input

**AGENCY:** Cooperative State Research, Education, and Extension Service, USDA.

**ACTION:** Notice of request for proposals and request for input.

**SUMMARY:** The Cooperative State Research, Education, and Extension Service (CSREES) is giving notice that a competition for new graduate fellowship grants will not be held during Fiscal Year (FY) 2000. CSREES is also announcing the availability of supplemental grants for Special International Study or Thesis/Dissertation Research Travel Allowances for FY 2000. Applications for supplemental grants are invited from recipients of currently active Food and Agricultural Sciences National Needs Graduate Fellowship Grants to support special international study or thesis/dissertation research experiences for current Fellows. CSREES also is soliciting comments regarding this request for proposals from any interested party. These comments will be considered in the development of the next request for proposals for this program. Such comments will be forwarded to the Secretary or his designee for use in meeting the requirements of section 103(c)(2) of the Agricultural Research, Extension, and Education Reform Act of 1998, 7 U.S.C. 7613(c)(2).

**DATES:** Supplemental Grant proposals must be received by January 12, 2001. User comments are requested within six months from the issuance of the request for proposals. Comments received after that date will be considered to the extent practicable (see Section G.).

**ADDRESSES:** Hand-delivered proposals (brought in person by the applicant or through a courier service) must be received on or before January 12, 2001, at the following address: Graduate Fellowship (International) Supplemental Grants Program; c/o Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; 901 D Street, SW.; Washington, DC 20024. The telephone number is (202) 401–5048. Proposals transmitted via a facsimile (fax) machine will not be accepted.

Proposals submitted through the U.S. mail must be received on or before January 12, 2001. Proposals submitted through the U.S. mail should be sent to the following address: Graduate Fellowship (International) Supplemental Grants Program; c/o Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, SW; Washington, DC 20250–2245.

Written user comments should be submitted by first-class mail to: Policy and Program Liaison Staff; Office of Extramural Programs; USDA–CSREES; STOP 2299; 1400 Independence Avenue, SW; Washington, DC 20250–2299; or via e-mail to: RFP–OEP@reeusda.gov. (This address is only for user comments and not for requesting forms or information.) In your comments, please include the name of the program and the fiscal year of the request for proposals to which you are responding.

**FOR FURTHER INFORMATION CONTACT:** Dr. Howard Sandberg, Higher Education Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture, STOP 2251, 1400 Independence Avenue, SW; Washington, DC 20250–2251; Telephone: (202) 720–2193; E-mail: hsandberg@reeusda.gov.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

A. Administrative Provisions and Legislative Authority
B. Program Description
C. Selection Process and Evaluation Criteria
D. How to Obtain Application Materials
E. What to Submit
F. Catalog of Federal Domestic Assistance
G. Stakeholder Input

#### A. Administrative Provisions and Legislative Authority

This Program is subject to the provisions found at 7 CFR part 3402. 7 CFR 3402.5(e) sets forth procedures to be followed when submitting supplemental grant proposals for special international study or thesis/dissertation research travel allowances, rules governing the evaluation of proposals and the awarding of such grants, and regulations relating to the post-award administration of grant projects.

Legislative authority for this program is contained in section 1417(b)(6) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (NARETPA) (7 U.S.C. 3152(b)(6)).

#### B. Program Description

CSREES has determined that a new competition for special international study or thesis/dissertation research travel allowances will be held during FY 2000, and hereby solicits proposals for competitive supplemental grants. Proposals may be submitted by universities or colleges who currently have active Food and Agricultural Sciences National Needs Graduate Fellowship Grants. Eligibility for this opportunity is limited to any current Fellow with sufficient time to complete the international experience before the termination date of the fellowship grant under which he/she is supported. These supplementary grants provide support for a Fellow to conduct thesis/dissertation research or to undertake studies at a site outside of the United States primarily for the pursuit of activities that are not generally available within the United States. Before the international study or thesis/dissertation research travel may commence, a Fellow must have completed one academic year of full-time study, as defined by the institution, under the fellowship appointment and arrangements must have been formalized for the Fellow to study and/or conduct research in the foreign location(s).

Estimated funds for supplemental grants in FY 2000 are approximately $60,000. These funds are obtained from

no-year funds drawn from expired fellowship grants with unspent funds remaining. CSREES has determined that no FY 2000 appropriations will be targeted to supplemental grants supporting special international study or thesis/dissertation research travel allowances. For each travel allowance, the institution may request up to $5,000. Travel allowance monies may be used only to pay travel and living expenses for the Fellow while the Fellow is on the specific international assignment as proposed in the application for the special international study or thesis/dissertation research travel allowance. No limitation is placed on the number of applications an institution may submit. Awards will be made to the extent possible based on the review of the proposal and availability of funds.

**C. Selection Process and Evaluation Criteria**

Applications for the special international travel allowances will be evaluated as they are received until available funds for the supplemental grants are exhausted. Upon receipt of an application, CSREES staff will first determine the eligibility of the Fellow for whom the application was submitted for an international travel experience. Eligible and complete requests then will be reviewed by professional staff from USDA or other Federal agencies, as appropriate. Since awards for supplemental grants will be awarded as reviews are completed, there is no assurance funds will be available late in the application period for every acceptable proposal.

The six evaluation criteria are:

1. Destination and duration—the degree to which the destination and duration of the travel experience is appropriate for enhancing the Fellow's academic program—10 points.

2. Travel experience activities—the degree to which the specific international experiences contribute to the Fellow's program of study—30 points.

3. Advance preparations—the degree to which the proposed study or research activities are well-planned, including the likelihood that these activities will come to fruition and that the participation of identified personnel will materialize—20 points.

4. Budget—the degree to which the budget for the international experience is justified—10 points.

5. Personnel—the degree to which the personnel, both U.S. and international, involved with the travel experience have the appropriate credentials and experience to direct the Fellow's international experience, and the likelihood that their participation as mentors, trainers, advisors, or teachers will contribute to the educational value of the travel experiences—20 points.

6. Supporting documentation—the degree to which letters from the dean of the college (or equivalent administrative unit) and the fellowship grant project director support the application—10 points.

**D. How To Obtain Application Materials**

An Application Kit containing program application materials will be made available to eligible institutions upon request. These materials include the Administrative Provisions, Request for Proposals, Program Announcement, forms, instructions, and other relevant information needed to prepare and submit grant applications. Copies of the Application Kit may be requested from the Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, SW; Washington, DC 20250–2245. The telephone number is (202) 401–5048. When contacting the Proposal Services Unit, please indicate that you are requesting the Application Kit for the FY 2000 Graduate Fellowship (International) Supplemental Grants Program.

Application materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and telephone number to psb@reeusda.gov that states that you wish to receive a copy of the application materials for the FY 2000 Graduate Fellowship (International) Supplemental Grants Program. The materials will then be mailed to you (not e-mailed) as quickly as possible.

**E. What To Submit**

An original plus six copies of each application must be submitted. Proposals should contain all requested information when submitted. Each proposal should be typed on 8½″ x 11″ white paper, double-spaced, and on one side of the page only. Please note that the text of the proposal should be prepared using a font no smaller than 12 point and one-inch margins. Each copy of the application should be stapled securely in the upper left-hand corner (DO NOT BIND). All copies of the application must be submitted in one package. Applications transmitted via a facsimile (FAX) machine will not be accepted.

A separate application must be submitted by a fellowship grant project director at an eligible institution on behalf of each Fellow for which a special international study or thesis/dissertation research travel allowance is requested.

Each application must include an ''Application for Funding,'' Form CSREES–661, and a ''Budget,'' Form CSREES–55. To provide the office of Higher Education Programs (HEP) with sufficient information upon which to evaluate the merits of the requests for a special international study or thesis/dissertation research travel allowance, each application for a supplemental grant must contain a narrative which provides the following: (1) The specific destination(s) and duration of the travel; (2) the specific study or thesis/dissertation research activities in which the Fellow will be engaged; (3) how the international experience will contribute to the Fellow's program of study; (4) a budget narrative specifying and justifying the dollar amount requested for the travel; (5) summary credentials of both the U.S. and international faculty or other professionals with whom the Fellow will be working during the international experience (summary credentials must not exceed three pages per person; ''Summary Vita—Teaching Proposal,'' Form CSREES–708, may be used for this purpose); (6) a letter from the dean of the Fellow's college or equivalent administrative unit supporting the Fellow's travel request and certifying that the travel experience will not jeopardize the Fellow's satisfactory progress toward degree completion; and (7) a letter from the fellowship grant project director certifying the Fellow's eligibility, the accuracy of the Fellow's travel request, and the relevance of the travel to the Fellow's advanced degree objectives.

The narrative portion of the application must not exceed 10 pages, excluding the summary vita/vitae.

**F. Catalog of Federal Domestic Assistance**

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.210.

**G. Stakeholder Input**

CSREES is soliciting comments regarding this solicitation of applications from any interested party. These comments will be considered in the development of the next request for proposals for the program. Such comments will be forwarded to the Secretary or his designee for use in meeting the requirements of section 103(c)(2) of the Agricultural Research, Extension, and Education Reform Act of 1998 (Pub. L. 105–185). Comments

should be submitted as provided for in the **ADDRESSES** and **DATES** portions of this Notice.

Done at Washington, DC, this 28th day of January, 2000.

**Charles W. Laughlin,**

*Administrator, Cooperative State Research, Education, and Extension Service.*

[FR Doc. 00–2823 Filed 2–7–00; 8:45 am]

**BILLING CODE 3410–22–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–122–601]**

### Brass Sheet and Strip From Canada: Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative review.

**SUMMARY:** In response to a request by Hussey Copper Ltd., The Miller Company, Olin Corporation, Outokumpu American Brass, Revere Copper Products, Inc., International Association of Machinists and Aerospace Workers, International Union, Allied Industrial Workers of America (''AFL–CIO''), Mechanics Educational Society of America (''Local 56''), and the United Steel Workers of America (''AFL–CIO/CLC'') (collectively the ''Petitioners''), the Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on brass sheet and strip from Canada. The review covers one manufacturer/exporter of this merchandise to the United States, Wolverine Tube (Canada), Inc., (''Wolverine''). The period covered is January 1, 1998, through December 31, 1998. As a result of the review, the Department has preliminarily determined that a dumping margin exists for this respondent for the covered period.

We invite interested parties to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument.

**EFFECTIVE DATE:** February 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Paige Rivas or Nithya Nagarajan, Antidumping/Countervailing Duty Enforcement, Import Administration, Office IV, Group II , International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0651 or 482–5253, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce's regulations refer to the regulations codified at 19 CFR Part 351 (1999).

#### Background

The Department of Commerce (''the Department'') published an antidumping duty order on brass sheet and strip from Canada on January 12, 1987 (52 FR 1217). On January 14, 1999, the Department published a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty order on brass sheet and strip from Canada (64 FR 2470). On January 29, 1999, the Petitioners requested an administrative review of Wolverine's exports of the subject merchandise to the United States for the period January 1, 1998 through December 31, 1998. In accordance with 19 CFR 351.213 we published a notice of initiation of the review on February 22, 1999 (64 FR 8542). The Department is now conducting this administrative review in accordance with section 751 of the Act.

On April 22, 1999, we issued an antidumping questionnaire to Wolverine. Wolverine submitted the response to Sections A, B, C, and D on July 9, 1999. On July 29, 1999, the Petitioners submitted comments with respect to Wolverine's questionnaire which response.

We issued a supplemental questionnaire to Wolverine on October 13, 1999. The response to this supplemental questionnaire was submitted by Wolverine on November 12, 1999. On December 2, 1999, the Petitioners submitted comments with respect to Wolverine's supplement questionnaire response.

On December 20, 1999 we issued a second supplemental questionnaire to Wolverine. Wolverine filed its response to the second supplemental questionnaire which was received on January 11, 2000.

On January 28, 2000, the Department issued its third supplemental questionnaire to Wolverine. The response to the supplemental questionnaire is not due until after the preliminary results are completed. Therefore, we will take that response into account for the final results of review.

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for issuing a preliminary determination in an administrative review if it determines that it is not practicable to complete the preliminary review within the statutory time limit of 245 days. On October 19, 1999, the Department published a notice of extension of the time limit for the preliminary results in this case to January 31, 2000. *See Brass Sheet and Strip from Canada: Time Limit*, 64 FR 56308 (October 19, 1999).

#### Scope of Review

The product covered by this review is brass sheet and strip (''BSS''), other than leaded and tinned BSS. The chemical composition of the covered products is currently defined in the Copper Development Association (''C.D.A.'') 200 Series or the Unified Numbering System (''U.N.S.'') C2000. This review does not cover products the chemical compositions of which are defined by other C.D.A. or U.N.S. series. In physical dimensions, the products covered by this review have a solid rectangular cross section over 0.006 inches (0.15 millimeters) through 0.188 inches (4.8 millimeters) in finished thickness or gauge, regardless of width. Coiled, wound-on-reels (traverse wound), and cut-to-length products are included. The merchandise is currently classified under Harmonized Tariff Schedule (''HTS'') item numbers 7409.21.00 and 7409.29.00. Although the HTS item numbers are provided for convenience and customs purposes, the written description of the scope of this order remains dispositive. Pursuant to the final affirmative determination of circumvention of the antidumping duty order, covering the period September 1, 1990, through September 30, 1991, we determined that brass plate used in the production of BSS falls within the scope of the antidumping duty order on BSS from Canada. *See Brass Sheet and Strip from Canada: Final Affirmative Determination of Circumvention of Antidumping Duty Order,* 58 FR 33610 (June 18, 1993).

The period of review (''POR'') is January 1, 1998, through December 31, 1998. The review involves one manufacturer/exporter, Wolverine.

#### United States Price (''USP'')

In calculating the price to the United States, we used export price (''EP'') as

defined in section 772(a) of the Act because the subject merchandise was sold to unaffiliated U.S. purchasers in the United States prior to the date of importation into the United States and the use of constructed export price was not indicated by the facts of the record.

We calculated EP based on prices that were for merchandise delivered to the customers' premises. In accordance with section 772(c)(1) of the Act, we adjusted the gross USP for U.S. brokerage and handling, foreign and U.S. inland freight, and customs duty. No other adjustments to EP were claimed or allowed.

**Normal Value (''NV'')**

*A. Viability*

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Wolverine's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Because Wolverine's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market provides a viable basis for calculating NV for Wolverine.

*B. Below Cost of Production Test*

Because we disregarded sales below the cost of production (''COP'') in the 1997 POR, the most-recently completed segment of this proceeding, we have reasonable grounds to believe or suspect that sales of the foreign like product under consideration for determining NV in this review may have been at prices below the COP, within the meaning of section 773(b)(2)(A)(ii) of the Act. *See Notice of Final Results of Review and Intent Not to Revoke Order in Part: Brass Sheet and Strip from Canada,* 64 FR 46344 (August 25, 1999) (*''BS&S 1997''*). Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by Wolverine. In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of materials and fabrication employed in producing the foreign like product, plus selling, general, and administrative expenses (''SG&A'') and the cost of all expenses incidental to placing the foreign like product in condition packed ready for shipment. We relied on the home market sales and COP information Wolverine provided in its questionnaire responses. After calculating COP, we tested whether home market sales of subject BSS were made at prices below the COP within an extended period of time in substantial quantities, and whether such prices permitted the recovery of all costs within a reasonable period of time. To conduct this test, we compared model-specific COPs to the reported home market prices less any applicable movement charges.

Pursuant to section 773(b)(2)(C) of the Act, where less than twenty percent of Wolverine's home market sales of a model were at prices less than the COP, we did not disregard any below-cost sales of that model because we determined that the below-cost sales were not made within an extended period of time in ''substantial quantities.'' Where twenty percent or more of Wolverine's home market sales of a particular model were at prices less than the COP, we determined that such sales were made within an extended period of time in substantial quantities in accordance with section 773(b)(2) (B) and (C) of the Act. To determine whether such sales were at prices which would not permit the full recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act, we compared home market prices to the weighted-average COPs for the POR. The results of our cost test for Wolverine indicated that for certain home market models less than twenty percent of the sales of the model were at prices below COP. We therefore retained all sales of these models in our analysis and used them as the basis for determining NV. Our cost test for Wolverine also indicated that for certain other home market models more than twenty percent of the home market sales within an extended period of time were at prices below COP and would not permit the full recovery of all costs within a reasonable period of time. In accordance with section 773(b)(1) of the Act, we therefore excluded the below-cost sales of these models from our analysis and used the remaining above-cost sales as the basis for determining NV.

*C. Differences in Levels of Trade (''LOT'')*

In accordance with section 773(a)(1)(B)(i) of the Act and the Statement of Administrative Action (''SAA'') at 829–831, to the extent practicable, the Department will calculate NV based on sales at the same LOT as the U.S. sales. When the Department is unable to find sales in the comparison market at the same LOT as the U.S. sale(s), the Department may compare sales in the U.S. and foreign market at different LOTs, and adjust NV if appropriate. The NV LOT is that of the starting-price sales in the home market. As the Department explained in *Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review,* 62 FR 17148, 17156 (April 9, 1997), for both EP and CEP, the relevant transaction for the LOT analysis is the sale from the exporter to the importer.

To determine whether comparison market NV sales are at a different LOT than the U.S. sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and unaffiliated customer. If the comparison-market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731, 61732 (November 17, 1997), and *Granular Polytetrafluoroethylene Resin From Italy; Preliminary Results of Antidumping Duty Administrative Review,* 63 FR 25826 (May 11, 1998).

In its questionnaire responses, Wolverine stated that there were no significant differences in its selling activities by customer categories between markets. Therefore, Wolverine did not distinguish between LOTs for this review and did not claim a LOT adjustment. Our analysis of the questionnaire responses detailing the selling functions (*e.g.,* strategic and economic planning; technical support; engineering services; procurement services; packing; computer, legal, accounting, audit, and/or business-systems development; and freight and delivery arrangements) provided by Wolverine in the U.S. and home markets leads us to conclude that sales in those markets are not made at different LOTs. Accordingly, we preliminarily find that all sales in the home market and the U.S. market were made at the same LOT. Therefore, all price comparisons are at the same LOT and no adjustment pursuant to section 773(a)(7) of the Act is necessary. For a complete discussion, *see Preliminary Results Analysis Memo* (*''Analysis Memo''*), dated January 31, 2000, on file in the Central Records Unit, Room B–099 of the main Commerce Department Building.

*D. Model-Matching*

We calculated NV using prices of BSS products having the same characteristics as to form, temper, gauge, width, and

alloy as the U.S. products. We used the same gauge and width groupings and the same model-match methodology in this review as in the last completed administrative review. *See BS&S 1997.* Also, *see Analysis Memo.*

We based NV on the price at which the foreign like product is first sold for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade, and at the same LOT as the export price, as defined by section 773(a)(1)(B)(i) of the Act.

We reduced NV for warranty and home market credit expenses, and increased NV for U.S. credit expenses in accordance with section 773(a)(6)(C)(iii), due to differences in circumstances of sale. We reduced NV for home market movement expenses, in accordance with section 773(a)(6)(B)(ii); and for packing costs incurred in the home market, in accordance with section 773(a)(6)(B)(i); and increased NV to account for U.S. packing expenses in accordance with section 773(a)(6)(A).

**Preliminary Results of the Review**

As a result of our comparison of EP to NV, we preliminarily determine that a 3.33 percent dumping margin exists for Wolverine for the period January 1, 1998, through December 31, 1998.

**Assessment**

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. We divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct the U.S. Customs Service to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period.

**Cash Deposit**

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for Wolverine, the sole respondent covered by this review, will be the rate established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in these reviews, a prior review, or the original LTFV investigations, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the manufacturer nor the exporter is a firm covered in this or any previous review, the cash deposit rate will continue to be 8.10 percent, the ''all others'' rate established in the LTFV investigations. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the publication of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Case briefs must be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs, that is, thirty-seven days after the date of publication of these preliminary results. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing not later than 120 days after the date of publication of these preliminary results.

**Notification to Parties**

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 31, 2000.

**Holly Kuga,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–2851 Filed 2–7–00; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–201–805]**

### Certain Circular Welded Non-Alloy Steel Pipe From Mexico; Final Results of Administrative Reviews

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of administrative reviews.

**SUMMARY:** On June 25, 1999, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the 1992–1993 and 1993–1994 administrative reviews of the antidumping duty order on certain circular welded non-alloy steel pipe from Mexico (64 FR 34190). These reviews cover one manufacturer/exporter of the subject merchandise during the periods of review (POR) for April 28, 1992 through October 31, 1993, (the 92/93 POR) and November 1, 1993 through October 31, 1994 (the 93/94 POR).

We gave interested parties an opportunity to comment on the preliminary results. Based upon our analysis of the comments received we have not changed the results from those presented in our preliminary results for the 92/93 administrative review. However, we have changed the results for the 93/94 administrative review.

**EFFECTIVE DATE:** February 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** John Drury at (202) 482–0195 or Linda Ludwig at (202) 482–3833, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

**Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the Tariff Act of 1930, as

amended (the Tariff Act) and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Department published an antidumping duty order on circular welded non-alloy steel pipe and tube from Mexico on November 2, 1992 (57 FR 49453). The Department published a notice of Opportunity to Request an Administrative Review of the antidumping duty order for the 92/93 POR on November 3, 1993 (58 FR 58682). On November 19, 1993, respondent Hylsa S.A. de C.V. (Hylsa) requested that the Department conduct an administrative review of the antidumping duty order on circular welded non-alloy steel pipe and tube from Mexico. On November 30, 1993, respondent Tuberia Nacional S.A. de C.V. (TUNA) requested that the Department conduct an administrative review of this order. We initiated this review on January 18, 1994 (59 FR 2593).

The Department published a notice of Opportunity to Request an Administrative Review of the antidumping duty order for the 93/94 POR on November 10, 1994 (59 FR 56034). On November 29, 1994, respondent Hylsa requested that the Department conduct an administrative review of the antidumping duty order on circular welded non-alloy steel pipe and tube from Mexico. On November 30, 1994, respondent Western American Manufacturing, Inc. (Western American) requested that the Department conduct an administrative review of this order. We initiated this review on December 15, 1994. (59 FR 64650).

We published the preliminary results of these reviews, and termination of reviews with respect to TUNA and Western American, in the **Federal Register** on June 25, 1999 (Circular Welded Non-Alloy Steel Pipe and Tube From Mexico: Preliminary Results of Antidumping Duty Administrative Reviews; and Partial Revocation, 64 FR 34190 (Preliminary Results)). Hylsa filed a case brief on July 26, 1999; we did not receive any other case or rebuttal comments.

The Department has now completed these reviews in accordance with section 751 of the Tariff Act.

**Scope of the Review**

The review of circular welded non-alloy steel pipe and tube covers products of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). Those pipes and tubes are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications. Standard pipes and tubes are intended for the low pressure conveyance of water, steam, natural gas, air and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing and mechanical applications, such as for fence tubing, and for protection of electrical wiring, such as conduit shells.

The scope is not limited to standard pipe and fence tubing, or those types of mechanical and structural pipe that are used in standard pipe applications. All carbon steel pipes and tubes within the physical description outlined above are included within the scope of this review, except line pipe, oil country tubular goods, boiler tubing, cold-drawn or cold-rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished rigid conduit. In accordance with the Final Negative Determination of Scope Inquiry (56 FR 11608, March 21, 1996), pipe certified to the API 5L line pipe specification, or pipe certified to both the API 5L line pipe specifications and the less-stringent ASTM A–53 standard pipe specifications, which fall within the physical parameters as outlined above, and entered as line pipe of a kind used for oil and gas pipelines, are outside of the scope of the antidumping duty order.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7306.3010.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. These HTS item numbers are provided for convenience and customs purposes. The written descriptions remain dispositive.

**Analysis of Comments Received**

*Comment 1: Use of Best Information Available for 92/93 Administrative Review.*

Hylsa takes issue with the Department's statement that [t]he inability of Hylsa to reconcile aggregate quantities and values to its financial statements throws into doubt the accuracy of Hylsa's reported transaction-specific sales, and that because of such inaccuracies, the Department does [n]ot believe that it is possible to calculate an accurate margin for the first review. (64 FR 34190, at 34192). On the contrary, Hylsa states that the Department was able to verify that the reported information was consistent with the sales information in Hylsa's accounting system. Any discrepancies, argues Hylsa, were minor, and did not undermine the integrity of the response.

By way of explaining any discrepancies, Hylsa points to the fact that the verification for the review took place over 2½ years after Hylsa filed its initial response. In the intervening time, according to Hylsa, a failure of a computer hard drive resulted in the loss of the database used to prepare the original response. Compounding the problem, according to Hylsa, is the fact that it had to respond to Department requests for submissions and information concerning four separate reviews. According to Hylsa, the burden of responding to information requests, and preparing for verifications for the 94/95 administrative review concerning the same product, prevented Hylsa from having adequate time and resources to resolve this problem.

In examining the discrepancies found by the Department, Hylsa classifies them into two categories. The first category contains errors that Hylsa asserts are inconsequential because, according to Hylsa, the sales involved will not be used in the Department's margin calculations. These involve third country sales, and sales regarding unreported secondary merchandise.

Hylsa places the discrepancies between both U.S. and home market quantity and value figures into the second category. These discrepancies might affect the Department's dumping calculations. However, according to Hylsa, these discrepancies were small and insignificant for the purposes of verifying the accuracy of Hylsa's response.

Furthermore, Hylsa states that it cooperated with the Department to the best of its ability to provide the requested information. Given the nature of the errors, and the fact that Hylsa cooperated with the Department, Hylsa believes that the submitted information was sufficient and that there is no reasonable basis for the Department not to use the submitted data.

Petitioners did not comment on the issues.

*Department's Position*

We disagree with respondent. To begin, the Department takes issue with Hylsa's statement that it could not provide the necessary database because of a computer failure. During the

verification, Hylsa stated to the Department that it had changed computer systems and neglected to preserve those data files which it would need to document and explain its method of responding to the Department's questionnaire. (*See* verification report at page 20). Thus, rather than being the result of a computer failure, findings at verification indicated that the company, in the process of changing computer systems, simply failed to preserve a key database.

With regard to the errors in quantity and value, both those known before verification and those discovered at verification, the Department disagrees with Hylsa's statements that they were either minor or irrelevant to the Department's analysis. Establishing the completeness and accuracy of the response with respect to the quantity and value of sales in both the home and U.S. markets is a very significant element of verification. Only with a complete and accurate response can the Department reasonably calculate values for a price analysis.

19 CFR 353.37(a) states that [t]he Secretary will use the best information available whenever the Secretary: (1) Does not receive a complete, accurate, and timely response to the Secretary's request for factual information; or (2) Is unable to verify, within the time specified, the accuracy and completeness of the factual information submitted. In the instant case, Hylsa did not provide a complete, accurate, and timely response to the Department. Additionally, the Department was unable to verify, within the time specified, the accuracy and completeness of the information which Hylsa did submit.

At verification the Department ascertained that Hylsa's submission contained two errors. Both errors prevented the Department from establishing completeness and accuracy. The first error was that certain sales of subject merchandise were not reported to the Department until the verification, including large amounts of sales of subject merchandise in the home market. The second error was that even with these unreported sales included, Hylsa was unable to reconcile quantity and value figures. While the Department provided Hylsa with three separate opportunities to reconcile its quantity and value figures during the verification process, using separate databases, Hylsa was ultimately unable to reconcile any of the differences (*See* verification report at 16).

With regard to the first error (unreported sales), the Department discovered at verification that approximately 10 percent of sales of subject merchandise in the home market (most of which, but not all, were seconds) had not been reported and that a large volume of third country sales were not reported. The failure to report approximately 10 percent of home market sales until verification is especially disturbing and, by itself, is reasonable grounds to apply BIA to this case (19 CFR 353.37(a)(1)). The importance of providing accurate information regarding the quantity and value of sales in the home market, on a timely basis, which forms the basis of calculating fair market value, cannot be overstated. Full disclosure of such information prior to verification is critical to the process of verifying its accuracy and suitability for use in determining fair market value. Due to stringent time deadlines and the significant limitations on Commerce's resources, 'it is vital that accurate information be provided promptly to allow the agency sufficient time for review.' *Ceramica Regiomontana, S.A.* v. *United States*, 10 CIT 399, 406, 636 F. Supp. 961, 967 (1986). *Tatung Co.* v. *United States*, 18 CIT 1137, 1140 (1994). The failure to report a substantial portion of information regarding quantity or value is sufficient grounds for the application of BIA. The use of a 'neutral' margin . . . [where respondent failed to report a significant percentage of its home market prices] . . . would be inconsistent with the purpose of BIA, which is to insure a reasonably adverse inference against respondents which fail to comply fully with the Department's requests for information. (*See* Notice of Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Germany, 58 FR 37136, 37145 (July 9, 1993)). As the Court noted in *Persico Pizzamiglio, S.A.* v. *United States*, by allowing the Department to reject a submission in toto, the court encourages full disclosure by the respondent, because only full disclosure will lead to a dumping margin lower than that established by employing BIA. *Persico Pizzamiglio, S.A.* v. *United States*, 18 CIT 299 (CIT 1994). The lack of full information prior to verification substantially compromised the integrity of Hylsa's response.

In addition to the failure of Hylsa to report all home market sales of subject merchandise, the Department was unable to verify the quantity and value figures for both home market and U.S. sales for the review. Hylsa claims that the loss of the database used to create the original submission, as well as the need to respond to multiple Department requests for information on various reviews over a one-year period, complicated its efforts to reconcile quantity and value figures. However, the Department provided Hylsa with three separate opportunities to reconcile the quantity and value figures during verification (*See* verification report at 16). Hylsa was unable to do so. The failure to verify the submitted information is sufficient grounds for the application of BIA (19 CFR 353.37(a)(2)).

Despite its failure to reconcile quantity and value, Hylsa argues that the percentage differences were minor and did not prevent the Department from making reasonable price comparisons. However, even accepting Hylsa's figures, some of the percentage differences are sufficiently great to affect the margin calculations (*See* Analysis Memorandum, dated January 7, 2000). More importantly, because the Department was unable to verify quantity and value figures, we have no way of determining whether the unreported sales we uncovered represented all unreported sales. Verification is not a complete audit, and not an opportunity to provide substantial new data. As we said in Final Results of Antidumping Duty Administrative Review; Sodium Nitrate from Chile (52 FR 25897, 25898 (July 9, 1987)):

*Comment 4*

SQM claims that during the first period only 3.28 percent and during the second period only 1.60 percent of sales in the United States of commercial grade nitrates were not included in its response and these omissions would not have appreciably affect the Department's analysis.

*Department's Position*

The Department was unable to complete its price analysis because of the omission of an undeterminable number of U.S. sales and a substantial number of other deficiencies found at verification. The purpose of verification is to confirm the accuracy of the data submitted; the Department is not authorized to use verification for the purpose of supplementing the information originally missing from the response and investigating these unreported sales. Failure to include certain sales information in the original response meant that the Department was not able to conduct verification.

Taken together, the Department believes that the totality of the errors

and omissions found at verification render Hylsa's submitted data unusable for purposes of calculating a margin. To summarize, at verification the Department found that both the reported quantity and value of home market sales were misreported to varying degrees. Additionally, the value of sales to the United States was also misreported. Hylsa was unable to reconcile these differences. Finally, Hylsa failed to report a number of home market sales of subject merchandise until the Department arrived at Hylsa to begin verification.

The decision to resort to BIA in an administrative review is made on a case-by-case basis after evaluating all evidence in the administrative record. See *Allied-Signal Aerospace Corp.* v. *United States*, 966 F.2d 1185, 1191 (Fed. Cir. 1993). Once again, the multiple and pervasive nature of errors and omissions in the information provided by Hylsa prevented the Department from relying on Hylsa's response, as the Department was not confident that the response was an accurate reflection of Hylsa's sales activity during the POR. Therefore, the use of BIA is appropriate. Since Hylsa substantially cooperated with the Department's request for information, the Department believes that assigning Hylsa second-tier BIA is the most reasonable approach. (See *Allied Signal Aerospace Corp.* v. *United States*, 996 F.2d 1185 (Fed. Cir. 1993) (concluding that the Department's two-tiered BIA methodology, under which cooperating companies are assigned the lower, second tier BIA rate, is reasonable).) As such, the Department is not deviating from its preliminary results with respect to the first administrative review.

*Comment 2: Use of Best Information Available for 93/94 Administrative Review.*

Hylsa believes that the Department's use of BIA in establishing Hylsa's cost of production in the second review is unfair. While acknowledging that it failed to report weighted-average costs for the full POR, Hylsa states that it had no reason to suspect that its methodology was inappropriate until verification. In fact, Hylsa indicates that it had ample reason to believe that the methodology was the Department's preferred methodology for this review.

In the second administrative review, Hylsa reported six-month costs corresponding to the time in which Hylsa made sales to the United States. The Department approved a six-month reporting period for sales data in this review, and had approved six-month cost reporting for the 94/95 administrative review. Furthermore, after the submission, the Department did not notify Hylsa that the cost data were in error. Citing *Olympic Adhesives, Inc.* v. *U.S.*, 899 F.2d 1565, 1573 (Fed. Cir. 1990), Hylsa indicates that the Department was required to give notice of any perceived inadequacies of the responses. Since the Department did not do so prior to verification, Hylsa asserts, there was no reason to suspect that the reported cost data was unacceptable. Therefore, in the interest of fairness, Hylsa requests that the Department use Hylsa's reported costs for this review.

Petitioners did not comment on the issues.

*Department's Position*

We agree with respondent, and have used its reported costs when calculating the margin for this administrative review. The Department accepted limited reporting in the third administrative review. As the Department used a similar methodology in a previous review, the use of limited reporting in this review is consistent with previous practice. Further, the Department did not request that Hylsa alter its reporting methodology in this review. Consequently, application of BIA for this review is not warranted.

**Final Results of Review**

Based on our review of the arguments presented above, for these final results we have made no changes in the margins for Hylsa in the first review. We have determined that Hylsa's weighted-average margin for the period April 28, 1992 through October 31, 1993 is 32.62 percent. Hylsa's margin for the November 1, 1993 through October 31, 1994 period of review is 7.17 percent.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. For assessment purposes, we have calculated importer-specific ad valorem duty assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales during the POR to the total quantity of sales examined during the POR. The Department will issue appraisement instructions directly to Customs.

Furthermore, the following deposit requirements will be effective upon completion of the fnal results of these administrative reviews for all shipments of circular welded non-alloy steel pipe from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of these administrative reviews, as provided in section 751(a)(1) of the Tariff Act:

(1) The cash deposit rate for Hylsa will continue to be 8.31 percent (*See* Circular Welded Non-Alloy Steel Pipe from Mexico: Final Results of Administrative Review, 63 FR 33041 (June 17, 1998);

(2) For previously reviewed or investigated companies other than Hylsa, the cash deposit rate will continue to be the company-specific rate publish for the most recent period;

(3) If the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 32.62 percent. *See* Antidumping Duty Order; Circular Welded Non-Alloy Steel Pipe from Mexico, 57 FR 49453 (November 2, 1992).

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act (19 U.S.C. 1675(a)(1) and 1677f(i)(1)).

Dated: January 11, 2000.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 00–2849 Filed 2–7–00; 8:45 am]

BILLING CODE 3510 –DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–588–806, A–484–801]**

### Electrolytic Manganese Dioxide From Japan and Greece: Notice of Extension of Time Limits for Preliminary Results of Antidumping Administrative Reviews

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of extension of time limits for preliminary results of antidumping duty administrative reviews.

**SUMMARY:** The Department of Commerce is extending the time limit for the preliminary results of the antidumping duty administrative reviews of the antidumping duty orders on electrolytic manganese dioxide from Japan and Greece. The period of review is April 1, 1998, through March 31, 1999.

**EFFECTIVE DATE:** February 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Larry Tabash, Hermes Pinilla or Richard Rimlinger, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5047, (202) 482–3477 or (202) 482–4477, respectively.

#### The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (the Act), by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (1998).

#### Extension of Time Limits for Preliminary Results

The Department has received a request to conduct administrative reviews of the antidumping duty orders on electrolytic manganese dioxide from Japan and Greece. On May 20, 1999, and June 30, 1999, the Department initiated these administrative reviews covering the period April 1, 1998, through March 31, 1999 (64 FR 28973 and 64 FR 35124, respectively).

On December 28, 1999, we extended the preliminary results for both cases from December 31, 1999, to February 14, 2000. Because it is not practicable to complete these reviews by February 14, 2000, due to the complexity of the issues involved (*see* Memoranda from Laurie Parkhill to Richard W. Moreland, Extension of Time Limit for Administrative Reviews of Electrolytic Manganese Dioxide from Japan and Greece, February 1, 2000), the Department is extending the time limits for the preliminary results by 75 days from the current deadline of February 14, 2000. Thus, the extended deadline for issuance of the preliminary results is May 1, 2000. The Department intends to issue the final results of reviews 120 days after the publication of the preliminary results. This extension of the time limit is in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: February 1, 2000.

**Richard W. Moreland,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 00–2848 Filed 2–7–00; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**A–557–805**

### Extruded Rubber Thread From Malaysia; Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On November 8, 1999, the Department of Commerce published in the Federal Register the preliminary results of the administrative review of the antidumping duty order on extruded rubber thread from Malaysia. This review covers four manufacturers/exporters of the subject merchandise to the United States (Filati Lastex Sdn. Bhd., Heveafil Sdn. Bhd./Filmax Sdn. Bhd., Rubberflex Sdn. Bhd., and Rubfil Sdn. Bhd.). The period of review is October 1, 1997, through September 30, 1998.

We gave interested parties an opportunity to comment on our preliminary results. We have based our analysis on the comments received and have changed the results from those presented in the preliminary results of review.

**EFFECTIVE DATE:** February 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Shawn Thompson or Irina Itkin, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1776 or (202) 482–0656, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On November 8, 1999, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the 1997–1998 administrative review of the antidumping duty order on extruded rubber thread from Malaysia (64 FR 60766). The Department has now completed this administrative review, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

#### Scope of the Review

The product covered by this review is extruded rubber thread. Extruded rubber thread is defined as vulcanized rubber thread obtained by extrusion of stable or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm, which is 0.007 inch or 140 gauge, to 1.42 mm, which is 0.056 inch or 18 gauge, in diameter. Extruded rubber thread is currently classifiable under subheading 4007.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this review is dispositive.

#### Period of Review

The period of review (POR) is October 1, 1997, through September 30, 1998.

#### Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Act, are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (1999).

#### Facts Available

*A. Use of Facts Available for Rubfil Sdn. Bhd. (Rubfil)*

In accordance with section 776(a)(2)(A) of the Act, we determine that the use of facts available is appropriate as the basis for Rubfil's dumping margin. Paragraphs 776(a)(2)(A) through (D) of the Act provide, respectively, that if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a

determination under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Specifically, Rubfil failed to respond to the Department's questionnaire, issued in December 1998. Because Rubfil did not respond to the Department's questionnaire, paragraphs A through C of section 776(a)(2) of the Act apply. Moreover, Rubfil was advised that failure to respond to the Department's questionnaire would be considered a deficiency which would result in the use of facts available. In light of Rubfil's continued failure to respond and in accordance with sections 776(a) and 782(d) of the Act, we must use facts otherwise available to determine Rubfil's dumping margin.

Section 776(b) of the Act provides that adverse inferences may be used with respect to a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See* Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 316, 103rd Cong., 2d Sess. 870 (SAA). The failure of Rubfil to reply to the Department's questionnaire demonstrates that it has failed to act to the best of its ability in this review and, therefore, an adverse inference is warranted.

As adverse facts available for Rubfil, we have used the highest rate for any respondent in any segment of this proceeding. That rate is 52.89 percent. We find that the rate of 52.89 percent, which was assigned in a prior administrative review, is sufficiently high as to effectuate the purpose of the adverse facts available rule (*see Extruded Rubber Thread from Malaysia; Final Results of Antidumping Duty Administrative Review,* 63 FR 12752 (Mar. 16, 1998) (*Thread Fourth Review*)).

*B. Corroboration of Secondary Information*

As facts available in this case, the Department has used information derived from a prior administrative review, which constitutes secondary information within the meaning of the SAA. *See* SAA at 870. Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information from independent sources reasonably at its disposal. The SAA provides that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870.

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike for other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from the same or a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin may not be appropriate, the Department will attempt to find a more appropriate basis for facts available. *See, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review,* 61 FR 6812, 6814 (Feb. 22, 1996) (*Fresh Cut Flowers*) (where the Department disregarded the highest margin as adverse best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin).

For Rubfil, we examined the rate applicable to extruded rubber thread from Malaysia throughout the course of the proceeding. With regard to its probative value, the rate specified above is reliable and relevant because it is a calculated rate from the 1995–1996 administrative review. There is no information on the record that demonstrates that the rate selected is not an appropriate total adverse facts available rate for Rubfil. Thus, the Department considers this rate to be appropriate adverse facts available.

**Normal Value Comparisons**

To determine whether sales of extruded rubber thread from Malaysia to the United States were made at less than normal value (NV), we compared the export price (EP) to the NV for Rubberflex, as specified in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice, below. We compared the constructed export price (CEP) to the NV for Filati Lastex Sdn. Bhd. (Filati), Heveafil Sdn. Bhd./Filmax Sdn. Bhd (collectively Heveafil), and Rubberflex Sdn. Bhd. (Rubberflex), also as specified in those sections.

When making comparisons in accordance with section 771(16) of the Act, we considered all home market sales of extruded rubber thread that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales in the ordinary course of trade of identical merchandise in the home market, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in sections B and C of our antidumping questionnaire.

**Level of Trade and CEP Offset**

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as EP or CEP. The NV level of trade is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses (SG&A) and profit. For EP, the U.S. level of trade is also the level of the starting-price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731, 61732–33 (Nov. 19, 1997).

Filati, Heveafil, and Rubberflex claimed that they made home market sales at only one level of trade (*i.e.,* sales to original equipment manufacturers (OEMs)). According to these respondents, no level of trade adjustment was warranted. Although Filati claimed that the home market level was different, and more remote, than the level of trade of the CEP, we

have found the levels of trade to be the same.

In order to determine whether NV was established at a level of trade which constituted a more advanced stage of distribution than the level of trade of the CEP, we compared the selling functions performed for home market sales with those performed with respect to the CEP transaction, which excludes economic activities occurring in the United States. In examining the record, we found that all sales in the home market for all respondents were in a single channel of trade (*i.e.,* to OEMs) constituting a single stage of marketing. Moreover, we found that Filati, Heveafil, and Rubberflex performed essentially the same selling functions in their sales offices in Malaysia for all home market and U.S. sales. Therefore, the respondents' sales in Malaysia were not at a more advanced stage of marketing and distribution than the constructed U.S. level of trade, which represents an FOB foreign port price after the deduction of expenses associated with U.S. selling activities. *See* 19 CFR 351.412(c)(2). Because we find that no difference in level of trade exists between markets, we have not granted a CEP offset to any of the respondents. For a detailed explanation of this analysis, see the concurrence memorandum issued for the preliminary results of this review, dated November 1, 1999.

**Export Price and Constructed Export Price**

For Rubberflex, we based the U.S. price on EP, in accordance with section 772(a) of the Act, when the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise indicated.

In addition, for all companies, we based the U.S. price on CEP where sales to the unaffiliated purchaser took place after importation into the United States, in accordance with section 772(b) of the Act. We also based U.S. price on CEP for Filati and Heveafil where the merchandise was shipped directly to certain unaffiliated customers because we found that the extent of the affiliates' activities performed in the United States in connection with those sales was significant. For further discussion, see *Comment 1* in the ''Analysis of Comments Received'' section of this notice.

*A. Filati*

We calculated CEP based on the starting price to the first unaffiliated purchaser in the United States. In accordance with section 772(c)(1)(B) of the Act, we added an amount for uncollected import duties in Malaysia. We made deductions from the starting price, where appropriate, for rebates. In addition, where appropriate, we made deductions for foreign inland freight, foreign brokerage and handling expenses, ocean freight, marine insurance, U.S. customs duty, U.S. brokerage and handling expenses, U.S. inland freight, and U.S. warehousing expenses, in accordance with section 772(c)(2)(A) of the Act.

We made additional deductions from CEP, where appropriate, for commissions, credit expenses and U.S. indirect selling expenses, including U.S. inventory carrying costs, in accordance with section 772(d)(1) of the Act. We disallowed an offset claimed by Filati relating to imputed costs associated with financing antidumping and countervailing duty deposits, in accordance with the Department's practice. *See Extruded Rubber Thread from Malaysia; Final Results of Antidumping Duty Administrative Review,* 64 FR 12967, 12968 (Mar. 16, 1999) (*Thread Fifth Review; Thread Fourth Review,* 63 FR at 12754; and *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews,* 62 FR 54043, 54075 (Oct. 17, 1997) (*AFBs*). *Also see Comment 2* in the ''Analysis of Comments Received'' section of this notice, for further discussion.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit, to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Filati and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

*B. Heveafil*

We calculated CEP based on the starting price to the first unaffiliated customer in the United States. In accordance with section 772(c)(1)(B) of the Act, we added an amount for uncollected import duties in Malaysia. We made deductions from the starting price, where appropriate, for rebates. We also made deductions for foreign inland freight, foreign brokerage and handling expenses, ocean freight, marine insurance, U.S. customs duty, U.S. brokerage and handling expenses, U.S. inland freight, and U.S. warehousing expenses, in accordance with section 772(c)(2)(A) of the Act.

We made additional deductions to CEP, where appropriate, for credit expenses and U.S. indirect selling expenses, including U.S. inventory carrying costs, in accordance with section 772(d)(1) of the Act.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit, to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Heveafil and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

*C. Rubberflex*

We based EP or CEP, as appropriate, on the starting price to the first unaffiliated purchaser in the United States. We made deductions from the starting price, where appropriate, for rebates. We also made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling expenses, ocean freight, marine insurance, U.S. customs duty, U.S. inland freight, and U.S. warehousing expenses, in accordance with section 772(c)(2)(A) of the Act.

We made additional deductions from CEP, where appropriate, for credit expenses and U.S. indirect selling expenses, including U.S. inventory carrying costs, in accordance with section 772(d)(1) of the Act. Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit, to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Rubberflex and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

**Normal Value**

In order to determine whether there was during the POR a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.,* the aggregate volume of home market sales of the foreign like product was greater than five percent of the aggregate volume of U.S. sales), we compared the volume of each respondent's home market sales of the foreign like product to the volume of U.S. sales of subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Based on this comparison, we determined that each respondent had a viable home

market during the POR. Consequently, we based NV on home market sales.

Pursuant to section 773(b)(2)(A)(ii) of the Act, there were reasonable grounds to believe or suspect that Filati, Heveafil, and Rubberflex had made home market sales at prices below their costs of production (COPs) in this review because the Department had disregarded sales below the COP for these companies in the most recent administrative review. *See Thread Fifth Review,* 64 FR at 12969. As a result, the Department initiated an investigation to determine whether the respondents made home market sales during the POR at prices below their respective COPs.

We calculated the COP based on the sum of each respondent's cost of materials and fabrication for the foreign like product, plus amounts for SG&A and packing costs, in accordance with section 773(b)(3) of the Act.

We compared the COP figures to home market prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. On a product-specific basis, we compared the COP to home market prices, less any applicable movement charges, discounts, and rebates.

In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made: (1) in substantial quantities within an extended period of time; and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. *See* section 773(b)(1) of the Act.

Pursuant to section 773(b)(2)(c)(i) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product were at prices below the COP, we found that sales of that model were made in ''substantial quantities'' within an extended period of time (as defined in section 773(b)(2)(B) of the Act), in accordance with section 773(b)(2)(C)(i) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

We found that, for certain models of extruded rubber thread, more than 20 percent of each respondent's home market sales within an extended period of time were at prices less than COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded the below-cost sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. For those U.S. sales of extruded rubber thread for which we were unable to make comparisons with home market sales, we compared CEP to CV, in accordance with section 773(a)(4) of the Act.

In accordance with section 773(e) of the Act, we calculated CV based on the sum of each respondent's cost of materials, fabrication, SG&A, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

Company-specific calculations are discussed below.

*A. Filati*

In all instances, NV for Filati was based on home market sales. Accordingly, we based NV on the starting price to unaffiliated customers. For all price-to-price comparisons, we made deductions from the starting price for rebates, where appropriate. We also made deductions, where appropriate, for foreign inland freight, pursuant to section 773(a)(6)(B)(ii) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act, we also made deductions for home market credit expenses and bank charges. Where applicable, in accordance with 19 CFR 351.410(e), we offset any commission paid on a U.S. sale by reducing the NV by the amount of home market indirect selling expenses and inventory carrying costs, up to the amount of the U.S. commission.

In addition, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

*B. Heveafil*

Where NV was based on home market sales, we based NV on the starting price to unaffiliated customers. We made deductions from the starting price for discounts. We also made deductions for foreign inland freight and foreign inland insurance, pursuant to section 773(a)(6)(B)(ii) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act, we also made deductions for home market credit expenses.

In addition, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

For CV-to-CEP comparisons, we made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses, in accordance with sections 773(a)(6)(C)(iii) and 773(a)(8) of the Act.

*C. Rubberflex*

In all instances, NV for Rubberflex was based on home market sales. Accordingly, we based NV on the starting price to unaffiliated customers. We made deductions from the starting price for foreign inland freight, pursuant to section 773(a)(6)(B)(ii) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act, we also made a circumstance-of-sale adjustment for credit expenses.

For all price-to-price comparisons, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

**Currency Conversion**

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark for the daily rate, in accordance with established practice.

**Analysis of Comments Received**

We gave interested parties an opportunity to comment on the preliminary results. We received comments from North American Rubber Thread (the petitioner) and two respondents, Filati and Rubberflex. We also received rebuttal comments from the petitioner.

*A. Filati*

*Comment 1: Treatment of Direct Container Sales*

During the POR, Filati shipped some thread directly from the factory in Malaysia to its U.S. customers. The Department treated these ''direct container'' shipments as CEP sales for purposes of the preliminary results. Filati argues that this treatment was incorrect, based on the Department's criteria for determining whether a sale is an EP transaction (rather than a CEP sale). According to Filati, whenever sales are made prior to the date of importation through an affiliated sales agent in the United States, the Department concludes that EP is the most appropriate determinant of the U.S. price where all of the following factors are present:

- The merchandise in question is shipped directly from the manufacturer to the unaffiliated buyer without being introduced into the physical inventory of the selling agent;
- Direct shipment from the manufacturer to the unaffiliated buyer is the customary channel for sales of the subject merchandise between the parties involved; and
- The selling agent in the United States acts only as a processor of sales-related documentation and a communication link with the unaffiliated U.S. buyer.

*See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Korea,* 63 FR 40404, 40418 (July 29, 1998) (*Korean Steel*); and *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Review,* 61 FR 18547, 18551 (Apr. 26, 1996) (*Carbon Steel from Korea*).

Filati contends that each of these criteria was met with respect to its direct container sales. Specifically, Filati states that, because the date of sale was prior to entry, the direct container sales were made prior to importation. In addition, Filati asserts that the first and second criteria were met, since: (1) The subject merchandise was shipped directly to the U.S. customer without being introduced into the physical inventory of Filati USA; and (2) direct shipments have been a normal commercial channel for the customer involved.

Regarding the third criterion, Filati argues that the Department erroneously found in the preliminary results that the activities carried out by its U.S. affiliate, FLE–USA, exceeded those of a document processor and communication link. Filati contends that the selling activities performed by FLE–USA are within the range of activities previously determined by the Department to be consistent with EP classification.

Filati acknowledges that FLE–USA takes title to the merchandise, invoices the customer, and in some cases, arranges and pays for delivery from the port of entry. However, Filati contends that FLE–USA has only limited authority to set prices in the United States. As support for this assertion, Filati cites to the U.S. sales verification report issued in the prior administrative review, where the Department noted that prices are quoted in accordance with a window that is set based on consultations with the parent company. (*See* Memorandum from Irina Itkin to Louis Apple regarding Verification of the Sales Questionnaire Responses of Filati Lastex Sdn. Bhd. and Filati Lastex Elastofibre in the Antidumping Duty Administrative Review on Extruded Rubber Thread from Malaysia, dated Oct. 7, 1998, at page 4 (*FLE–USA Verification Report*).)

In addition, Filati asserts that the Department has accorded EP treatment to sales by respondents who performed selling functions that were more significant than those performed by FLE–USA. Filati cites to *AK Steel Corp.* v. *United States,* Slip Op. 98–159 at 10–12 (Court of International Trade (CIT), Nov. 23, 1998) (*AK Steel*) and *Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands: Final Results of Antidumping Duty Administrative Review,* 64 FR 11825, 11828 (Mar. 10, 1999) (*Dutch Steel*) in support of its position. Filati asserts that, in the former, the CIT upheld the Department's EP classification of U.S. sales where the U.S. affiliate: (1) took title to the shipment; (2) acted as importer of record; (3) made initial contact with the direct shipment customer; (4) negotiated price based upon predetermined factors; (5) received purchase orders from the customer and forwarded them to the exporter/producer for confirmation; (6) invoiced the customer; (7) conducted market research and economic planning; (8) found customers; (9) arranged and paid for post-sale warehousing, transportation, U.S. Customs duties, brokerage, handling, and other expenses; (10) extended credit to and accepted payment from direct container customers; and (11) maintained relationships with those customers.

Regarding the latter, Filati asserts that the Department found that sales were properly classified as EP transactions where the U.S. affiliate: (1) arranged visits and accompanied the foreign producer/exporter on visits to U.S. customers; (2) relayed customer price and quantity quotes to the producer and the producer's reply to the customer; (3) advised the producer whether the price quotes were reasonable based on market research; (4) drafted and signed sales contracts on behalf of the foreign producer; (5) processed U.S. customs declarations and made arrangements with U.S. freight forwarders; (6) acted as importer of record; (7) received payment from the customer; and (8) provided some after-sale support functions, such as facilitating visits by the producer's service technician.

Finally, Filati notes that the Department found that Filati's direct container shipments were EP transactions in the second and third reviews of this proceeding. Filati contends that, because its method of making these shipments has not changed since the time of those reviews, the Department should continue to treat direct container sales as EP transactions in the instant review.

The petitioner contends that the Department correctly treated Filati's direct container shipments as CEP transactions. According to the petitioner, Filati concedes that its U.S. subsidiary negotiates U.S. prices, albeit within the constraints of a ''window.'' The petitioner asserts that Filati has failed to adequately define this window, including how it is determined, whether it changes from sale to sale, or whether FLE–USA can in fact determine what the window is. Thus, the petitioner asserts that the Department should continue to classify the sales in question as CEP sales.

*DOC Position*

In the preliminary results of this review, we examined the facts of this case in light of the statutory definitions of EP and CEP sales. Section 772(b) of the Act, as amended, defines CEP as ''the price at which the subject merchandise is first sold (or agreed to be sold) *in the United States* before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted''

(emphasis added). Section 772(a) of the Act defines EP as ''the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise *outside of the United States* to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States, as adjusted'' (emphasis added).

As the statutory definitions state, sales before importation can be classified as either EP or CEP sales. The decisive factor for classifying sales made prior to importation is where the selling activity takes place (*i.e.,* inside or outside of the United States). Distinguishing EP and CEP transactions based on where selling activity takes place is consistent with the purpose of ensuring that, where appropriate, expenses related to selling activity in the United States are deducted to reach a constructed ''export'' price.

It is the Department's practice to examine several criteria to determine whether sales made prior to importation through a sales agent to an unaffiliated customer in the United States are EP sales, including: (1) whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer; (2) whether this was the customary commercial channel between the parties involved; and (3) whether the function of the U.S. selling agent was limited to that of a ''processor of sales-related documentation'' and a ''communications link'' with the unaffiliated U.S. buyer. Where all three criteria are met, indicating that the activities of the U.S. selling agent are ancillary to the sale, the Department has determined the sales to be EP sales. Where one or more of these conditions are not met the Department has classified the sales in question as CEP sales. (*See, e.g., Viscose Rayon Staple Fiber from Finland: Final Results of Antidumping Duty Administrative Review,* 63 FR 32820, 32821 (June 16, 1998) (*Viscose Rayon from Finland); Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews,* 63 FR 13170 (Mar. 18, 1998).)

The crucial distinction between EP and CEP treatment in this case lies in the last factor (*i.e.,* whether the entity in the United States acted only as a processor of documentation and a communication link). *See Mitsubishi Heavy Industries* v. *United States,* 15 F. Supp. 2d 807, 811–12 (CIT 1998). This factor entails a fact-based analysis to determine whether the entity in the United States is actually engaged in significant selling activities, in which case CEP applies, or is merely performing ancillary functions for a foreign seller, in which case EP is appropriate. *See Id.* The classification of sales as EP or CEP is not confined to tallying up the various functions of the U.S. selling agent. In *Industrial Nitrocellulose From the United Kingdom: Notice of Final Results of Antidumping Duty Administrative Review,* 64 FR 6609, 6611 (Feb. 10, 1999), we observed that ''[t]he Department looks at the totality of the evidence to determine whether an agent's role in the sales process is beyond the ancillary role.'' As noted above, in cases where the U.S. affiliate or sales agent has a significant role in making U.S. sales (including setting the price in the United States and providing after-sale support), we generally find that CEP treatment is appropriate. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From the Republic of Korea,* 64 FR 30664, 30685–86 (June 8, 1999); *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Spain,* 63 FR 40391, 40395 (July 29, 1998) (*SSWR from Spain);* and *Viscose Rayon from Finland.* 63 FR at 32821.

Our analysis of the facts in this case indicates that during the POR Filati's U.S. affiliate, FLE–USA, played an extensive role in making direct container sales. Specifically, FLE–USA: (1) Made initial contact with the customer; (2) transmitted the order to Filati in Malaysia; (3) quoted prices without consulting the parent company on a sale-by-sale basis; (4) took title to the merchandise; (5) invoiced, and received payment from, the customer; and (6) arranged and paid for delivery from the U.S. port to the customer. *See* page 9 of the September 13, 1999, supplemental response and the *FLE–USA Verification Report* at page 4. Thus, the record shows that FLE–USA was significantly involved in every aspect of the sales to U.S. direct container customers, except for arranging for shipment of the subject merchandise from Malaysia to the U.S. port of entry.

FLE–USA's role in negotiating the terms of the sales in question is more significant than that of a conduit of information between the U.S. customer and the Malaysian parent. Specifically, FLE–USA had the authority to contact U.S. customers directly, and then to negotiate and accept sales terms and prices on a case-by-case basis without Filati's approval. Both of these functions contradict Filati's claim that the U.S. subsidiary's role is ancillary. The record of this case shows FLE–USA's involvement in the U.S. sales process is extensive, as evidenced by the selling functions described herein. Based on these facts, we determine that FLE–USA's role in making direct container sales exceeds that of a mere processor of sales-related documentation and communication link between the parent company and U.S. customer.

We also find unpersuasive Filati's claim that FLE–USA had limited authority to set prices because it did so only within parameters set by Filati. In similar circumstances, we have found the U.S. subsidiary's role in making the sales at issue to be significant enough to warrant their treatment as CEP sales. For example, in *SSWR from Spain,* we found that the U.S. subsidiary's ability to negotiate prices within the parameters set by the parent company, in conjunction with other sale related activities, was sufficient to warrant classification of those sales as CEP sales. In addition, in *U.S. Steel Group* v. *United States,* Slip Op. 98–96 at 26 (CIT 1998), the CIT upheld the Department's classification of U.S. sales as CEP transactions, based in part on the U.S. subsidiary's ability to negotiate prices above the minimum set by the parent company.

We also find that Filati's reliance upon *Dutch Steel* is misplaced. The record on which that determination was based demonstrated that the U.S. subsidiary performed limited liaison functions in the processing of sales-related documentation and held a limited role as a communication link. Specifically, the U.S. subsidiary in that case did not take title to the merchandise, finance sales, provide technical assistance, issue order confirmations or invoices, or accept payment from customers (except in extraordinary circumstances). *See Dutch Steel,* 64 FR at 11828. Moreover, the Department stated in its final determination that the U.S. subsidiary had no authority to negotiate prices, that it did not initiate contact with U.S. customers on its own authority, and that the preponderance of selling functions involved in U.S. sales occurred in the Netherlands. *Id.* at 11828–29. In the instant case, because FLE–USA contacted customers, took title to the merchandise, quoted prices without consulting with the parent company on a sale-by-sale basis, issued invoices, and accepted payment, we find that FLE–USA did not act as a mere communications link or document processor.

We similarly find Filati's citation to *AK Steel* to be inapposite. In *AK Steel,*

the CIT affirmed the Department's initial classification of direct container sales as EP transactions based on the fact that there was no evidence on the record to indicate that the U.S. subsidiary had the freedom to negotiate prices. More importantly, the CIT in *AK Steel* expressly distinguished its holding in that case from its prior holding in *U.S. Steel Group,* citing to this factual distinction as the basis for reconciling the decisions.

Consequently, consistent with the final results in the most recent reviews of this proceeding (*see Thread Fourth Review* and *Thread Fifth Review*) and the Department's current practice, we have continued to treat these transactions as CEP sales for purposes of the final results.

*Comment 2: Offset for Imputed Costs Associated With AD/CVD Duty Deposits*

In its questionnaire response, Filati reported the opportunity costs associated with financing its cash deposits of antidumping and countervailing duties as an offset to U.S. indirect selling expenses. Filati concedes that the Department's decision to deny this offset for purposes of the preliminary results is consistent with the recent practice articulated in *AFBs.* However, Filati contends that the Department's change in policy conflicts with prior decisions made both by the Department and the CIT. *See, e.g., Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews,* 62 FR 2081, 2104 (Jan. 15, 1997 (*1994–1995 AFBs Reviews*); and *Federal-Mogul* v. *United States,* 950 F. Supp. 1179 (CIT 1996).

Specifically, Filati asserts that the reasoning in *AFBs* was flawed in two respects. First, Filati asserts that *AFBs* was based on the premise that money is fungible. According to Filati, however, this point is irrelevant, just as it is irrelevant whether a company has actually obtained loans or has otherwise financed the antidumping cash deposits, because the company has incurred a real expense which it would not have incurred but for the existence of the antidumping duty order. Second, Filati asserts that *AFBs* was based on the premise that there is no ''real'' opportunity cost associated with the duty deposits. Filati maintains that this point is also incorrect, because respondents making cash deposits are required to divert funds from more profitable ventures.

In addition, according to Filati, the Department has correctly held that the costs associated with antidumping or countervailing duty deposits are not ''selling expenses.'' Consequently, Filati maintains that the antidumping law does not allow their deduction from CEP.

Finally, Filati contends that the CIT has taken a consistent position which approves of the offset. Filati cites to *Timken Co.* v. *United States,* 16 F. Supp. 2d 1102, 1105 (CIT 1998) (*Timken*), which lists the cases in which the court has upheld the Department's decisions to grant the adjustment and the cases in which it has remanded decisions to deny the offset.

Based on the above arguments, Filati contends that the Department should allow its offset to indirect selling expenses for the imputed cost of financing its cash deposits of antidumping and countervailing duties for purposes of the final results.

*DOC Position*

Consistent with Department's current practice, we have continued to deny an offset to Filati's U.S. indirect selling expenses for theoretical expenses related to financing of antidumping and countervailing duty cash deposits. For a discussion of the Department's reasoning behind this practice, see *AFBs*, 62 FR at 54075 and *Thread Fifth Review*, 64 FR at 12973.

We continue to believe that this practice is valid in general for the reasons articulated in *AFBs* and *Thread Fifth Review.* However, even were we to reverse our practice, the record of this case does not support Filati's claim. Specifically, we disagree with Filati's argument that it incurred a real expense that it would not have incurred but for the existence of the antidumping duty order. The only expenses relevant to this question are U.S. financing expenses. Because the record shows no evidence of financing activity in the United States, we find that Filati incurred no ''real'' expense, despite its assertions to the contrary.

Regarding Filati's argument that expenses associated with financing cash deposits of antidumping duties may not be deducted from CEP, we find that Filati failed to demonstrate how the Department's denial of its offset resulted in an improper deduction of such selling expenses. Indeed, because the Department deducted neither actual nor imputed financing expenses, nor the cash deposits themselves, we have in fact made no deduction for expenses associated with financing Filati's cash deposits. In contrast, we find that Filati's scheme to reduce actual expenses by the amount of a theoretical offset is contrary to the explicit language of the Act, which requires the deduction of all selling expenses incurred by or for account of the affiliated seller in the United States in selling the subject merchandise. *See* section 772(d) of the Act.

Finally, regarding Filati's citation to *Timken*, we note that in this decision the CIT acknowledged that it is the Department's current practice to deny the type of offset in question. While we concede that *Timken* references a number of cases which were remanded to the Department after denying the offset, we note that these cases were decided according to the Department's prior practice in this area.

Therefore, in accordance with our current practice, we have continued to deny an offset to Filati's indirect selling expenses for purposes of the final results.

*B. Rubberflex*

*Comment 3: Errors in Rubberflex's Sales Response*

In December 1999, Rubberflex notified the Department that it had discovered an error in its home market database which affected two sales. Specifically, Rubberflex stated that it had discovered that one of the sales in question had been exported to a third country and the other returned by the customer. At the Department's request, Rubberflex submitted documentation demonstrating that these transactions were not in fact home market sales. (*See* Memorandum from Shawn Thompson to The File regarding Submission of Additional Data and Extension of Briefing Schedule in the 97–98 Antidumping Duty Administrative Review on Extruded Rubber Thread from Malaysia, dated December 3, 1999.) Accordingly, Rubberflex contends that the Department should disregard these transactions when calculating NV.

The petitioner maintains that Rubberflex's December submission should be rejected because it was untimely. Moreover, the petitioner alleges that Rubberflex has not demonstrated that the submission complies with the Department's requirements on new submissions—namely that the nature of the alleged errors is apparent from the prior record itself.

*DOC Position*

It is the Department's practice to accept a correction of a party's clerical error if certain conditions are met. *See, e.g., Antifriction Bearings (Other Than*

*Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 64 FR 35590, 35625 (July 1, 1999). In this case, those conditions have been met.

In accordance with 19 CFR 351.301(c)(2), the Department may request that a respondent submit factual information at any time during a proceeding. Because the Department requested that Rubberflex submit the documentation in question, it is not untimely within the meaning of 19 CFR 351.301.

We find that the documentation provided by Rubberflex provides clear evidence that the sales at issue had been reported in error. Contrary to the petitioner's assertions, the Department does not require respondents to demonstrate that factual errors in their data are apparent in the record of a proceeding. The effect of such a requirement would be to preclude respondents, as is the case here, from notifying the Department of any clerical errors found in their data. *See NTN Bearing Corp.* v. *U.S.*, 74 F.3d 1204, 1207–08 (1995). Consequently, because Rubberflex provided sufficient proof that the sales in question were not home market transactions, we have disregarded them for purposes of the final results.

*Comment 4: Calculation of U.S. Indirect Selling Expenses*

The petitioner argues that Rubberflex understated the indirect selling expenses of its U.S. subsidiary, Flexfil, because it allocated a certain portion of these expenses to Canadian sales which were not invoiced by Flexfil. The petitioner contends that, if Flexfil had had significant involvement in the sales, they would have appeared on Flexfil's books. Furthermore, the petitioner asserts that such ''off the books'' allocations are inherently unverifiable and arbitrary. According to the petitioner, the Department should reallocate these expenses using only the sales made by the subsidiary and recorded in the subsidiary's books.

*DOC Position*

In its supplemental questionnaire response, Rubberflex demonstrated that Flexfil was actively involved in making sales to Canada. (*See* pages 15 and 16, as well as Exhibit 32, of the September 7, 1999, submission.) Not only did Flexfil routinely accept orders from Canadian customers on behalf of Rubberflex, but it also corresponded with them regarding the status of these orders and it handled various problems which arose during the sales process.

Thus, because the indirect selling expenses incurred by Flexfil related, in part, to sales to Canada, we find that it is appropriate to allocate a portion of these expenses to Canadian sales. We note that this treatment of Flexfil's indirect selling expenses is in accordance with our treatment of such expenses in prior segments of this proceeding. *See, e.g., Thread Fifth Review*, 64 FR at 12976, where the Department verified Flexfil's role in making Canadian sales. Accordingly, we have accepted Flexfil's indirect selling expense allocation for purposes of the final results.

**Final Results of Review**

As a result of comments received we have revised our analysis and determine that the following margins exist for the period October 1, 1997, through September 30, 1998:

| Manufacturer/Exporter | Percent margin |
|---|---|
| Filati Lastex Sdn. Bhd | 0.45 |
| Heveafil Sdn. Bhd./ | ..... |
| Filmax Sdn. Bhd | 0.17 |
| Rubberflex Sdn. Bhd | 1.10 |
| Rubfil Sdn. Bhd | 52.89 |

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales. These rates will be assessed uniformly on all entries of that particular importer made during the POR. The Department will issue appraisement instructions directly to the Customs Service.

Further, the following deposit requirements will be effective for all shipments of extruded rubber thread from Malaysia entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates for those firms as stated above (except for Filati and Heveafil the cash deposit rates will be zero because their margins are *de minimis*); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 15.16 percent, the all others rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), section 777(i) of the Act (19 U.S.C. 1677f(i)), and 19 CFR 351.210(c).

Dated: January 31, 2000.

**Holly A. Kuga,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–2845 Filed 2–7–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–475–703, A–588–707]**

### Continuation of Antidumping Duty Orders: Granular Polytetrafluoroethylene Resin From Italy and Japan

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Continuation of Antidumping Orders: Granular Polytetrafluoroethylene Resin from Italy and Japan.

**SUMMARY:** On December 3, 1999, the Department of Commerce (''the

Department''), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended (''the Act''), determined that revocation of the antidumping duty orders on granular polytetrafluoroethylene resin (''PTFE'') from Italy and Japan would likely lead to continuation or recurrence of dumping (64 FR 67865 (December 3, 1999)). On December 27, 1999, the International Trade Commission (''the Commission''), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty orders on PTFE from Italy and Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (64 FR 72362 (December 27, 1999)). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing this notice of the continuation of the antidumping duty orders on PTFE from Italy and Japan.

**EFFECTIVE DATE:** January 3, 2000.

**FOR FURTHER INFORMATION CONTACT:** Darla D. Brown or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, D.C. 20230; telephone: (202) 482–3207 or (202) 482–1560, respectively.

**Background**

On May 3, 1999, the Department initiated, and the Commission instituted, sunset reviews (64 FR 23596 and 64 FR 23677, respectively) of the antidumping duty orders on PTFE from Italy and Japan pursuant to section 751(c) of the Act. As a result of these reviews, the Department found that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the orders revoked. [1]

On December 27, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on PTFE from Italy and Japan would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. [2]

**Scope**

The merchandise subject to these antidumping duty orders is PTFE from Italy and Japan. The subject merchandise is defined as granular PTFE resin, filled or unfilled. The order explicitly excludes PTFE dispersions in water and PTFE fine powders. Such merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item number 3904.61.00. This HTS item number is provided for convenience and customs purposes only. The written description remains dispositive.

There has been one scope ruling with respect to the order on PTFE from Japan in which reprocessed PTFE powder was determined to be outside the scope of the order (57 FR 57420; December 4, 1992). The Department issued a circumvention determination in which it determined that PTFE wet raw polymer exported from Italy to the United States falls within the scope of the order on PTFE from Italy (58 FR 26100; April 30, 1993).

**Determination**

As a result of the determinations by the Department and the Commission that revocation of these antidumping duty orders would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty orders on PTFE from Italy and Japan. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rate in effect at the time of entry for all imports of subject merchandise.

Normally, the effective date of continuation of a finding, order, or suspension agreement will be the date of publication in the **Federal Register** of the Notice of Continuation. As provided in 19 CFR 351.218(f)(4), the Department will issue its determination to continue a finding, order, or suspended investigation not later than seven days after the date of publication in the **Federal Register** of the Commission's determination concluding the sunset review and immediately thereafter will publish its notice of continuation in the **Federal Register**. In these instant cases, however, the Department's publication of the Notice of Continuation was delayed. The Department has explicitly indicated that the effective date of continuation of these orders is January 3, 2000, seven days after the publication in the **Federal Register** of the Commission's determination. As a result, pursuant to section 751(c)(6)(A) of the Act, the Department intends to initiate the next five-year review of these orders not later than December 2004.

Dated: February 1, 2000.

**Holly A. Kuga,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–2837 Filed 2–7–00; 8:45 am]

**BILLING CODE 3510–DS–P**

[1] *See Final Results of Expedited Sunset Reviews: Granular Polytetrafluoroethylene Resin from Italy and Japan,* 64 FR 67865 (December 3, 1999).

[2] *See Granular Polytetrafluoroethylene Resin from Italy and Japan,* 64 FR 72362 (December 27, 1999), and USITC Publication 3260 (December 1999), Granular Polytetrafluoroethylene Resin from Italy and Japan: Investigations Nos. 731–TA–385–386 (Review).

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–412–803]**

### Industrial Nitrocellulose From the United Kingdom; Notice of Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of antidumping duty administrative review.

**SUMMARY:** On August 6, 1999, the Department of Commerce (''the Department'') published the preliminary results of its administrative review of the antidumping duty order on industrial nitrocellulose (''INC'') from the United Kingdom. This review covers one manufacturer/exporter of the subject merchandise to the United States during the period July 1, 1997, through June 30, 1998.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the final results from those presented in the preliminary results. The final results are listed below in the section *Final Results of the Review.*

**EFFECTIVE DATE:** February 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ron Trentham or Thomas Futtner, AD/CVD Enforcement, Office IV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–6320 or 482–3814, respectively.

**Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round

Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (1999).

**SUPPLEMENTARY INFORMATION:**

**Background**

On August 6, 1999, the Department published in the **Federal Register** (64 FR 42908) the preliminary results of the administrative review of the antidumping order on industrial nitrocellulose (INC) from the United Kingdom, 55 FR 28270 (July 10, 1990). We gave interested parties an opportunity to comment on the preliminary results. On September 7, 1999, we received a case brief from Imperial Chemical Industries PLC (''ICI'') (''respondent''). On September 8, 1999, we received a case brief from Hercules Incorporated (''petitioner''). On September 14, 1999, we received a rebuttal case brief from the respondent. Based on our analysis of the comments received, we changed the final results from those presented in the preliminary results as described below in ''*Changes from the Preliminary Results*'' *and* ''*Interested Party Comments*'' sections of this notice. The Department has now completed this administrative review in accordance with section 751(a) of the Act.

**Scope of Review**

Imports covered by this review are shipments of INC from the United Kingdom. INC is a dry, white amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, and is produced from the reaction of cellulose with nitric acid. INC is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of this order does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

INC is currently classified under Harmonized Tariff System (HTS) subheading 3912.20.00. While the HTS item number is provided for convenience and Customs purposes, the written description remains dispositive as to the scope of the product coverage.

**Changes From the Preliminary Results**

1. We corrected an error in the model match program with regard to the physical characteristic viscosity. *See* Comment 5.

2. We corrected an error in the calculation of net interest expense used to determine the constructed export price (''CEP'') profit ratio. *See* Comment 4.

**Interested Party Comments**

*Comment 1: Categorization of U.S. Sales*

The petitioner states that in the 1996–1997 administrative review of the subject antidumping duty order, the Department determined that sales to the United States by ICI were CEP, and not export price (''EP'') transaction. *See Industrial Nitrocellulose From the United Kingdom; Notice of Final Results of Antidumping Duty Administrative Review,* 64 FR 6609 (Feburary 10, 1999) (''*1996–1997 Final Results*''). According to the petitioner, ICI has failed to show any changes in the manner in which its merchandise is sold in the United States that would lead the Department to change its categorization. Thus, the petitioner contends that the Department was correct in finding ICI's U.S.sales to be CEP in this review as well, and should not alter such finding. In addition, the petitioner notes that ICI reported all of its U.S. sales as CEP transactions in response to the Department's instructions in its February 17, 1999 supplemental questionnaire.

In rebuttal ICI states that its action to acquiesce to the Department's determination that its U.S. sales in this review are CEP sales does not represent agreement with petitioner's comments and ''is without prejudice to its position involving sales in future reviews.''

*Department's Position*

We agree with the petitioner and for these final results we have continued to treat ICI's U.S. sales as CEP sales.

*Comment 2: CEP Offset*

The petitioner states that the Department incorrectly granted ICI a CEP offset. The petitioner contends that the Department's present methodology for determining the appropriateness of a CEP offset has been deemed ''contrary to law'' by recent Court of International Trade (''CIT'') decisions, *Borden, Inc.* v. *United States,* 4 F. Supp. 2d 1221, 1241 (Ct. Intl. Trade 1998) (''Borden'') and *Micron Technology* v. *United States,* 40 F. Supp 2d 481, (Ct. Intl. Trade1999) (''Micron'').

In rebuttal ICI states that the Department has filed notice of appeal of *Borden* and the *Micron* decision is on remand to the Department. According to ICI, *Borden* and *Micron* are not final decisions because a decision of the CIT that has been appealed ''is not a ''final court decision'. . .'' *See Timken Co.* v. *United States,* 893 F.2d 337, 339 (Fed. Cir. 1990). Thus, ICI contends that the Department's position to continue to apply its current methodology of adjusting CEP, as articulated in section 351.412 of the Department's regulations, is correct since the issue has not been fully judicially determined.

*Department's Position*

The Department has consistently stated that the statute and the Statement of Administrative Action (''SAA'') support analyzing the level of trade (''LOT'') of CEP sales at the constructed level, after expenses associated with economic activities in the United States have been deducted, pursuant to section 772(d) of the Act. In the preamble to our proposed regulations, we stated:

> With respect to the identification of levels of trade, some commentators argued that, consistent with past practice, the Department should base level of trade on the starting price for both export price EP and CEP sales ... The Department believes that this proposal is not supported by the SAA. If the starting price is used for all U.S. sales, the Department's ability to make meaningful comparisons at the same level of trade (or appropriate adjustments for differences in levels of trade) would be severely undermined in cases involving CEP sales. As noted by other commentators, using the starting price to determine the level of trade of both types of U.S. sales would result in a finding of different levels of trade for an EP sale and a CEP sale adjusted to a price that reflected the same selling functions. Accordingly, the regulations specify that the level of trade analyzed for EP sales is that of the starting price, and for CEP sales it is the constructed level of trade of the price after the deduction of U.S. selling expenses and profit.

*See Antidumping Duties; Countervailing Duties; Notice of Proposed Rule Making and Request for Public Comments,* 61 FR 7308, 7347 (February 27, 1996).

Consistent with the above position, the Department evaluates the level of trade for CEP sales based on the price after adjustments are made under section 772(d) of the Act. *See, e.g., Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan: Notice of Final Determination of Sales at Less Than Fair Value,* 61 FR 38139, 38143 (July 23, 1996). We note that, in every case decided under the revised antidumping statute, we have consistently adhered to this interpretation of the SAA and of the Act. *See, e.g., Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands; Preliminary Results of Antidumping Duty Administrative Review,* 61 FR 15766, 15768 (April 9, 1996); *Certain Stainless Steel Wire Rods from France; Preliminary Result of Antidumping Duty Administrative Review,* 61 FR 8915, 8916 (March 6, 1996); *Antifriction Bearings (Other Than Tapered Roller*

*Bearings) and parts Thereof from France, et. al., Preliminary Results of Antidumping Duty Administrative Review,* 61 FR 25713, 35718–23 (July 8, 1996); and *Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke the Order in Part,* 64 FR 69694 (December 14, 1999).

In accordance with the above precedent, our instructions in the questionnaire issued to ICI for this case stated that constructed LOT should be used. ICI adequately documented the differences in selling functions in the home and in the U.S. markets. See Memorandum Regarding industrial Nitrocellulose from the United Kingdom-LOT Analysis-Imperial Chemical Industries, PLC, August 2, 1999 (''LOT Analysis Memo''). Therefore, the Department's decision to grant a CEP offset to ICI was consistent with the statute and the Department's practice, and was supported by substantial evidence on the record.

We disagree with the petitioner's interpretation of *Borden* and of its impact on our current practice. In *Borden,* the court held that the Department's practice to base the LOT comparisons on CEP sales after CEP deductions is an impermissible interpretation of section 772(d) of the Act. *See Borden,* 4 F. Supp. 2d at 1236–38 ; *see also Micron,* 40 F. Supp. 2d at 485–86. The Department believes, however, that its practice is in full compliance with the statute. On June 4, 1999, the CIT entered final judgement in Borden on the LOT issue. *See Borden, Inc.* v. *United States,* Court No. 96–08–01970, Slip Op. 99–50 (CIT June 4, 1999). The government has filed an appeal of *Borden* which is pending before the U.S. Court of Appeals for the Federal Circuit. Consequently, the Department has continued to follow its normal practice of adjusting CEP under section 772(d) of the Act, prior to starting a LOT analysis, as articulated in the regulations at section 351.412. Accordingly, consistent with the preliminary results, we will continue to analyze the LOT based on adjusted CEP prices, rather than the starting CEP prices.

*Comment 3: LOT Analysis*

Notwithstanding its argument above, the petitioner contends that the respondent is not entitled to a CEP offset even on the basis of the Department's LOT/CEP methodology. The petitioner states that in the *1996–1997 Final Results,* the Department denied a CEP offset to ICI using the same methodology as that used in the instant review. According to the petitioner, ''even after removing many of ICI's selling activities in the U.S. market, the Department nonetheless found that not only did significant selling functions remain in both the U.S. and home markets, but that these functions were ''essentially identical'' in both markets.''

The petitioner argues that in the present review, as in the prior segment, ICI is not entitled to the CEP offset. First, the channels of distribution are the same in both markets. Second, significant parallel selling functions ''remain in both the U. S. and home markets'' even after adjusting for selling functions occurring in the United States pursuant to section 772(d) of the Act.

The petitioner notes that in its LOT analysis the Department concludes that ''the home market LOT includes significantly more selling functions and greater selling expenses than the CEP LOT.'' *See* LOT Analysis Memo. However, the petitioner claims that in this review, as in the preceding one, significant selling functions continue to be carried out at the CEP LOT. Moreover, the petitioner contends that certain of the ''selling functions'' listed in the chart in the LOT Analysis Memo in order to differentiate ICI's home market and CEP sales are distinctions without a difference.

According to the petitioner, the category ''Technical Support Services'' is insignificant for both home market and CEP sales. The petitioner argues that the Department has compared a ''may-occasionally-answer-a-technical-question'' in the home market with a ''no-expense-incurred'' answer regarding CEP sales. Moreover, the petitioner maintains that as one of only five categories of selling activities designed to show differences between home market and CEP sales significant enough to warrant a CEP offset, this item carries a full 20 percent of the ''conceptual totality'' of home market to CEP sales differences.

The petitioner contends that, in this manner, the Department has elevated an item of virtual non-difference to a level whereby it may significantly impact the CEP offset determination, and thus, ultimately, the dumping margin.

The petitioner notes that for the second of the chart's five categories, ''Sales Activities'', there is a ''Yes'' for home market sales and a ''No'' for sales CEP sales. However, the petitioner argues that despite the ''No'' grade, there are certain functions subsumed under the ''Sales Activities'' box on the chart with regard to CEP sales, such as order processing, issuing confirmations, etc..

The fourth of the five categories on the chart, ''Sales Support'', shows a ''Yes'' for the home market and a ''No'' for CEP sales. With regard to this category, the petitioner alleges that the respondent has failed to disclose that ICI entertained numerous U.S. customers and potential customers in Scotland.

According to the petitioner, it can be seen that the chart used in the LOT Analysis Memo to differentiate ICI's home-market and CEP selling functions gives the erroneous impression that major differences exist between the two. However, the petitioner argues that the differences in the functions are very few.

In rebuttal, ICI states that the petitioner's argument that ICI is not entitled to a CEP offset in the present review because it was denied a CEP offset in the 1996–1997 review is legally flawed. ICI argues that each administrative review is a separate proceeding, conducted and based upon its own record. ICI maintains that as preliminarily determined by the Department, the record in this administrative review fully supports the allowance of a CEP offset. According to ICI, it is this record that is determinative and not the record from the previous review or for that matter the determination that was based on the prior record.

ICI contends that virtually the entire argument submitted by the petitioner under its category ''sales support'' is based on assertions made at the time its case brief was filed. According to ICI, the Department should not accept this information into the record and should not consider it in its analysis. Further, ICI notes that throughout its factual analysis comments the petitioner attempts to assign a 20 percent numerical value to each of the five categories listed in the chart and attempts to find minor flaws with the Department's factual analysis in each category. ICI contends that this biased approach seems absurd on its face and that there is no basis to claim that each of the summary categories carries the same weight. Moreover, ICI claims that the petitioner's critiques are extremely selective and limited and, for the most part, do not address the record as a whole.

ICI asserts that in its ''sales activities'' table the petitioner seems to criticize the Department for not taking into account ordering and freight functions in sales to the U.S. affiliate. However, ICI argues that these categories of activities were considered and analyzed by the

Department with regard to the sales administration and sales services section of the chart. Further, ICI notes that although the petitioner ''pays lip service to the notion'' that selling functions for respondent's U.S. sales and related expenses associated with economic activity in the United States are removed from the analysis, its comments consistently seem to use such functions as support for its argument.

*Department's Position:*

We disagree with the petitioner's claim that ICI is not entitled to a CEP offset in the present review because it was denied a CEP offset in a preceding segment of the proceeding. Each review is a separate segment of the proceeding with a separate and distinct factual record. *See 1996–1997 Final Results*, 64 FR at 6612.

Section 773(a)(7)(A) of the Act provides for a LOT adjustment if the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between sales on which normal value (NV) is based and comparison market sales at the LOT of the export transaction. Section 351.412(c)(2) of the Department's regulations states that the Secretary will determine that sales are made at different LOTs if they are made at different marketing stages (or their equivalent). To make this determination, the Department reviews such factors as selling functions, classes of customer, and the level of selling expenses for each type of sale. Different stages of marketing necessarily involve differences in selling functions, but differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in the LOT.

Similarly, while customer categories such as ''distributor'' and ''wholesaler'' may be useful in identifying different LOTs, they are insufficient in themselves to establish that there is a difference in the LOT. In addition, the Department bases the LOT of CEP sales on the transaction to the affiliate in the United States after making CEP deductions under section 772(d) of the Act, as amended. *See Gray Portland Cement and Clinker from Mexico; Final Results of Antidumping Duty Administrative Review*, 64 FR 13148 (March 17,1999) *(''Gray Portland Cement''); Notice of Final Determination of Sales at Less Than Fair Value; Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61631 (November 19, 1997); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 2081 (January 15, 1997).

Based upon our analysis of the record, we determine, as in the preliminary results of review, that ICI's home market sales occurred at a different and more advanced stage of distribution than ICI's sales to it U.S. affiliate. The record demonstrates that ICI performs sales activities, sales support, and technical service support for its sales in the home market but not for its CEP sales to the U.S. affiliate after deducting the expenses pursuant to section 772(d) of the Act. Thus, contrary to the petitioner's assertions, we find adequate basis on the record to conclude that ICI performs three of its five selling functions with respect to only its home market sales and not with respect to its CEP sales.

In addition, based on our analysis of sales administration and sales services, we find that ICI performs these selling functions at a higher level of intensity for its home market sales than for its CEP sales. Contrary to the petitioner's assertion, selling functions do not carry the same weight. In the Department's questionnaire, respondents are asked to describe the degree to which each selling activity was performed on its reported sales. Thus, when we compare the CEP level of trade to the home market level of trade, we analyze selling functions on the basis of not only function but intensity, as well. *See Gray Portland Cement*, 64 FR at 13161; *Professional Electric Cutting Tools from Japan; Preliminary Results of Antidumping Duty Review*, 63 FR 30706, 30708 (June 5, 1998).

Thus, as the record demonstrates, ICI performs the majority of its selling functions with respect to its home market sales and not with respect to its CEP sales. In addition, ICI does not perform any services for its CEP sales which it does not perform for its home market sales. Accordingly, we determine that ICI's home market sales occur at a different and more advanced stage of distribution than its CEP sales. We also determine that a LOT adjustment cannot be calculated because the data provided do not provide an appropriate basis upon which to determine a LOT adjustment. Therefore, in accordance with section 773(a)(7)(B) of the Act, a CEP offset is appropriate for these final results.

Finally, we agree with ICI that the petitioner's assertions regarding the entertaining of U.S. market customers and potential customers by ICI in Scotland are unsubstantiated by factual information on the record and we have disregarded these assertions for the purposes of these final results.

*Comment 4: CEP Profit Ratio*

The petitioner alleges that the Department has incorrectly calculated the CEP profit ratio by looking to ICI's net operating income as the numerator, instead of ICI's total U.S. expenses. According to the petitioner, under section 772(f) of the Act, CEP profit is determined by multiplying total actual profit by the applicable percentage, which is determined pursuant to section 772(f)(2)(A) of the Act, by dividing total U.S. expenses by total expenses. The CEP profit ratio should be stated as ''[p]rofit on ordinary activities before taxation'' divided by operating costs plus net interest payable.

In rebuttal, ICI contends that the petitioner is confusing the terms ''applicable percentage'' and ''CEP profit ratio'' as having the same meaning. According to ICI, the ''applicable percentage'' consists of the ratio of U.S. total expenses divided by the total expenses, whereas, the ''CEP profit ratio'' is a percentage derived from a two-step calculation: (1) calculation of a total actual profit by deducting total expenses from total revenue, and (2) dividing the total actual profit by the total expenses. This CEP ratio is then applied to the CEP selling expenses to derive an actual CEP profit for the CEP sales. ICI maintains that this is the formula used by the Department in its calculation of the CEP profit for the CEP sales.

ICI argues that the numerator used by the petitioner in calculating the CEP profit ratio, *i.e.,* profit on ordinary activities before taxation, is incorrect. According to ICI, the profit figure used by the petitioner does not consist of profit before ordinary activities ; rather, it takes into account profit realized on activities which have nothing to do with income derived from ICI's main core business.

ICI maintains that the Department's calculation of the total actual profit and CEP ratio is correct because it deducts the total revenue derived from operations from the total expenses. According to ICI, this methodology reflects the actual profit earned by ICI from the operations of its main core business.

*Department's Position*

We agree with respondent that the correct methodology was used in the calculation of CEP profit in our preliminary results and thus, we have used the same methodology for calculating CEP profit in these final results.

Section 772(d)(3) of the Act provides that CEP shall be reduced by the profit allocable to selling, distribution, and further manufacturing activities in the United States.

Section 772(f) of the Act provides three alternative methods for determining total expenses for purposes of computing CEP profit. These alternatives form a hierarchy where the use of any one of the methods depends on the data available to the Department from the case record. We were unable to apply the first alternative (section 772(f)(2)(C)(i)) because the Department is not conducting a sales below cost investigation and, therefore, ICI did not report COP or CV information for the home market and U.S. products. In addition, we were unable to apply the second alternative (section 772 (f)(2)(C)(ii)) because the financial statements of ICI are not specific to the production costs and sales information of merchandise sold only in the U.S. and home market. Therefore, we calculated CEP profit using alternative three (section 772(f)(2)(C)(iii)). Under this alternative, we calculated the profit percentage based on ICI's financial statement of 1997 for merchandise produced and sold by the respondent in all countries.

Pursuant to the Department's policy as embodied in Policy Bulletin 97.1, ''Calculation of Profit for Constructed Export Price Transactions,'' we determined the CEP profit ratio by using ICI's income before taxes which we calculated by subtracting total expenses (cost of sales, distribution costs, research and development, administrative expenses and net interest expense) from net sales revenue. We then divided income before taxes by total expenses to arrive at a CEP profit ratio which we then multiplied by CEP selling expenses to arrive at CEP profit.

During the course of our analysis, we discovered that an incorrect amount for net interest expense was used in the calculation of the CEP profit ratio. Therefore, for these final results, we have recalculated the CEP profit ratio to include the correct net interest expense. See Calculation Memorandum of the Final Results for the 1997–1998 Administrative Review of Imperial Chemical Industries, February 2, 2000 (''Final Calculation Memo'').

*Comment 5: Clerical Error in Model Match Program*

ICI states that the Department should correct a clerical error in its model match program that resulted in the failure of the program to match certain U.S. sales transactions with the most similar home market sales. According to ICI, the Department's model match computer program was based on six physical characteristics reported in both the U.S. and home market sales files. With regard to the physical characteristic viscosity, the Department ranked the viscosity ranges for each U.S. and home market control number (CONNUM) by assigning a code. ICI contends that the Department's program contains a computer programming error in the ranking of the viscosity codes for both home market and U.S. products. ICI argues that this error resulted in matching one U.S. product with a home market product that is not the most similar match in terms of physical characteristics to the U.S. product. No comments were submitted by the petitioner on this issue.

*Department's Position*

We agree with ICI and have made the appropriate modifications to the Department's model match program for these final results. *See* Final Calculation Memo.

*Comment 6: Error in Preliminary Results*

ICI noted that in the preliminary determination the Department states that ''* * * all sales to the first unaffiliated purchaser took place after importation.'' *See* 64 FR at 42909. ICI alleges that based on the factual record and the Department's own analysis this statement appears to be in error and should be corrected. No comments were submitted by the petitioner on this issue.

*Department's Position*

We agree with ICI. In our preliminary determination we stated that in calculating price to the United States for ICI, we used CEP, as defined in section 772(b) of the Act because all sales to the first unaffiliated purchaser in the United States took place after importation. This statement was incorrect. In the instant review, as in the previous segment of this proceeding, we determined that ICI's U.S. sales were CEP transactions even though the sales took place before importation because ICI's U.S. selling agent was substantially involved in the sales process in the United States on behalf of or for the account of ICI. *See 1996–1997 Final Results*, 64 FR at 6611–12.

**Final Results of Review**

As a result of this review, we have determined that the following margin exists for the period of July 1, 1997 through June 30, 1998:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| Imperial Chemical Industries PLC | 18.49 |

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department shall issue appraisement instructions directly to the Customs Service.

For assessment purposes, we have calculated an importer-specific duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the same sales. The rate will be assessed uniformly on all entries made by the relevant importer during the POR.

The following deposit requirements shall be effective upon publication of this notice of final results of review for all shipments of industrial nitrocellulose from the United Kingdom entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 11.13 percent, the ''all others'' rate established in the LTFV investigation (55 FR 21058, May 22, 1990). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to

administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with Sections 351.305 and 351.306 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 2, 2000.

**Holly A. Kuga,**

*Acting Assistant Secretary, Import Administration.*

[FR Doc. 00–2850 Filed 2–7–00; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–588–850, A–588–851, A–791–808]**

### Notice of Postponement of Final Antidumping Duty Determinations and Extension of Provisional Measures: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan and the Republic of South Africa

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** February 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Charles Riggle at (202) 482–0650 or Constance Handley at (202) 482–0631, AD/CVD Enforcement, Office V, DAS Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

**Postponement of Final Determinations**

The Department of Commerce (the Department) is postponing the final determinations in the antidumping duty investigations of certain large diameter carbon and alloy seamless standard, line and pressure pipe from Japan and certain small diameter carbon and alloy seamless standard, line and pressure pipe from Japan and the Republic of South Africa.

On December 14, 1999, the Department published its preliminary determinations in these investigations. *See* ''Notice of Preliminary Determinations of Sales at Less Than Fair Value: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan and the Republic of South Africa'', 64 FR 69718 (December 14, 1999). The notice stated that the Department would issue its final determinations no later than 75 days after the date of issuance of the notice.

Pursuant to section 735(a)(2)(A) of the Act, on January 13, 2000, Sumitomo Metal Industries (Sumitomo), a respondent in the investigations involving Japan, and Iscor Ltd. (Iscor), the sole respondent in the investigation involving South Africa, requested that the Department postpone its final determinations. Further to those requests, the respondents requested that the Department extend by 60 days the application of the provisional measures prescribed under paragraphs (1) and (2) of section 773(d) of the Act. In accordance with 19 CFR 351.210(b), because: (1) these preliminary determinations are affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise in their respective investigations; and (3) no compelling reasons for denial exist, we are granting the respondents' requests and are postponing the final determinations until no later than 135 days after the publication of the preliminary determinations in the **Federal Register** (*i.e.,* until no later than April 27, 2000). Suspension of liquidation will be extended accordingly.

This extension is in accordance with section 735(a)(2)(A) of the Act, and 19 CFR 351.210(b)(2).

Dated: January 31, 2000.

**Holly A. Kuga,**

*Acting Assistant Secretary, Import Administration.*

[FR Doc. 00–2841 Filed 2–7–00; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–351–505]**

### Certain Malleable Cast Iron Pipe Fittings From Brazil: Preliminary Results of Antidumping Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of antidumping administrative review.

**SUMMARY:** The Department of Commerce is conducting an administrative review of the antidumping duty order on certain malleable cast iron pipe fittings from Brazil in response to a request from a respondent, Industria de Fundiçao Tupy Ltda. This review covers the period May 1, 1998, through April 30, 1999.

We preliminarily determine that sales have been made below normal value. Interested parties are invited to comment on these preliminary results. Parties who submit argument are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument.

**EFFECTIVE DATE:** February 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Thomas Schauer or Richard Rimlinger, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0410 or (202) 482–4477, respectively.

**SUPPLEMENTARY INFORMATION:**

**The Applicable Statute**

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (1998).

**Background**

On May 28, 1999, the Department received a request from Industria de Fundiçao Tupy Ltda. (Tupy) to conduct an administrative review of the antidumping duty order on certain malleable cast iron pipe fittings from Brazil. On June 30, 1999, the Department published a notice of initiation of an administrative review of Tupy, covering the period May 1, 1998, through April 30, 1999, in the **Federal Register** (64 FR 14860).

**Scope of Review**

Imports covered by this review are shipments of certain malleable cast iron pipe fittings, other than grooved, from Brazil. In the original antidumping duty order, these products were classifiable in the Tariff Schedules of the United States, Annotated, under item numbers 610.7000 and 610.7400. These products are currently classifiable under item

numbers 7307.19.00 and 7307.19.90 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

**United States Price**

In calculating the price to the United States, we used export price (EP) as defined in section 772(a) of the Act because the subject merchandise was sold to an unaffiliated U.S. purchaser in the United States prior to the date of importation into the United States and the use of constructed export price was not indicated by the facts of record.

We calculated EP for U.S. sales based on C&F U.S. port prices to the United States. We made adjustments for domestic inland freight, domestic inland freight insurance, domestic brokerage and handling, international freight, and freight revenue in accordance with section 772(c)(2)(A) of the Act. According to Tupy's representations, the material terms of sale were established on the purchase-order date. Therefore, we used the purchase-order date as the date of sale for the U.S. market. No other adjustments to EP were claimed.

**Normal Value**

In order to determine whether there is a sufficient volume of sales in the home market to serve as a basis for calculating normal value (NV), we compared the respondent's volume of home-market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a) of the Act. Because the aggregate volume of home-market sales of the foreign like product was greater than five percent of the aggregate volume of U.S. sales of the subject merchandise, we determined that the home market provides a viable basis for calculating NV. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the price at which the foreign like product was first sold to unaffiliated customers for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade.

We compared the EP sales of individual transactions to the monthly weighted-average price of sales of the identical product Tupy sold in Brazil. We based NV on delivered prices to unaffiliated purchasers in the home market. Where applicable, we made adjustments to home-market price for billing adjustments and inland freight. We matched EP sales to sales at the same level of trade in the home market and made no level-of-trade adjustment. (See *Level of Trade* below.)

When applicable, we made adjustments for differences in packing in accordance with section 773(a)(6)(A) of the Act. We made adjustments for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. To make COS adjustments, we reduced home-market price by an amount for home-market credit, advertising expenses, and commissions, and we increased it by an amount for U.S. credit expenses. We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred on home market or U.S. sales where commissions were granted on sales in one market but not in the other (the ''commission offset''). Specifically, where commissions were granted in the home market but not in the U.S. market, we made a upward adjustment to normal value for the lesser of (1) the amount of the commission paid in the home market, or (2) the amount of indirect selling expenses incurred in the U.S. market. We also deducted value-added taxes pursuant to section 773(a)(6)(B)(iii) of the Act. Because we compared U.S. sales to identical merchandise sold in the home market, no adjustment for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act was necessary.

**Level of Trade**

As set forth in section 773(a)(1)(B)(i) of the Act and in the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, at 829–831 (see H.R. Doc. No. 103–316, at 829–831 (1994)), to the extent practicable, the Department calculates NV based on sales at the same level of trade as the U.S. sales (either EP or constructed export price). When the Department is unable to find sale(s) in the comparison market at the same level of trade as the U.S. sale(s), the Department may compare sales in the U.S. and foreign markets at different levels of trade. When NV is based on constructed value (CV), the level of trade is that of the sales from which we derive selling, general and administrative expenses (SG&A) and profit.

To determine whether home-market sales are at a different level of trade than U.S. sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade and the differences affect price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

In implementing these principles in this review, we examined information from the respondent regarding the marketing stages involved in the reported home-market and EP sales, including a description of the selling activities Tupy performed for each channel of distribution. Tupy reported three types of customers in the home market: wholesalers, distributors, and retailers. We found that the selling and other activities associated with selling to each of the three types of customers differed significantly from activities for the other two types of customers. For example, we found differences with respect to inventory maintenance, freight and delivery arrangements, packing and handling, advertising, technical services, and sales and administrative functions. Based on these differences, we found that the three types of home-market customers constituted three different levels of trade.

All of the U.S. sales were EP sales. Based on our examination of the record, we determined that the level of trade of the EP sales was the same as that of the home-market wholesale level of trade. We found that the level of trade of the EP sales was different from that of distributor and retail sales because Tupy performed a number of selling functions for distributor and retail sales at a moderate or high level that it either did not perform or performed at a low level for the EP and wholesale sales. These selling functions included freight and delivery arrangements, inventory maintenance, packing and handling, advertising, technical services, and sales and administrative functions.

Because we found that Tupy's EP sales were made at the same level of trade as its home-market wholesale level and because we were able to match EP sales to home-market sales made at the wholesale level of trade in all instances, no level-of-trade adjustments to normal value were necessary.

**Preliminary Results of Review**

As a result of our comparison of EP and NV, we preliminarily determine a weighted-average dumping margin of

2.91 percent for Tupy for the period May 1, 1998, through April 30, 1999.

Any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held 38 days after the date of publication of this notice, or the first workday thereafter. Issues raised in hearings will be limited to those raised in the respective case and rebuttal briefs. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication.

Parties who submit argument are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an exporter/customer-specific assessment value for subject merchandise. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of certain malleable cast iron pipe fittings from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Act: (1) The cash deposit rate for Tupy will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 5.64 percent, the all-others rate established in the LTFV investigation.

The deposit rate, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 31, 2000.

**Holly A. Kuga,**

*Acting Assistant Secretary, Import Administration.*

[FR Doc. 00–2847 Filed 2–7–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–588–845]**

### Stainless Steel Sheet and Strip in Coils From Japan: Notice of Initiation and Preliminary Results of Changed Circumstance Antidumping Duty Review, and Intent to Revoke Order in Part

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of initiation and preliminary results of changed circumstance antidumping duty review, and intent to revoke order in part.

**EFFECTIVE DATE:** February 8, 2000.

**SUMMARY:** On August 13, 1999, the Department of Commerce (the Department) received a request on behalf of Watanabe Trading Co., Ltd. (Watanabe), and Byram Steel Trading Co., (Byram) for a changed circumstance antidumping (AD) duty review and an intent to revoke in part the AD order with respect to specific stainless steel sheet and strip from Japan. The Department received a letter on August 30, 1999, from petitioners (Allegheny Ludlum Corporation, Armco, Inc., J&L Specialty Steel, Inc., Washington Steel Division of Bethlehem Steel Corporation (formerly Lukens, Inc.), the United Steelworkers of America, AFL–CIO/CLC, the Butler Armco Independent Union and the Zanesville Armco Independent Organization, Inc. of CA) not opposing the request of Watanabe and Byram for revocation in part of the order pursuant to a changed circumstance review with respect to the subject merchandise defined in the Scope of the Review section below.

Interested parties are invited to comment on these preliminary results.

**FOR FURTHER INFORMATION CONTACT:** Karla Whalen or Robert Bolling, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–1391 and (202) 482–3434, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351.

#### Background

On July 27, 1999, the Department published the Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order on stainless steel sheet and strip from Japan (64 FR 40565).

On August 13, 1999, Watanabe and Byram requested revocation in part of the Antidumping Duty (AD) order pursuant to section 751(b) of the Act and section 351.216 of the Department's regulations, with respect to specific stainless steel sheet and strip in coils from Japan as described below.

#### Scope of the Review

The products covered by this exclusion request are stainless steel welding electrode strips that are manufactured in accordance with American Welding Society (AWS) specification ANSI/AWS A5.9–93. The products are 0.5mm in thickness, 60 mm in width, and in coils of approximately 60 pounds each. The products are limited to the following AWS grade classifications: ER308L, ER 309L, ER 316L and ER347, and a modified ER 309L or 309LCb which meets the following chemical composition limits (by weight):

Carbon—0.03% maximum
Chromium—20.0–22.0%
Nickel—10.0–12.0%
Molybdenum—0.75% maximum
Manganese—1.0–2.5%
Silicon—0.65% maximum
Phosphorus—0.03% maximum
Sulphur—0.03% maximum

Copper—0.75% maximum
Columbium—8 times the carbon level minimum—1.0% maximum

**Initiation and Preliminary Results of Changed Circumstance AD Review, and Intent To Revoke Order in Part**

At the request of Watanabe and Byram, in accordance with sections 751(d)(1) and 751(b)(1) of the Act and section 351.216 of the Department's regulations, the Department is initiating a changed circumstance review of stainless steel sheet and strip from Japan to determine whether partial revocation of the AD order is warranted with respect to the stainless steel sheet and strip subject to this request. Section 782(h)(2) of the Act and section 351.222(g)(1)(i) of the Department's regulations provide that the Department may revoke an order (in whole or in part) if it determines that producers accounting for substantially all of the production of the domestic like product have no further interest in the order, in whole or in part. In addition, in the event the Department determines that expedited action is warranted, section 351.221(c)(3)(ii) of the regulations permits the Department to combine the notices of initiation and preliminary results.

In accordance with section 751(b) of the Act and sections 351.222(g)(l)(i) and 351.221(c)(3) of the Department's regulations, we are initiating this changed circumstance review and have determined that expedited action is warranted. Our decision to expedite this review stems from the domestic industry's lack of interest in applying the AD order to the specific stainless steel sheet and strip covered by this request. Additionally, in accordance with section 351.216(a) we find that the petitioners' affirmative statement of no interest constitutes good cause for the conduct of this review.

Based on the expression of no interest by petitioners and absent any objection by any other domestic interested parties, we have preliminarily determined that substantially all of the domestic producers of the like product have no interest in continued application of the AD order to the stainless steel sheet and strip subject to this request. Therefore, we are notifying the public of our intent to revoke, in part, the AD order as it relates to imports of the merchandise described above from Japan.

**Public Comment**

Interested parties may submit case briefs and/or written comments no later than 14 days after the date of publication of these preliminary results. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 21 days after the date of publication. The Department will issue the final results of this changed circumstance review, which will include the results of its analysis raised in any such written comments, no later than 270 days after the date on which this review was initiated, or within 45 days if all parties agree to our preliminary determination. *See* section 351.216(e) of the Department's regulations.

If final revocation occurs, we will instruct the U.S. Customs Service to end the suspension of liquidation and to refund, with interest, any estimated AD duties collected for all unliquidated entries of the specific stainless steel sheet and strip covered by this request from Japan. The current requirement for a cash deposit of estimated AD duties on all subject merchandise will continue unless and until it is modified pursuant to the final results of this changed circumstance review.

This initiation of review and notice are in accordance with sections 751(b) of the Act (19 U.S.C. 1675(b)) and 19 CFR 351.216, 351.221, and 351.222.

Dated: January 24, 2000.

**Robert S. LaRussa,**

*Assistant Secretary, Import Administration.*

[FR Doc. 00–2853 Filed 2–7–00; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–533–806, A–570–815]**

### Final Results of Expedited Sunset Reviews: Sulfanilic Acid From India and The People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Final Results of Expedited Sunset Reviews: Sulfanilic Acid from India and The People's Republic of China.

**SUMMARY:** On October 1, 1999, the Department of Commerce (''the Department'') initiated sunset reviews of the antidumping duty orders on sulfanilic acid from India and The People's Republic of China (''China'') (64 FR 53320) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate and an adequate response filed on behalf of a domestic interested party and an inadequate response (in these cases no response) from respondent interested parties in each of these reviews, the Department decided to conduct expedited reviews. As a result of these reviews, the Department finds that revocation of the antidumping duty orders would likely lead to the continuation or recurrence of dumping at the levels indicated in the Final Results of Reviews section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Mark D. Young or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–3207 or (202) 482–1560, respectively.

**EFFECTIVE DATE:** February 8, 2000.

**Statute and Regulations**

These reviews were conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for conducting sunset reviews are set forth in Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) (''Sunset Regulations''), and 19 CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) (''Sunset Policy Bulletin'').

**Scope**

The products covered by these orders are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid (sodium sulfanilate). The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry free flowing powders. Technical sulfanilic acid contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials. Sodium salt of sulfanilic acid (sodium sulfanilate) is a granular or crystalline material containing 75 percent minimum sulfanilic acid, 0.5 percent maximum aniline, and 0.25

percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content. The merchandise is classifiable under Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings 2921.42.22 and 2921.42.24.20.[1] Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these orders are dispositive.

These reviews cover imports from all manufacturers and exporters of sulfanilic acid from India and China.

**History of the Orders**

*India*

The Department published its final affirmative determination of sales at less than fair value (''LTFV'') with respect to imports of sulfanilic acid from India on January 8, 1993 (58 FR 3251). In this determination, the Department published a weighted-average dumping margin for all manufacturers/producers/exporters of 114.8 percent. However, consistent with section 772(d)(1)(D) of the Act, which prohibits assessing antidumping duties on the portion of the margin attributable to an export subsidy, we established, for duty deposit purposes, an estimated antidumping duty deposit rate of 71.09 percent. The Department issued its antidumping duty order on sulfanilic acid from India on March 2, 1993.[2] The Department has not conducted an administrative review of this order since its imposition. The order remains in effect for all manufacturers and exporters of the subject merchandise from India.

*China*

On July 6, 1992, the Department published its affirmative final determination of sales at LTFV regarding sulfanilic acid from China (57 FR 29705). The Department issued its antidumping duty order on August 19, 1992.[3] In this determination, the Department published weighted-average dumping margins for one company and an ''all others'' rate. Since the order was issued, the Department has conducted four administrative reviews with respect to sulfanilic acid from China.[4] The order remains in effect for all manufacturers and exporters of the subject merchandise from China.

**Background**

On October 1, 1999, the Department initiated sunset reviews of the antidumping duty orders on sulfanilic acid from India and China (64 FR 53320), pursuant to section 751(c) of the Act. We received a Notice of Intent to Participate, in each of the two sunset reviews, on behalf of National Ford Chemical Company (''NFC''), by October 15, 1999, within the deadline specified in section 351.218(d)(1)(i) of the Sunset Regulations. Pursuant to section 771(9)(C) of the Act, NFC claimed interested party status as a U.S. manufacturer whose workers are engaged in the production of domestic like products. Moreover, NFC claims that it was a petitioner in the original investigation and, with respect to China, a domestic interested party in each of the six initiated administrative reviews. The Department received a complete substantive response from NFC, in each of the two sunset reviews, by November 1, 1999, within the 30-day deadline specified in the Sunset Regulations under section 351.218(d)(3)(i). We did not receive a substantive response from any respondent interested party to these proceedings. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct expedited, 120-day, reviews of these orders.

**Determination**

In accordance with section 751(c)(1) of the Act, the Department conducted these reviews to determine whether revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making these determinations, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order, and shall provide to the International Trade Commission (''the Commission'') the magnitude of the margins of dumping likely to prevail if the orders were revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margins are discussed below. In addition, NFC's comments with respect to continuation or recurrence of dumping and the magnitude of the margins are addressed below.

**Continuation or Recurrence of Dumping**

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (''URAA''), specifically the Statement of Administrative Action (''the SAA''), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its Sunset Policy Bulletin providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its Sunset Policy Bulletin, the Department indicated that determinations of likelihood will be made on an order-wide basis (see section II.A.2). In addition, the Department indicated that it normally will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above de minimis after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (see section II.A.3).

In addition to the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of the order would be likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In these reviews, the Department did not receive a substantive response from any respondent interested party. Under section 351.218(d)(2)(iii) of the Sunset Regulations, this constitutes a waiver of participation.

In its substantive response, NFC argues that the substantial decline (or cessation, with respect to India) in the volume of imports of sulfanilic acid from the subject countries following the issuance of the order demonstrates the inability of the producers from subject countries to sell in the United States at any significant volume without dumping. NFC argues further that revocation of the antidumping duty orders in these sunset reviews would likely lead to a continuation or recurrence of dumping by Indian and Chinese producers/manufacturers. NFC

[1] HTSUS subheadings for sulfanilic acid and sodium salts of sulfanilic acid have changed since the issuance of this order. The petitioner asserts that the HTSUS subheading for sulfanilic acid was 2921.42.24.20 in 1993 and has remained at 2921.42.22 since 1994.

[2] See Notice of Antidumping Duty Order; Sulfanilic Acid from India, 58 FR 12025 (March 2, 1993).

[3] See Antidumping Duty Order: Sulfanilic Acid from the People's Republic of China, 57 FR 37524 (August 19, 1992).

[4] See Sulfanilic Acid from the People's Republic of China: Final Results of Administrative Review, 61 FR 53711 (October 15, 1996); 61 FR 53702 (October 15, 1996); 62 FR 48597 (September 16, 1997); 63 FR 63834 (November 17, 1998).

supports this argument with evidence showing that, since the imposition of the orders, respondents have generally reduced (ceased with respect to Indian imports) their shipments to the United States. Therefore, NFC asserts it is likely that Indian and Chinese producers would need to dump in order to sell sulfanilic acid in any significant quantities in the United States.

*India*

With respect to subject merchandise from India, NFC maintains that, in the years preceding the order, India was a major foreign supplier of the subject merchandise to the U.S. market. Following the issuance of the order, it asserts, Indian imports have ceased completely. Furthermore, NFC comments, deposit rates for Indian manufacturers of sulfanilic acid continue to exist at 71.09 percent. In sum, it argues, cessation of imports following the imposition of the order and high dumping margins, in conjunction with the fact that Indian manufactures never availed themselves of the administrative review process to demonstrate that dumping has ceased or abated, provides clear evidence that the Indian producers are incapable of selling at fair value in the U.S. market.[5]

*China*

NFC argues that the imposition of the antidumping duty order had a dramatic effect on subject import volumes from China. NFC states that in the years following the order, imports of the subject merchandise from China dropped nearly 40 percent. Moreover, NFC asserts, import volumes of the subject sulfanilic acid from China have remained low, relative to the pre-order levels. Furthermore, NFC mentions, that there has been a reduction in the Chinese producers' share of U.S. domestic consumption of sulfanilic acid. This decline in imports and share of U.S. domestic consumption, NFC adds, coupled with above de minimis dumping margins demonstrates that Chinese manufacturers cannot maintain a presence in the U.S. market without dumping.[6]

As discussed in section II.A.3 of the Sunset Policy Bulletin, the SAA at 890, and the House Report at 63–64, if companies continue dumping with the discipline of an order in place, or imports ceased after the issuance of the order, the Department may reasonably infer that dumping would continue or recur if the discipline were removed. As pointed out above, dumping margins above de minimis continue to exist for shipments of the subject merchandise from India and China.

Consistent with section 752(c) of the Act, the Department also considers the volume of imports before and after issuance of the order. As outlined in each section above, NFC argues that a significant decline in the volume of imports of the subject merchandise from China and a cessation of imports with regard to India since the imposition of the orders, provides further evidence that dumping would continue or recur if the orders were revoked. In its substantive response, NFC provided statistics demonstrating the decline/cessation in import volumes of sulfanilic acid from China and India. The Department disagrees, in part, with NFC's arguments that Chinese imports of the subject merchandise fell sharply after the order was imposed and never regained pre-order volumes. In 1992 and 1993 the import volume of the subject merchandise did significantly drop below pre-order levels. However, in 1994 and 1995 import levels of the subject merchandise exceeded pre-order volumes.[7] The Department also disagrees, in part, with NFC's assertion that Indian imports of the subject merchandise ceased completely since the issuance of the order.[8]

As noted above, in conducting its sunset reviews, the Department considers the weighted-average dumping margins and volume of imports when determining whether revocation of an antidumping duty order would lead to the continuation or recurrence of dumping. Based on this analysis, the Department finds that the existence of dumping margins above de minimis levels and a reduction/cessation in export volumes after the issuance of the order is highly probative of the likelihood of continuation or recurrence of dumping. A deposit rate above a de minimis level continues for exports of the subject merchandise by all known Indian and Chinese manufacturers/exporters. Therefore, given that dumping has continued and import volumes have declined significantly or ceased after the imposition of the order, the respondent interested parties waived participation in these reviews, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue or recur if the orders were revoked.

**Magnitude of the Margin**

In the Sunset Policy Bulletin, the Department stated that it normally will provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the ''all others'' rate from the investigation. (See section II.B.1 of the Sunset Policy Bulletin.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (See sections II.B.2 and 3 of the Sunset Policy Bulletin.) We note that, to date, the Department has not issued any duty absorption findings in any of these cases.

In its substantive response, NFC recommends that the Department adhere to its general practice of selecting dumping margins from the original investigation. Regarding companies not reviewed in the original investigations, NFC suggests that the Department report to the Commission the ''all others'' rate published in the original investigations. Specifically, NFC recommends that the Department report a margin of 71.09 percent for all manufacturers/producers/exporters under the order on India and with respect to the order on China, 19.14 percent for China National Chemicals Import & Export Corporation, Hebei Branch and 85.20 for all other producers. Since the Department has not conducted an administrative review of sulfanilic acid from India, and imports of Chinese and Indian sulfanilic acid to the United States have decreased dramatically since the issuance of the order, the Department has decided that it would not be appropriate to use a more recently calculated rate.

The Department agrees, with NFC that the margins calculated in the original investigations are probative of the behavior of Indian and Chinese producers/exporters if the orders were revoked, as they are the only margins which reflect their actions absent the discipline of the orders. Therefore, the Department will report to the Commission the company-specific and ''all others''rates from the original investigations as contained in the Final Results of Reviews section of this notice. As noted above, in the original investigation the Department

[5] See November 1, 1999, Substantive Response of NFC, regarding sulfanilic acid from India at 9.

[6] See November 1, 1999, Substantive Response of NFC, regarding sulfanilic acid from China at 9.

[7] Nevertheless, in 1996–1999 import volumes dropped well below pre-order levels.

[8] In 1994 Indian manufacturers exported 20,000 kg. of sulfanilic acid to the United States, and 36,000 kg. in 1996. Only since 1997 have the imports of the subject merchandise ceased completely.

determined the margin of dumping for all manufacturers/producers/exporters of the subject merchandise from India to be 114.80 percent, and established an antidumping duty deposit rate of 71.09 percent after taking into account the 43.71 percent export subsidy rate. Therefore, we will report to the Commission the margins from the original investigations as contained in the Final Results of Reviews section of this notice.

**Final Results of Reviews**

As a result of these reviews, the Department finds that revocation of the antidumping duty orders would be likely lead to continuation or recurrence of dumping at the margins listed below:

*India*

| Manufacturer/Exporter | Margin (percent) |
|---|---|
| All Manufacturers/Producers/Exporters | *114.80 |

*(71.09 as adjusted for CVD)

*China*

| Manufacturer/Exporter | Margin (percent) |
|---|---|
| China National Chemicals Import & Export Corporation, Hebei Branch | 19.14 |
| All Others | 85.20 |

This notice serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These five-year (''sunset'') reviews and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: January 31, 2000.

**Holly A. Kuga,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–2839 Filed 2–7–00; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–489–501]**

### Notice of Preliminary Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube From Turkey

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** In response to a request by the respondent, the Department of Commerce is conducting an administrative review of the antidumping duty order on certain welded carbon steel pipe and tube from Turkey. This review covers shipments of this merchandise to the United States during the period May 1, 1998, through April 30, 1999.

We preliminarily determine that sales have been made below normal value. If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to assess antidumping duties equal to the differences between the United States price and the normal value.

Interested parties are invited to comment on the preliminary results. Parties who submit arguments are requested to submit with each argument: (1) a statement of the issue; and (2) a brief summary of the argument.

**EFFECTIVE DATE:** February 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** David Layton or Charles Riggle, AD/CVD Enforcement, Office 5, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0371 or (202) 482–0650, respectively.

**SUPPLEMENTARY INFORMATION:**

**Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (the Department) regulations are to the regulations codified at 19 CFR Part 351 (1999).

**Background**

On May 15, 1986, the Department published in the **Federal Register** the antidumping duty order on certain welded carbon steel pipe and tube from Turkey (51 FR 17784). On May 19, 1999 (64 FR 27235), we published in the **Federal Register** the notice of ''Opportunity to Request an Administrative Review'' of this order covering the period May 1, 1998, through April 30, 1999, hereinafter referred to as the POR. In accordance with 19 CFR 351.213(b)(2), on May 28, 1999, The Borusan Group (Borusan), a producer and exporter of certain welded carbon steel pipe and tube, requested a review. On June 30, 1999, we published the notice of initiation of this antidumping duty administrative review covering the period May 1, 1998, through April 30, 1999 (64 FR 35124). We are now conducting this administrative review in accordance with section 751 of the Act.

**Scope of the Review**

The products covered by this review include circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded and coupled). Those pipes and tubes are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications. Standard pipes and tubes are intended for the low pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioner units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing and mechanical applications, such as for fence tubing, and for protection of electrical wiring, such as conduit shells.

The scope is not limited to standard pipe and fence tubing, or those types of mechanical and structural pipe that are used in standard pipe application. All carbon steel pipes and tubes within the physical description outlined above are included in the scope of this review, except for line pipe, oil country tubular goods, boiler tubing, cold-drawn or cold-rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished rigid conduit.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90.

Although the HTSUS subheadings are provided for convenience and customs

purposes, our written description of the scope of this proceeding is dispositive.

**Fair Value Comparisons**

We compared the export price (EP) to the normal value (NV), as described in the *Export Price* and *Normal Value* sections of this notice. Because Turkey's economy experienced high inflation during the POR (approximately 45 percent), as is Department practice, we limited our comparisons to comparison market sales made during the same month in which the U.S. sale occurred and did not apply our ''90/60 contemporaneity rule'' (*see,* e.g., *Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Turkey,* 63 FR 68429, 68430 (December 11, 1998). This methodology minimizes the extent to which calculated dumping margins are overstated or understated due solely to price inflation that occurred in the intervening time period between the U.S. and home market sales. We first attempted to compare products sold in the U.S. and home markets that were identical with respect to the following characteristics: grade, diameter, wall thickness, finish, and end finish. However, given that there were no contemporaneous sales of identical merchandise, we compared U.S. products with the most similar merchandise sold in the home market based on the characteristics listed above, in that order of priority.

**Export Price**

Because Borusan sold subject merchandise directly to the first unaffiliated purchaser in the United States prior to importation, and constructed export price methodology was not otherwise warranted based on the record facts of this review, in accordance with section 772(a) of the Act, we used EP as the basis for all of Borusan's sales.

We calculated EP as the packed, delivered price to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price (gross unit price), where appropriate, for foreign inland freight, foreign inland insurance, international freight and other related charges. In addition, we added countervailing duties and duty drawback.

**Normal Value**

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Borusan's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because Borusan's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable. We calculated NV as noted in the ''Price to Price Comparisons'' section of this notice.

**Cost of Production Analysis**

Because the Department disregarded sales below the cost of production (COP) in the last completed review of Borusan, we had reasonable grounds to believe or suspect that sales of the foreign product under consideration for the determination of NV in this review may have been made at prices below the COP as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by Borusan in the home market. (*See Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipes and Tubes From Turkey (Final Results*), 63 FR 35190 (June 29, 1998)).

*A. Calculation of COP*

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of Borusan's costs of materials and fabrication employed in producing the foreign like product, plus selling, general, and administrative expenses (SG&A) and the cost of all expenses incidental to placing the foreign like product in condition packed ready for shipment.

In order to avoid the distortive effect of inflation on our comparison of costs and prices, we requested that Borusan submit monthly production costs incurred during each month of the POR. We calculated a POR-average cost for each product after indexing the reported monthly costs of manufacturing (COM) during the POR to an equivalent currency level using the wholesale price index for Turkey from the *International Financial Statistics,* published by the International Monetary Fund. We then restated the POR-average COM to the currency level of each month and calculated monthly COP and constructed value (CV) for each product. We relied on Borusan's submitted costs to calculate COP and CV. To obtain a Borusan Group general and administrative (G&A) expense factor, we used the company-wide cost information from Borusan's three pipe and tube manufacturing companies. We applied the G&A and interest expense rates to the COM plus packing because the denominator used to compute the rates included packing.

The respondent provided information in the response showing that one of the Borusan mills, Kartal Boru, received coil and zinc inputs from affiliated parties. We consider coil and zinc to be major inputs and therefore we have applied the major input rule to value such purchases (*see Notice of Final Results and Partial Recission of Antidumping Review: Certain Pasta from Italy,* 64 FR 6615, 6621 (February 10, 1999)). The major input rule of section 773(f)(3), together with section 772(f)(2) of the Act, provides that the Department may value inputs obtained from affiliated parties at the highest of the transfer price, the market price or the affiliated supplier's costs. *See* 16 CFR Section 351.407(b). However, some of the inputs in this review were purchased from an affiliated mill that was collapsed with Borusan for purposes of this and previous reviews. With respect to those inputs (*i.e.,* inputs from a collapsed entity), we do not apply the major input rule. Rather, in those instances, we value the purchases based upon the cost of producing the input. *See e.g., AK Steel Corp.* v. *United States,* 34 F Supp. 2d 75b(CIT 1998) (affirming the Department's determination not to apply the major input rule to transactions between collapsed entities).

Therefore, for major input purchases of coil from the affiliated party not collapsed with Borusan, we have utilized the highest of: (1) The cost of producing the input; (2) the transfer price; or (3) the market price. In contrast, we have valued major input purchases of coil and zinc from the collapsed entity at the cost to the affiliated provider. *See* Preliminary Results Analysis Memorandum, dated January 31, 2000, on file in the Central Records Unit (room B–099 of the main Commerce Department Building).

*B. Test of Home Market Prices*

We compared the indexed weighted-average COP figures to home market sales of the foreign like product as called for by section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges, rebates and direct selling expenses.

*C. Results of COP Test*

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we do

not disregard any below-cost sales of that product because we determine that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales because they (1) were made over an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (C) of the Act, and (2) based on comparisons of prices to weighted-average COPs for the POR, were at prices which would not permit the recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain products, more than 20 percent of Borusan's home market sales were sold at below the COP. Further, we did not find that the prices for these sales provided for the recovery of costs within a reasonable period of time. We therefore excluded these sales from our analysis and used the remaining above-cost sales as the basis for determining NV, in accordance with section 773(b)(1).

**Price to Price Comparisons**

For those comparison products for which there were sales at prices above the COP, we based NV on home market prices. In these preliminary results, we were able to match all U.S. sales to contemporaneous sales of a similar foreign like product made in the ordinary course of trade, based on matching characteristics. We calculated NV based on FOB mill/warehouse or delivered prices to unaffiliated customers, or prices to affiliated customers which were determined to be at arm's length (see discussion below regarding these sales). We made deductions, where appropriate, from the starting price for inland freight, pre-sale warehouse expense, discounts, and rebates. Additionally, we added late payment charges. In accordance with section 773(a)(6) of the Act, we deducted home market packing costs and added U.S. packing costs.

In accordance with section 773(a)(6)(C)(iii) of the Act, we adjusted for differences in the circumstances of sale. These circumstances included differences in imputed credit expenses. We also made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. We calculated POR-average variable and total COMs, by product, after indexing the reported monthly costs using the wholesale price index for Turkey. We then restated the average variable and total COMs to the currency level of each respective month.

**Arm's-Length Sales**

We included in our analysis Borusan's home market sales to affiliated customers only where we determined that such sales were made at arm's-length prices, *i.e.,* at prices comparable to prices at which Borusan sold identical merchandise to unrelated customers. *See* section 773(a)(1)(B) of the Act. In order to determine the arm's-length nature of Borusan's home market sales to affiliated customers we compared the gross unit prices of sales to affiliated and unaffiliated customers net of all movement charges, direct and indirect selling expenses, and packing (*see Final Determination of Sales at Less Than Fair Value; Certain Cold-Rolled Carbon Steel Flat Products from Argentina,* 58 FR 37062, 37077 (July 9, 1993)).

**Level of Trade**

As set forth in section 773(a)(1)(B)(i) of the Act and in the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, at 829–831 (see H.R. Doc. No. 316, 103d Cong., 2d Sess. 829–831 (1994)), to the extent practicable, the Department calculates NV based on sales at the same level of trade (LOT) as the U.S. sales (either EP or Constructed Export Price). When the Department is unable to find sale(s) in the comparison market at the same LOT as the U.S. sale(s), the Department may compare sales in the U.S. and foreign markets at different LOTs. The NV LOT is that of the starting-price sales in the home market. To determine whether home market sales are at a different LOT than U.S. sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT and the differences affect price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Tariff Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

In implementing these principles in this review, we examined information from the respondent regarding the marketing stages involved in the reported home market and EP sales, including a description of the selling activities performed by Borusan for each channel of distribution. Consistent with the prior review of this respondent (POR 96–97), we determined that with respect to Borusan's sales, there were two home market LOTs and one U.S. LOT (*i.e.,* the EP LOT). *See Final Results,* 63 FR 35190, 35193.

Where possible, we compared sales at the U.S. LOT to sales at the identical home market LOT. If no match was available at the same LOT, we compared sales at the U.S. LOT to sales at the second home market LOT.

To determine whether a LOT adjustment was warranted, we examined, on a monthly basis, the prices of comparable product categories, net of all adjustments, between sales at the two home market LOTs we had designated. We found a pattern of consistent price differences between sales at these LOTs.

In making the LOT adjustment, we calculated the difference in weighted-average prices between the two different home market LOTs. Where U.S. sales were compared to home market sales at a different LOT, we reduced the home market price by the amount of this calculated difference.

**Currency Conversion**

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. However, the Federal Reserve Bank does not track or publish exchange rates for the Turkish lira. Therefore, we made currency conversions based on the daily exchange rates from the Dow Jones Business Information Services.

Section 773A(a) directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a ''fluctuation.'' It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from a benchmark rate by 2.25 percent. The benchmark rate is defined as the rolling average of the rates for the past 40 business days. When we determine a fluctuation to have existed, we generally utilize the benchmark rate instead of the daily rate, in accordance with established practice.

When the rate of domestic price inflation is significant, as it is in this case, it is important that we use as a basis for NV home market prices that are as contemporaneous as possible with the date of the U.S. sale. This is to minimize the extent to which calculated dumping margins are overstated or understated due solely to price inflation that occurred in the intervening time period between the U.S. and the home market sales. For this reason, as

discussed above, we are comparing home market and U.S. sales in the same month. For the same reason, we have used the daily exchange rates for currency conversion purposes. *See, e.g., Certain Porcelain on Steel Cookware From Mexico: Final Results of Antidumping Duty Administrative Review,* 62 FR 42496, 42503 (August 7, 1997) and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta From Turkey,* 61 FR 30309 (June 14, 1996).

**Preliminary Results of Review**

As a result of our review, we preliminarily determine that the following margins exist for the period May 1, 1998, through April 30, 1999:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| Borusan | 0.48 |

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding within five (5) days after the date of publication of this notice any calculations performed in connection with these preliminary results.

Any interested party may request a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific assessment rates by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise. Upon completion of this review, the Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of pipe and tube from Turkey entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 752(a)(2)(c) of the Act: (1) The cash deposit rate for Borusan will be the rate established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis* within the meaning of section 733(b)(3) of the Act, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 14.74 percent, the ''all others'' rate established in the LTFV investigation.

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: January 31, 2000.

**Holly A. Kuga,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–2846 Filed 2–7–00; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–580–818]**

### Cold Rolled and Corrosion-Resistant Carbon Steel Plate From the Republic of Korea: Rescission of Countervailing Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Rescission of Countervailing Duty Administrative Review.

**SUMMARY:** On September 24, 1999, in response to a request from petitioner and respondents, the Department of Commerce initiated an administrative review of the countervailing duty order on cold rolled and corrosion-resistant carbon steel plate from the Republic of Korea. The review covers the period January 1, 1998 through December 31, 1998. In accordance with 19 CFR 351.213(d)(1), the Department is now rescinding this review because the petitioner and respondents have withdrawn their requests for review.

**EFFECTIVE DATE:** February 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Eric B. Greynolds or Tipten Troidl, AD/CVD Enforcement, Group II, Office VI, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2786.

**SUPPLEMENTARY INFORMATION:** On August 31, 1999, the Department received requests for an administrative review of the countervailing duty order on cold rolled and corrosion-resistant carbon steel plate from the Republic of Korea from Weirton Steel Corporation (petitioner) and Pohang Iron & Steel Co., Ltd., Dongbu Steel Co., Ltd., and Union Steel Manufacturing Co., Ltd. (respondents), for the period January 1, 1998 through December 31, 1998. On October 1, 1999, the Department published in the **Federal Register** (64 FR 53318) a notice of ''Initiation of Countervailing Duty Administrative Review'' initiating the administrative review. On January 4, 2000, petitioner withdrew its request for review. On January 6, 2000, respondents withdrew their request for review.

The applicable regulation, 19 CFR 351.213(d)(1), states that if a party that requested an administrative review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review, the Secretary will rescind the review. In this case, the parties to the proceeding did not withdraw their requests within the 90 day period. However, our regulations state that the Secretary may extend the time limit if the Secretary decides that it is reasonable to do so. Since both parties have requested to withdraw and because their requests were made shortly after the 90 day period, we find it reasonable to accept parties' withdrawals of their requests for review. No other interested party requested a review, and we have received no other submissions regarding parties' withdrawals of their requests for review. Therefore, we are rescinding this review of the countervailing duty order on cold

rolled and corrosion-resistant carbon steel flat products from the Republic of Korea covering the period January 1, 1998, through December 31, 1998.

This notice is published in accordance with 19 CFR 351.213(d)(4).

Dated: January 27, 2000.

**Holly A. Kuga,**

*Acting Deputy Assistant Secretary for Import Administration.*

[FR Doc. 00–2842 Filed 2–7–00; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–508–605]**

### Final Results of Full Sunset Review: Industrial Phosphoric Acid From Israel

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of full sunset review: Industrial phosphoric acid from Israel.

**SUMMARY:** On September 27, 1999, the Department of Commerce (''the Department'') published in the **Federal Register** (64 FR 51954) the preliminary results of the full sunset review of the countervailing duty order on industrial phosphoric acid from Israel pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). We provided interested parties an opportunity to comment on our preliminary results and received comments filed on behalf of domestic and respondent interested parties. As a result of this review, the Department finds that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. The net countervailable subsidy and the nature of the subsidy are identified in the Final Results of Review section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Kathryn B. McCormick or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution, N.W., Washington, D.C. 20230; telephone: (202) 482–1930 or (202) 482–1560, respectively.

**EFFECTIVE DATE:** February 8, 2000.

**Statute and Regulations**

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) (''Sunset Regulations'') and in 19 CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) (''Sunset Policy Bulletin'').

**Scope**

This order covers shipments of industrial phosphoric acid (''IPA'') from Israel. According to the final results of the Department's most recent administrative review, the merchandise subject to this order is currently classifiable under item number 2809.20.00 of the Harmonized Tariff Schedule of the United States (''HTSUS'').[1] Although the HTSUS subheading is provided for convenience and customs purposes, the written description remains dispositive.

**Background**

On September 27, 1999, the Department published in the **Federal Register** the Preliminary Results of Full Sunset Review: Industrial Phosphoric Acid from Israel (64 FR 51954). In our preliminary results, we found that revocation of the order would be likely to lead to continuation or recurrence of a countervailable subsidy. Further, we found the net countervailable subsidy likely to prevail if the order were revoked to be 10.93 percent for Haifa Chemicals Ltd. (''Haifa'') and 5.97 percent for ''all others.''

On November 16, 1999, we received a case brief on behalf of Albright and Wilson Americas Inc., FMC Corporation, and Solutia Inc. (collectively, ''domestic interested parties''), within the deadline specified in 19 CFR 351.309(c)(1)(i). We also received a case brief on behalf of the Government of Israel (''GOI'') and Rotem Amfert Negev Ltd. (''Rotem'') (collectively, ''respondent interested parties''). On November 23, 1999, within the deadline specified in 19 CFR 351.309(d), the Department received rebuttal comments from domestic and respondent interested parties. We have addressed the comments below.

Although the deadline for this determination was originally January 25, 2000, due to the Federal Government shutdown on January 25 and 26, 2000, resulting from inclement weather, the timeframe for issuing this determination has been extended by three days.

**Comments**

*Comment 1*

The domestic interested parties assert that the Department correctly concluded in its preliminary results that revocation of the order would likely lead to continuation or recurrence of a countervailable subsidy, and further, that this conclusion is appropriate for the final results in light of the results in the recently completed eleventh administrative review (*see* November 16, 1999, Case Brief of domestic interested parties at 5).

The respondent interested parties argue that, because of a recent WTO interim panel determination that privatization extinguishes prior non-recurring subsidies,[2] and because the Department has verified in the last several reviews the GOI's intention to fully privatize Rotem, the Department should reconsider its preliminary results and find that revocation of the order on Rotem will not lead to continuation of their benefits from subsidies (*see* November 16, 1999, Case Brief of respondent interested parties at 2). They claim that, whereas the privatization of Rotem was 68.48 percent complete as of the last administrative review, today, it is approximately 98 percent complete. *Id.* Therefore, the Department's calculation of the countervailing duty applicable to Rotem, which assumes that most prior, non-recurring subsidies are passed through to the new owners, is contrary to the WTO dispute panel determination. *Id.*

In rebuttal, the domestic interested parties argue that the WTO finding noted by respondent interested parties is neither relevant nor binding, and there is no reason why the Department should alter its reasoning as a result of an unadopted interim panel report with no legal status in U.S. domestic proceedings (*see* November 23, 1999, Rebuttal of Case Brief of domestic interested parties at 2). Further, they argue that the report apparently concludes that the United States should not assume, in an administrative review, that the sale of a company to private bidders automatically terminates the subsidies the company received when it was government-owned, and that the United States should recalculate anew

[1] *See Industrial Phosphoric Acid from Israel: Final Results and Partial Recission of Countervailing Duty Administrative Review,* 64 FR 49460 (September 12, 1999).

[2] *See* October 8,1999, ''WTO Interim Panel Finds Against U.S. CVD Rules on Privatization,'' 17 Inside U.S. Trade No. 140 at 4.

any countervailable subsidies received after privatization. *Id.* at 3. Therefore, the domestic interested parties assert that were the interim report adopted, its relevance to a sunset review would be unclear, and the Department still would be free to conclude, in a sunset review, that subsidization would be likely to continue or recur.

*Department's Position*

We disagree with the respondent interested parties that the WTO interim panel finding requires the Department to alter its approach to privatization in the instant case and revise its preliminary determination of likelihood. The domestic interested parties are correct in noting that, because the final panel report has not been adopted by the Dispute Settlement Body, the United States has no obligation with respect to the report. As the report has not been adopted, it is premature to consider what obligations, if any, the panel report may impose on the United States.

Even if it were not premature for the Department to reconsider our approach to privatization in light of the panel report, and it were otherwise appropriate to do so, 19 U.S.C. § 3533(g)(1) provides that a regulation or practice may not be amended, rescinded, or otherwise modified in the implementation of such report unless and until very specific statutorily mandated actions have been fulfilled and the appropriate congressional committees have been consulted. Thus, we continue to determine that a portion of subsidies bestowed on a government-owned company prior to privatization continues to benefit the production of the privatized company.

*Comment 2*

The domestic interested parties agree with the Department's method of adjusting the original net subsidies to reflect new and terminated programs, and increased usage of a program. Further, they agree with the rates selected by the Department to report to the Commission for Rotem and Haifa (*see* November 16, 1999, Case Brief of domestic interested parties at 6–7).

Respondent interested parties assert that, should the Department maintain its position that subsidization will continue, then it must revise the magnitude of the margin in the preliminary results to reflect the Department's findings in the most recent review. The respondent interested parties reassert that the Department's methodology with respect to privatization of previously subsidized companies is contrary to the WTO dispute panel determination holding that the Department is in violation of the WTO Subsidies Agreement (*see* November 16, 1999, Case Brief of respondent interested parties at 2). Thus, they argue, the Department should adjust its calculation of the countervailing duty for Rotem. *Id.* Respondent interested parties add that should the Department find that it can take into account only the level of privatization as of the most recently completed administrative review, then the Department should still recalculate the rate using the privatization level of 68.48 percent to reflect that review. Therefore, the Department should report to the Commission a rate of 1.88 percent for Rotem (5.97–(0.6848*5.97 = 1.88%). *Id.* at 3.

Accordingly, the Department should adjust the Encouragement of Capital Investments Law (''ECIL'') Grants benefits from 5.58 percent to the 5.43 percent from the most recent review. *Id* at 3. Further, the subsidy of 0.11 percent from the Environmental Grants Program was expensed entirely by the Department in the 1996 review and was found not to be used in the 1997 review; therefore, the Department should not include the program in its calculations. Finally, the Department should find no benefit from Long-Term Industrial Development (''LTID'') Loans because, as verified in the original investigation, all loans were terminated in 1985 and any loan taken in 1985 would be fully repaid ten years later, in 1995. Thus, no benefits from this program were found in the results of the 1996 review.

In summary, the respondent interested parties assert that the calculation of the likely level of subsidization for Rotem should exclude two programs, Environmental Grants Program and LTID Loans, and reduce the subsidy from ECIL Grants benefits from 5.58 percent to 5.43 percent. Thus, according to respondent interested parties, the Department should adjust its calculations to include: (1) 5.43 percent from the ECIL Grants; (2) 0.18 percent from the Infrastructure Grant Program; and (3) 0.04 percent from the Encouragement of Research and Development Law (''EIRD'') Grants, for a net subsidy of 5.65 percent.

In rebuttal, the domestic interested parties reassert that the Department's calculation of the net countervailable subsidy for Rotem reflects the Department's standard methodology of presuming that the rate calculated in the original investigation is the best indicator of the behavior of exporters and foreign governments without the discipline of the order in place (*see* November 23, 1999, Rebuttal Brief of domestic interested parties at 4). Further, the domestic interested parties reassert that the Department's adjustments to the original subsidy rate fall well within the Department's discretion. *Id.*

*Department's Position*

The Department agrees, in part, with the respondent interested parties' argument. We agree that, in the original investigation, the Department found the LTID Loans program was terminated in 1985. The Department, nonetheless, included an estimated subsidy from the program on the basis that loans taken prior to termination of the program would continue to provide countervailable benefits. Loans taken in 1985 would not be fully repaid until ten years later; after 1995, there would be no benefits conferred by this program. In the 1996 review, the GOI stated that the LTID Loan program was terminated in 1985 and had not been reinstated. Accordingly, in the 1996 review and all subsequent reviews, the Department found the program ''not used'' and that Rotem did not hold any outstanding loans from this program.

We disagree with the respondent interested parties' argument that we should eliminate the benefits from the Environmental Grants Program from our calculation of the net subsidy. The Department has not found the program terminated in any administrative reviews. Without such Department determination, consistent with the *Sunset Policy Bulletin,* we find that this program continues to exist and may provide benefits in the future. Therefore, we will continue to include a benefit in our calculation of the rate to report to the Commission.

We disagree with the respondent interested parties' assertion that we erred in selecting a benefit from the 1996 administrative review of 5.58 percent for the ECIL Grant program on the basis that the 1997 administrative review (with the rate of 5.43 percent) reflects the results of the Department's most recent review. While the final results of our 1997 administrative review, which was issued after the deadline for submitting comments for our preliminary results, were not addressed by interested parties in pre-preliminary comments, we do not agree that our policy is to select the benefit rates from the most recently completed review. Rather, as noted in section III.B.3(d) of the *Sunset Policy Bulletin,* where the Department has conducted an administrative review of an order and determined to increase the net countervailable subsidy rate for any reason, the Department may adjust the net countervailable subsidy rate determined in the original investigation to reflect the increase in the rate. In our preliminary results we stated that

because, over the life of the order, there has been a consistent pattern of increased usage of the grants provided by this program, we determined that the rate for this program from the original investigation should be adjusted to reflect this increased usage. While the reduction in the rate from the 1996 to 1997 administrative review reflects a decrease in the benefits from the previously bestowed grants, it does not necessarily reflect the behavior of the exporters and foreign government without the discipline of the order. The ECIL Grant program continues to exist and grants continue to be available. Therefore, we continue to determine that the history of increased usage of this program makes it appropriate that the Department select a more recently calculated rate that reflects the increased usage of this program. Therefore, we will continue to add the benefit as determined in the 1996 administrative review to determine the net countervailable subsidy likely to prevail.

Therefore, the Department will not include benefits from LTID Loans in the net countervailable subsidy. With respect to the ECIL Grants, the Department will continue to use the rate of 5.58 percent from the preliminary results for Haifa and ''all others.''

*Comment 3*

The respondent interested parties argue that the Department should not report a higher rate for Haifa than the rate it will report for Rotem. Specifically, the rate for the LTID Loans program should be 0.00 percent instead of 5.02 percent because, as noted above, the LTID Loans program was terminated in 1985, and any residual benefits from the program ended in 1995, after all ten-year loans were repaid (*see* November 16, 1999 Case Brief of the respondent interested parties at 7). Further, the respondent interested parties note that the Department has used Rotem's rates for all other programs to determine Haifa's overall rate. Therefore, should the Department disagree with a rate of zero for the LTID Loans, then the rate for this program for Haifa should still be no greater than 0.06 percent, Rotem's rate for this program. *Id.* at 7.

In rebuttal, the domestic interested parties contend that the Department has no information indicating that Haifa did not obtain LTID Loans or that it has not received residual benefits from such loans in later years (*see* November 23, 1999, Rebuttal Brief of domestic interested parties at 6). Thus, there is no basis for a downward adjustment to Haifa's net countervailable subsidy. Additionally, they reassert that the original rate is the most accurate predictor of Haifa's actions were the order revoked and the Department should not recalculate this rate for its final results. *Id.* at 7.

*Department's Position*

The Department agrees with the respondent interested parties. As noted above, we determined in the original investigation that the program was terminated in 1985, but that benefits from loans granted under the LTID Loans program would be conferred through 1995. Further, we found the program to be not used in the administrative reviews since 1996. Therefore, we will not include the benefits from this terminated program in our calculation of the net subsidy likely to prevail. With respect to the respondent interested parties assertion that the Department has used Rotem's rates for all other programs to determine Haifa's overall rate, two programs, the Infrastructure Grant Program and the Environmental Grant Program, were not included in the original investigation. The third program, EIRD Grants conferred the same benefits on Haifa and ''all others'' in the final determination. Therefore, the Department, in each instance, has used the only available rates to determine Haifa's net subsidy.

*Comment 4*

The domestic interested parties agree with the Department's description of the information it intends to provide to the Commission with respect to the nature of the subsidies found and their categorization (whether the subsidy is a subsidy described in Article 3 or 6.1) under the WTO Subsidies Agreement (*see* November 16, 1999, Case Brief of domestic interested parties at 9). Specifically, they agree that the Bank of Israel Export Loans would fall under Article 3 of the Subsidies Agreement. Further, domestic interested parties assert that the remaining subsidies are actionable subsidies under Article 5 of the Subsidies Agreement, which defines an actionable subsidy as one that is ''specific'' within the meaning of Articles 1 and 2 of the Agreement, and causes adverse effects to the interests of other WTO members. *Id.* at 9. Finally, the domestic interested parties note that, of the eleven administrative reviews of the order, a net countervailing subsidy exceeding five percent was found in all but one (the 1992 review). *Id.* at 11. Accordingly, it is reasonable to assume that these programs continue to exist and are utilized, and that the Department is justified in reporting to the Commission that these subsidies constitute ''serious prejudice'' to the interests of the United States under Article 6.1 of the Subsidies Agreement.

In their rebuttal brief, respondent interested parties agree with the Department's approach of providing the

Commission with ''descriptions'' of the nature of the subsidy (*see* November 23, 1999, Rebuttal Brief of the respondent interested parties at 2). However, with respect to the Bank of Israel Export Loans, they assert that, because the Department found in the original investigation that the loans were no longer at preferential rates, the program's consistency with the Subsidies Agreement is irrelevant. *Id.* at 3.

With respect to the other programs, respondent interested parties contend that, even as measured by the Department's methodology, the other programs will not exceed the five percent threshold of Article 6 of the Subsidies Agreement in future reviews. First, of the six subsidies mentioned in the Preliminary Results other than the Bank of Israel Export Loans, three are not relevant: The LTID Loans and the Exchange Rate Risk Insurance Scheme (''ERIS'') have been terminated, and the Environmental Grant Program was used only one time and provides no residual benefits. *Id.* All the other programs combined *i.e.,* the ECIL Grants, EIRD Grants, and Infrastructure Grant Program will not exceed five percent in the future. *Id.* at 3–4. This is because ECIL and infrastructure grants are diminishing, both as a result of their allocation over time and as a result of the fact that any new grants have been minimal. Additionally, further privatization of Rotem, from about 31 percent government ownership to about two percent, will significantly reduce the residual subsidization from prior grants. *Id.* at 4.

*Department's Position*

The Department agrees with the respondent interested parties' assertion that descriptions of the Bank of Israel Export Loans, LTID Loans, and ERIS should not be included in the nature of the subsidy section because these programs were found to be terminated. However, as noted above, the Department has not found the Environmental Grant Program to be terminated. Therefore, we will revise the descriptions of the nature of the subsidies from these programs.

Additionally, as we noted in our preliminary results, we do not have information with which to calculate the net countervailable subsidy in accordance with Annex IV of the Subsidies Agreement, nor do we believe it appropriate to attempt such a calculation in the course of a sunset review.

**Nature of the Subsidy**

In the *Sunset Policy Bulletin,* the Department states that, consistent with section 752(a)(6) of the Act, the Department will provide to the Commission information concerning the nature of the subsidy, and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement.

Although the programs conferring benefits do not fall within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement, they could be found to be inconsistent with Article 6 if the net countervailable subsidy exceeds five percent, as measured in accordance with Annex IV of the Subsidies Agreement. The Department, however, has no information with which to make such a calculation, nor do we believe it appropriate to attempt such a calculation in the course of a sunset review. Rather, we are providing the Commission with the following program descriptions.

The Encouragement of Capital Investments Law (ECIL) Grants. In the 1987 original investigation, the Department found that Negev Phosphates, Ltd. (''Negev'') and Haifa Chemicals, Ltd. received countervailable subsidies from this program, the benefits of which depend on the geographic location of the eligible enterprises. ECIL Grants were found to confer subsidies in each subsequent administrative review.

Encouragement of Research and Development Law (''EIRD'') Grants. Israeli manufacturers, producers or exporters of IPA may benefit from research and development grants under this program. With the exception of the 1988, 1989 and 1991 administrative reviews, the Department found the EIRD Law Grants to be countervailable in each yearly review since the issuance of the order.

Infrastructure Grant Program. In the administrative review of the 1996 period, the Department found that this program enables the GOI to establish new industrial areas by partially reimbursing companies for their costs of developing the infrastructure in certain geographical zones.

Environmental Grant Program. Additionally, in the 1996 administrative review, the Department found that the GOI administers this countervailable subsidy program to provide financial assistance for the adaptation of existing industrial facilities to new environmental requirements.

**Final Results of Review**

As a result of this review, the Department finds that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy for the reasons set forth in the final results of review. As discussed more fully above, we will adjust our calculations of the net subsidy to reflect the termination of the LTID Loans program on the rates listed below:

| Manufacturer/Exporter | Margin (Percent) |
|---|---|
| Haifa, Ltd. | 5.91 |
| All Others | 5.91 |

This notice serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO material or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: January 28, 2000.

**Holly A. Kuga,**

*Assistant Secretary for Import Administration.*

[FR Doc. 00–2852 Filed 2–7–00; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–469–004]**

### Final Results of Expedited Sunset Review: Stainless Steel Wire Rod From Spain

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of expedited sunset review: Stainless steel wire rod from Spain.

**SUMMARY:** On July 1, 1999, the Department of Commerce (''the Department'') initiated a sunset review of the countervailing duty order on stainless steel wire rod from Spain (64 FR 35589) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of the domestic interested parties, as well as inadequate response from respondent interested parties, the Department determined to conduct an expedited (120 day) review. As a result of this

review, the Department finds that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. The net countervailable subsidy and the nature of the subsidy are identified in the Final Results of Review section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Eun W. Cho or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue N.W., Washington, D.C. 20230; telephone: (202) 482–1698 or (202) 482–1560, respectively.

**EFFECTIVE DATE:** February 8, 2000.

**Statute and Regulations**

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) (''Sunset Regulations'') and in 19 CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3 Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) (''Sunset Policy Bulletin'').

**Scope**

Imports covered by this order are shipments of stainless steel wire rod (''SSWR'') from Spain, which includes coiled, semi-finished, hot-rolled stainless steel products of approximately round solid cross section, not under 0.20 inch nor over 0.74 inch in diameter, whether or not tempered or treated or partly manufactured, from Spain. This merchandise is currently classifiable under item numbers 7221.00.0020 and 7221.00.0040 of the Harmonized Tariff Schedule (''HTS'') of the United States. The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

**History of the Order**

On November 15, 1982, the Department issued a final affirmative countervailing duty determination on certain stainless steel products from Spain.[1] During the investigation, the Department reviewed four companies: Olarra, S.A. (''Olarra''), Roldan, S.A. (''Roldan''), S.A. Echevarria (''Echevarria''), and Forjas Alavesas, S.A. (''FASA'').[2] The Department determined that four general subsidy programs were providing countervailable subsidies to Spanish manufacturers, producers, and exporters of the subject merchandise. The four relevant subsidy programs are as follows: medium- and long-term preferential loans under the Concerted Action Program (''CAP''), Privileged Circuit Exporter Credits program operating capital loans (''PCEC-OC''), Privileged Circuit Exporter Credits program pre-financing loans (''PCEC-PF''), and cash grants.[3]

Specifically, in its original investigation, the Department found Roldan was subsidized at the rate of 1.31 percent from the CAP and 1.88 percent from PCEC–OC and PCEC–PF; hence, the net countervailable subsidy rate for Roldan regarding the subject merchandise was 3.19 percent. Likewise, the Department found Echevarria was subsidized at the rates of 11.48 from the CAP, 1.88 percent from PCEC–OC, and 2.07 percent from a government-directed grant. Therefore, the net countervailable subsidy rate for Echevarria regarding the subject merchandise was 15.43 percent. Similarly, the subsidy rates for FASA are 0.21 and 1.88 percent for the CAP and for PCEC-OC, respectively. Thus, the net countervailable subsidy rate for FASA regarding the subject merchandise was 2.09 percent. As for Olarra, the Department determined that the net countervailable subsidy rate was 0.00 percent.[4] Finally, the all-others rate was 15.43 percent.

The Department published the countervailing duty order on SSWR from Spain in the **Federal Register** on January 3, 1983.[5] Since that time, the Department has completed several administrative reviews.[6] In the first administrative review, covering the period January 1, 1986 through December 31, 1986, the Department determined that the net countervailable subsidy for Roldan was 1.42 percent:[7] the benefits from PCEC–OC, PCEC–PF, and the CAP were 0.07, 1.02, and 0.33 percent *ad valorem*, respectively. At the same time, however, the Department found that two subsidy programs were terminated: PCEC–OC (effective January 1, 1986 as per Treasury Order of April 14, 1982) and PCEC–PF (effective March 5, 1987 pursuant to Royal Decrees 321/1987 and 322/1987). Since the net countervailable subsidy for Roldan was reduced to *de minimis* (0.33 percent *ad valorem*) when the Department incorporated the above terminations into consideration, it waived cash deposits for any future shipments from Roldan, until the final results of the next administrative review.

In its second administrative review, covering January 1, 1987 through December 31, 1987, the Department determined that Roldan benefitted from PCEC–PF and the CAP at the rate of 0.15 and 0.27 percent *ad valorem*—combined rate of 0.42 percent *ad valorem*.[8] In its

[1] See Final Affirmative Countervailing Duty Determinations; Certain Stainless Steel Products From Spain, 47 FR 51453 (November 15, 1982). However, this product designation was changed to ''stainless steel wire rod'' in the subsequent countervailing duty order because the International Trade Commission determined that only imports of SSWR from Spain are causing material injury or are threatening material injury to a domestic industry. The countervailing duty investigations pertaining to hot-rolled stainless steel bars and cold-formed stainless steel bars from Spain were terminated. See Stainless Steel Wire Rod From Spain; Countervailing Duty Order. 48 FR 52 (January 3, 1983).

[2] *See id.* The Department found that there were five known producers and exporters of the subject merchandise to the United States. The fifth company, La Calibradora Mechanica, S.A., was lumped with all others because it did not respond to the Department's inquiry. (Although Echevarria also did not provide the Department with a response, the Department had enough information to employ the best information otherwise available in determining the net subsidy rate for that company.)

[3] *See id.* For other subsidy programs investigated, the Department determined that some programs fall outside the purview of the countervailing duty law (such as, Desgravacion Fiscal a la Exportacion (''DFE'') and Export Credit Insurance), and the others are either not applicable to or not used by Spanish producers/exporters of the subject merchandise (such as, some of Certain Privileged Circuit Exporter Credits, Warehouse Construction Loans, Regional Investment Incentive Programs, Equity Infusion, Special Credits to Aceros de Llodio, and Research and Development Incentives).

[4] Although the Department determined that Olarra was in a court-ordered bankruptcy receivership and, therefore, any benefits associated with pre-receivership loans have been lost (*i.e.*, Olarra's net countervailable subsidy rate is zero), Olarra was not excluded from the final determination, countervailing duty order, and final results of subsequent administrative reviews because the Department determined that if the financial condition of Olarra improves, it could again qualify for and obtain the benefits under these programs in the future.

[5] Stainless Steel Wire Rod From Spain: Countervailing Duty Order, 48 FR 52 (January 3, 1983).

[6] See Stainless Steel Wire Rod From Spain; Final Results of Countervailing Duty Administrative Review, 53 FR 28427 (July 28, 1988); Stainless Steel Wire Rod From Spain; Final Results of Countervailing Duty Administrative review, 54 FR 26826 (June 26, 1989); and Stainless Steel Wire Rod From Spain; Final Results of Countervailing Duty Administrative Review. 55 FR 349 (January 4, 1990).

[7] *See id.* Roldan was the lone subject of all three administrative reviews because the Department determined that Roland was the only known Spanish producer/exporter of the subject merchandise during the relevant periods of reviews.

[8] *See* footnote 6, *supra.* Also see Stainless Steel Wire Rod From Spain: Preliminary Results of

Continued

third and the latest administrative review, covering January 1, 1988 through December 31, 1988, the Department determined that the only subsidy program that conferred a benefit to Roldan was the CAP at the rate of 0.19 percent *ad valorem*.[9] The order remains in effect for all manufacturers and exporters of the subject merchandise.

**Background**

On July 1, 1999, the Department initiated a sunset review of the countervailing duty order on SSWR from Spain (64 FR 35588), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of AL Tech Specialty Steel Corp., Carpenter Technology Corp., Republic Engineered Steels, Inc., Talley Metals Technology, Inc., and United Steelworkers of America (collectively referred to as ''the domestic interested parties''), on July 16, 1999, within the deadline specified in section 351.218(d)(1)(i) of the Sunset Regulations. In their Notice of Intent to Participate, the domestic interested parties denoted that none of them is related to a foreign producer/exporter or is a U.S. importer of the subject merchandise, nor are any of them importers of the subject merchandise.

We received a complete substantive response on behalf of the domestic interested parties on August 2, 1999, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). The domestic interested parties claimed interested party status pursuant to sections 771(9)(C) and (D) of the Act, as U.S. producers of the domestic like product and as a union representing workers that engage in the production of the like product in the United States. In their substantive response, the domestic interested parties indicated that the most of them have participated in this proceeding since its inception and that, as a group, they remain committed to a full participation in the instant review. (*See* the domestic interested parties' August 2, 1999 Substantive Response, at 4–5.)[10] The domestic interested parties also submitted their rebuttal comments on August 9, 1999, within the five-day deadline in accordance with section 351.218(d)(4).

The Department received substantive responses from the Government of the Kingdom of Spain (''KOS'') and from the European Commission (''EC'') on July 30, 1999 and July 29, 1999, respectively.[11] Both the KOS and EC indicated, in their respective substantive responses, that they are willing to participate in the instant review and that they have in the past participated in the proceedings of the order. However, the Department did not receive a substantive response from any foreign producer/manufacturer, exporter, or the U.S. importer, etc., as defined under 771(9)(A) of the Act. Thus, pursuant to section 351.218(e)(1)(ii)(A) of the *Sunset Regulations*, the Department determined that respondent interested parties' substantive responses were inadequate to warrant a full review. Consequently, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day, review of this order.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). Therefore, on November 16, 1999, the Department determined that the sunset review of the countervailing duty order on SSWR from Spain is extraordinarily complicated and extended the time limit for completion of the final results of this review until not later than January 27, 2000, in accordance with section 751(c)(5)(B) of the Act.[12]

Although the deadline for this determination was originally January 27, 2000, due to the Federal Government shutdown on January 25 and 26, 2000, resulting from inclement weather, the time frame for issuing this determination has been extended by two days.

**Determination**

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any change in the program which gave rise to the net countervailable subsidy has occurred that is likely to affect that net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the International Trade Commission (''the Commission'') the net countervailable subsidy likely to prevail if the order is revoked. In addition, consistent with section 752(a)(6), the Department shall provide to the Commission information concerning the nature of the subsidy and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the 1994 WTO Agreement on Subsidies and Countervailing Measures (''Subsidies Agreement'').

The Department's determinations concerning continuation or recurrence of a countervailable subsidy, the net countervailable subsidy likely to prevail if the order is revoked, and nature of the subsidy are discussed below. In addition, the domestic interested parties' comments with respect to each of these issues are addressed within the respective sections.

**Continuation or Recurrence of a Countervailable Subsidy**

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (''URAA''), specifically the Statement of Administrative Action (''SAA''), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis (*see* section III.A.2 of the *Sunset Policy Bulletin*). Additionally, the Department normally will determine that revocation of a countervailing duty order is likely to lead to continuation or recurrence of a countervailable subsidy where (a) a subsidy program continues, (b) a subsidy program has been only temporarily suspended, or (c) a subsidy program has been only partially terminated (*see* section III.A.3.a of the *Sunset Policy Bulletin*). Exceptions to this policy are provided where a company has a long record of not using a program (*see* section III.A.3.b of the

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Countervailing Duty Administrative Review, 54 FR 16384 (April 24, 1989). Since PCEC–PF was terminated pursuant to Royal Decrees 321/1987 and 322/1987, effective March 5, 1987, the Department preliminarily determined that cash deposit of estimated countervailing duties under this program is zero. In its final results of the administrative review, because the combined subsidy rate was *de minimis*, the Department required zero cash deposits for Roldan until the final results of the next administrative review is published.

[9] *See* footnote 6, *supra.*

[10] *See* footnote 1, *supra.* AL Tech Specialty Steel Corp., Carpenter Technology Corp., and Republic Engineered Steels were members of the original group which filed the petition.

[11] Although both the KOS and EC did not explicitly claim their interested party status, they are interested parties within the meaning of 771(9)(B) of the Act.

[12] *See Extension of Time Limit for Final Results of Five-Year Reviews* 64 FR 62167 (November 16, 1999).

*Sunset Policy Bulletin*). Also, if the Department determines that the fully allocated benefit stream of a countervailable subsidy is likely to continue after the end of a sunset review, it will normally determine that the subsidy continues to exist regardless whether the program that gave rise to such benefit continues to exist. (*See Id.* at section III.A.4.)

In addition to considering guidance on likelihood provided in the Sunset Policy Bulletin and legislative history, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of a countervailable subsidy where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a response from any respondent manufacturers/producers or exporters of the subject merchandise.[13] Pursuant to section 351.218(d)(2)(iii) of the Sunset Regulations, this constitutes a waiver of participation.

In their substantive response, the domestic interested parties contend that revocation of the countervailing duty order would be likely to lead to continued unfair subsidization by the KOS. The domestic interested parties further contend that the KOS and its regional governments continue to provide an array of subsidy programs benefitting the Spanish steel industry. In support of their contention, the domestic interested parties point to Roldan's 1990–1994 financial statements, in which Roldan allegedly admitted receiving unspecified subsidies. Also, the domestic interested parties state that Roldan received subsidies from the Industrial Expansion Area of Castilla Leon in 1987 and 1990.[14] In addition, the domestic interested parties request the Department to reconsider, in the instant sunset review, the legal method by which the KOS eliminated some of its subsidy programs and to analyze whether the KOS is likely to reinstate such programs. In other words, the domestic interested parties are urging the Department to revisit its decisions in previous administrative reviews in which the Department determined that PCEC–OC and PCEC–PF were eliminated. (See August 2, 1999 Substantive Response of the domestic interested parties at 14–17 and 21–23.)[15]

In conclusion, the domestic interested parties suggest that the countervailing duty order has been only marginally effective because of the existence of the other subsidy provisions[16] and that it is likely that the KOS and its regional governments will continue and resume subsidizing Spanish manufacturers/exporters of the subject merchandise. Id.

In its substantive response, the KOS indicates that the programs, on which the countervailing duty order was determined, have expired a long time ago: the CAP was only applicable during the period 1974–1982, and the PCEC–OC has not been applicable since 1986. Thus, according to the KOS, any outstanding benefit stream from 16-year-old programs would have long been amortized. Also, the KOS insists that the countervailing duty rates established in the original investigation were either zero or insignificant. Last, the KOS argues that the records clearly indicate that there is no subsidization of the product concerned. (See July 30, 1999 Response of the KOS.)

The EC emphasizes, in its substantive response, that the countervailing duty order under consideration is very old. According to the EC, all subsidies which were relevant in the original investigation, have since been terminated or no longer benefit the Spanish exporters/manufacturers of the subject merchandise. Also, the EC contends that, because the domestic interested parties withdrew their request for an administrative review in 1993,[17] the domestic interested parties acknowledged that there was no further evidence of subsidization in Spain. In conclusion, the EC asserts that revocation of the order is not likely to lead to continuation or recurrence of subsidization. (See July 29, 1999 Response of the EC.)

The domestic interested parties, in their rebuttal, claim that the KOS continues to provide significant countervailable subsidies to its domestic steel industry. Also, the domestic interested parties argue against the respondent interested parties' suggestion that outstanding benefit streams have already been amortized and, therefore, that the order should be revoked. The domestic interested parties note that because the analytical framework applied by the Department in a sunset review is forward-looking, the Department should not give undue significance to the respondents' claim that subsidies provided to Roldan have been completely allocated. (See August 9, 1999 the domestic interested parties' Rebuttal Comments, at 1–7.)

Furthermore, the domestic interested parties note that the countervailable subsidy rates for Roldan, Echevarria, and all others, determined in the original investigation, are significant because the subsidies enable the manufacturers/exporters to aggressively price the subject merchandise in the U.S. market, where purchasers of SSWR consider price to be a significant factor. Id.

As noted above, in the final affirmative countervailing duty determination, the Department determined that all Spanish producers/exporters of the subject merchandise, except one, were benefitting from countervailable subsidies under the CAP, PCEC–OC, PCEC–PF, and cash grants programs at levels above de minimis.[18] In the first administrative review, however, the Department found that PCEC–OC was terminated pursuant to a Treasury Order of April 14, 1982, effective January 1, 1986; that PCEC–PF was terminated as per Royal Decrees 321/1987 and 322/1987, effective March 5, 1997; and that Roldan was not benefitting from a cash grant.[19] Therefore, based on the Department's prior findings regarding the termination of PCEC–OC and PCEC–PF and based on lack of evidence to the contrary, we determine that PCEC–OC and PCEC–PF were eliminated and are not likely to be reinstated if the order is revoked. In addition, the Department determines that the domestic interested parties' claim that other or new subsidies are benefitting Roldan is not supported by sufficient facts. Specifically, the domestic interested parties did not provide sufficient and/or appropriate information, evidence, or arguments to warrant consideration of newly alleged

[13] The Department did not receive a substantive response from Roldan, which is the only known exporter of the subject merchandise. (See footnote 7, supra.) As noted earlier, the Department received substantive responses from the respondent governments, the KOS and EC.

[14] The domestic interested parties' claims, however, do not go beyond a general statement; i.e., their claims lack specifics. In other words, other than merely arguing that other or new subsidies are benefitting Roldan, with respect to manufacturing/exporting the subject merchandise, the domestic interested parties did not provide the Department with any evidence or information in support of their claims.

[15] The domestic interested parties acknowledge that resumption or continuation of subsidization might not be likely if the terminations of subsidy programs are permanent and not replaced. (See the domestic interested parties' substantive response at 15, footnote 5.)

[16] As noted above, the domestic interested parties failed to supply any specific facts with respect to their claim that other or new subsidies will benefit Roldan.

[17] See Stainless Steel Wire Rod From Spain; Termination of Countervailing Duty Administrative Review, 58 FR 39197 (July 22, 1993).

[18] See footnote 1, supra.

[19] See Stainless Steel Wire Rod From Spain; Preliminary Results of Countervailing Duty Administrative Review, 53 FR 9789 (March 25, 1988).

subsidy programs in this sunset review. Moreover, whether the domestic interested parties are making subsidy allegations on products within the purview of the instant review is unclear. Finally, the domestic interested parties have provided no information that would cause us to revisit the final results of our prior administrative reviews, in which the above terminations and the non-usage of grants were found, and to reconsider the legal method by which the KOS eliminated the above subsidy programs.

Nevertheless, despite the KOS's claim that the CAP is expired as of 1982 and the EC's contention that the subsidies countervailed in the original investigation either were terminated or no longer benefit the exporters of the subject merchandise, the Department found that Roldan had an outstanding balance of long-term loans that were extended under the CAP and that Roldan, consequently, was benefitting from the said loan, as late as December 31, 1989, the last period considered by the Department in an administrative review.[20]

Section III.A.4 of the Sunset Policy Bulletin stipulates that in considering a subsidy for which the benefits are allocated over time, the Department normally will determine that the countervailable subsidy will continue to exist when the benefit stream will continue beyond the end of the sunset review regardless of whether the program that gave rise to the long-term benefit continues to exist. In the instant review, Roldan or other respondent parties did not come forth with information which would indicate whether Roldan's long-term loans under the CAP have been fully paid off or whether Roldan is no longer benefitting from the CAP. Hence, the Department is forced to rely on the information contained in the latest administrative review, in which the Department found residual benefits from the CAP still lingering with respect to Roldan, and to determine that Roldan is still benefitting from the eliminated subsidy, the CAP.

In conclusion, because we find that a countervailable program currently is being used (or the benefit stream therefrom continues beyond the end of this sunset review), and respondent interested parties waived their right to participate in this review before the Department, we determine that it is likely that a countervailable subsidy will continue or recur were the order revoked.

[20] See Stainless Steel Wire Rod From Spain; Fnal Results of Countervailing Duty Administrative Review, 55 FR 349 (January 4, 1990).

**Net Countervailable Subsidy**

In the Sunset Policy Bulletin, the Department stated that, consistent with the SAA and House Report, the Department normally will select a rate from the investigation, because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order or suspension agreement in place. The Department went on to clarify that this rate may not be the most appropriate if, for example, the rate was derived from subsidy programs which were found in subsequent reviews to be terminated, there has been a program-wide change, or the rate ignores a program found to be countervailable in a subsequent review. Additionally, where the Department determined company-specific countervailing duty rates in the original investigation, the Department normally will report to the Commission company-specific rates from the original investigation or where no company-specific rate was determined for a company, the Department normally will provide to the Commission the country-wide or all others rate. (See Sunset Policy Bulletin at section III.B.2.)

The domestic interested parties, citing the Sunset Policy Bulletin, state that the Department should select, as the net countervailable subsidy that is likely to prevail if the order is revoked, the company-specific and all-others rates from the original investigation. (See the domestic interested parties substantive response at 24–25.) In contrast, the respondent interested parties assert that all the countervailing duty rates established at the original investigation were either zero or insignificant and that the only meaningful or significant rate in the investigation was imposed against a particular producer because the producer had not cooperated. Both the KOS and EC stress that the order is 16 years old; therefore, any outstanding benefit streams have long been amortized. Therefore, they argue the rates likely to prevail if the order is revoked would be zero. (See the KOS and EC's July 30, 1999 and July 29, 1999 substantive responses, respectively.)

The Department disagrees with the domestic interested parties' argument concerning the net countervailable subsidy rate that is likely to prevail were the order revoked. The Department normally will choose the rates from the investigation because such rates reflect how companies will act without the discipline of an order in place. (See section III.B.1 of the Sunset Policy Bulletin.) Section III.B.3 of Sunset Policy Bulletin also provides that the Department may make an adjustment with respect to the likely-to-prevail subsidy rate to reflect change(s) in the programs that gave rise to the order. As the Department noted in its administrative reviews and as the KOS indicated in its substantive response, all subsidies pertaining to manufacturing/exporting of the subject merchandise, except cash grants, have been terminated.[21] Also, the KOS stipulates in its substantive response that the CAP was applicable only during the period 1974–1982.

As a result of changes in programs since the imposition of the countervailing duty order, we determine that selecting the net countervailable subsidy rates, as determined in the original investigation, is no longer appropriate. Rather, to reflect these changes in the programs, which gave rise to the net countervailable subsidy determination in the investigation or subsequent reviews, we have adjusted the company-specific and all-others countervailing duty rates from the original investigation by subtracting the subsidy rates from programs that have been terminated and that have no existing benefit stream. (See Memos to the File—Calculation of the Likely-to-Prevail Rates.) As a result, the Department will report to the Commission the rates as contained in the Final Results of Review section of this notice.

**Nature of the Subsidy**

In the Sunset Policy Bulletin, the Department stated that, consistent with section 752(a)(6) of the Act, the Department will provide information to the Commission concerning the nature of the subsidy and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement. The domestic interested parties do not specifically address this issue in their substantive response.

Among the benefits provided by the KOS's countervailable programs, the Department determined that those provided by the PCEC–OC and PCEC–PF were contingent upon export performance;[22] therefore, both programs fall within the purview of Article 3(a). Since the CAP and government-directed

[21] See footnote 6, supra. The Department, in its administrative reviews, determined that PCEC–OC and PCEC–PF had been terminated with no residual benefits. Moreover, the Department found that the Cash Grant program was never used by Roldan during the investigation and throughout the existence of the order.

[22] See Stainless Steel Wire Rod From Spain: Preliminary Results of Countervailing Duty Administrative Review, 53 FR 9789 (March 25, 1988). The maximum amount of loan a company can acquire was expressed in terms of the percentage of the company's exports in previous years. Also, see footnote 1.

grants are not contingent upon exports, these programs seem to fall outside the definition of export subsidies under Article 3(a) of the Subsidies Agreement. However, the Department does not have enough information to calculate or determine whether the total ad valorem subsidization of the subject merchandise from the CAP/government-directed grants exceeds five-percent or whether the CAP/government-directed grants were meant to cover operating losses or to be used as direct forgiveness of debt. Nor does the Department believe such calculation or determination would be appropriate in the course of a sunset review. Instead, we are providing the Commission with the following program descriptions.

*The CA*

Under the Concerted Action Program established by Royal Decree 669/74, the Spanish government directs banks to make long-term loans to steel companies at below market rates. Because loans under the CAP are provided to a specific industry at rates and terms inconsistent with commercial consideration, the Department determined that this loan confers a countervailable domestic subsidy.[23]

*Government-directed grants*

Although initially the disbursements were characterized as zero interest loans, the Department found that this is an untied cash grant meant to keep some companies in operation until a reconversion plan could be implemented. Thus, the Department determined that the disbursements were government-directed grants and countervailable subsidies.[24]

**Final Results of Review**

As a result of this review, the Department finds that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy at the rates listed below:

| Manufacturer/exporters | Margin (percent) |
|---|---|
| Roldan, S.A. | 0.19 |
| S.A. Echevarria | 13.55 |
| Forjas Alavesas, S.A. | 0.21 |
| Olarra | [25] 0.00 |
| All others | 13.55 |

This notice serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 C.F.R. 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: January 31, 2000.

**Holly A. Kuga,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–2838 Filed 2–7–00; 8:45 am]

**BILLING CODE 3510–DS–P**

[23] See id.

[24] See footnote 1, supra.

[25] See footnote 4, supra.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–475–821]**

### Stainless Steel Wire Rod From Italy: Rescission of Countervailing Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Rescission of Countervailing Duty Administrative Review.

**SUMMARY:** On October 28, 1999, in response to a request from respondents, the Department of Commerce initiated an administrative review of the countervailing duty order on stainless steel wire rod from Italy. The review covers the period January 1, 1998 through December 31, 1998. In accordance with 19 CFR 351.213(d)(1), the Department is now rescinding this review because the respondents have withdrawn their request for review.

**EFFECTIVE DATE:** February 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Eric B. Greynolds, AD/CVD Enforcement, Group II, Office VI, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2786.

**SUPPLEMENTARY INFORMATION:** On September 30, 1999, the Department received a request for an administrative review of the countervailing duty order on stainless steel wire rod from Italy from Accaiaerie Valbruna S.r.l. and Accaiaerie di Bolzano SpA (respondents), for the period January 1, 1998 through December 31, 1998. On November 4, 1999, the Department published in the **Federal Register** (64 FR 60161) a notice of ''Initiation of Countervailing Duty Administrative Review'' initiating the administrative review. On November 15, 1999, respondents withdrew their request for review.

The applicable regulation, 19 CFR 351.213(d)(1), states that if a party that requested an administrative review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review, the Secretary will rescind the review. In this case, respondents have withdrawn their request within the 90 day period. No other interested party requested a review, and we have received no other submissions regarding respondents' withdrawal of its request for review. Therefore, we are rescinding this review of the countervailing duty order on stainless steel wire rod from Italy covering the period January 1, 1998, through December 31, 1998.

This notice is published in accordance with 19 CFR 351.213(d)(4).

Dated: January 27, 2000.

**Holly A. Kuga,**

*Acting Deputy Assistant Secretary for Import Administration.*

[FR Doc. 00–2844 Filed 2–7–00; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–533–807]**

### Final Results of Expedited Sunset Review: Sulfanilic Acid From India

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Final Results of Expedited Sunset Review: Sulfanilic Acid from India.

**SUMMARY:** On October 1, 1999, the Department of Commerce (''the Department'') initiated a sunset review of the countervailing duty order on sulfanilic acid from India (64 FR 53320) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate and an adequate response filed on behalf of a domestic interested party and an inadequate response (in this case no response) from respondent interested parties, the Department decided to conduct an expedited (120-day) review. As a result of this review, the Department finds that revocation of the countervailing duty order would be

likely to lead to continuation or recurrence of a countervailable subsidy. The net countervailable subsidy and the nature of the subsidy are identified in the Final Results of Review section of this notice.

**EFFECTIVE DATE:** February 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mark D. Young or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–3207 or (202) 482–1560, respectively.

**Statute and Regulations**

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for conducting sunset reviews are set forth in Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) (''Sunset Regulations''), and 19 CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) (''Sunset Policy Bulletin'').

**Scope**

The products covered by this order are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid (sodium sulfanilate). The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry free flowing powders. Technical sulfanilic acid contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials. Sodium salt of sulfanilic acid (sodium sulfanilate) is a granular or crystalline material containing 75 percent minimum sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content. The merchandise is classifiable under Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings 2921.42.22 and 2921.42.24.20.[1] Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

This review covers imports from all manufacturers and exporters of sulfanilic acid from India.

**History of the Order**

The Department published its final affirmative countervailing duty determination on sulfanilic acid from India in the **Federal Register** on January 8, 1993 (58 FR 3259). In the final determination the Department found an estimated net subsidy, for all manufacturers/producers/exporters of sulfanilic acid from India, of 43.71 percent *ad valorem* based on four programs: (1) 2.17 percent under the Preferential Export Financing Through Packing Credits; (2) 1.69 percent under the Preferential Post-Shipment Financing; (3) 6.13 percent under the Import Tax Deduction for Exporters (Section 80HHC); and (4) 33.72 percent under the Import Duty Exemptions Available Through Advance Licenses. Receipt of benefits under each of these programs was contingent upon exports.

On March 2, 1993, the Department issued the countervailing duty order, utilizing the subsidy rates found in the original investigation.[2] Since the issuance of the order, the Department has not conducted an administrative review.

**Background**

On October 1, 1999, the Department initiated a sunset review of the countervailing duty order on sulfanilic acid from India (64 FR 53320), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of National Ford Chemical Company (''NFC'') on October 18, 1999, within the deadline specified in section 351.218(d)(1)(i) of the Sunset Regulations. Pursuant to section 771(9)(C) of the Act, NFC claimed interested party status as a U.S. manufacturer whose workers are engaged in the production of domestic like products. Moreover, NFC claims that it was a petitioner in the original investigation. The Department received a complete substantive response from NFC by November 1, 1999, within the 30-day deadline specified in the Sunset Regulations under section 351.218(d)(3)(i). We did not receive a substantive response from any respondent interested party to this proceeding. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to a conduct an expedited, 120-day, review of this order.

**Determination**

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any change in the program which gave rise to the net countervailable subsidy has occurred and is likely to affect that net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the International Trade Commission (''the Commission'') the net countervailable subsidy likely to prevail if the order is revoked. In addition, consistent with section 752(a)(6), the Department shall provide to the Commission information concerning the nature of the subsidy and whether it is a subsidy described in Article 3 or Article 6.1 of the 1994 WTO Agreement on Subsidies and Countervailing Measures (''Subsidies Agreement'').

The Department's determinations concerning continuation or recurrence of a countervailable subsidy, the net countervailable subsidy likely to prevail if the order is revoked, and nature of the subsidy are discussed below. In addition, NFC's comments with respect to each of these issues are addressed within the respective sections.

**Continuation or Recurrence of a Countervailable Subsidy**

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (''URAA''), specifically the Statement of Administrative Action (the ''SAA''), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its Sunset Policy Bulletin providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that determinations of

[1] HTSUS subheadings for sulfanilic acid and sodium salts of sulfanilic acid have changed since the issuance of this order. The petitioner asserts that the HTSUS subheading for sulfanilic acid was 2921.42.24.20 in 1993 and has remained at 2921.42.22 since 1994.

[2] See Countervailing Duty Order: Sulfanilic Acid From India, 58 FR 12026 (March 2, 1993).

likelihood will be made on an order-wide basis (see section III.A.2 of the Sunset Policy Bulletin). Additionally, the Department normally will determine that revocation of a countervailing duty order is likely to lead to continuation or recurrence of a countervailable subsidy where (a) a subsidy program continues, (b) a subsidy program has been only temporarily suspended, or (c) a subsidy program has been only partially terminated (see section III.A.3.a of the Sunset Policy Bulletin). Exceptions to this policy are provided where a company has a long record of not using a program (see section III.A.3.b of the Sunset Policy Bulletin).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of a countervailable subsidy where a respondent interested party waives its participation in the sunset review. Pursuant to the SAA, at 881, in a review of a countervailing duty order, when the foreign government has waived participation, the Department shall conclude that revocation of the order would be likely to lead to a continuation or recurrence of a countervailable subsidy for all respondent interested parties.[3] In the instant review, the Department did not receive a response from the foreign government or from any other respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the Sunset Regulations, this constitutes a waiver of participation.

In its substantive response, NFC argues that revocation of the countervailing duty order on sulfanilic acid from India will result in the continuation or recurrence of a countervailable subsidy. Citing the SAA, at 888, NFC asserts that continuation, or temporary or partial termination, of a subsidy program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies, absent significant evidence to the contrary (see November 1, 1999, Substantive Response of NFC regarding sulfanilic acid from India at 6). NFC asserts that there is no indication that the Indian government's subsidy programs have been modified or eliminated (see November 1, 1999, Substantive Response of NFC regarding sulfanilic acid from India at 8). NFC argues as support the fact that the order has never been subject to an administrative review, nor has any evidence been submitted to the Department demonstrating the termination of these programs that conferred countervailable subsidies. Therefore, NFC adds, it is reasonable to assume that these programs continue to exist and are utilized. Moreover, NFC notes that section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of a countervailable subsidy where a respondent interested party waives its participation in the sunset review.

As stated above, the continued use of a program is highly probative of the likelihood of continuation or recurrence of countervailable subsidies if the order were revoked. Additionally, the presence of programs that have not been used, but have also not been terminated, is also probative of the likelihood of continuation or recurrence of a countervailable subsidy. Absent argument or evidence to the contrary, we find that countervailable programs continue to exist and be used. Therefore, because countervailable programs continue to exist and be used, the foreign government and other respondent interested parties waived their right to participate in this review before the Department, and absent argument to the contrary, the Department concludes that revocation of the order would be likely to lead to a continuation or recurrence of a countervailable subsidy for all respondent interested parties.[4]

**Net Countervailable Subsidy**

In the Sunset Policy Bulletin, the Department stated that, consistent with the SAA and House Report, the Department normally will select a rate from the investigation as the net countervailable subsidy likely to prevail if the order is revoked, because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order or suspension agreement in place. The Department noted that this rate may not be the most appropriate rate if, for example, the rate was derived from subsidy programs which were found in subsequent reviews to be terminated, there has been a program-wide change, or the rate ignores a program found to be countervailable in a subsequent administrative review.[5]

NFC, citing the SAA, notes that the Administration intends that Commerce normally will select the rate from the investigation as the net countervailable subsidy likely to prevail if the order is revoked, because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place (see November 1, 1999, Substantive Response of NFC regarding sulfanilic acid from India at 8). Therefore, NFC argues that the Department should determine that the net countervailable subsidy likely to prevail is 43.71 percent, the rate set forth in the original investigation.

As noted above, the Department has not conducted an administrative review of this order. Thus, we have never found that substantive changes have been made to any of the Indian subsidy programs. Therefore, absent any argument or evidence to the contrary, the Department determines that the net countervailable subsidy that would be likely to prevail in the event of revocation of the order would be 43.71 percent. This rate is for all producers and exporters of the subject merchandise from India.

**Nature of the Subsidy**

In the Sunset Policy Bulletin, the Department states that, consistent with section 752(a)(6) of the Act, the Department will provide to the Commission information concerning the nature of the subsidy, and whether the subsidy is a subsidy as described in Article 3 or Article 6.1 of the Subsidies Agreement. NFC did not address this issue in its substantive response of November 1, 1999.

Because the receipt of benefits provided by the Government of India under all four of the programs are contingent on exports, these programs fall within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement. Therefore, the Department is providing the Commission with the following program descriptions.

*1. Preferential Export Financing Through Packing Credits*

The Reserve Bank of India, through commercial banks, provides ''packing'' credits or pre-shipment loans to exporters. With these pre-shipment loans, exporters may purchase raw materials to produce goods for export based on the presentation of a confirmed purchase order. In general, the pre-shipment loans are granted for a period of up to 180 days. Because only exporters are eligible for these pre-shipment loans, they are countervailable to the extent that they are provided at preferential rates.

*2. Preferential Post-Shipment Financing*

The Reserve Bank of India, through commercial banks, provides post-

[3] See 19 CFR 351.218(d)(2)(iv).

[4] See 19 CFR 351.218(d)(2)(iv).

[5] See section III.B.3 of the Sunset Policy Bulletin.

shipment financing loans to exporters. The purpose of post-shipment financing is to enable exporters to extend favorable payment terms such as deferred payment, to the foreign purchaser. Post-shipment financing loans may not exceed a period of 180 days. Because only exporters are eligible for the post-shipment loans, they are countervailable to the extent that they are provided at preferential interest rates.

*3. Import Tax Deduction for Exporters (Section 80HHC)*

For tax returns filed during the period of investigation, the Indian government allowed exporters to claim a tax deduction related to their export sales. This tax deduction was calculated by dividing export sales by total sales and then multiplying the resulting figure by the exporter's profit as shown in the tax return. This amount is then deducted from taxable profits. Because this program is only available to exporters, we determine it to be countervailable.

*4. Import Duty Exemptions Available Through Advance Licenses*

Advance licenses are available to exporters, to enable them to import raw material inputs used in the production of exports duty-free. Recipients of advance licenses are obligated under the terms of the license to export the products produced with the duty-free imports. The amount of imports allowed under an advance license is closely linked to the amount of exports to be produced. We consider the use of the advance licenses to be equivalent to a duty drawback program insofar as customs duties are not paid on physically incorporated, imported products used in the production of exports. However, where imported inputs are not physically incorporated into the exported product, we consider the duty savings afforded by the advance license to be a countervailable export subsidy.

**Final Results of Review**

As a result of this review, the Department finds that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy at the rates listed below:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| All manufacturers/producers/exporters | 47.31 |

This notice serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: January 31, 2000.

**Holly A. Kuga,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–2840 Filed 2–7–00; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 011100F]**

### Marine Mammals; File No. 738–1454

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

**ACTION:** Receipt of application for amendment.

**SUMMARY:** Notice is hereby given that Ms. Carole Conway, University of California, Davis, CA 95616–8521, has requested an amendment to scientific research Permit No. 738–1454.

**DATES:** Written or telefaxed comments must be received on or before March 9, 2000.

**ADDRESSES:** The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 090802–4213.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

**FOR FURTHER INFORMATION CONTACT:** Ruth Johnson, 301/713–2289.

**SUPPLEMENTARY INFORMATION:** The subject amendment to Permit No. 738–1454, issued on January 13, 1998(63 FR 38391) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Permit No. 739–1454 authorizes the permit holder to import blue whale samples from Canada. The permit holder now requests authorization to import samples from any where blue whales are found. Currently, samples are available in Mexico. No additional samples above that already authorized is requested.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: February 1, 2000.

**Gene Nitta,**

*Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 00–2810 Filed 2–7–00; 8:45 am]

**BILLING CODE 3510–22–F**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 010700A]**

### Marine Mammals; Scientific Research Permit (PHF 924–1484–00)

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

**ACTION:** Issuance of permit.

**SUMMARY:** Notice is hereby given that Marsha Green, Ph.D., Psychology Department, Albright College, P.O. Box 15234, Reading, PA 19612–5234, has been issued a permit to take (*i.e.*, harass) humpback whales (*Megaptera novaeangliae*) for purposes of scientific research.

**ADDRESSES:** The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4027) and

Pacific Islands Area Office, National Marine Fisheries Service, NOAA, 1601 Kapiolani Boulevard, Suite 1110, Honolulu HI 96814–4700 (808/973–2935).

**FOR FURTHER INFORMATION CONTACT:** Jeannie Drevenak, 301/713–2289.

**SUPPLEMENTARY INFORMATION:** On December 21, 1998, notice was published in the **Federal Register** (63 FR 70395) that a request for a scientific research permit to take (i.e., harass) North Pacific humpback whales during the course of vessel effects studies, had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR Parts 222 - 226).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: February 2, 2000.

**Ann D. Terbush,**

*Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 00–2811 Filed 2–7–00; 8:45 am]

**BILLING CODE 3510–22–F**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Malaysia

February 2, 2000.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs reducing limits.

**EFFECTIVE DATE:** February 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, 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 reduced for carryforward used.

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 64 FR 71982, published on December 22, 1999). Also see 64 FR 62657, published on November 17, 1999.

**Troy H. Cribb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

February 2, 2000.

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 8, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the period beginning on January 1, 2000 and extending through December 31, 2000.

Effective on February 8, 2000, you are directed to reduce the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| Other Specific Limits | |
| 331/631 | 2,433,678 dozen pairs. |
| 351/651 | 301,416 dozen. |
| 638/639 | 557,587 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 00–2825 Filed 2–7–00; 8:45 am]

**BILLING CODE 3510–DR–F**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Establishment of a New Export Visa Arrangement and New Certification Stamp for Outward Processed Goods for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Romania; Amendment

February 2, 2000.

In the letter to the Commissioner of Customs published in the **Federal Register** on December 14, 1999 (64 FR 69744), insert the following sentence on page 69746, 1st column, 6th paragraph, line 20, right above **''General Provisions'':** ''Any shipment which is declared for the Outward Processing Program but found not to qualify may be

permanently denied entry into the United States.''

**Troy H. Cribb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 00–2824 Filed 2–7–00; 8:45 am]

**BILLING CODE 3510–DR–F**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Science Board

**AGENCY:** Office of the Secretary, Department of Defense.

**ACTION:** Notice of Cancellation of Advisory Committee Meeting.

**SUMMARY:** The Defense Science Board was scheduled to meet in closed session at the Pentagon, Arlington, VA, on January 26–27, 2000. However, due to severe weather conditions, the meeting was cancelled and has not been rescheduled. Notice of this meeting was published in the **Federal Register** on November 24, 1999 (Volume 64, Number 226, Page 66173).

Dated: February 2, 2000.

**L.M. Bynum,**

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

[FR Doc. 00–2816 Filed 2–7–00; 8:45 am]

**BILLING CODE 5001–10–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Strategic Environmental Research and Development Program, Scientific Advisory Board

**ACTION:** Notice.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee meeting:

*Date of Meeting:* March 14, 2000 from 1000 to 1700 and March 15, 2000 from 0830 to 1210.

*Place:* 1777 North Kent Street, 14th Floor, Arlington, VA 22209.

*Matters to be Considered:* Research and Development proposals and continuing projects requesting Strategic Environmental Research and Development Program funds in excess of $1M will be reviewed.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

**FOR FURTHER INFORMATION CONTACT:** Ms. Veronica Rice, SERDP Program Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696–2119.

Dated: February 2, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, DoD.*

[FR Doc. 00–2815 Filed 2–7–00; 8:45 am]

**BILLING CODE 5001–10–M**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice to amend a system of records.

**SUMMARY:** The Department of the Army is amending two systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on March 9, 2000, unless comments are received which result in a contrary determination.

**ADDRESSES:** Privacy Act Officer, Records Management Program Division, Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop C55, Ft. Belvoir, VA 22060–5576.

**FOR FURTHER INFORMATION CONTACT:** Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

**SUPPLEMENTARY INFORMATION:** The Department of the Army systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: February 2, 2000.

**L.M. Bynum,**

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

**A0600–37a DAPE**

**SYSTEM NAME:**

Special Review Board Appeal Case Summary File (February 22, 1993, 58 FR 10002).

**CHANGES:**

* * * * *

**SYSTEM LOCATION:**

Delete entry and replace with ''Office of the Deputy Chief of Staff for Personnel, Special Review Board (DAPE–MPC–S), Washington, DC 20310–0300.''

* * * * *

**RETENTION AND DISPOSAL:**

Delete entry and replace with ''Records are retained by the Special Review Board for 6 years, then destroyed.''

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with ''Director, Deputy Chief of Staff for Personnel, Special Review Board (DAPE–MPC–S), Washington, DC 20310–0300.''

* * * * *

**A0600–37a DAPE**

**SYSTEM NAME:**

Special Review Board Appeal Case Summary File.

**SYSTEM LOCATION:**

Office of the Deputy Chief of Staff for Personnel, Special Review Board (DAPE–MPC–S), Washington, DC 20310–0300.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Army officer and enlisted personnel who have submitted substantive, as opposed to administrative, appeal of Officer Evaluation Reports, Enlisted Evaluation Reports, Academic Evaluation Reports, and cases referred for promotion reconsideration.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Identification data on individual, date of appeal, dates of contested OER/EER/AER period, and supporting documentation; promotion reconsideration referrals including information provided by the promotion board and relevant documents from individual's OMPF, names of voting SRB member, names of persons contacted by SRB, summary of evidence considered, discussion,

recommendations, conclusions, final determination of appeal, and disposition.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army.

PURPOSE(S):

To review and adjudicate appeals of officer and noncommissioned officer ratings, academic ratings, and promotion board reconsideration cases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The ''Blanket Routine Uses'' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in folders.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are maintained in areas accessible only to designated authorized persons in buildings which employ security guards.

RETENTION AND DISPOSAL:

Records are retained by the Special Review Board for 6 years, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Deputy Chief of Staff for Personnel, Special Review Board (DAPE–MPC–S), Washington, DC 20310–0300.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves contained in this system should address written inquiries to the Director, Deputy Chief of Staff for Personnel, Special Review Board (DAPE-MPC-S), Washington, DC 20310–0300.

Individuals should furnish full name, current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should write to the Director, Deputy Chief of Staff for Personnel, Special Review Board (DAPE–MPC–S), Washington, DC 20310–0300.

Individuals should furnish full name, current address and telephone number. For personal visits, individuals must provide acceptable identification such as military identification card.

CONTESTING RECORD PROCEDURES:

The Army's rules for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, relevant Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

**A0621–1 DAPE**

SYSTEM NAME:

Army Continuing Education System (February 22, 1993, 58 FR 10002).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Education Centers at Army installations; centralized automated education registry transcript system is maintained at Fort Leavenworth, KS. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.'

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Change second paragraph to read 'Information may be disclosed to the Department of Labor, Bureau of Apprenticeship and Training for individuals enrolled in an Army Apprenticeship Program.'

* * * * *

STORAGE:

Delete entry and replace with 'Paper records and computer printouts; discs and magnetic tapes.'

* * * * *

**A0621–1 DAPE**

SYSTEM NAME:

Army Continuing Education System.

SYSTEM LOCATION:

Education Centers at Army installations. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices. A centralized automated education registry transcript system is maintained at Fort Leavenworth, KS.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel on active duty, Army Reserves and National Guard.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, rank, Social Security Number, Military Occupational Specialty, educational and military training achievements, course attendance/completion records; tuition assistance documents; counseling records; academic and diagnostic tests which measure educational level and/or needs including recommendations of American Council on Education (ACE). A composite of course descriptors and scores is recorded in a transcript registry for each soldier who volunteers for educational courses and/or programs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 4302; Army Regulation 621–5, Army Continuing Education System and E.O. 9397 (SSN).

PURPOSE(S):

To determine academic/vocational level of education; to provide educational guidance and counseling; to enhance soldiers' military effectiveness, prepare them for greater responsibility in the Armed Forces and for productive post-service careers; to provide for systematic recording of all educational accomplishments of Army members; and to render statistical and managerial reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to the Department of Labor, Bureau of Apprenticeship and Training for individuals enrolled in an Army Apprenticeship Program.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

**STORAGE:**

Paper records and computer printouts; discs and magnetic tapes.

**RETRIEVABILITY:**

By individual's surname or Social Security Number.

**SAFEGUARDS:**

Records are protected from unauthorized disclosure by storage in areas accessible only to authorized personnel within buildings secured by locks or guards. Automated records may be called up by terminals supported by remote and dedicated lines. Each terminal has a physical key lock and is identified by its own physical profile containing user ID, user password which are confidential. Software prohibits entry to files by other than designated authorized personnel.

**RETENTION AND DISPOSAL:**

Automated data are erased after selected information is captured for managerial reports and course/score data transferred to individual's DA Form 669 which becomes part of the Military personnel Records Jacket. Automated data in the registry transcript system are retained during the soldier's tenure and for 2 additional years following separation after which they are converted to microfiche and retained for 40 years.

**SYSTEM MANAGER(S) AND ADDRESS:**

Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, ATTN: DAPE–MPO, 300 Army Pentagon, Washington, DC 20310–0300.

**NOTIFICATION PROCEDURE:**

Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, ATTN: DAPE–ZXI–IC (PA Officer), 300 Army Pentagon, Washington, DC 20310–0300; or the installation's Privacy Act Officer.

**RECORD ACCESS PROCEDURES:**

Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, ATTN: DAPE–ZXI–IC (PA Officer), 300 Army Pentagon, Washington, DC 20310–0300; or the installation's Privacy Act Officer.

For verification purposes, individual should provide full name, rank, and Social Security Number.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

School transcripts, Education Services Officer/Counselor, the individual, test results, SIDPERS, Enlisted Master File.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 00–2819 Filed 2–7–00; 8:45 am]

**BILLING CODE 5001–10–F**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice to amend a system of records.

**SUMMARY:** The Department of the Army is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on March 9, 2000, unless comments are received which result in a contrary determination.

**ADDRESSES:** Privacy Act Officer, Records Management Program Division, Army Records Management and Declassification Agency, ATTN: TAPC-PDD-RP, Stop C55, Ft. Belvoir, VA 22060-5576.

**FOR FURTHER INFORMATION CONTACT:** Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

**SUPPLEMENTARY INFORMATION:** The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: February 2, 2000.

**L.M. Bynum,**

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

**A0340 JDMSS**

**SYSTEM NAME:**

HQDA Correspondence and Control/ Central Files System *(February 22, 1993, 58 FR 10002).*

**CHANGES:**

**SYSTEM IDENTIFIER:**

Change to 'A0025 JDIM'.

* * * * *

**RETENTION AND DISPOSAL:**

Delete entry and replace with 'Disposition pending (until NARA disposition is approved, treat as permanent).'

**STORAGE:**

Delete entry and replace with 'Paper records and computer database.'

**RETRIEVABILITY:**

Delete entry and replace with 'Paper records are retrieved by date of correspondence; electronic records are retrieved by name, date of correspondence, subject natter, or key word (which may include Social Security Number and date of birth).'

**SAFEGUARDS:**

Delete entry and replace with 'Records are controlled; access to information from specified documents if restricted to persons who have been designated by their agency to have official need for the information in the performance of their duties. File areas are protected by electronic surveillance systems with combination lock doors. Users of the system receive training designed to preclude misuse or unauthorized disclosure of information.'

* * * * *

**A0340 JDMSS**

**SYSTEM NAME:**

HQDA Correspondence and Control/ Central Files System.

**SYSTEM LOCATION:**

Office, Secretary of the Army; Office, Chief of Staff; Headquarters, Department of the Army Staff agencies. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals who either initiated, or are the subject of, communications with the Headquarters, Department of the Army.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Inquiries, with referrals and responses, and other communications pertaining to any function or subject involving or of interest to Headquarters, Department of the Army level. Records may include, but are not restricted to, complaints, appeals, grievances, investigations, alleged improprieties, personnel actions, medical reports,

intelligence, and similar matters. They may be either specific or general in nature and may include such personal information as an individual's name, Social Security Number, date and/or place of birth, description of events or incidents of a sensitive or privileged nature, commendatory or unfavorable data.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013, Secretary of the Army; Army Regulation 25–1, The Army Information Resources Management Program; and E.O. 9397 (SSN).

**PURPOSE(S):**

To control correspondence, document actions taken, and locate records for reference purposes.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

**Note:** Disclosure of information from documents or records which properly become part of another system of records will be as authorized in the 'routine uses' portion of that system of records.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records and computer database.

**RETRIEVABILITY:**

Paper records are retrieved by date of correspondence; electronic records are retrieved by name, date of correspondence, subject natter, or key word (which may include Social Security Number and date of birth).

**SAFEGUARDS:**

Records are controlled; access to information from specified documents if restricted to persons who have been designated by their agency to have official need for the information in the performance of their duties. File areas are protected by electronic surveillance systems with combination lock doors. Users of the system receive training designed to preclude misuse or unauthorized disclosure of information

**RETENTION AND DISPOSAL:**

Disposition pending (until NARA disposition is approved, treat as permanent).

**SYSTEM MANAGER(S) AND ADDRESS:**

Chief of Correspondence, Office of the Secretary of the Army, 101 Army Pentagon, Washington, DC 20310–0101.

Chief of Staff, 200 Army Pentagon, Washington, DC 20310–0200.

Commander, Corps of Engineers, 200 Massachusetts Avenue, Washington, DC 20314–1000.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the system manager having functional responsibility or interest.

For verification purposes, the individual should provide full name, current address, and Social Security Number (if applicable), and the request must be signed. Inquiry should include timeframe of correspondence, subject matter, and details that will assist in identifying the records sought.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to the system manager having functional responsibility or interest.

For verification purposes, the individual should provide full name, current address, and Social Security Number (if applicable), and the request must be signed. Inquiry should include timeframe of correspondence, subject matter, and details that will assist in identifying the records sought.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

From the individual; correspondence emanating within the Army Secretariat, the Office, Chief of Staff, and Army Staff agencies; and other Federal agencies.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3506, may be exempt pursuant to 5 U.S.C. 552a(k)(3).

Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8, may be exempt pursuant to 5 U.S.C. 552a(k)(4).

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

An exemption rule for this exemption has been promulgated in accordance with requirements of 5 U.S.C. 553(b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

[FR Doc. 00–2820 Filed 2–7–00; 8:45 am]

BILLING CODE 5001–10–F

## DEPARTMENT OF DEFENSE

### Defense Logistics Agency

### Privacy Act of 1974; Computer Matching Program

**AGENCY:** Defense Manpower Data Center, Defense Logistics Agency, DoD.

**ACTION:** Notice of a computer matching program.

**SUMMARY:** Subsection (e)(12) of the Privacy Act of 1974, as amended, (5

U.S.C. 552a) requires agencies to publish advance notice of any proposed or revised computer matching program by the matching agency for public comment. The Department of Defense (DoD), as the matching agency under the Privacy Act, is hereby giving notice to the record subjects of a computer matching program between Department of Veterans Affairs (VA) and DoD that their records are being matched by computer. The record subjects are VA delinquent debtors who may be current or former Federal employees receiving Federal salary or benefit payments and who are indebted and or delinquent in their repayment of debts owed to the United States Government under programs administered by VA.

**DATES:** This proposed action will become effective March 9, 2000, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

**ADDRESSES:** Any interested party may submit written comments to the Director, Defense Privacy Office, 1941 Jefferson Davis Highway, Suite 920, Arlington, VA 22202–4502.

**FOR FURTHER INFORMATION CONTACT:** Mr. Vahan Moushegian, Jr. at telephone (703) 607-2943.

**SUPPLEMENTARY INFORMATION:** Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DoD and VA have concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies for debt collection. The match will yield the identity and location of the debtors within the Federal government so that VA can pursue recoupment of the debt by voluntary payment or by administrative or salary offset procedures. Computer matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching agreement between VA and DoD is available upon request to the public. Requests should be submitted to the address caption above or to the Debt Management Center, U.S. Department of Veterans Affairs, Bishop Henry Whipple Federal Building, 1 Federal Drive, Ft. Snelling, MN 55111.

Set forth below is the notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published on June 19, 1989, at 54 FR 25818.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on January 21, 2000, to the House Committee on Government Reform, the Senate Committee on Government Affairs, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records about Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: February 2, 2000.

**L.M. Bynum,**

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

## NOTICE OF A COMPUTER MATCHING PROGRAM BETWEEN THE DEPARTMENT OF VETERANS AFFAIRS AND THE DEPARTMENT OF DEFENSE FOR DEBT COLLECTION

### A. PARTICIPATING AGENCIES:

Participants in this computer matching program are the Department of Veterans Affairs (VA) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The VA is the source agency, *i.e.,* the activity disclosing the records for the purpose of the match. The DMDC is the specific recipient activity or matching agency, *i.e.,* the agency that actually performs the computer matching.

### B. PURPOSE OF THE MATCH:

Upon the execution of this agreement, VA will provide and disclose debtor records to DMDC to identify and locate any Federal personnel, employed, serving, or retired, who owe delinquent debts to the Federal Government under certain programs administered by VA. VA will use this information to initiate independent collection of those debts under the provisions of the Debt Collection Act of 1982, as amended, when voluntary payment is not forthcoming. These collection efforts will include requests by VA of the military service/employing agency in the case of military personnel (either active, reserve, or retired) and current non-postal civilian employees, and to OPM in the case of retired non-postal civilian employees, to apply administrative and/or salary offset procedures until such time as the obligation is paid in full.

### C. AUTHORITY FOR CONDUCTING THE MATCH:

The legal authority for conducting the matching program is contained in the Debt Collection Act of 1982 (Pub. L. 97–365), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, section 31001); 31 U.S.C. Chapter 37, Subchapter I (General) and Subchapter II (Claims of the United States Government), 31 U.S.C. 3711 Collection and Compromise, 31 U.S.C. 3716 Administrative Offset, 5 U.S.C. 5514, Installment Deduction for Indebtedness (Salary Offset); 10 U.S.C. 135, Under Secretary of Defense (Comptroller); Section 101(1) of Executive Order 12731; 4 CFR 101.1–105.5, Federal Claims Collection Standards; 5 CFR 550.1101–550.1108, Collection by Offset from Indebted Government Employees (OPM); 38 CFR 1.980–1.994 (VA).

### D. RECORDS TO BE MATCHED:

The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

VA will use personal data from the following Privacy Act record system for the match: Accounts Receivable Records-VA, 88VA244, published in the **Federal Register** at 63 FR 16864 on April 6, 1998.

DoD will use personnel data from the record system identified as S322.11 DMDC, entitled ''Federal Creditor Agency Debt Collection Data Base'' last published in the **Federal Register** at 64 FR 42101 on August 3, 1999.

### E. DESCRIPTION OF COMPUTER MATCHING PROGRAM:

VA, as the source agency, will provide DMDC with an electronic file which contains the names of delinquent debtors in programs VA administers. Upon receipt of the electronic file of debtor accounts, DMDC will perform a computer match using all nine digits of the SSN of the VA file against a DMDC computer database. The DMDC database, established under an interagency agreement between DoD, OPM, OMB and the Department of the Treasury, consists of personnel records of non-postal Federal civilian employees and military members, both active and retired. The ''hits'' or matches will be furnished to VA. VA is responsible for verifying and

determining that the data on the DMDC electronic reply tape file are consistent with VA's source file and for resolving any discrepancies or inconsistencies on an individual basis. VA will also be responsible for making final determinations as to positive identification, amount of indebtedness and recovery efforts as a result of the match.

The electronic file provided by VA will contain data elements of the debtor's name, SSN, internal account numbers and the total amount owed for each debtor on approximately 200,000 delinquent debtors.

The DMDC computer database file contains approximately 4.8 million records of active duty and retired military members, including the Reserve and Guard, and approximately 3.1 million records of active and retired non-postal Federal civilian employees.

DMDC will match the SSNs on the VA tape by computer against the DMDC database. Matching records, ''hits'' based on SSN's, will produce data elements of the individual's name, SSN, military service or employing agency, and current work or home address.

**F. INCLUSIVE DATES OF THE MATCHING PROGRAM:**

This computer matching program is subject to review by the Office of Management and Budget and Congress. If the mandatory 30 day period for public comment has expired and if no objections are raised by either Congress or the Office of Management and Budget within 40 days of being notified of the proposed match, the computer matching program becomes effective and the respective agencies may begin the exchange of data at a mutually agreeable time on a six month basis. By agreement between VA and DoD, the matching program will be in effect and continue for 18 months with an option to extend for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

**G. ADDRESS FOR RECEIPT OF PUBLIC COMMENTS OR INQUIRIES:**

Director, Defense Privacy Office, 1941 Jefferson Davis Highway, Suite 920, Arlington, VA 22202–4502. Telephone (703) 607–2943.

[FR Doc. 00–2818 Filed 2–7–00; 8:45 am]

BILLING CODE 5001–10–F

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Record of Decision for Developing Home Port Facilities for Three NIMITZ–Class Aircraft Carriers in Support of the U.S. Pacific Fleet

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice of record of decision.

**SUMMARY:** The Department of the Navy, after carefully weighing the operational, environmental, and cost implications of home port facilities for NIMITZ-class nuclear-powered aircraft carriers (''CVNs'') in the Pacific Fleet, announces its decision to: (1) construct facilities and infrastructure required to home port two additional CVNs at Naval Air Station North Island (NASNI), Coronado, CA; (2) upgrade existing CVN support facilities at Puget Sound Naval Shipyard (PSNS), Bremerton, WA; and (3) retain Naval Station (NAVSTA) Everett, WA, as a CVN home port.

**SUPPLEMENTARY INFORMATION:** The text of the entire Record of Decision (ROD) is provided as follows:

**Background**

Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. Section 4332(2)(c), the regulations of the Council on Environmental Quality that implement NEPA procedures, 40 CFR Parts 1500–1508, and 40 CFR 93, the General Conformity Rule of the Clean Air Act, the Department of the Navy (DON) announces its decision regarding home port facilities and infrastructure for CVNs in support of the U.S. Pacific Fleet.

First, as conventionally-powered aircraft carriers (CVs) reach the end of their service life and are replaced by nuclear-powered carriers (CVNs), the Navy has a need to create the capacity to home port these new CVN assets. Compared to the CV, the CVN is a newer class of aircraft carrier that has a wider beam, a deeper draft, and different shore maintenance and support requirements. Consequently, a CVN home port requires different shore infrastructure than that provided for a CV. The U.S. Pacific Fleet is preparing for the replacement of two CVs assigned within the U.S. Pacific Fleet area of responsibility (AOR) with two CVNs. Therefore, there is a need to select locations within the Pacific Fleet AOR for the construction of facilities and infrastructure necessary to create the capacity to home port these CVNs.

Second, changes in CVN home port pier, logistics support area, and utility infrastructure standards for CVN home ports created the need to decide whether to upgrade the existing CVN home port facilities at PSNS to meet those standards or maintain the existing facilities even though they did not meet current standards.

Third, development of Planned Incremental Availability (PIA) maintenance for CVNs created the need to re-evaluate the viability of retaining NAVSTA Everette as a CVN home port to determine if the facilities and infrastructure could efficiently support a CVN while undergoing a PIA maintenance program without adversely affecting crew quality of life.

The DON undertook the planning effort for these decisions on December 3, 1996, when it published a Notice of Intent (NOI) to prepare an Environmental Impact Statement in the **Federal Register**. A public scoping meeting was held in each of the following locations: Bremerton, Washington; Everett, Washington; Pearl City, Hawaii; and Coronado, California. A Notice of Availability (NOA) for the Draft EIS (DEIS) was published in the **Federal Register** on August 28, 1998. Public hearings were held on the DEIS in the same four locations as the scoping meetings and in San Diego, CA. Approximately 317 individuals, agencies, and organizations submitted comments on the DEIS during the 75 day public comment period. All oral and written comments were considered in the preparation of the Final EIS (FEIS). The NOA for the FEIS was published in the **Federal Register** on July 9, 1999. In addition, public notices and news releases noting the availability of the FEIS and draft Final Clean Air Act (CAA) Conformity Determination were published in local and regional newspapers beginning on July 10, 1999. The DON received approximately 60 public comment letters on the FEIS during a 60-day public review period.

**Alternatives**

Four areas within the Pacific Fleet AOR were considered as feasible locations for the development of CVN home port capacity. The four areas considered were: Naval Air Station North Island (NASNI) Coronado, CA; Puget Sound Naval Shipyard (PSNS) Bremerton, WA; Naval Station (NAVSTA) Everett, WA; and Pearl Harbor Naval Shipyard (PHNSY) Pearl Harbor, HI. Using these four locations, six alternative configurations for creating the necessary CVN home port capacity, including a no construction alternative, were developed and analyzed. Each alternative was evaluated and compared against the

others in terms of: operational, logistical, and personnel requirements; environmental impacts; and facility and infrastructure life cycle costs.

The EIS contained a commitment on the part of the DON to carefully review information collected on crew quality of life (QOL) and maintenance during USS ABRAHAM LINCOLN's first PIA at PSNS. USS ABRAHAM LINCOLN's PIA was completed in October 1999. Information collected concerning QOL demonstrated that commuting from home port at NAVSTA Everett to PSNS did not significantly impact the crew of USS ABRAHAM LINCOLN. The results of this PIA revealed the quality of maintenance met expectations, the maintenance schedule was achieved, the increase in overall cost to perform the maintenance away from home port was acceptable, and the PERSTEMPO/OPTEMPO implications of maintaining NAVSTA Everett as a home port were acceptable.

This additional information was not available at the time the FEIS was published, but was included in DON's evaluation of whether to keep existing home port facilities at NAVSTA Everett or develop home port facilities at PSNS. The availability of this new information does not generate a need for additional environmental analysis. The analysis of the six alternatives considered in the EIS process thoroughly addressed the environmental impacts associated with a CVN remaining at NAVSTA Everett and those associated with creating additional home port capacity at PSNS.

Based upon my review of the comparative analysis of alternatives and public comments received during the NEPA process, I have selected Alternative Two, which was identified as the preferred Alternative in the DEIS and FEIS, as the DON action for developing CVN home port capacity. Alternative Two will create home port capacity for two additional CVNs at NASNI, bringing the total CVN home port capacity at NASNI to three. Under Alternative Two the CVN home port facilities at PSNS will be upgraded to meet current standards and NAVSTA Everett will remain a CVN home port.

Implementation of Alternative Two at NASNI requires that existing Pier J/K be demolished and replaced by a wharf meeting the berthing requirements of a CVN. Approximately 582,000 cubic yards (cy) of sediment will be dredged to meet depth requirements. Most of the material will be deposited at an in-bay location south of the Naval Amphibious Base (NAB) to create an NAB Habitat Enhancement Area, and some of the material will be used as fill for the wharf. A 1.5 to 2.5 acre intertidal habitat will be created from an upland site to compensate for intertidal/subtidal habitat filled as part of the wharf construction. Berthing for a second additional CVN will be along the section of the existing quay wall that currently serves as the transient berth for CVNs not homeported at NASNI. No dredging is required to convert the transient berth to a permanent berth for the second additional CVN. Utility upgrades are required, as is additional fencing.

Implementation of Alternative Two at PSNS requires that Pier D be removed and replaced by a new pier that meets current berthing criteria for a CVN home port. Dredging of approximately 425,000 cy will be accomplished at Pier D and its turning basin and also at two other CVN maintenance berths and their associated turning basins. The dredged material determined to be suitable for unconfined aquatic disposal will be deposited at a site in Elliot Bay designated under the Puget Sound Dredge Disposal Analysis Program. Material unsuitable for unconfined aquatic disposal will be deposited at an appropriately permitted upland landfill or in one of three Confined Disposal Facilities/Confined Aquatic Disposal sites shown in the FEIS.

Implementation of Alternative Two at NAVSTA Everett requires no action.

Alternative Six (the no construction alternative) is the environmentally preferred alternative because it involves the least disturbance of the natural environment. While environmentally preferable, this alternative would overtax utility, logistical, and personnel support infrastructures at NASNI and PSNS. Consequently, Alternative Six places an unacceptable constraint on the mission capability of the U.S. Pacific Fleet from an operational, training, and personnel perspective.

**Environmental Impacts and Mitigation**

The DON analyzed the potential impacts of the selected action in fifteen environmental resource areas: geology; topography and soils; terrestrial hydrology and water quality; marine water quality; sediment quality; marine biology; transportation; air quality; noise; aesthetics; cultural resources; general services/access; health and safety; utilities; and environmental justice. This ROD summarizes the potentially significant, but mitigable, impacts associated with Alternative Two, the DON's selected alternative.

Dredging and pier replacement at NASNI will cause the loss of 1.5 acres of intertidal and subtidal habitat. Impacts to habitat will be mitigated by the construction of 1.5 to 2.5 acres of intertidal habitat at a nearby upland site, and creation of additional snowy plover nesting habitat. The potential loss of eelgrass will be monitored through surveys before and after construction. If the post-construction surveys determine that a loss of eelgrass has occurred, the Navy will provide mitigation for that loss. The amount of eel grass lost will be applied against the Navy's north-central eelgrass mitigation bank according to the 1992 Southern California Eelgrass Mitigation Policy Guidelines, as amended.

Consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service led to the conclusion that dredging and pier construction at PSNS could impact threatened and endangered species of salmon during their out-migration season. In order to mitigate impacts on salmon migration, the Navy will avoid dredging and marine construction during established salmon migration windows. Impacts from construction of a confined disposal facility (CDF), if such a facility is required by the terms of the CWA Section 404 permit obtained for dredging and marine construction activities, will be offset by making the area occupied by the CDF a shallow water habitat area.

Overall impacts on the coastal resources in California were addressed in the coastal consistency determination (CCD) submitted to the California Coastal Commission (CCC) by DON. On December 8, 1999, the California Coastal Commission unanimously concurred that the proposed development of home port capacity at NASNI was consistent to the maximum extent practicable with the California Coastal Management Program. In public hearings on the DON consistency determination held on the same day, DON agreed to continue discussions with the CCC staff about emergency planning issues, thermal discharges from CVNs, and Best Management Practices (BMPs) for stormwater runoff control. DON agreed to discuss these three issues further with the CCC staff, and to present the results to the Commission at another public hearing on or before April 2000. DON also agreed that, if the DON Record of Decision for the development of CVN home port facilities required pier construction at NASNI, no construction work would begin at NASNI before presentation of these results to the Commission on or before April 2000. All construction activities and the operation of facilities necessary to implement Alternative Two will be undertaken in a manner consistent with the terms and conditions of required permits.

**Responses to Comments on the FEIS**

The DON received comments on the FEIS from elected officials, federal, state, and local government agencies, citizen's groups, and individuals. Most of the issues raised in the comments had already been addressed in the FEIS in response to comments received on the DEIS. New issues raised in comments received on the FEIS concerning those aspects of the proposed action at NASNI are addressed below. No new issues were raised in comments received concerning those aspects of the proposed action at PSNS, NAVSTA Everett or NAVSTA Pearl Harbor.

Commentors noted that the FEIS did not discuss the potential for the proposed project to exacerbate water quality problems in San Diego Bay associated with areas identified under CWA, Section 303(d). Section 303(d) requires states to list those areas for which water quality standards cannot be implemented. As none of the sites in San Diego Bay listed under Section 303(d) are near enough to the proposed pier and mitigation sites to be affected by short term construction and dredging activities, these activities will not further hinder the implementation of water quality standards at any of the sites listed under the CWA.

Commentors noted that the cumulative impact section did not address traffic increases in the City of Coronado they anticipated would accompany the upgraded commissary and exchange facilities proposed for NASNI. The Navy does not anticipate that upgrading commissary and exchange facilities at NASNI will cause any appreciable increase in traffic. Commissary and exchange facilities are already present at NASNI. Changes to those facilities are not expected to attract new users. The pool of eligible patrons in the San Diego area is relatively stable. Patrons are expected to continue to shop at the larger, more conveniently located facilities at Naval Station San Diego, Marine Corps Air Station Miramar, and Camp Pendleton.

Commentors stated that the FEIS failed to analyze the increased probability that invasive species would be introduced into San Diego Bay through ballast water discharges from CVNSs homeported at NASNI. Trim and list on CVNs are maintained through a closed system of freshwater tanks. Unlike conventionally-powered ships, no ballast water is taken from or discharged to surrounding waters. Therefore there is no avenue by which invasive species can be introduced into San Diego Bay from CVN ballast water.

It was clear from some comments received on the FEIS that concern still exists about the Navy's adherence to the NEPA process, the marine environment in San Diego Bay, traffic within the City of Coronado, and nuclear propulsion aspects of the addition of more home port capacity for CVNs in the San Diego area. Even though these issues were specifically addressed in the FEIS and there is no requirement that the DON address them further in the ROD, a brief discussion is included here to demonstrate that these concerns have been carefully considered.

Some commentors suggested that regulations implementing NEPA required Navy to reissue the DEIS due to changes included in the FEIS. The DON carefully reviewed the differences between the DEIS and FEIS and concluded that reissuing the DEIS was not required. The NEPA process is an iterative one, designed to produce an FEIS that reflects change, clarification, and refinement of the DEIS based upon comments received from the public. No changes included in the FEIS were so substantial as to require republication of the DEIS.

Some commentors sought more information on the potential loss of eelgrass and soil contamination levels at the upland mitigation site on North Island. In the DEIS, the best available information was used to predict impacts to eelgrass and pollutant levels at the mitigation site. This information was subsequently validated by additional data collected and analyzed in conjunction with the DON's pending application for a CWA Section 404 permit.

Some commentors sought a new discussion about copper leaching into San Diego Bay from anti-fouling paint on ship hulls. The Navy calculated the amount of copper expected to leach from anti-fouling paint on ship hulls and concluded in the FEIS that the net difference from replacement of CVs by CVNs will not be significant. Also, the number of Navy ships berthed in San Diego has decreased. Therefore, there would be no cumulative increase in the amount of copper leaching into the bay.

The City of Coronado and a number of its citizens expressed concern that creating the home port capacity for three CVNs at NASNI will result in major increases in commuter traffic along Coronado streets. The DON took a hard look at the traffic impact associated with creating home port capacity for two additional CVNs. The best available historical data on the days spent in port by CVs homeported at NASNI was analyzed and future days in port by CVNs were projected based upon anticipated training and deployment requirements. These historical data and projections suggest that the decision to create home port capacity for two additional CVNs at NASNI will not cause significant traffic impacts.

Historically, even when three aircraft carriers were assigned NASNI as a home port, all three of those aircraft carriers were present in port at the same time only an average of thirteen days per year. Based upon training requirements, maintenance schedules, and projected operational tempo, the implementation of Alternative Two is not expected to increase the average number of days a year three CVNs will be present at their NASNI home port. While traffic levels will increase for those brief periods when three CVNs assigned to NASNI are present, overall traffic impacts will be less than significant. Nevertheless, the DON will use mitigation measures to reduce the level of traffic during those infrequent periods when three CVNs assigned to NASNI are simultaneously in port. Mitigation may include measures such as staggering work hours, encouraging carpools and vanpools, and subsidizing the use of public transportation by military personnel and civilian employees. The DON will monitor the effectiveness of these traffic mitigation measures. If the mitigation measures are not successful and traffic associated with the presence of a third homeported CVN creates a significant adverse effect on traffic conditions in Coronado, DON will develop additional mitigation measures.

Several commentors from the San Diego area expressed concern that nuclear propulsion issues such as reactor accident analysis, emergency planning, perimeter monitoring, distribution of potassium iodide, and notification of releases were not thoroughly considered in the FEIS process. The FEIS discusses, among other points, how NIMITZ Class reactor designs have received independent review by the Nuclear Regulatory Commission and the Advisory Committee on Reactor Safeguards, and that the Navy has plans and procedures in place for all types of emergencies that could be associated with Naval Nuclear Propulsion Program (NNPP) operations. These plans and procedures contain classified and sensitive military information that cannot be released to the public. In recent meetings among DON, State, County, and local emergency response officials, the consensus was reached that existing DON, State, County, and local emergency plans are adequate in the highly unlikely event of a radiological emergency.

I thoroughly reviewed the entire discussion of nuclear propulsion radiologcal issues in the EIS, including classified information not releasable to the public. I am convinced that there are no significant radiological impacts associated with creating and utilizing home port capacity at any of the three locations affected by this decision. As there are no significant radiological impacts, mitigation measures such as installation of a perimeter monitoring system or disputing of potassium iodide are not warranted.

**Conclusion**

On behalf of the Department of Navy, I have decided to implement Alternative Two, as set out in the FEIS, for development of home port capacity for CVNs within the U.S. Pacific Fleet AOR.

In selecting where to create home port capacity for the two CVNs programmed to replace existing CV assets within the U.S. Pacific Fleet, I considered how the development of home port capacity as set out in each alternative analyzed in the EIS would affect: (1) Operations and training, crew quality of life, and the CVN maintenance program; (2) the environment; and (3) facility and infrastructure life cycle costs. I took a hard look at the environmental impacts analyzed in the EIS and gave careful consideration to the comments received on the DEIS and FEIS.

After weighing all of these factors, I have determined that Alternative Two, the preferred alternative in the FEIS, best serves the interests of the DON while keeping environmental impacts at a less than significant level. Alternative Two satisfies the operational, training, and maintenance requirements of the Pacific Fleet, provides acceptable quality of life for Navy sailors and their families, causes no significant environmental impacts, and entails manageable facility and infrastructure costs.

Dated: January 28, 2000.

**Duncan Holaday,**

*Deputy Assistant Secretary of the Navy (Installations and Facilities).*

[FR Doc. 00–2831 Filed 2–7–00; 8:45 am]

**BILLING CODE 3810–FF–M**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Intent To Grant Exclusive Patent License; Virotek, LLC

**AGENCY:** Department of the Navy.

**ACTION:** Notice.

**SUMMARY:** The Department of the Navy hereby gives notice of its intent to grant to Virotek, LLC, a revocable, nonassignable, exclusive license to practice worldwide the Government-owned inventions described in U.S. Patent No. 6,015,681 issued 18 January 2000, and its PCT serial No. 96/12135, filed 12 Dec 1996, entitled ''Rapid Immunoassay for Cariogenic Baceria''; and U.S. Patent Serial No. 90/44214, filed on 3 Aug 1999 and its PCT serial No. 99/10482 filed on 3 Aug 1999, entitled ''Rapid Immunoassay to Detect Infection with Mycobacterium tuberculosis'' in the field of Rapid, Hand-held Salivary Diagnostics for Streptococcus mutans, lactobacillus and Mycobacterium tuberculosis.

**DATE:** Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than April 10, 2000. Written objections are to be filed with the Office of Technology Transfer, Naval Medical Research Center, 8901 Wisconsin Ave, Bethesda, MD 20889–5607, telephone (301) 319–7428.

**FOR FURTHER INFORMATION CONTACT:** CDR Charles Schlagel, MSC, USN, Director, Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Avenue, Silver Spring, MD 20910–7500, telephone (301) 319–7428.

Dated: January 27, 2000.

**J.L. Roth,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 00–2728 Filed 2–7–00; 8:45 am]

**BILLING CODE 3812–FF–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice to amend record system.

**SUMMARY:** The Department of the Navy proposes to amend six systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** The amendments will be effective on March 9, 2000, unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350-2000.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Doris Lama at (202) 685-6545 or DSN 325-6545.

**SUPPLEMENTARY INFORMATION:** The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to amend six systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the systems of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports. The records systems being amended are set forth below, as amended, published in their entirety.

Dated: February 2, 2000.

**L.M. Bynum,**

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

**N01070-1**

**SYSTEM NAME:**

JAG Corps Officer Personnel Information *(February 22, 1993, 58 FR 10694).*

**CHANGES:**

* * * * *

**SYSTEM LOCATION:**

Delete entry and replace with 'Office of the Judge Advocate General (Code 61), Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374-5066.'

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In paragraph 2, delete 'a semi-annual' and replace with 'an annual'.

* * * * *

**N01070-1**

**SYSTEM NAME:**

JAG Corps Officer Personnel Information.

**SYSTEM LOCATION:**

Office of the Judge Advocate General (Code 61), Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374-5066.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Active Duty Officers in the Judge Advocate General's Corps, Law Education and Excess Leave Programs.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Name, grade, designator, date of birth, Social Security Number, date of rank, pay entry base data, active duty service date, active commission base date, year and month of graduation from Naval Justice School, service date, lineal number, year group, current billet, future billets that are finalized, sub-specialty code, number of primary and secondary dependents, spouse's name, projected loss date and reason for loss, projected rotation date, law school and year of graduation from law school, state bar membership and year admitted, officer's preference for duty assignment and postgraduate education.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 806 and E.O. 9397 (SSN).

**PURPOSE(S):**

To manage the officers of the Navy JAG Corps, as the Judge Advocate General is statutorily required to make recommendation on the assignment of all active duty JAG Corps officers; to determine qualifications of an officer to receive a JAG Corps designation and to be certified as a trial or defense counsel; to determine the rotation dates and release from active duty dates of JAG Corps officers as well as the date new officers will be available for duty; to prepare JAG Corps strength plans for submission to OPNAV; and to obtain an officer's preference for duty assignment as well as eligibility for consideration for postgraduate education and overseas assignments. Certain information is promulgated to all active duty JAG Corps officers in a semi-annual publication known as the Directory of Navy Judge Advocates. The information is promulgated in the directory for general informational purposes within the JAG Corps, including provision of position (billet) availability information to officers contemplating rotation.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

*In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:*

Certain information (not including Social Security Number and date of birth) is promulgated to active-duty JAG Corps officers in an annual publication known as the Directory of Navy Judge Advocates. The information is promulgated for general informational purposes within the JAG Corps, including provision of position (billet) availability information to officers contemplating rotation and as a social roster for official and nonofficial functions.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices also apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Data is maintained on personal computers and paper records filed in file folders in storage devices.

**RETRIEVABILITY:**

Name.

**SAFEGUARDS:**

Data is maintained on personal computers and paper records filed in file folders in storage devices.

**RETENTION AND DISPOSAL:**

Upon release from active duty, records are kept three years and then destroyed. Upon retirement from active duty, records are maintained indefinitely.

**SYSTEM MANAGER(S) AND ADDRESS:**

Deputy Assistant Judge Advocate General (Code 61), Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374-5066.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Assistant Judge Advocate General (Code 61), Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374-5066.

Written requests must be signed by the requesting individual. For personal visits, the requesting individual should be able to provide some acceptable identification, e.g. Armed Forces identification card, driver's license, etc.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Deputy Assistant Judge Advocate General (Code 61), Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374-5066. Personnel visits may be made to the JAG Personnel Office, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374-5066.

**CONTESTING RECORD PROCEDURES:**

The Navy's rules for accessing records and contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Individual; orders to active duty and subsequent transfer orders; and computer strips provided by the Navy Personnel Command on all active duty officers.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**N01301-2**

**SYSTEM NAME:**

Naval Officer Development and Distribution Support System *(February 22, 1993, 58 FR 10712).*

**CHANGES:**

* * * * *

**SYSTEM NAME:**

Delete entry and replace with 'On-Line Distribution Information System (ODIS).'

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**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Delete entry and replace with 'All Navy personnel on active duty including reservists on active duty more than 60 days.'

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete entry and replace with 'Personnel records in automated form concerning qualifications, assignment, placement, career development, education, training, recall, release from active duty, advancement, performance, retention, reenlistment, separation, morale, personal affairs, benefits, entitlements, and administration.'

* * * * *

**N01301-2**

**SYSTEM NAME:**

On-Line Distribution Information System (ODIS).

**SYSTEM LOCATION:**

Navy Personnel Command, 5720 Integrity Drive, Millington, TN 38055-8340.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All Navy personnel on active duty including reservists on active duty more than 60 days.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Personnel records in automated form concerning qualifications, assignment, placement, career development, education, training, recall, release from active duty, advancement, performance, retention, reenlistment, separation, morale, personal affairs, benefits, entitlements, and administration.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5504, Lineal List; 10 U.S.C. 5708, Promotion Selection List; and E.O. 9397 (SSN).

**PURPOSE(S):**

To assist Navy officials and employees in the classification, qualification determinations, assignment, placement, career development, education, training, recall and release of officer personnel pursuant to meet manpower allocations and requirements.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

*In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:*

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Automated records may be stored on magnetic tapes, disc, or drums. Manual records may be stored in paper file folders, microfiche, or microfilm.

**RETRIEVABILITY:**

Records may be retrieved by Social Security Number and/or name.

**SAFEGUARDS:**

Computer terminals are located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained. Manual records and computer printouts are available only to authorized personnel having an official need-to-know.

**RETENTION AND DISPOSAL:**

Records are generally maintained until superseded, or for a period of two years or until release from active duty and disposed of by burning or shredding.

**SYSTEM MANAGER(S) AND ADDRESS:**

Commander, Navy Personnel Command (Pers-06), 5720 Integrity Drive, Millington, TN 38055-0600.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Navy Personnel Command (Pers-06), 5720 Integrity Drive, Millington, TN 38055-0600.

The letter should contain full name, rank, Social Security Number, designator, address and signature. The individual may visit the Navy Personnel Command (Pers-06), 5720 Integrity Drive, Millington, TN 38055-0600. Advance notification is required for personal visits. Proof identification will consist of military identification card.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, Navy Personnel Command (Pers-06), 5720 Integrity Drive, Millington, TN 38055-0600.

The letter should contain full name, rank, Social Security Number, designator, address and signature. The individual may visit the Commander, Navy Personnel Command (Pers-06), 5720 Integrity Drive, Millington, TN 38055-0600. Advance notification is required for personal visits. Proof of identification will consist of military identification card.

**CONTESTING RECORD PROCEDURES:**

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Personnel Service Jackets; records of the officer promotion system; officials and employees of the Department of the Navy, Department of Defense, and components thereof, in performance of their official duties and as specified by current instructions and regulations promulgated by competent authority; education institutions; official records of professional qualifications; general correspondence concerning the individual.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**N01306-1**

**SYSTEM NAME:**

Enlisted Development and Distribution Support System *(February 22, 1993, 58 FR 10713).*

**CHANGES:**

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**SYSTEM NAME:**

Delete entry and replace with 'Job Advertisement and Selection System (JASS).'

**SYSTEM LOCATION:**

Delete entry and replace with 'Navy Personnel Command, 5720 Integrity Drive, Millington, TN 38055-0600.'

* * * * *

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete entry and replace with 'Limited personnel records in automated form displaying basic qualifications. This system primarily displays a listing of available billets from which a sailor can request through their career counselor.'

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**PURPOSE(S):**

Delete entry and replace with 'To allow active Navy personnel to participate in the selection of their next assignment.'

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**RETRIEVABILITY:**

Delete entry and replace with 'Social Security Number'.

* * * * *

**N01306-1**

**SYSTEM NAME:**

Job Advertisement and Selection System (JASS).

**SYSTEM LOCATION:**

Navy Personnel Command, 5720 Integrity Drive, Millington, TN 38055-0600.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All Navy enlisted personnel: active, inactive, reserve, fleet reserve, and retired.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Limited personnel records in automated form displaying basic qualifications. This system primarily displays a listing of available billets

from which a sailor can request through their career counselor.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy; and E.O. 9397 (SSN).

**PURPOSE(S):**

To assist Navy officials and employees in the initiation, development, implementation of policies pertaining to enlisted personnel assignment, placement, retention, career enhancement, and motivation, and other career related matters, in order to meet manpower allocations and requirements.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

*In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:*

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of system of record notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Automated records may be stored on magnetic tapes, disc, and drums. Manual records may be stored in paper file folders, microfiche, or microfilm.

**RETRIEVABILITY:**

Social Security Number.

**SAFEGUARDS:**

Computer processing facilities and terminals are located in restricted areas accessible only to authorized persons that are properly screened, cleared, and trained. Manual records and computer printouts are available only to authorized personnel having a need-to-know.

**RETENTION AND DISPOSAL:**

Records are generally maintained until superseded or for a period of two years and then disposed of by burning or shredding.

**SYSTEM MANAGER(S) AND ADDRESS:**

Commander, Navy Personnel Command (Pers-06), 5720 Integrity Drive, Millington, TN 38055-0600.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Navy Personnel Command (Pers-06), 5720 Integrity Drive, Millington, TN 38055-0600.

The letter should contain full name, Social Security Number (and/or enlisted service number), rate, military status, and signature of the requester.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander, Navy Personnel Command (Pers-06), 5720 Integrity Drive, Millington, TN 38055-0600.

The letter should contain full name, Social Security Number (and/or enlisted service number), rate, military status, and signature of the requester.

**CONTESTING RECORD PROCEDURES:**

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Personnel service jackets, correspondence, official records of professional qualifications, and educational institutions.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**N03760-1**

**SYSTEM NAME:**

Naval Flight Record Subsystem (NAVFLIRS) *(February 22, 1993, 58 FR 10732).*

**CHANGES:**

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**SAFEGUARDS:**

Delete entry and replace with 'Automated records are password protected and access limited to personnel with an official need to know.'

**RETENTION AND DISPOSAL:**

Delete entry and replace with 'Permanent data base maintained by the Naval Air Systems Command.'

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with 'Commander, Naval Air Systems Command (AIR 3.6.2.3), 47056 Mcleod Road, Building 447, Patuxent River, MD 20670-1626.'

* * * * *

**RECORD SOURCE CATEGORIES:**

Add to entry 'and enlisted aircrew members.'

* * * * *

**N03760-1**

**SYSTEM NAME:**

Naval Flight Record Subsystem (NAVFLIRS).

**SYSTEM LOCATION:**

Primary data base is maintained at the Naval Air Systems Command (Code AIR 3.6.2.3), 47056 Mcleod Road, Building 447, Patuxent River, MD 20670-21626.

Secondary data base is maintained at the Naval Safety Center, 375 A Street, Norfolk, VA 23511-4399.

Local data bases are maintained at Navy and Marine Corps aviation activities.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All aeronautically designated commissioned Navy and Marine Corps Officers and enlisted members assigned as aircrew members in the operation of an aircraft in accordance with the direction of competent authority.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Reports of each flight submitted to the custodian of the aircraft. Records contain personal identification (name, rank, Social Security Number), and specific technical data related to the flight of naval aircraft.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

**PURPOSE(S):**

Naval Flight Record Subsystem consolidates the collection of naval flight data into a single, locally controlled collection and correction system, and implements a standard data collection source document (the Naval Flight Record OPNAV 3710/4) throughout the Navy and Marine Corps. It further establishes a single control data base containing all naval flight data.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

*In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:*

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Automated records.

**RETRIEVABILITY:**

Individual records are primarily retrieved by a unique document number assigned to each naval flight record. Additionally, each of the data elements such as pilots' Social Security Number, model aircraft and squadron may be used to retrieve individual records.

**SAFEGUARDS:**

Automated records are password protected and access limited to personnel with an official need to know.

**RETENTION AND DISPOSAL:**

Primary and secondary data base at the Naval Safety Center are permanent. Records in the secondary data base at Headquarters, U.S. Marine Corps are erased from tape when the individual is removed from active flight status. Local data bases purge all magnetic tape records after six months.

**SYSTEM MANAGER(S) AND ADDRESS:**

Commander, Naval Air Systems Command (AIR 3.6.2.3), 47056 Mcleod Road, Building 447, Patuxent River, MD 20670-1626.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Naval Air Systems Command (AIR 3.6.2.3), 47056 Mcleod Road, Building 447, Patuxent River, MD 20670-1626.

The request should contain full name, Social Security Number, squadron assigned, and address of the individual concerned and should be signed. Personal visitors will be required to produce military or comparable civilian identification cards.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, Naval Air Systems Command (AIR 3.6.2.3), 47056 Mcleod Road, Building 447, Patuxent River, MD 20670-1626.

**CONTESTING RECORD PROCEDURES:**

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Aircraft reporting custodian, Navy and Marine Corps pilots and enlisted aircrew members.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**N05801-1**

**SYSTEM NAME:**

JAG Management Information System (JAGMIS) *(February 22, 1993, 58 FR 10770).*

**CHANGES:**

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**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Delete entry and replace with 'Service members who are pending courts-martial, administrative separation proceedings, nonjudicial punishment proceedings, or who have sought advice or counseling or other representational services from a Trial Service Office, Naval Legal Service Office, Detachment, or Branch Office. Authorized military and civilian personnel and dependents who have sought legal assistance, advice or counseling or other representational services from Naval Legal Service Offices or Detachments and any command with a legal assistance office.'

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete entry and replace with '(1) Legal Assistance Card Files: Legal assistance card files typically contain client identification information, e.g., name, address, duty station, telephone numbers, etc., client description of legal problem, attorney classification of problem, and attorney time expended.

(2) Judge Advocate General Management Information System (JAGMIS): JAGMIS records contain identification information about the individual being courts-martialed such as name; rank/rate; Social Security Number; organizational information, such as Convening Authority and Supervisory Authority; information relevant to internal management of the Trial Service Office or Legal Service Office, such as dates of receipt, docketing, trial, and transcript completion; identities of counsel and military judge; information on the charges of which convicted, if any, sentence adjudged; and other information describing overall case management and processing. This information may also be entered into the JAGMIS system by the office rendering service.

(3) Legal Assistance, Personnel Claims, and Personal Representation Client Records: File contains I.D. information about the individual seeking legal advice such as name, address, duty station, telephone number, type of assistance requested, results of any hearing involved, and attorney time expended.'

* * * * *

**PURPOSE(S):**

Delete entry and replace with 'To process courts-martials and render legal assistance and advice to naval personnel and their dependents. Trial Service Offices, Naval Legal Service Offices, and legal assistance offices will use the data for internal management purposes, such as court scheduling and counsel assignment information, and generating monthly workload productivity and statistical reports.'

* * * * *

**RETRIEVABILITY:**

Delete entry and replace with 'Name of client or accused, or by assigned case number.'

* * * * *

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with 'Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374-5066 for legal assistance files and Deputy Assistant Judge Advocate General, Management and Plans Division, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374-5066 for case files.'

* * * * *

**RECORD SOURCE CATEGORIES:**

Delete entry and replace with 'Basic information contained in the legal assistance records file is provided by the client. Basic information contained in the courts-martial files is provided by the Convening Authority for the courts-martial, the attorneys and military judge assigned to the case, and administrative personnel assigned to the Trial Service Office or Naval Legal Service Office. Information regarding personal representation services is provided by the client, by the commanding officer of the individual being processed, and by administrative personnel of the Trial Service Office or Naval Legal Service Office. Information regarding the ultimate disposition of the matter is provided by the attorney rendering the service.'

* * * * *

**N05801-1**

**SYSTEM NAME:**

JAG Management Information System (JAGMIS).

**SYSTEM LOCATION:**

Naval Legal Service Command, 1322 Patterson Avenue SE, Suite 3000, Washington DC 20374-5066; Trial Service Offices and detachments; Naval Legal Service Offices and detachments; and any other Naval Legal Office providing legal assistance services. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Service members who are pending courts-martial, administrative separation proceedings, nonjudicial punishment proceedings, or who have sought advice or counseling or other representational services from a Naval Legal Service Office, Detachment, or Branch Office. Authorized military and civilian personnel and dependents who have sought legal assistance, advice or counseling or other representational services from Naval Legal Service Offices or Detachments and any command with a legal assistance office.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

(1) Legal Assistance Card Files: Legal assistance card files typically contain client identification information, e.g., name, address, duty station, telephone numbers, etc., client description of legal problem, attorney classification of problem, and attorney time expended.

(2) Judge Advocate General Management Information System (JAGMIS): JAGMIS records contain identification information about the individual being courts-martialed such as name; rank/rate; Social Security Number; organizational information, such as Convening Authority and Supervisory Authority; information relevant to internal management of the Trial Service Office or Legal Service Office, such as dates of receipt, docketing, trial, and transcript completion; identities of counsel and military judge; information on the charges of which convicted, if any, sentence adjudged; and other information describing overall case management and processing. This information may also be entered into the JAGMIS system by the office rendering service.

(3) Legal Assistance, Personnel Claims, and Personal Representation Client Records: File contains I.D. information about the individual seeking legal advice such as name, address, duty station, telephone number, type of assistance requested, results of any hearing involved, and attorney time expended.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Departmental Regulations; Manual of the Judge Advocate General; and E.O. 9397 (SSN).

**PURPOSE(S):**

To process courts-martials and render legal assistance and advice to naval personnel and their dependents. Naval Legal Service Offices and legal assistance offices will use the data for internal management purposes, such as court scheduling and counsel assignment information, and generating monthly workload productivity and statistical reports.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

*In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:*

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of system of record notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Military justice, legal assistance, and personal representation case files are stored in file cabinets. Case data is entered into the JAGMIS computer system which is maintained on computer hard disks.

**RETRIEVABILITY:**

Name of client or accused, or by assigned case number.

**SAFEGUARDS:**

Manual records/cards are maintained in file cabinets or other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside of official working hours. Information in the JAGMIS system is stored on computer hard disks which are afforded the same physical protection afforded to manual records/cards. Additionally, computers containing JAGMIS information are protected by individual operator passwords to preclude access by unauthorized personnel.

**RETENTION AND DISPOSAL:**

Manual records, cards, and case files are retained for two years after completion of the case, then destroyed. JAGMIS records, maintained since July 1985, are retained indefinitely.

**SYSTEM MANAGER(S) AND ADDRESS:**

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374-5066 for legal assistance files and Deputy Assistant Judge Advocate General, Management and Plans Division, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374-5066 for case files.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374-5066, for case files.

The written request should include full name and must be signed by the requesting individual.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374-5066, for case files.

The written request should include full name and must be signed by the requesting individual.

**CONTESTING RECORD PROCEDURES:**

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Basic information contained in the legal assistance records file is provided by the client. Basic information contained in the courts-martial files is provided by the Convening Authority for the courts-martial, the attorneys and military judge assigned to the case, and administrative personnel assigned to the Trial Service Office or Naval Legal

Service Office. Information regarding personal representation services is provided by the client, by the commanding officer of the individual being processed, and by administrative personnel of the Trial Service Office or Naval Legal Service Office. Information regarding the ultimate disposition of the matter is provided by the attorney rendering the service.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**N12950-7**

**SYSTEM NAME:**

Drug-Free Workplace Records *(July 29, 1994, 59 FR 38589).*

**CHANGES:**

**SYSTEM IDENTIFIER:**

Delete entry and replace with 'N12792-7'.

**SYSTEM NAME:**

After the word 'Workplace' add 'Program'.

**SYSTEM LOCATION:**

Delete entry and replace with 'Records are located at the local naval activity, the local servicing human resources offices or the Department of the Navy Headquarters office.'

* * * * *

**PURPOSE(S):**

In paragraph 2, line 2, delete 'employee's Medical Review Official' and replace with 'Medical Review Officer'.

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**RECORD SOURCE CATEGORIES:**

Delete entry and replace with 'Records are obtained from the individual to whom the record pertains; DON or contractor employees involved in the selection, notification, and collection of urine from individuals who are tested; DON or contractor laboratories that test urine samples for the presence of illegal drugs, DON or contractor Medical Review Officers; supervisors and managers and other DON officials engaged in administering the Drug-Free Workplace Program; the Civilian Employee Assistance Program; processing adverse actions based on drug test results; and DON or contractor electronic databases.'

* * * * *

**N12792-7**

**SYSTEM NAME:**

Drug-Free Workplace Program Records.

**SYSTEM LOCATION:**

Records are located at the local naval activity, the local servicing human resources offices or the Department of the Navy Headquarters office.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Civilian employees and applicants for employment with the Department of the Navy.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records related to selection, notification, testing of employees and applicants, urine specimens, drug test results, collection authentication and chain of custody documents.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Pub. L. 100-71, 5 U.S.C. 7301; 21 U.S.C. 812; and E.O. 12564, Drug-Free Federal Workplace; and E.O. 9397 (SSN).

**PURPOSE(S):**

The system is established to maintain records relating to the selection and testing of Department of the Navy employees, and applicants for employment, for use of illegal drugs and drugs identified in Schedules I and II of 21 U.S.C. 812.

The records are also used by the Medical Review Officer; the administrator of any Employee Assistance Program in which the employee is receiving counseling or treatment or is otherwise participating; and supervisory or management officials within the employee's agency having authority to take adverse personnel action against such employee.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

*In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:*

In order to comply with the provisions of 5 U.S.C. 7301, the 'Blanket Routine Uses' published at the beginning of the Navy's compilation do not apply to this system.

To a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action.

**Note:** Record of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd-2. The results of a drug test of civilian employees may be disclosed only as expressly authorized under 5 U.S.C. 7301. These statutes takes precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. The Navy's 'Blanket Routine Uses' do not apply to these types records.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records consist of written materials and/or electronic media.

**RETRIEVABILITY:**

Records are retrieved by name of employee, applicant for employment, Social Security Number, I.D. number assigned, or any combination of these.

**SAFEGUARDS:**

Records will be stored in secure containers, e.g., safes, locked filing cabinets, etc. Urine specimens will be stored in appropriate locked storage facilities. Access to such records and specimens is restricted. Chain-of-custody and other procedural and documentary requirements of Pub. L. 100-71 and the Department of Health and Human Services Guidelines will be followed in collection of urine samples, conducting drug tests, and processing test results. All information contained in computers is password protected.

**RETENTION AND DISPOSAL:**

Records are retained for three years and then destroyed by shredding, burning, or erasure in the case of electronic media.

Written records and test results together with urine specimens shall be retained until litigation is complete when the employee challenges or appeals adverse actions.

**SYSTEM MANAGER(S) AND ADDRESS:**

DON Drug Program Coordinator, Deputy Assistant Secretary of the Navy (Civilian Personnel/Equal Employment Opportunity, 800 North Quincy Street, Arlington, VA 22203-1998.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether this system contains information about themselves should address written inquiries to the Commanding Officer/Commander of the DON activity or the servicing human resources office at which they are or

were employed, or at which they made application for employment, and for which they provided a urine specimen for drug testing.

Individuals may furnish their full name, Social Security Number, the title, series, and grade of the position they occupied or applied for when the drug test was conducted, specimen ID number, and the date of the test.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Commanding Officer/Commander of the DON activity or the servicing human resources office at which they are or were employed, or at which they made application for employment, and for which they provided a urine specimen for drug testing.

Individuals may furnish their full name, Social Security Number, the title, series, and grade of the position they occupied or applied for when the drug test was conducted, specimen ID number, and the date of the test.

**CONTESTING RECORD PROCEDURES:**

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Records are obtained from the individual to whom the record pertains; DON or contractor employees involved in the selection, notification, and collection of urine from individuals who are tested; DON or contractor laboratories that test urine samples for the presence of illegal drugs, DON or contractor Medical Review Officers; supervisors and managers and other DON officials engaged in administering the Drug-Free Workplace Program; the Civilian Employee Assistance Program; processing adverse actions based on drug test results; and DON or contractor electronic databases.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 00–2817 Filed 2–7–00; 8:45 am]

**BILLING CODE 5001–10–F**

## DEPARTMENT OF EDUCATION

### National Committee on Foreign Medical Education and Accreditation; Meeting

**AGENCY:** National Committee on Foreign Medical Education and Accreditation, Department of Education.

**What Is the Purpose of This Notice?**

The purpose of this notice is to announce the upcoming meeting of the National Committee on Foreign Medical Education and Accreditation. Parts of this meeting will be open to the public, and the public is invited to attend those portions.

**When and Where Will the Meeting Take Place?**

We will hold the meeting on March 17, 2000 beginning at 9 a.m. in Ballroom D at Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW, Washington, DC 20024–2197. You may call the Hotel on (202) 484–1000 to inquire about room accommodations.

**What Access Does the Hotel Provide for Individuals With Disabilities?**

The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in an alternate format) notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

**What Are the Functions of the Committee?**

The National Committee on Foreign Medical Education and Accreditation was established by the Secretary of Education under section 102 of the Higher Education Act of 1965, as amended by Public Law 105–244. The Committee's responsibilities are to (1) evaluate the standards of accreditation applied to applicant foreign medical schools; and (2) determine the comparability of those standards to standards for accreditation applied to United States medical schools.

**What Are the Issues To Be Considered At This Meeting?**

The National Committee on Foreign Medical Education and Accreditation will review the standards of accreditation applied to medical schools by several foreign countries to determine whether those standards are comparable to the standards of accreditation applied to medical schools in the United States. Discussions of the standards of accreditation will be held in sessions open to the public. Discussions that focus on specific determinations of comparability are closed to the public in order that each country may be properly notified of the decision. Beginning February 18, you may call to obtain the identity of the countries whose standards are to be evaluated during this meeting.

**Who Is the Contact Person for the Meeting?**

Please contact Bonnie LeBold, who is the Executive Director of the National Committee on Foreign Medical Education and Accreditation, if you have questions about the meeting. You may contact her at the U.S. Department of Education, 7th Floor—Rm. 7107, 1990 K St. NW, Washington, DC 20006, telephone: (202) 219–7009, fax: (202) 219–7008, e-mail: Bonnie__LeBold@ed.gov. Individuals who use telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339.

Dated: February 2, 2000.

**A. Lee Fritschler,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 00–2765 Filed 2–7–00; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### President's Advisory Board on Tribal Colleges and Universities; Meeting

**AGENCY:** President's Advisory Board on Tribal Colleges and Universities.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of the first meeting of the President's Advisory Board on Tribal Colleges and Universities and is intended to notify the general public of their opportunity to attend. This notice also describes the functions of the Board. Notice of the Board's meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

*Date and Time:* February 11, 2000, from 9:00 a.m. to 5:00 p.m., and February 12, 2000, from 8:30 a.m. to 4:00 p.m.

*Location:* The Federal South Conference Room on February 11th, and the Congressional Conference Room on February 12th, Holiday Inn on the Hill, 415 New Jersey Avenue, NW, Washington, DC 20001.

**FOR FURTHER INFORMATION CONTACT:** Carrie Billy, Executive Director, President's Advisory Board on Tribal Colleges and Universities, U.S. Department of Education, 4050 MES, 330 C. Street, SW, Washington, DC 20202–7594, Telephone: 202–260–5714.

**SUPPLEMENTARY INFORMATION:** The Board is established by Executive Order 13021 (October 19, 1996) to provide advice regarding the progress made by federal agencies toward fulfilling the purposes and objective of the order. The Board shall also provide recommendations to the President and the Secretary of Education at least annually on ways Tribal Colleges can:

(1) Use long-term development, endowment building, and master planning to strengthen institutional viability;

(2) Use the federal and private sector to improve financial management and security, obtain private sector funding support, and expand and complement federal education initiatives;

(3) Develop institutional capacity through the use of new and emerging technologies offered by the federal and private sectors;

(4) Enhance physical infrastructure to facilitate more efficient operation and effective recruitment and retention of students and faculty; and

(5) Help achieve National Education Goals and meet other high standards of education accomplishment.

The meeting agenda will include: Strategic Planning discussions; information sharing among Presidentially appointed members; and organizing the Presidential Advisory Board on Tribal Colleges and Universities into cluster committees and developing their agenda. The general public is encouraged to attend. However, space is limited and is available on a first come, first served basis.

A summary of the activities of the meeting and other related materials, which are informative to the public and consistent with the policy of section 5 U.S.C. 552b, will be available to the public within 14 days after the meeting. Records are kept of all Board proceedings and are available for public inspection at White House Initiative on Tribal Colleges & Universities, U.S. Department of Education, 4050 MES, 330 C. Street, SW, Washington, DC from 9:00 a.m. to 5:30 p.m.

Dated: February 3, 2000.

**Robert D. Muller,**

*Acting Assistant Secretary, Office of Vocational and Adult Education.*

[FR Doc. 00–2902 Filed 2–7–00; 8:45 am]

**BILLING CODE 4000–01–M**

## DEPARTMENT OF EDUCATION

### President's Board of Advisors on Historically Black Colleges and Universities Meeting

**AGENCY:** President's Board of Advisors on Historically Black Colleges and Universities, U.S. Department of Education.

**ACTION:** Rescheduled notice of meeting.

**SUMMARY:** Due to inclement weather the President's Board of Advisors on Historically Black Colleges and Universities meeting was cancelled for Friday, January 21, 2000, and is rescheduled for Wednesday, February 16, 2000. This notice sets forth the schedule and agenda of the meeting of the President's Board of Advisors on Historically Black Colleges and Universities. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

**DATE AND TIME:** Wednesday, February 16, 2000 from 9 a.m. to 5 p.m.

**ADDRESSES:** The meeting will be held at the Washington Hilton Hotel, located at 1919 Connecticut Avenue, NW., Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:** Ms. Treopia Washington, White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 1990 K Street, NW., Suite 8108, Washington, DC 20006–5120. Telephone: (202) 502–7900.

**SUPPLEMENTARY INFORMATION:** The President's Board of Advisors on Historically Black Colleges and Universities was established under Executive Order 12876 of November 1, 1993. The Board was established to advise on federal policies that impact upon Historically Black Colleges and Universities, to advise on strategies to increase participation of Historically Black Colleges and Universities in federally sponsored programs and funding opportunities, and to advise on strategies to increase private sector support for these colleges.

The meeting of the Board is open to the public. The meeting will focus on efforts to expand federal and private sector support for Historically Black Colleges and Universities.

Records are kept of all Board procedures and are available for public inspection at the White House Initiative on Historically Black Colleges and Universities located at 1990 K Street, NW., Suite 8099, Washington, DC, 20006, from the hours of 8:30 a.m. to 5 p.m.

**A. Lee Fritschler,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 00–2763 Filed 2–7–00; 8:45 am]

**BILLING CODE 4000–01–M**

## DEPARTMENT OF ENERGY

### Comment Period Extension and Additional Public Hearing for Draft Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, NV

**AGENCY:** Office of Civilian Radioactive Waste Management, Department of Energy.

**ACTION:** Notice of comment period extension and additional public hearing.

**SUMMARY:** On August 13, 1999, the U.S. Department of Energy (DOE) published a Notice of Availability (64 FR 44200) of its Draft Environmental Impact Statement (EIS) for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada (DOE/EIS–0250–D) and announced a 180-day public comment period ending February 9, 2000. Based on input from the public, DOE is now announcing an additional public hearing in San Bernardino, California. The comment period is being extended to February 28, 2000.

**DATES:** The additional public hearing will be held on February 22, 2000, from 11:00 a.m. until 2:00 p.m. and from 6:00 p.m. until 9:00 p.m. The comment period for the Draft EIS is extended to February 28, 2000.

**ADDRESSES:** The additional public hearing will be held at the following location: Radisson Hotel, 295 North E. Street, San Bernardino, CA 92401.

Written comments on the Draft EIS should be directed to: Ms. Wendy R. Dixon, EIS Program Manager, M/S 010, U.S. Department of Energy, Office of Civilian Radioactive Waste Management, Yucca Mountain Site Characterization Office, P.O. Box 30307, North Las Vegas, NV 89036–0307. Comments may also be transmitted by facsimile to 1–800–967–0739 and should include the following identifier: ''Yucca Mountain Draft EIS.'' Comments may be submitted over the Internet via the Yucca Mountain Project website at *http://www.ymp.gov*, under the listing ''Environmental Impact Statement.''

**INVITATION TO COMMENT:** The public is invited to provide comments on the Draft EIS during the comment period that ends on February 28, 2000. DOE will consider comments received during the comment period in preparation of the Final EIS. Comments received after February 28, 2000 will be considered to the extent practicable.

**FOR FURTHER INFORMATION CONTACT:** Ms. Wendy R. Dixon, EIS Program Manager, M/S 010, U.S. Department of Energy, Office of Civilian Radioactive Waste Management, Yucca Mountain Site Characterization Office, P.O. Box 30307, North Las Vegas, NV 89036–0307, Telephone 1–800–967–3477, Facsimile 1–800–967–0739. Copies of the document may also be requested by telephone (1–800–967–3477) or over the Internet via the Yucca Mountain Project website at *http://www.ymp.gov*, under the listing ''Environmental Impact Statement''; the Draft EIS also may be viewed on this website.

Issued in Washington, DC, February 2, 2000.

**Ivan Itkin,**

*Director, Office of Civilian Radioactive Waste Management.*

[FR Doc. 00–2714 Filed 2–7–00; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Chicago Operations Office, Office of Industrial Technologies; Notice of Solicitation for Financial Assistance Applcations for Cooperative Research and Development for Advanced Microturbine Systems

**AGENCY:** Chicago Operations Office, DOE.

**ACTION:** Notice of solicitation availability.

**SUMMARY:** The Department of Energy (DOE) announces its interest in receiving applications for federal assistance. The purpose of this research is to advance the state of development of one or more cost-effective technologies for integration into Advanced Microturbine Systems that will be commercialized and used in power and/or combined heat and power generation. In order to reach this goal, component and subsystem development, testing integration and demonstration of optimized and fully integrated microturbine systems will be performed.

**DATES:** The solicitation document will be available on or about February 25, 2000. Applications are due on or about April 12, 2000. Awards are anticipated by August 15, 2000.

**ADDRESSES:** The solicitation will be available on the internet by accessing the DOE Chicago Operations Office, Acquisition and Assistance Group home page at *http://www.ch.doe.gov/business/acq.htm* under the heading ''Current Solicitations'', Solicitation No. DE–SC02–00CH11016. Completed applications referencing Solicitation No. DE–SC02–00CH11016 must be submitted to the U.S. Department of Energy, Chicago Operations Office, Communications Center, Building 201, Room 168, 9800 South Cass Avenue, Argonne, IL 60439–4899, ATTN: Tonja L. Stokes, Acquisition and Assistance Group.

**FOR FURTHER INFORMATION CONTACT:** Tonja L. Stokes at 630/252–2136, U.S. Department of Energy, 9800 South Cass Avenue, Argonne, IL 60439–4899, by facsimile at 630/252–5045, or by electronic mail at *tonja.stokes@ch.doe.gov.*

**SUPPLEMENTARY INFORMATION:** The Scope of Work covers applied research in five work areas as described below as Tasks 1, 2, 3, 4 and 5. In addition to these tasks, the Scope of Work includes Subtasks A and B. Subtask A will require the participant to provide a report that will identify and quantify the potential technical market for microturbine systems. Subtask B will require the participant to provide a commercialization plan which supports the proposed technological development.

The Tasks represent an increasing progression of maturation stages for technology development. Task 1 involves concept research and development; Task 2 involves subsystem component design and development; Task 3 involves microturbine modifications for integration of advanced technologies; Task 4 involves microturbine system assembly and testing, and Task 5 involves pre-commercial demonstration. Depending on the current maturation of proposed technologies, the work may start at any task if prior work has been performed that would satisfy completion or sufficient progress of the previous task(s). For example, an applicant with an innovative concept but limited development experience for that concept may decide to apply only under Task 1. Whereas, applicants with more developed concepts may elect to bypass the initial tasks. Applications may address any combination or portions of the tasks. While it is not mandatory for applications to address only sequentially numbered tasks (e.g., applying under Tasks 1, 3 and 4 is allowable), there must be a logical sequence of the tasks to be performed based on the nature of the work to be performed.

The ultimate maturation of technologies will be reached upon the attainment of the solicitation objectives in a pre-commercial demonstration of 8000 hours (Task 5). Although it is the intention of this solicitation to support development of microturbine systems that will so culminate, there also is relevancy in gaining a better understanding of advanced technologies and their impact on microturbines. In such a case, development of a completed commercial system may not be feasible. For example, development may end prior to the maturation state of Task 5, or Task 5 may be scheduled to complete less than the 8000 hours (but more than 4000 hours as discussed below) identified in the solicitation as a goal for commercialization. Regardless of the tasks proposed, applications will raise the maturation level of the concept relative to the solicitation objectives.

Insofar as Subtask A and B are concerned, all participants will complete the program and planning report required by Subtask A, which will become part of the lowest numbered Task proposed. Additionally, participants performing work under Tasks 3, 4 and/or 5 will complete the commercialization plan required by Subtask B as a part of the lowest numbered Task proposed that is equal to or greater than 3.

All work proposed to be performed under an application must be scheduled for completion within the five year life expectancy of this program.

Under Tasks 1 and 2 that follow, the work may be performed with respect to any test device or turbines that could serve as a logical and cost effective intermediate basis for developing a technology for microturbines. However, any such technology developed under Tasks 1 and 2 must have applicability to microturbines.

Under Tasks 3, 4 and 5 that follow, all work must be performed with respect to microturbines and the demonstration required under Task 5 must be performed on a microturbine. In performing this work, one or more such turbines may be used.

Work under all tasks will be enhanced by the participation of an end user. For these tasks, this solicitation encourages the coordination of technical and administrative activities with an end user. Long-term demonstration under Task 5 should be conducted at an end user that is committed by the applicant. We encourage the demonstration to be conducted at an Industry of the Future Company.

*Task 1*—The starting point of this task shall be, as a minimum, a technological concept(s) with prior experimental evidence of its potential for meeting the solicitation objectives. The participant will identify the form, function, and fit of all components necessary to execute the proposed technology. The participant will also develop preliminary designs compatible with the properties of the advanced material system(s). The participant will also develop preliminary designs for the components. Testing on preliminary articles may be done at a scale suitable to confirm the design parameters that were used and to give qualitative and quantitative indications that the components will perform as planned.

*Task 2*—The participant will complete detailed designs of the selected subsystem components. The design process will include the investigations of all process and economic parameters for integrating the selected components into a viable microturbine system. The components will be manufactured and the sub-system will be assembled. Development and testing will be done to verify and optimize the overall approach, to provide operating and control parameters, and to establish allowable microturbine operating ranges, energy efficiency, sensitivity to fuel variability, and other factors affecting the performance and competitiveness of the microturbine system.

*Task 3*—The design of a microturbine will be adapted in parallel to component development to assure compatibility, optimum fit, and functionality. The work under this task will integrate hardware, controls, and operating procedures for startup, steady operation over the usual power range (for example 50% to 100% of rated output), planned changes (such as anticipated shutdown or transitions of operating load), and unexpected changes in power output (such as lost load) and determining such parameters as energy efficiency and emissions.

*Task 4*—The applicant shall design and fabricate a complete microturbine system that utilizes the subsystems components developed under Task 2 or elsewhere. The subsystem components shall exhibit the form, function, and fit compatible with the modified microturbine developed either under Task 3 or elsewhere. The applicant shall prove, either by subsystem rig testing or by demonstrating on a microturbine, the ability of the subsystem components to perform as planned. Such testing shall include those sensors and controllers needed to maintain testing over the design operating range of the turbine. Test results shall include relationships among performance, efficiency, emissions, temperatures, and all other relevant parameters that quantify and qualify the system for commercial delivery.

The completion of Task 4 would result in the assembly of an advanced industrial gas turbine that incorporates components completed under this task or elsewhere. The advanced industrial gas turbine shall be ready for insertion into a commercial package that is suitable for shipment, installation, and demonstration in the field under Task 5.

*Task 5*—A host site(s) will be selected for demonstration of the microturbine system developed by the completion of Task 4 or elsewhere. The participant will integrate the turbine with the balance of plant equipment that makes the microturbine system compatible with the needs of a specific host site(s). The completion of Task 5 would result in an 8000-hour demonstration of an advanced microturbine that can be reasonably expected to meet one or more project objectives. At a minimum, the demonstration shall comprise 4000 hours of operation at a host site that is compatible with an operating rate of at least 4000 hours per annum.

The applicant will complete a coordinated plan for the demonstration that incorporates the perspectives of all relevant parties, including the host site. The plan will also assign responsibilities on all matters necessary to execute the demonstration plan, such as business arrangements, balance of plant equipment, site construction, site integration, periodic inspections of hardware, visitations of third parties, data acquisition at the host site to verify expected benefits, and obtainment of environmental, construction, operating, and other permits.

In support of the Office of Industrial Technologies and the nation's industries, it is preferred that the demonstration be conducted at an Industry of the Future Company. If it is not feasible to conduct the demonstration at an Industry of the Future Company or if there are valid reasons to do the demonstration elsewhere, a host site other than an Industry of the Future Company may be proposed. Host sites comprising buildings or natural gas and electric utility sites may be relevant to programs of the Office of Energy Efficiency and Renewable Energy, Office of Building and Community Systems, and the Office of Power Technologies respectively. In such cases, the result of the demonstration will be coordinated with these offices as feasible and appropriate by the DOE program manager.

The demonstration shall be representative of significant market segments of the distributed power generation industry. As a result, the successful demonstration at the host site will be expected to exemplify the resolution of the typical barriers (such as technical, environmental, industry acceptance, and control issues related to an interconnection to the existing local utility transmission and distribution grid) that impede the widespread adoption of distributed generation. In this regard, all hours of operation may be accumulated under the demonstration while the host site is interconnected to the existing local utility grid that exists for the routine transmission and distribution of electric power. Accordingly, the balance of plant equipment may be sufficient to generate and condition such electric power, and all hardware may be provided for interconnection to the local utility grid.

*Subtask A*—Subtask A is required for any applicant selected for award and will be performed in conjunction with the lowest numbered task which the participant will do work. The completed report must be received within 90 days of award of the cooperative agreement and will be submitted in accordance with topical report requirements.

With emphasis on the Industries of the Future Companies, but not excluding other applicants, the report will further define completed distributed generation and combined heat and power systems likely to be available at the successful completion of this project. The participant will identify and quantify the potential technical markets for such systems. In areas such as energy efficiency, performance, cost, and emissions, the participant will provide detailed rationale that supports these projections. All barriers such as the lack of uniform grid connection standards that will impact on the technical market will be identified. However, any barriers that are out of the control of the participant shall be deemed not to impact on the projected technical market.

*Subtask B*—Subtask B is required for any applicant selected for award that proposed on Tasks 3, 4, and/or 5 and will be performed in conjunction with the lowest numbered task proposed. The completed report must be received within 180 days of initiation of the lowest numbered Task (3–5) under which the participant will do work. This report will be submitted in accordance with topical report requirements.

The main impetus for this work is the commercial implementation of efficiency, clean, and cost-effective microturbines in distributed generation and combined heat and power system(s). It is essential that a commercialization plan support the proposed technological development. Participants doing work under Tasks 3, 4, or 5 shall complete commercialization plans and strategies for all relevant functions in the commercialization process such as cost-effective manufacturing, marketing, production volumes, and support for the participant's microturbine system. The commercialization plan will emphasize market applications in the Industries of the Future Companies.

As applicants may apply under one or more of the five tasks within the solicitation's Scope of Work, there is a wide range in the number of potential awards and award values. DOE expects to award six (6) to ten (10) cooperative agreements under this solicitation. It is estimated that individual awards will range in value between approximately $500,000.00 and $10,000,000.00 of DOE funding and will require recipient cost sharing. A minimum non-federal cost sharing commitment of 30% of the total cost for Tasks 1 and 2, 45% of the total cost for Tasks 3 and 4, and 60% of the total cost for Task 5 is required.

Estimated DOE funding is $40 million over a five-year period. DOE reserves the right to fund any, all, or none of the applications submitted in response to this solicitation. All awards are subject to the availability of funds.

Any non-profit or for-profit organization or other institution of higher education, or non-federal agency or entity is eligible to apply, unless otherwise restricted by the Simpson-Craig Amendment. In addition, applicants must satisfy the requirements of the Energy Policy Act in order to be eligible for award.

Issued in Argonne, Illinois on February 1, 2000.

**James R. Bieschke,**

*Acquisition and Assistance Group, Acting Group Manager.*

[FR Doc. 00–2796 Filed 2–7–00; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Office of Science, Basic Energy Sciences Advisory Committee

**AGENCY:** Department of Energy.

**ACTION:** Notice of Open Meeting.

**SUMMARY:** This notices announces a meeting of the Basic Energy Sciences Advisory Committee (BESAC). Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Monday, February 28, 2000, 8:15 a.m. to 5:15 p.m.; Tuesday, February 29, 2000, 8:30 a.m. to 4:30 p.m.; and Wednesday, March 1, 2000, 8:30 a.m. to 12:00 p.m.

**ADDRESS:** Gaithersburg Washingtonian Marriott Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

**FOR FURTHER INFORMATION CONTACT:** Sharon Long; Office of Basic Energy Sciences; U.S. Department of Energy; 19901 Germantown Road; Germantown, MD 20874–1290; Telephone: (301) 903–5565.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Meeting:* The purpose of this meeting is to provide advice and guidance with respect to the basic energy sciences research program.

*Tentative Agenda:* Agenda will include discussions of the following:

**Monday, February 28, 2000**

- Welcome and Introduction
- Remarks from Acting Director, Office of Science
- News from Basic Energy Sciences
- President's R&D Focus Areas for FY 2001
- BES Discussion of R&D Focus Areas for FY 2001
- Report of the Neutron Scattering Subpanel
- Update on 4th Generation Synchrotron Light Source Activities

**Tuesday, February 29, 2000**

- Report of the Electron Beam Microcharacterization Center Review Subpanel
- Report of the Advanced Light Source Subpanel
- Brief overviews of BES programs

**Wednesday, March 1, 2000**

- Advisory Committee Discussion of Issues
- Review of Calendar Year 2000 Calendar

*Public Participation:* The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Sharon Long at 301–903–6594 (fax) or *sharon.long@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days prior to the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

*Minutes:* The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; 1E–190, Forrestal Building; 1000 Independence Avenue, SW; Washington, DC 20585; between 9:00 a.m. and 4:00 p.m., Monday through Friday, except holidays.

Issued in Washington, D.C. on February 3, 2000.

**Rachel Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 00–2794 Filed 2–7–00; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

### Building Energy Codes Program: Workshop on Analysis of Standard 90.1–1999

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

**ACTION:** Notice of public workshop.

**SUMMARY:** The Department of Energy is in the process of making a determination as to whether ASHRAE/IESNA Standard 90.1–1999 would save energy in commercial buildings. In doing so, we are performing a comparative analysis of the 1989 edition of that standard to the 1999 edition and seeking input on our proposed approach to carrying out that analysis.

**DATES:** The Department will hold a public workshop on February 17, 2000, in Washington, DC. Please send requests to speak at the workshop so that we receive them by 4:00 p.m., February 14, 2000. The Department must also receive ten (10) copies of statements to be given at the public workshop no later than 4:00 p.m., February 15, 2000, and we request that you provide a computer diskette of each statement in WordPerfect ™ at that time.

**ADDRESSES:** Please address requests for the proposed methodology for the comparative analysis or requests to make statements at the public workshop and copies of those statements to Brenda Edwards-Jones at the following address: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–41, 1000 Independence Avenue, SW,

Washington, DC 20585–0121. You should identify documents as either, ''Request for Proposed Methodology,'' or ''Request to Speak,'' or ''Statement,'' followed by, ''Workshop on Analysis of Standard 90.1-1999''. The workshop will begin at 9:00 a.m., on February 17, 2000, in Room 1E–245 at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC.

You can read copies of the transcript of the public workshop in the Freedom of Information Reading Room (Room No. 1E–190) at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may obtain copies of the referenced standard ASHRAE/IESNA Standard 90.1–1999 by request from the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., 1791 Tullie Circle, NE, Atlanta, GA 30329, (404) 636–8400, *http://www.ASHRAE.org.* You may obtain a copy of the ''Proposed Methodology for a Comparative Analysis of ASHRAE/IESNA Standard 90.1–1989 and Standard 90.1–1999'' from the Department by request from the address listed above. The proposed methodology may also be downloaded from the Office of Building Technical Assistance web site listed below.

The latest information regarding the public workshop is available on the Office of Building Technical Assistance web site at the following address: http://www.eren.doe.gov/buildings/codes—standards/.

**FOR FURTHER INFORMATION CONTACT:** Jean J. Boulin, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–42, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–9870, email: Jean.Boulin@EE.DOE.gov

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

### *A. Authority*

Section 304(b)(2) of Title III of the Energy Conservation and Production Act, as amended (ECPA or Act), requires the Secretary of Energy (We, DOE, or the Department) to determine whether the revisions of ASHRAE/IESNA Standard 90.1 embodied in the 1999 edition will improve energy efficiency in commercial buildings. A notice of the determination is required to be published in the **Federal Register**. If the Secretary makes an affirmative determination, each State is required to review and update the provisions of its commercial building code regarding energy efficiency in accordance with Standard 90.1–1999. Each State is further required, within two years of an affirmative determination, to certify and demonstrate to the Secretary that its State commercial building code meets or exceeds the revised standard. If, on the other hand, the Secretary determines that Standard 90.1–1999 will not improve energy efficiency in commercial buildings, then State commercial code provisions regarding energy efficiency shall continue to meet or exceed Standard 90.1–1989.

### *B. Background*

In preparation for making the determination, we are doing a comparative analysis between the 1989 edition and 1999 edition of Standard 90.1. An initial analysis was prepared in the summer of 1999 and the results were presented to the Standing Standards Project Committee 90.1, the ASHRAE committee responsible for revising Standard 90.1. It was also shared with other interested parties. At that time we identified the shortcomings that we perceived in the analysis, and suggested how some could be resolved. Comments were requested on these issues and other issues that people might identify. We have developed an approach to complete that analysis that addresses these issues. We are holding a workshop to obtain comment on the approach and to identify any other issues. This workshop is the subject of today's notice.

### *C. Summary of Proposed Comparative Analysis*

We propose to carry out both a qualitative and quantitative comparison of the Standard 90.1-1989 and Standard 90.1–1999. The proposed analysis would provide qualitative comparisons of the stringencies between the two editions of Standard 90.1 in the scope of the standard; the building envelope requirements; the building lighting requirements; the building mechanical equipment requirements; and the paths to compliance. The quantitative comparison of energy codes would be done on whole building energy simulations of buildings built to each standard. We propose to simulate seven representative building types in 11 representative U.S. climates. The detailed methodology for the quantitative comparison is presented in ''Proposed Methodology for a Comparative Analysis of ASHRAE/IESNA Standard 90.1–1989 and Standard 90.1–1999.''

## II. Discussion

### *A. Proposed Comparative Analysis of Standard 90.1–1989 and Standard 90.1–1999*

We propose to carry out both a qualitative and quantitative comparison of the Standard 90.1–1989 and Standard 90.1–1999.

Qualitative Comparisons

The proposed analysis would provide qualitative comparisons of the stringencies between the two editions of Standard 90.1 in each of the following areas:

Scope of the standard,
Building envelope requirements,
Building lighting requirements,
Building mechanical equipment requirements,
Paths to compliance.

The emphasis of the qualitative comparison would differ between the envelope, lighting, and mechanical sections. In the building envelope section, the comparison would focus on the impact of the different building envelope requirements on the building heating and cooling loads for different building types and climates. The envelope comparison would examine requirements for all envelope components, including roofs, walls, floors, and fenestration as well as explore variations in construction types and in the window-to-wall ratio.

In the lighting requirements comparison, the focus would be primarily on the impact the different lighting requirements have on lighting energy use, as well as on building loads. The comparison would look separately at the whole building and space-by-space lighting requirements in both standards in a variety of commercial building types, as well as examine the affect of any ''additional lighting power allowances.''

The mechanical requirements comparison would be divided into comparisons of equipment efficiency requirements and system design requirements. The system design requirements affect both the system efficiency, system load, and may have direct energy impacts due for instance to fan design. Tables of relative stringency and estimated positive or negative national energy impact would be prepared based on practical application of the system design requirements in each standard.

Each standard has multiple ways to demonstrate compliance. We would enumerate the multiple paths to compliance, but do not propose a detailed comparison of the relative

stringency of alternate paths internal to a single standard or between standards. The large quantity of variables among the alternative compliance paths would make such analysis prohibitive to undertake. Further, we know of no data on which to base the selection of representative requirements for such an analysis. Assignment of requirements would be arbitrary. Rather we would focus on what we believe is the most common approach to using the standard in question for particular building types.

Quantitative Comparison

We propose to base the quantitative comparison of energy codes on whole building energy simulations of buildings built to each standard. We would simulate seven representative building types in 11 representative U.S. climates. The simulated buildings would utilize the 15 zone building prototype used in previous DOE building research, and the energy use intensities for each zone from the simulations would be scaled to correctly reflect variations in characteristic building sizes and shapes for each representative building type. Energy Use Intensities (EUIs) developed for each representative building type would be weighted by total national square footage in each representative building category to provide an estimate of the national energy savings. Note that only changes to new buildings would be considered in this quantitative analysis. The scope of ASHRAE 90.1–1999 also addresses additions and renovations to existing buildings. While this may have a significant energy impact, we do not believe the data is available to quantify this impact. We propose to point out this difference in the qualitative comparison of the two standards.

*B. Public Workshop*

1. Procedures for Submitting Requests To Speak

You will find the time and place of the public workshop listed at the beginning of this notice. The Department invites any person who would like to attend the public workshop to notify Brenda Edwards-Jones at (202) 586–2945. You may hand deliver requests to speak to the address indicated at the beginning of this notice between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays, or send them by mail.

2. Conduct of Workshop

The workshop will be conducted in an informal, conference style. The Department may use a professional facilitator to facilitate discussion, and a court reporter will be present to record the transcript of the meeting. We will present summaries of comments received before the workshop, allow time for presentations by workshop participants, and encourage all interested parties to share their views on issues affecting the proposed analysis. Following the workshop, we will provide an additional one week comment period, during which interested parties will have an opportunity to present further comment on the proposed analysis.

The Department will arrange for a transcript of the workshop and will make the entire record of the workshop, including the transcript, available for inspection in the Department's Freedom of Information Reading Room. Any person may purchase a copy of the transcript from the transcribing reporter.

*C. Issues Requested for Comment*

The Department of Energy is interested in receiving comments and/or data concerning issues relating to the comparative analysis of Standard 90.1–1989 and Standard 90.1–1999. We are especially interested in any comments or data regarding:

(1) The seven building types listed below and selected for analysis.

(2) The 11 representative climate locations proposed for the analysis.

(3) The frequency of use of alternative paths to compliance in building standards (e.g. space-by-space versus whole building lighting power allowances).

(4) New non-residential building construction data by State or census division and building type.

(5) Data to quantify the impact of Standard 90.1–1999 on additions and renovations to existing buildings.

(6) The prevalence of the semi-heated building envelope subcategory in the building types proposed for analysis.

(7) Specific comments on the preliminary energy savings analysis distributed in June 1999.

The seven building types proposed for the analysis are Office, Retail, Education, Lodging, Public Assembly, Food Service, and Warehouse and Storage. It is currently proposed to include outpatient health care buildings in the office building category. These buildings together will account for approximately 80% of commercial building energy use, and national weights for each of these building categories can be readily obtained through the Commercial Buildings Energy Consumption Survey (CBECS) data. One category of building which is conspicuously absent is multifamily dwellings over three stories above grade. Relevant data on current stock, construction, or building configuration for this category would allow its inclusion in the analysis.

The 11 climate variations proposed for the analysis are the same as those used in the National Energy Model, version 5, and in the initial analysis and they are proposed to be represented by the same climate locations used in that analysis. The climate locations are: Providence, Rhode Island; Detroit, Michigan, Minneapolis, Minnesota; Knoxville, Tennessee; Shreveport, Louisiana, Tampa, Florida; Denver, Colorado; Phoenix, Arizona; Seattle Washington; Fresno, California; and Los Angeles, California. We would be interested to know of any data or analysis that would indicate that these are inappropriate for this analysis, and what alternatives are more appropriate and why.

This analysis proposes to set criteria for buildings using what are believed to be the most common paths to compliance. Any data describing the relative frequency of use of alternative paths to compliance would be appreciated as would more detailed data on building construction by State, region and building type. Additionally, we are interested in data regarding the type and fraction of buildings which should be modeled as semi-heated buildings for the 90.1–1999 standard. Finally, as the methodology proposed is an extension of what was done for the preliminary analysis in June, any comments on that methodology and the questions raised in the presentation, would be appreciated.

These data will help us to make a determination whether ASHRAE/IESNA Standard 90.1–1999 will improve energy efficiency in commercial buildings.

Issued in Washington, DC, on February 2, 2000.

**Dan W. Reicher,**

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

[FR Doc. 00–2793 Filed 2–7–00; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Notice of Competitive Financial Assistance for the Office of Energy Efficiency and Renewable Energy

**AGENCY:** U.S. Department of Energy.

**ACTION:** Notice of Competitive Financial Assistance Solicitation, State Science Initiative for Applied Research, Development and Demonstration Projects.

**SUMMARY:** The Department of Energy (DOE) is announcing a competitive solicitation for applications for cooperative agreements to pursue applied research, development and demonstration (including field testing) involving energy efficiency. Demonstrations will be limited to field tests which provide critical operational feedback to researchers and/or manufacturers for the purpose of improving technical performance or lowering costs.

It is estimated that funding of approximately $6 million will be available for 7 to 10 awards under this solicitation in fiscal year 2000. Seven priority areas of interest have been identified through a collaborative planning process with the States during the past year: (1) Bio-based products and bioenergy; (2) Fuel cells and microturbines; (3) Petroleum industry; (4) Schools; (5) Combined heat and power and distributed generation; (6) Data acquisition; and (7) Transportation. The awards will be for a period of one to three years.

Proposals will be subject to the objective merit review procedures for the Office of Energy Efficiency and Renewable Energy (EERE). Eligibility under this solicitation is restricted to state energy offices and state energy research organizations. These organizations may enter teaming arrangements with industry, DOE national laboratories, private educational institutions, non-profit organizations, and Native American organizations.

Applications by DOE management and operating contractors (M&O) will not be eligible for award. However, applications that include performance of a portion of the project, not to exceed 50 percent of the total effort, by an M&O contractor will be eligible provided that the proposed use of any such entity is specifically authorized in writing by the DOE Contracting Officer or authorized designee responsible for the M&O.

This solicitation provides opportunities to leverage funds for important Research, Development and Demonstration (RD&D) designed to advance technologies that promote energy efficiency. It is anticipated that a minimum of 20 percent non-Federal cost-sharing will be required for all projects receiving awards. Any proposed cost-sharing above the minimum 20 percent will be given favorable consideration in the selection process.

**DATES:** The formal solicitation document, which will include greater detail about specific program areas of interest, application instructions, due dates and evaluation criteria, is expected to be issued later in February 2000. Prospective applicants will be encouraged to submit a pre-application, not longer than two pages, within 20 days following issuance of the solicitation. All pre-applications must be submitted by an eligible applicant. A response to the pre-application encouraging or discouraging a formal application will be communicated to the applicant. Submission of a pre-application is not a requirement for submitting an application under this solicitation.

**ADDRESSES:** The formal solicitation document will be disseminated electronically as Solicitation No. DE–PS36–00GO10499 through the Golden Field Office's World Wide Web site at http://www.eren.doe.gov/golden/solicitations.html.

**FOR FURTHER INFORMATION CONTACT:** Contact the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Golden Field Office, 1617 Cole Blvd., Golden, CO 80401. The Contract Specialist is James Damm, at FAX (303) 275–4788 or e-mail at jim__damm@nrel.gov. All questions or comments concerning this announcement must be in writing and should be directed to the attention of Mr. Damm. The preferred method of submitting questions and/or comments is through e-mail. Only questions and comments submitted to Mr. Damm will be considered. Questions and/or comments requiring coordination with EERE program officials will be directed by Mr. Damm to the cognizant offices.

**SUPPLEMENTARY INFORMATION:** The Office of EERE implements DOE's strategic objectives of increasing the efficiency and productivity of energy use, while limiting environmental impacts; reducing the vulnerability of the U.S. economy to disruptions in energy supplies; ensuring that a competitive electric utility industry is in place that can deliver adequate and affordable supplies with reduced environmental impacts; supporting U.S. energy, environmental, and economic interests in global markets; and delivering leading-edge technologies.

The purpose of the planned solicitation is to pursue applied research, development, and demonstration (including field testing) with state energy offices and state energy research organizations in the following technology areas (or combination of technology areas) as described below:

**1. Bio-Based Products and Bioenergy**

Applications will be accepted on applied research and development for promoting the use of crops, trees and residues to (a) replace conventional feedstocks to make chemical products; or (b) enhance existing, or produce new, forest or agricultural (non-food, non-feed) products. We anticipate that proposals will include, but are not limited to, R&D on: (a) Biotechnology for accelerating the development or deployment of plant feedstocks that could be used by companies to perform biochemical and other conversions to produce chemicals and other products; (b) plant physiology controlling important traits affecting crop and forest productivity; (c) improved production methods and practices to ensure that an adequate supply of plant-derived material is available for industrial use; or (d) improved conversion methods or practices for the production of bio-based chemicals and products. Priority will be given to projects that integrate the areas of plant science and production with processing and utilization of new chemical, forest or agricultural (non-food, non-feed) products. Such integrated projects that also show a linkage to the biopower and biofuels technologies are encouraged.

**2. Fuel Cells and Microturbines**

Applications will be accepted for applied research and technology field tests focused in both the buildings and transportation sectors. Proposals in the fuel cells technology area should include, but are not limited to, applied research and field testing of: (a) Proton exchange membrane (PEM) fuel cells adapted for use in residential and light commercial facilities, particularly the operation of PEM fuel cells in a variety of existing building types (*e.g.,* small commercial retail, light manufacturing, multi-family residential) under various operating scenarios; (b) other types of fuel cells (*e.g.,* molten carbonate, solid oxide) in commercial and industrial facilities; (c) fuel cell performance in on-road vehicles under various operating conditions; and (d) vehicle fleets as a test bed for improving current systems or advancing technologies to generate hydrogen from natural gas reforming or through electrolysis.

In the microturbine technology area, cooperative projects should focus on applied research and field testing over a range of applications, geographic locations, and operating systems: (a) To demonstrate technical performance reliability and durability and to provide feedback for further technology development; and (b) to demonstrate

microturbine technology improvements or upgrades, including components or subsystems (e.g., gas compressors, recuperators, and combustors).

**3. Petroleum Industry**

Applications will be accepted for applied research and testing of motors and other energy-using equipment in domestic oil fields to assess usage and modify or replace equipment to reduce energy costs. Examples of efforts with the states could include, but are not limited to: (a) Improving sensor and control technologies for reducing electricity demand in the oil fields; (b) developing models for field energy use assessments; and (3) developing guidelines for equipment replacement.

**4. Schools**

Applications will be accepted for applied research and technology field validations/operational tests which accelerate adoption of new technologies to improve the energy efficiency of school facilities. This work should be focused in the following areas:

(a) *Building Technologies*—Conduct applied research and technology field testing through an integrated buildings approach in a range of technology areas, such as: space conditioning and refrigeration; other energy-efficient appliances; super-efficient windows and lighting; productivity enhancing approaches (e.g., increased daylighting); and peak shaving/load shifting technologies that reduce peak air conditioning demand during the day.

(b) *Advanced Technologies*—Conduct applied research and field testing of (i) distributed generation technologies, including but not limited to, fuel cell, microturbine and cogeneration applications in school facilities; and (ii) advanced energy technologies for use in school facilities.

(c) *Technology Integration*—Develop a mechanism that will take the results of the building and advanced technologies research and field testing and integrate them into a comprehensive program which supports, but is not limited to, the development of technical design guidelines for new school construction and renovations which will be used by architects, engineers and product manufacturers. Emphasis also will be placed on building design and financing templates and related facilitation of financial assistance aimed at integrated building efficiency improvements.

**5. Combined Heat and Power (CHP) and Distributed Power**

Applications will be accepted for work involving distributed power and combined heat and power technologies. This work includes, but is not limited to, applied research and field testing to address:

(a) Transmission constraints, interconnect barriers, and to encourage strategic placement of distributed power technologies, consistent and streamlined siting and permitting regulations, and an equipment pre-certification program to avoid long and costly permitting delays;

(b) New commercial and industrial development and urban infill redevelopment for distributed generation utilizing several DOE developed technologies (e.g., fuel cells, microturbines, industrial turbines, photovoltaics, wind, solar geothermal and energy storage) and demand-side management measures to examine systemic operational parameters and capabilities;

(c) Advanced distributed power and combined heat and power technologies at state and federal facilities; and

(d) Hybrid applications (e.g., hybrid wind/fuel cell/microturbine applications) for institutional and commercial application.

**6. Data Acquisition**

Applications will be accepted for: (a) Reviewing and developing complementary State and Federal energy data sets; (b) expanding energy data sets; and (c) redesigning federal and state data collection instruments to evaluate the changing structure of the electric power industry and the natural gas industry.

**7. Transportation**

Emphasis should be placed upon applied research and technology field validations/operational tests designed to maximize the benefits of clean and efficient vehicle technologies. These activities include, but are not limited to: (a) Testing alternative fuels performance in on-road vehicles under operating conditions to test propulsion systems; (b) research on operating a refueling infrastructure for alternative fuel vehicles; (c) transportation applications, such as fuel cells, hybrid propulsion systems, motors, controllers, and sensors.

Additional information about the programs of the Office of EERE can be obtained at the Office's Internet site at http://www.eren.doe.gov/ee.html.

Issued in Golden, CO

Dated: February 1, 2000.

**Jerry Zimmer,**

*Procurement Director, Golden Field Office.*

[FR Doc. 00–2795 Filed 2–7–00; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP00–72–000]**

## ANR Pipeline Company; Notice of Application

February 2, 2000.

Take notice that on January 27, 2000, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP00–72–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon natural gas transportation service provided to Texas Gas Transmission Corporation (Texas Gas) under an individually certificated agreement, 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).

ANR proposes to abandon a firm natural gas transportation service provided to Texas Gas under ANR's Rate Schedule X–153 contained in its respective FERC Gas Tariff, Original Volume No. 2. ANR states that the service agreement provided for an initial term of fifteen years from the date of first deliveries and from year to year thereafter, unless canceled by either party. ANR asserts that transportation of the gas commenced on February 7, 1985. ANR states that Texas Gas has requested that the parties terminate the transportation service effective February 27, 2000 and requests that authority to abandon the transportation service provided under Rate Schedule X–153 be made effective as of that date. ANR declares that it does not propose to abandon any facilities pursuant to the instant application.

Any person desiring to be heard or to make any protest with reference to said Application should on or before February 23, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 18 CFR 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene

in accordance with the Commission's Rules.

Take further notice that pursuant to the authority contained in and subject to the jurisdiction conferred upon the 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 petition 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 abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission, on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–2781 Filed 2–7–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP00–173–000]**

## ANR Pipeline Company; Notice of Proposed Change to FERC Gas Tariff

February 2, 2000.

Take notice that on January 28, 2000, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet, with an effective date of March 1, 2000.

Second Revised Sheet No. 45E.1

ANR states that the purpose of the filing is to designate one additional point as being eligible for service under its existing Rate Schedule IPLS.

ANR states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–2790 Filed 2–7–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP00–171–000]**

## Columbia Gulf Transmission Company; Notice of Proposed Change in Gas Tariff

February 2, 2000.

Take notice that on January 28, 2000, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, with a proposed effective date of March 1, 2000.

Columbia Gulf is making the instant filing to reflect various administrative revisions to its FERC Gas Tariff, Second Revised Volume No. 1 to reflect items including, but not limited to, changes to date references on various forms of service agreements and revisions to company contact information.

Columbia Gulf states further that copies of this filing have been mailed to all of its firm and interruptible customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–2788 Filed 2–7–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP85–60–013]**

## Overthrust Pipeline Company; Notice of Report of Refunds

February 2, 2000.

Take notice that on January 27, 2000, Overthrust Pipeline Company tendered for filing a refund report. Overthrust states that the report documents refunds of amounts pertaining to and detailing the Deferred Income Tax (DIT) refund payments for the year 1999.

Overthrust states that it is filing the refund report pursuant to a Commission order dated May 21, 1991, ''Order Approving Settlement with Modifications'' in Docket Nos. RP85–60–000 and –002. Overthrust explains the Article V of the settlement, as modified, requires Overthrust to file an annual report 60 days after making the actual DIT refunds.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before February 9, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–2785 Filed 2–7–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–344–014]**

### Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 2, 2000.

Take notice that on January 27, 2000 Texas Gas Transmission Corporation (Texas Gas) tendered for filing, as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets:

Thirty-third Revised Sheet No. 10
Sixteenth Revised Sheet No. 10A
Twenty-ninth Revised Sheet No. 11
Twenty-first Revised Sheet No. 11A
Seventeenth Revised Sheet No. 11B
Thirty-first Revised Sheet No. 12
Tenth Revised Sheet No. 12A
Eleventh Revised Sheet No. 15
Twelfth Revised Sheet No. 16
Eleventh Revised Sheet No. 17

Texas Gas states that this filing is made to implement the provisions of Article XI, Section 1(a), of the Offer of Settlement and Explanatory Statement in Docket No. RP97–344, *et al.,* and, as presented in the referenced Appendix D, page 2, of said Settlement, Texas Gas, in the instant filing, proposes to reflect the unit rate reductions, effective March 1, 2000, resulting from the termination of the ANR X–153 contract. The attached tariff sheets reflect reductions to the NNS and FT demand rates of ($0.0025), NNS and FT commodity rates of ($0.0009), SGT rates of ($0.0059), and IT rates of ($0.0034).

Texas Gas states that copies of this filing have been served upon all of Texas Gas's jurisdiction customers, all parties on the Commission's official service list in this proceeding, interested state commissions, and the FERC Staff.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–2786 Filed 2–7–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP00–172–000]**

### Texas Gas Transmission Corporation; Notice of Annual Cash-Out Report

February 2, 2000.

Take notice that on January 28, 2000, Texas Gas Transmission Corporation (Texas Gas) tendered for filing a report that compares its cash-out revenues with cash-out costs for the annual billing period November 1, 1998 through October 1, 1999.

Texas Gas states that the filing is being made in accordance with the Federal Energy Regulatory Commission's December 16, 1993, ''Order on Third Compliance Filing and Second Order on Rehearing'' in Docket Nos. RS92–24, et al. There is no rate impact to customers as a result of this filing.

Texas Gas states that copies of this filing have been served upon all of Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before February 9, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–2789 Filed 2–7–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EG00–49–000]**

### TransAlta Centralia Generation LLC; Notice of Amendment to Application for Commission Determination of Exempt Wholesale Generator Status

February 1, 2000.

Take notice that on January 24, 2000, TransAlta Centralia Generation LLC (TACG) tendered for filing with the Federal Energy Regulatory Commission (FERC), an amendment to its application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Any person desiring to be heard concerning the amended application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the amended application. All such motions and comments should be filed on or before February 22, 2000, and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection or on the Internet at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–2780 Filed 2–7–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP98–104–004]**

### Williston Basin Interstate Pipeline Company; Notice of Pooling Report

February 2, 2000.

Take notice that on January 24, 2000, Williston Basin Interstate Pipeline Company (Williston Basin), filed a Report of Pooling Activity pursuant to a Letter Order dated January 7, 1999 regarding the above-captioned proceeding.

Williston Basin stated that it is complying with the Letter Order by submitting its report of pooling and nomination aggregation activity for the first year of pooling service.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before February 9, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–2787 Filed 2–7–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP00–174–000]**

## Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

February 2, 2000.

Take notice that on January 27, 2000, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, Sixth Revised Sheet No. 288A, to become effective February 1, 2000.

Williston Basin states that on January 18, 2000, it filed with the Commission, pursuant to Order Nos. 636, et seq., and Subsection 39.3.1 of the General Terms and Conditions of Williston Basin's FERC Gas Tariff, Second Revised Volume No. 1, certain tariff sheets to implement the recovery of Gas Supply Realignment Transition Costs. The tariff sheets in the referenced filing proposed a new reservation charge surcharge of 43.714 cents per equivalent dekatherm of Maximum Daily Delivery Quantity applicable to firm transportation service and a new GSR unit rate of 0.441 cents per dekatherm applicable to Rate Schedule IT–1.

Williston Basin also states it has come to its attention that it inadvertently neglected to include reference to the GSR surcharge in Subsection 21.6.1, of the General Terms and Conditions of its Tariff. Williston Basin states that it is filing Sixth Revised Sheet No. 288A to include reference to the GSR surcharge in Subsection 21.6.1, Reservation Rate Discounts, of the General Terms and Conditions of its Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–2791 Filed 2–7–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER00–978–000, et al.]**

## Bangor Hydro Electric Company et al.; Electric Rate and Corporate Regulation Filings

February 1, 2000.

Take notice that the following filings have been made with the Commission:

### 1. Bangor Hydro Electric Company

[Docket No. ER00–978–000]

Take notice that on January 27, 2000, Bangor Hydro-Electric Company tendered for filing a Notice of Withdrawal of its December 30, 1999 filing of Notices of Cancellation of its FERC Electric Rate Schedules Nos. 7 (Eastern Maine Electric Cooperative, Inc.), 27 (Swan's Island Electric Cooperative), and 52 (Isle Au Haut Electric Power Company) to be effective March 1, 2000.

Copies of the filing were served upon the service list in this proceeding, the affected purchasers, Swan's Island Electric Cooperative, Eastern Maine Electric Cooperative, Inc., Isle Au Haut Electric Power Company, the Maine Public Utilities Commission, and Maine Public Advocate.

*Comment date:* February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 2. California Power Exchange Corporation, California Power Exchange Corporation, Avista Corporation, Hardee Power Partners Limited, Elwood Energy LLC, Tampa Electric Company

[Docket Nos. ER00–1217–000; ER00–1218–000; ER00–1235–000; ER00–1237–000; ER00–1236–000; and ER00–1238–000]

Take notice that on January 27, 2000, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending December 31, 1999.

*Comment date:* February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 3. Delmarva Power & Light Company

[Docket No. ER00–1219–000]

Take notice that on January 27, 2000, Delmarva Power & Light Company (Delmarva) filed a new Interconnection Agreement dated January 25, 2000 between Delmarva and the City of Dover, Delaware.

Delmarva requests an effective date of February 1, 2000, in accordance with the terms of the agreement.

The submittal also includes a notice of withdrawal by the City of Dover and its agent, Duke/Louis Dreyfus, LLC, of their requests for rehearing regarding interconnection agreement issues in Docket Nos. OA97–586–001, EL98–27–001, ER97–3189–019 and ER99–2367–001.

*Comment date:* February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 4. MidAmerican Energy Company

[Docket No. ER00–1225–000]

Take notice that on January 27, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50303 submitted for filing with the Commission a Service Agreement dated October 28, 1999, with Central Illinois Light Company entered into pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff, Original Volume No. 5 (Tariff).

MidAmerican requests an effective date of January 1, 2000 for this Agreement, and accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on Central Illinois Light Company, the Iowa Utilities Board, the Illinois

Commerce Commission and the South Dakota Public Utilities Commission.

*Comment date:* February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**5. MidAmerican Energy Company**

[Docket No. ER00–1226–000]

Take notice that on January 27, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50303 submitted for filing with the Commission a Service Agreement dated December 1, 1999, with Peoples Energy Services entered into pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff, Original Volume No. 5 (Tariff).

MidAmerican requests an effective date of December 27, 1999 for this Agreement, and accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on Peoples Energy Services, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

*Comment date:* February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**6. MidAmerican Energy Company**

[Docket No. ER00–1227–000]

Take notice that on January 27, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50303 submitted for filing with the Commission a Service Agreement dated November 23, 1999, with New Energy, Inc. entered into pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff, Original Volume No. 5 (Tariff).

MidAmerican requests an effective date of January 1, 2000 for this Agreement, and accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on New Energy, Inc., the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

*Comment date:* February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**7. MidAmerican Energy Company**

[Docket No. ER00–1228–000]

Take notice that on January 27, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50303 submitted for filing with the Commission a Service Agreement dated January 3, 2000, with TXU Energy Trading Company entered into pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff, Original Volume No. 5 (Tariff).

MidAmerican requests an effective date of January 1, 2000 for this Agreement, and accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on TXU Energy Trading Company, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

*Comment date:* February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**8. MidAmerican Energy Company**

[Docket No. ER00–1229–000]

Take notice that on January 27, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50303 submitted for filing with the Commission a Service Agreement dated October 1, 1999, with Illinova Power Marketing, Inc. entered into pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff, Original Volume No. 5 (Tariff).

MidAmerican requests an effective date of January 1, 2000 for this Agreement, and accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on Illinova Power Marketing, Inc., the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

*Comment date:* February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**9. MidAmerican Energy Company**

[Docket No. ER00–1230–000]

Take notice that on January 27, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50303 submitted for filing with the Commission a Service Agreement dated October 6, 1999, with NRG Power Marketing, Inc. entered into pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff, Original Volume No. 5 (Tariff).

MidAmerican requests an effective date of January 1, 2000 for this Agreement, and accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on NRG Power Marketing, Inc., the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

*Comment date:* February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**10. Northern States Power Company (Minnesota Company)**

[Docket No. ER00–1231–000]

Take notice that on January 27, 2000, Northern States Power Company (Minnesota) (NSP) tendered for filing the Amendment No.1 to the Distribution Facilities Agreement (Contract) between the City of Arlington (City) and NSP.

NSP requests that the Commission accept the Agreements effective January 1, 2000, and requests waiver of the Commission's notice requirements in order for the Amendment and Revisions to be accepted for filing on the date requested.

*Comment date:* February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**11. Northern States Power Company (Minnesota Company)**

[Docket No. ER00–1232–000]

Take notice that on January 27, 2000, Northern States Power Company (Minnesota) (NSP) tendered for filing the Amendment No.1 to the Distribution Facilities Agreement (Contract) between the City of Brownton (City) and NSP.

NSP requests that the Commission accept the Agreements effective January 1, 2000, and requests waiver of the Commission's notice requirements in order for the Amendment and Revisions to be accepted for filing on the date requested.

*Comment date:* February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**12. Northern States Power Company (Minnesota Company)**

[Docket No. ER00–1233–000]

Take notice that on January 27, 2000, Northern States Power Company (Minnesota) (NSP) tendered for filing the Amendment No.1 to the Distribution Facilities Agreement (Contract) between the City of Winthrop (City) and NSP.

NSP requests that the Commission accept the Agreements effective January 1, 2000, and requests waiver of the Commission's notice requirements in order for the Amendment and Revisions to be accepted for filing on the date requested.

*Comment date:* February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**13. Northern States Power Company (Minnesota Company)**

[Docket No. ER00–1234–000]

Take notice that on January 27, 2000, Northern States Power Company (Minnesota) (NSP) tendered for filing an Agreement to extend the Distribution Facilities Agreement between NSP and

the City of Shakopee, Minnesota (City), and an Agreement to extend a previously approved interim rate for the period January 1, 2000, through December 31, 2000.

NSP requests the Agreement be accepted for filing effective January 1, 2000, and requests waiver of the Commission's notice requirements in order for the Agreement to be accepted for filing on the date requested.

*Comment date:* February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**14. California Independent System Operator Corporation**

[Docket No. ER00–1239–000]

Take notice that on January 27, 2000, the California Independent System Operator Corporation (ISO) tendered for filing a proposed amendment (Amendment No. 25) to the ISO Tariff. Amendment No. 25 includes proposed Tariff and Protocols revisions, concerning imports of Regulation, release of bid information, Firm Transmission Right implementation, Reliability Must-Run Generation cost allocation, Transmission Owner debit clarification, implementation of the Phase II Payments Calendar, and Transmission Maintenance Outage Scheduling.

The ISO states that this filing has been served upon the Public Utilities Commission of California, the California Energy Commission, the California Electricity Oversight Board, and all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff.

*Comment date*: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**15. Entergy Services, Inc.**

[Docket No. ER00–1240–000]

Take notice that on January 27, 2000, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Point-to-Point Transmission Service Agreement, both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and British Columbia Power Exchange Corporation.

Entergy Services requests that the service agreements become effective January 10, 2000.

*Comment date:* February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**16. Entergy Services, Inc.**

[Docket No. ER00–1241–000]

Take notice that on January 27, 2000, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Point-to-Point Transmission Service Agreement, both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Utilicorp United, Inc.

*Comment date*: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**17. UtiliCorp United Inc.**

[Docket No. ES00–15–000]

Take notice that on January 21, 2000, UtiliCorp United Inc. (Applicant) filed an application seeking an order under Section 204(a) of the Federal Power Act authorizing the Applicant to issue and sell up to and including 1,500,000 shares of common stock, pursuant to the 1986 UtiliCorp United Inc. Employee Stock Purchase Plan.

*Comment date*: February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**18. MidAmerican Energy Company**

[Docket No. ER00–1223–000]

Take notice that on January 27, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50303 tendered for filing with the Commission a Service Agreement dated December 14, 1999, with Northern Indiana Public Service Company entered into pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff, Original Volume No. 5 (Tariff).

MidAmerican requests an effective date of January 1, 2000 for this Agreement, and accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on Northern Indiana Public Service Company, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

*Comment date*: February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**19. Allegheny Energy Service Corporation, on Behalf of Allegheny Energy Supply Company LLC**

[Docket No. ER00–907–000]

Take notice that on January 27, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply Company), tendered for filing Amendment No. 1 to Supplement No. 10 to complete the filing requirement for one (1) new Customer of the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy requests a waiver of notice requirements to make service available as of November 29, 1999, to PP&L, Inc.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

*Comment date:* February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**20. Cleco Evangeline LLC**

[Docket No. ER00–1271–000]

Take notice that on January 27, 2000, Cleco Evangeline LLC (Evangeline), tendered for filing an umbrella service agreement under which Evangeline will make market-based power sales under its power marketer tariff to the City of Alexandria, Louisiana. Evangeline is an affiliate of Cleco Utility Group Inc., a public utility subject to the Commission's jurisdiction under the Federal Power Act, 16 U.S.C. § 791a *et seq.*

Evangeline states that a copy of the filing has been served upon the City of Alexandria, Louisiana.

*Comment date:* February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**21. Allegheny Energy Service Corporation, on Behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)**

[Docket No. ER00–1262–000]

Take notice that on January 27, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing a request to amend their Pro Forma Open Access Transmission Tariff to make format and editorial changes, to

incorporate the North American Electric Reliability Council's Transmission Loading Relief Procedures, adopted by the Commission on December 16, 1998 at Docket No. EL98–52–000, to waive the deposit requirement for creditworthy customers, and to clarify scheduling procedures.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

*Comment date:* February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**22. Allegheny Energy Service Corporation on Behalf of Allegheny Energy Supply Company, LLC**

[Docket No. ER00–1263–000]

Take notice that on January 27, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Supplement No. 19 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests a waiver of notice requirements to make service available as of December 15, 1999 or as of a date determined by the Commission to Duquesne Light Company.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

*Comment date:* February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**23. Northeast Utilities Service Company**

[Docket No. ER00–1305–000]

Take notice that on January 27, 2000, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement with Great Bay Power Corporation (Great Bay) under the NU System Companies' Sale for Resale Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to Great Bay.

NUSCO requests that the Service Agreement become effective January 8, 2000.

*Comment date:* February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**24. New Century Services, Inc.**

[Docket No. ER00–1306–000]

Take notice that on January 27, 2000, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement for Network Integration Transmission Service and a Network Operating Agreement between the Companies and Municipal Energy Agency of Nebraska.

*Comment date:* February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**25. New Century Services, Inc.**

[Docket No. ER00–1307–000]

Take notice that on January 27, 2000, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Long Term Firm Point-to-Point Transmission Service between the Companies and Southwestern Public Service Company—Wholesale Merchant Function.

*Comment date:* February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**26. New Century Services, Inc.**

[Docket No. ER00–1308–000]

Take notice that on January 27, 2000, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Long Term Firm Point-to-Point Transmission Service between the Companies and Southwestern Public Service Company—Wholesale Merchant Function.

*Comment date:* February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**27. Allegheny Energy Service Corporation on Behalf of Allegheny Energy Supply Company, LLC**

[Docket No. ER00–1309–000]

Take notice that on January 27, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Supplement No. 18 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests a waiver of notice requirements to make service available as of December 8, 1999 or as of a date determined by the Commission to Coral Power, L.L.C.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

*Comment date:* February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**28. Florida Power & Light Company**

[Docket No. ER00–1310–000]

Take notice that on January 27, 2000, Florida Power & Light Company (FPL), tendered for filing proposed service agreements with The Legacy Energy Group, LLC for Short-Term Firm and Non-Firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreements are permitted to become effective on February 1, 2000.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

*Comment date:* February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**29. Ameren Services Company**

[Docket No. ER00–1311–000]

Take notice that on January 27, 2000, Ameren Services Company (ASC), the transmission provider, tendered for filing a Service Agreement for Long-Term Firm Point-to-Point Transmission Service between ASC and Reliant Energy Services, Inc., (RES). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to RES pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

*Comment date:* February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**30. Ameren Services Company**

[Docket No. ER00–1312–000]

Take notice that on January 27, 2000, Ameren Services Company (ASC), the transmission provider, tendered for filing a Service Agreement for Long-

Term Firm Point-to-Point Transmission Service between ASC and Reliant Energy Services, Inc. (RES). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to RES pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

*Comment date:* February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**31. Ameren Services Company**

[Docket No. ER00–1313–000]

Take notice that on January 27, 2000, Ameren Services Company (ASC), the transmission provider, tendered for filing a Service Agreement for Long-Term Firm Point-to-Point Transmission Service between ASC and Dynegy Power Marketing, Inc., (DPM). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to DPM pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

*Comment date:* February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**32. Ameren Services Company**

[Docket No. ER00–1314–000]

Take notice that on January 27, 2000, Ameren Services Company (ASC), the transmission provider, tendered for filing a Service Agreement for Long-Term Firm Point-to-Point Transmission Service between ASC and Dynegy Power Marketing, Inc. (DPM). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to DPM pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

*Comment date:* February 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–2747 Filed 2–7–00; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Application Tendered for Filing With the Commission

February 2, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2042–013.

c. *Date filed:* January 21, 2000.

d. *Applicant:* Public Utility District No. 1 of Pend Oreille County.

e. *Name of Project:* Box Canyon Hydroelectric Project.

f. *Location:* On the Pend Oreille River, in Pend Oreille County, Washington and Bonner County, Idaho. About 709 acres within the project boundary are located on lands of the United states, including Kalispel Indian Reservation (493 ac), U.S. Forest Service Colville National Forest (182.93), U.S. Department of Energy, Bonneville Power Administration (24.14), U.S. Fish and Wildlife Service (2.45), U.S. Army Corps of Engineers (5.29), and U.S. Bureau of Land Management (1.44).

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Robert Geddes, Public Utility District No. 1 of Pend Oreille County, 130 North Washington, Newport, WA 99156; (509) 447–3137.

i. *FERC Contact:* David Turner (202) 219–2844, Email: david.turner@ferc.fed.us

j. *Brief Project Description:* The 60-megawatt (MW) project consists of the following: (1) 46-foot-high, 160-foot-long reinforced concrete dam with integral spillway, (2) 217-foot-long, 35-foot-diameter diversion tunnel, (3) 1,170-foot-long forebay channel, (4) auxiliary spillway, (5) powerhouse containing four generating units with a combined capacity of 60 MW, (2) 8,850-acre reservoir at maximum operating pool elevation of 2030.6 feet, and other associated facilities.

k. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

l. With this notice, we are initiating consultation with the Montana and Idaho STATE HISTORIC PRESERVATION OFFICER (SHPO), as required by § 106, Naitonal Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

m. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–2782 Filed 2–7–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Intent To File Application for New License

February 2, 2000.

a. *Type of Filing:* Notice of Intent to File Applications for New License

b. *Project No.:* 2233

c. *Date Filed:* December 21, 1999.

d. *Applicants:* Portland General Electric Company, current licensee.

e. *Name of Project:* Willamette Falls Hydroelectric Project.

f. *Location:* On the Willamette River in Clackamas County, Oregon.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.

h. *Contact:* Julie A. Keil, Director of Hydro Licensing and Water Rights, Portland General Electric Company, 121 SW Salmon Street, Portland, OR 97204.

i. *Expiration date of original license:* December 31, 2004.

j. The project consists of the T.W. Sullivan Development on the west side of the Willamette Falls near the City of

West Linn with a total installed capacity of 16 MW, and the Smurfit Development on the east side of the Willamette Falls near Oregon City with a total installed capacity of 1.5 MW.

k. *FERC contact:* Hector M. Perez, (202) 219–2843.

l. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 2002.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–2783 Filed 2–7–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Offer of Settlement and Application for Amendment of License

February 2, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Offer of Settlement and Amendment of License.

b. *Project No:* 2342–011.

c. *Date Filed:* October 21, 1999.

d. *Applicant:* PacifiCorp.

e. *Name of Project:* Condit.

f. *Location:* The project is located on the White Salmon River in Skamania and Klickitat Counties, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 79(a)–825(r), and Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602 (1999).

h. *Applicant Contacts:* Mr. Randy Landolt, Managing Director Hydro Resources Group, PacifiCorp, 825 NE Multnomah Street, Suite 1500, Portland, OR 97232, (503) 813–6651; Mr. Thomas H. Nelson, Mr. Jeffrey S. Lovinger, Law Offices of Thomas H. Nelson and Associates, 825 NE Multnomah Street, Suite 925, Portland, OR 97232, (503) 230–8311; and Mr. Robert A. Nelson, Stoel Rives LLP, 1275 K Street, Suite 810, Washington, DC 20005–4006, (202) 408–2102.

i. *FERC Contact:* Any questions on this notice should be addressed to Dave Snyder at (202) 219–2385 or by e-mail at david.snyder@ferc.fed.us

j. *Filing the Removal Plan associated with the Settlement Agreement:* It appears, based upon the contents of the Offer of Settlement and of the Settlement Agreement, Section 2.1, that PacifiCorp may intend a portion of the draft Condit Hydroelectric Project Removal Summary Report, Engineering Considerations, filed on June 19, 1998, referenced as the ''Removal Plan,'' to be included as a part of the Settlement Agreement. Section 2.1 of the Agreement provides for PacifiCorp to file a copy of the Removal Plan, and such filing will make the Offer of Settlement complete.

k. *Deadline for filing comments and or motions:* March 15, 2000 or 45 days after the filing of the Removal Plan with the Commission, whichever occurs later.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please include the Project Number (Project No. 2342–011) on any comments or motions filed.

Under Rule 602(f)(3), 18 CFR 602(f)(3) (1999), a failure to file comments on the settlement agreement constitutes a waiver of all objections to the Offer of Settlement.

l. *Description of Filing:* PacifiCorp filed an Offer of Settlement on behalf of itself and the Yakama Indian Nation, the U.S. Forest Service, the U.S. Department of the Interior, the National Marine Fisheries Service, the Washington Department of Ecology, the Washington Department of Fish and Wildlife, American Rivers, American Whitewater Affiliation, Columbia Gorge Audubon Society, Columbia Gorge Coalition, Columbia River United, Federation of Fly Fishers, Friends of the Columbia Gorge, Friends of the Earth, Friends of the White Salmon, The Mountaineers, Rivers Council of Washington, The Sierra Club, Trout Unlimited, Washington Trout, the Washington Wilderness Coalition, and the Columbia River Intertribal Fish Commission.

The Offer of Settlement proposes retirement of the Condit Project and dam removal by December 2007. In addition, PacifiCorp requests an amendment of the current license to extend the license term through October 1, 2006 (increasing the term of the current license from 28 years to 41 years), and to incorporate the terms and conditions of the Settlement Agreement in the license.

m. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–2784 Filed 2–7–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application For Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

February 2, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Amendment of License.

b. *Project No.* 2543–045.

c. *Date Filed:* December 28, 1999.

d. *Applicant:* The Montana Power Company.

e. *Name of Project:* Milltown.

f. *Location:* On the Clark Fork River in Missoula County, Montana. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Michael P. Manion, The Montana Power Company, 40 East Broadway, Butte, Montana 59701, (406) 497–2456.

i. *FERC Contact:* Regina Saizan, (202) 219–2673, or e-mail address: *regina.saizan@ferc.fed.us.*

Deadline for filing comments and or motions: March 10, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the Project Number (2543–045) on any comments or motions filed.

k. *Description of Amendment:* The licensee requests that its license be amended to extend the expiration date of the license two years, from December 31, 2004 to December 31, 2006. On December 30, 1999, the license filed a notice of intent not to relicense the Milltown Project, with the understanding that its notice would become moot if its request to extend the term of the license is granted.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on *http://www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–2792 Filed 2–7–00; 8:45 am]

**BILLING CODE 6717–01–M**

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–64046; FRL–6489–6]**

### Formetanate Hydrochloride; Receipt of Requests to Voluntarily Delete Uses, Request for Cancellation, and Advance Notification of Tolerance Revocation

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

**ACTION:** Notice.

**SUMMARY:** AgrEvo USA Company, the company that holds the pesticide registration of pesticide products containing formetanate hydrochloride (m- [[(dimethylamino)methylene] amino]phenyl methylcarbamate hydrochloride) has asked EPA to amend its registration to delete use on plums, prunes, and greenhouse grown ornamental plants, and cancel six pesticide products registered for greenhouse grown ornamental plants under section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). In accordance with section 6(f)(1) of FIFRA, as amended, EPA is issuing a notice of receipt of this request by the registrant. The request to delete the aforementioned uses from the registration, and voluntary cancellation of 24(c) registrations for greenhouse grown ornamental plants are the result of an agreement between EPA and the registrant regarding the registration of pesticide products containing formetanate hydrochloride. Given the potential dietary risks from formetanate hydrochloride use on registered food crops, the registrant requested, among other things, that uses that appear to be of little benefit (i.e., plums and prunes) be deleted from pesticide product labels. In addition, due to potential worker exposure risks from formetanate hydrochloride pesticide product use on greenhouse grown ornamental plants, the registrant requested that this use also be terminated and registrations for this use under section 24(c) of FIFRA be canceled. Following publication of this Notice and completion of a 30-day public comment period, EPA intends to grant the requested amendments to delete uses and voluntary registration cancellations.

**DATES:** Comments on the requested amendments to delete uses and voluntary registration cancellations must be submitted to the address provided below by March 9, 2000.

**FOR FURTHER INFORMATION CONTACT:** By mail: Michael Goodis, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (703) 308–8157; e-mail address: goodis.michael@epa.gov.

**SUPPLEMENTARY INFORMATION:**

#### I. General Information

*A. Does this Action Apply to Me?*

This action is directed to the public in general. You may potentially be affected by this action if you manufacture, sell, distribute, or use pesticide products containing the active

ingredient formetanate hydrochloride. Formetanate hydrochloride, trade name is Carzol® SP, is an insecticide/miticide of the carbamate class, and is presently registered in the United States and is used on citrus, stone and pome fruits, alfalfa (grown for seed), and greenhouse grown ornamental plants. AgrEvo USA Company is the sole technical manufacturer of formetanate hydrochloride.

Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

*Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the '' **Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

*In Person.* The Agency has established an official record for this action under docket control number OPP–64046. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwys, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

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

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–64046 in the subject line on the first page of your response.

*By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

*In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwys, Arlington, VA. The PIRIB is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

*Electronically.* You may submit your comments electronically by E-mail to: ''opp-docket@epa.gov,'' or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by the docket control number OPP–64046. Electronic comments may also be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI That I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the ''FOR FURTHER INFORMATION CONTACT.''

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

- Explain your views/interests as clearly as possible.
- Describe any assumptions that you used.
- Provide copies of any technical information and/or data you used that support your views.
- Make sure to submit your comments by the deadline in this notice.
- To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

**II. What Action is the Agency Taking?**

This notice announces the Agency's receipt of a request from the registrant to amend their pesticide products registered under section 3 of FIFRA. In a memorandum of agreement (''Agreement'') effective October 14, 1999, EPA and the registrant of products containing formetanate hydrochloride agreed to several voluntary measures to reduce dietary, agricultural worker, and ecosystem risks associated with formetanate hydrochloride exposure. EPA initiated the negotiations with registrants after formetanate hydrochloride, as currently registered, was found to pose an unacceptable dietary risk, especially to children ages 1 to 6 years old, risks of concern to agricultural workers, and unacceptable risks to birds, terrestrial mammals, and aquatic invertebrates. As part of the Agreement, the registrant agreed, among other things, to reduce application rates on all food crops, reduce the number of applications, and to take a number of steps to reduce worker exposure. The registrant also agreed to terminate formetanate hydrochloride product use on plums and prunes, which appear to benefit little from use of the product, and greenhouse grown ornamentals, to address worker risk concerns. In return, EPA agreed at this time not to initiate any cancellation or suspension proceedings under section 6(b) or 6(c) of FIFRA to achieve the risk reduction measures set forth in the Agreement.

In order to terminate formetanate hydrochloride use on plums, prunes, and greenhouse grown ornamentals, the registrant has submitted a request to

amend their registration of pesticide products containing formetanate hydrochloride pursuant to section 6(f)(1)(A) of FIFRA. These registrations are listed in the following Table 1:

TABLE 1.— REGISTRATIONS WITH PENDING USE DELETIONS

| Registration No. | Product |
|---|---|
| 45639–82 | Formetanate Hydrochloride Technical |
| 45639–163 | Carzol® SP |

This notice also announces receipt by the Agency of an application from the registrant to cancel six pesticide products registered under section 24(c) of FIFRA. These registrations are listed in alphabetic order of the registration number in Table 2 below.

TABLE 2.— REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

| Registration No. | Product |
|---|---|
| IN–97000400 | Carzol® SP |
| NC–97000200 | Carzol® SP |
| OH–97000800 | Carzol® SP |
| SC–97000700 | Carzol® SP |
| TX–98000800 | Carzol® SP |
| UT–92000100 | Carzol® SP |

The following Table 3 includes the name and address of record for the registrant of the products listed in Tables 1 and 2:

TABLE 3.— REGISTRANT REQUESTING DELETED USES AND VOLUNTARY CANCELLATION

| EPA Company No. | Company name and address |
|---|---|
| 45639 | AgrEvo USA Company, Little Falls Centre One, 2711 Centerville Road, Wilmington, DE 19808 |

**III. What is the Agency's Authority for Taking this Action?**

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register** .

Section 6(f)(1)(B) of FIFRA requires that EPA provide a 30–day period in which the public may comment before the Agency may act on the request to cancel registrations or delete pesticide uses. In the case of minor agricultural uses, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period under certain circumstances.

For this action, the registrant of formetanate hydrochloride has requested that EPA waive any public comment period provided in 6(f) of FIFRA. In light of this request, EPA is granting the request to waive the 180–day comment period, but is providing a 30–day public comment period before taking action on the requested voluntary cancellations and amendments to delete uses.

**IV. Procedures for Withdrawal of Request**

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under ''FOR FURTHER INFORMATION CONTACT,'' postmarked before March 9, 2000. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

**V. Provisions for Disposition of Existing Stocks**

The registrant has requested amendment of the formetanate hydrochloride registrations identified in Table 1 and voluntary cancellation of the formetanate hydrochloride registrations identified in Table 2. Pursuant to section 6(f) of FIFRA, EPA intends to grant the requests for voluntary amendment and cancellation. For purposes of the cancellation order that the Agency intends to issue at the close of the comment period for this announcement, the term ''existing stocks'' will be defined, pursuant to EPA's existing stocks policy as prescribed in the **Federal Register** of June 26, 1991, (56 FR 29362) (FRL–3846–4), as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the amendment or cancellation.

As part of the October 14, 1999, Agreement negotiated with the registrant, all formetanate hydrochloride products sold or distributed, including existing stocks, (except for the purpose of relabeling according to the Agreement) by the registrant after December 1, 1999, shall bear labeling approved by EPA pursuant to the Agreement. Moreover, sale and distribution by persons other than the registrant of products, including existing stocks, not bearing labeling approved by EPA pursuant to the Agreement (except for the purpose of relabeling according to the Agreement), shall be prohibited after June 1, 2000.

**VI. Notification of Intent to Revoke Tolerances**

This document also serves as an advance notification that the Agency intends to propose to revoke the tolerances found in: 40 CFR 180.276 for residues of formetanate hydrochloride in or on plums (fresh prunes) and dried prunes. This action reflects the October 14, 1999, Agreement, in which the registrant agreed to delete the use of formetanate hydrochloride products on plums and prunes. In accordance with the October 14, 1999, Agreement, the Agency intends to revoke these tolerances to help reduce acute dietary risks that currently exceed the margins of safety deemed acceptable by the Agency. The Agency intends that the tolerance revocations become effective June 1, 2000.

**VII. Import Tolerance Guidance**

The Agency is willing to consider requests to modify or maintain a tolerance following the cancellation of the accompanying registration. Such request should be sent to the person identified in the ''FOR FURTHER INFORMATION CONTACT'' section. If EPA receives a request to modify or maintain a tolerance in response to this Notice, the Agency will issue a Notice under section 408(f) of FFDCA

informing the public of the data required to support the tolerance and stating the time period for submitting the required data. Regardless of whether a tolerance applies solely to domestic food uses or solely to imported foods, the same technical chemistry and toxicology data are required to support tolerances under FFDCA section 408. For pesticide chemicals used in or on food, EPA requires residue chemistry data that are representative of growing conditions in exporting countries in the same manner that the EPA requires representative residue chemistry data from different U.S. regions to support domestic use of the pesticide and the tolerance. Persons supporting the maintenance or modification of tolerances to cover residues in or on imported food have the burden of demonstrating the relevance of any existing domestic data to foreign growing conditions.

If EPA does not receive any indication of a need to retain a tolerance for imported foods following the cancellation of the registered food use, the Agency will publish in the **Federal Register** a notice proposing to revoke the tolerance. That notice will again give interested parties the opportunity to come forward to support the maintenance of the tolerance.

**List of Subjects**

Environmental protection, Pesticides and pests, Product registrations.

Dated: February 1, 2000.

**Lois A. Rossi,**

*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. 00–2828 Filed 2–7–00; 8:45 am]

**BILLING CODE 6560–50–F**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 3 p.m. on Wednesday, February 9, 2000, to consider the following matters:

*Summary Agenda:* No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Proposed amendment to Part 325—Risk–Based Capital Treatment of Recourse and Direct Credit Substitutes.

*Discussion Agenda:* Memorandum and resolution re: Notice of Proposed Rulemaking—New Part 332—Privacy of Consumer Financial Information.

The meeting will be held in the Board room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (*e.g.,* sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2449 (Voice); (202) 416–2004 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: February 2, 2000.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 00–2889 Filed 2–3–00; 4:48 pm]

**BILLING CODE 6214–01–M**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Sunshine Act Meeting Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 3:30 p.m. on Wednesday, February 9, 2000, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to sections 552b(c)(2), (c)(4), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider matters relating to the Corporation's supervisory activities and reports of the Office of Inspector General.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—7th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: February 4, 2000.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 00–2940 Filed 2–4–00; 1:22 am]

**BILLING CODE 6714–01–M**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1311–DR]**

### Georgia; Amendment No. 1 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 Georgia, (FEMA–1311–DR), dated January 28, 2000, and related determinations.

**EFFECTIVE DATE:** January 31, 2000.

**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 Georgia 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 January 28, 2000:

Carroll, Douglas, Floyd, and Rockdale counties for debris removal (Category A) and emergency protective measures, (Category B), including 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. 00–2806 Filed 2–7–00; 8:45 am]

**BILLING CODE 6718–02–P**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1311–DR]**

### Georgia; 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 Georgia, (FEMA–1311–DR), dated

January 28, 2000, and related determinations.

**EFFECTIVE DATE:** February 1, 2000.

**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 Georgia 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 January 28, 2000:

Banks, Barrow, Bartow, Carroll, Chattooga, Cherokee, Cobb, Dawson, DeKalb, Douglas, Elbert, Fannin, Floyd, Forsyth, Franklin, Fulton, Gilmer, Gordon, Gwinnett, Habersham, Hall, Hart, Lumpkin, Newton, Oconee, Paulding, Pickens, Rabun, Rockdale, Stephens, Union, Walker, White, and Wilkes for utilities (Category F) under the Public Assistance program (already designated for debris removal (Category A) and emergency protective measures, (Category B), including direct Federal assistance, under the Public Assistance program).

(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. 00–2808 Filed 2–7–00; 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 March 3, 2000.

*A. Federal Reserve Bank of Kansas City* (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

*1. Central Financial Corporation,* Hutchinson, Kansas; to acquire 8.34 percent of the voting shares of NorthStar Bancshares, Inc., Riverside, Missouri, and thereby acquire shares of NorthStar Bank, N.A., Kansas City, Missouri.

*B. Federal Reserve Bank of San Francisco* (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

*1. FNB Bancorp,* Layton, Utah; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Layton, Layton, Utah.

Board of Governors of the Federal Reserve System, February 2, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–2720 Filed 2–7–00; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System.

**TIME AND DATE:** 9 a.m., Friday, February 11, 2000.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW, Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Lynn S. Fox, Assistant to the Board; 202–452–3204.

**SUPPLEMENTARY INFORMATION:** You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: February 3, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–2890 Filed 2–3–00; 4:54 pm]

**BILLING CODE 6210–01–P**

## GENERAL ACCOUNTING OFFICE

### Advisory Council on Government Auditing Standards; Notice of Meeting

The Advisory Council on Government Auditing Standards will meet Monday, February 28, 2000, from 8:30 a.m. to 5:00 p.m., and Tuesday, February 29, 2000, from 8:30 a.m. to 12:15 p.m., in room 7C13 of the General Accounting Office building, 441 G Street, NW., Washington, DC.

The Advisory Council on Government Auditing Standards will hold a meeting to discuss issues that may impact government auditing standards. Any interested person may attend the meeting as an observer. Council discussions and reviews are open to the public.

For further information contact: Marcia Buchanan, Assistant Director, Government Auditing Standards, AIMD, 202–512–9321.

**Marcia B. Buchanan,**

*Assistant Director.*

[FR Doc. 00–2859 Filed 2–7–00; 8:45 am]

**BILLING CODE 1610–02–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Meeting of the Secretary's Advisory Committee on Genetic Testing

**AGENCY:** Office of the Secretary, DHHS.

**ACTION:** Notice of meeting.

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Secretary's Advisory Committee on Genetic Testing (SACGT), U.S. Public Health Service. The meeting will be held at the International Trade Center, Polaris Ballroom, 1300 Pennsylvania Avenue, NW, Washington, DC 20004, starting on February 24, 2000, at approximately 9:00 a.m. and will recess at approximately 5:30 p.m. The meeting will reconvene on February 25, 2000, at approximately 8:00 a.m. and will adjourn at approximately 5:00 p.m. The meeting will be open to the public. Attendance by the public will be limited by the space available. The committee will review public comments received in response to A Public Consultation on Oversight of Genetic Tests published in the **Federal Register** on December 1, 1999 (64 FR 67273), and work toward the development of final recommendations on the oversight of genetic testing. A limited period of time will be provided for public comment, and individuals interested in participating in the public comment period should contact Ms. Sarah Carr, SACGT Executive Secretary, as shown below.

Under authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services (DHHS) established the SACGT to advise and make recommendations to the Secretary through the Assistant Secretary for Health on all aspects of the development and use of genetic tests. The SACGT is directed to: (1) Recommend policies and procedures for the safe and effective incorporation of genetic technologies into health care; (2) assess the effectiveness of existing and future measures for oversight of genetic tests; (3) and identify research needs related to the Committee's purview.

Further information about the SACGT is available at the following web site: *http://www4.od.nih.gov/oba/sacgt.htm.* If you wish to attend, please register through the web site. A draft meeting agenda will be posted to the web site prior to the meeting. Individuals who wish to provide public comments should notify Ms. Carr, by telephone at 301–496–9838 or E-mail at *sc112c@nih.gov* as soon as possible and provide a copy of their remarks to Ms. Carr by February 15, 2000. Those who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify Ms. Carr at 301–496–9838. The SACGT office is located at 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892.

Dated: February 3, 2000.

**Sarah Carr,**

*Executive Secretary, SACGT.*

[FR Doc. 00–2906 Filed 2–7–00; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Notice of Meeting

Office of the Director, Centers for Disease Control and Prevention (CDC), announces the following meeting:

*Name:* Guide to Community Preventive Services (GCPS) Task Force Meeting.

*Times and Dates:* 9 a.m.-5:30 p.m., February 9, 2000; 8 a.m.–3:30 p.m., February 10, 2000.

*Place:* The Renaissance Waverly Hotel, 2450 Galleria Parkway, Atlanta, Georgia 30339, telephone (770) 953–4500.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 40 people.

*Purpose:* The mission of the Task Force is to develop and publish a Guide to Community Preventive Services, which is based on the best available scientific evidence and current expertise regarding essential public health services and what works in the delivery of those services.

*Matters to be Discussed:* Agenda items include: a briefing of administrative activities in the Community Guide Branch, recommendation approvals for the Oral Health and Tobacco Chapters, updates for the following chapters: Diabetes, Cancer, Motor Vehicle Occupant Injuries, Mental Health, Physical Activity, Nutrition, Sexual Behavioral, Alcohol, Violence Prevention and Sociocultural Environment, an update on the Economic Evaluation and a discussion of actions items for the next quarter.

Agenda items are subject to change as priorities dictate.

*Contact Person for Additional Information:* Stephanie Zaza, M.D., M.P.H., Chief, CPS Guide Development Activity, Division of Prevention Research and Analytic Methods, Epidemiology Program Office, CDC, 4770 Buford Highway, M/S K–73, Atlanta, Georgia 30341, telephone 770/488–8189.

Persons interested in reserving a space for this meeting should call 770/488–8189 by close of business on February 7, 2000.

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.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 00–2899 Filed 2–7–00; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 99N–0671]**

### Bestblood, Ltd.; Revocation of U.S. License No. 1116

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the revocation of the establishment license (U.S. License No. 1116) and product licenses (the licenses) issued to Bestblood, Ltd., doing business as Optimum Healthcare, Inc., for the manufacture of Whole Blood, Red Blood Cells, Red Blood Cells Frozen, Whole Blood CPD, Red Blood Cells Deglycerolized, and Whole Blood CPDA–1. Bestblood, Ltd., did not respond to a notice of opportunity for a hearing on a proposal to revoke its licenses.

**DATES:** The revocation of the establishment license (U.S. License No. 1116) and product licenses is effective February 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Joseph L. Okrasinski, Jr., Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD. 20852–1448, 301–827–6210.

**SUPPLEMENTARY INFORMATION:** FDA is revoking the establishment license (U.S. License No. 1116) and product licenses issued to Bestblood, Ltd., doing business as Optimum Healthcare, Inc., 239 Randall St., San Francisco, CA 94131, for the manufacture of Whole Blood, Red Blood Cells, Red Blood Cells Frozen, Whole Blood CPD, Red Blood Cells Deglycerolized, and Whole Blood CPDA–1. Proceedings to revoke the licenses were initiated because an attempted inspection of the facility by FDA, as required under 21 CFR 600.21, revealed that the firm was no longer in operation.

In a certified, return-receipt letter dated June 16, 1997, FDA notified the firm that the attempt to conduct an inspection at Bestblood, Ltd., 239 Randall St., San Francisco, CA 94131 was unsuccessful because the facility was apparently no longer in operation and requested that the firm notify FDA in writing of the firm's status. This letter was sent to 239 Randall St., San Francisco, CA 94131, and also to P.O. Box 843, Cupertino, CA 95054–0843,

and each was returned to the agency as undeliverable.

In a certified, return-receipt letter sent to Bestblood, Ltd., dated March 4, 1998, at both addresses mentioned previously and returned as undeliverable, FDA indicated that an attempt to conduct an inspection at the facility was unsuccessful. The letter advised the firm that, under 21 CFR 601.5(b)(1) and (b)(2), when FDA finds that authorized employees have been unable to gain access to an establishment for the purpose of carrying out an inspection required under § 600.21, or the manufacturing of products or of a product has been discontinued to an extent that a meaningful inspection cannot be made, proceedings for license revocation may be instituted. FDA also indicated that a meaningful inspection could not be made at the establishment and issued to the firm a notice of FDA's intent to revoke U.S. License No. 1116 and announced its intent to offer an opportunity for a hearing.

Under 21 CFR 12.21(b), FDA published in the **Federal Register** of April 15, 1999 (64 FR 18623), a notice of opportunity for a hearing on a proposal to revoke the licenses of Bestblood, Ltd. In the notice, FDA explained that the proposed license revocation was based on the inability of authorized FDA employees to conduct a meaningful inspection of the facility because it was no longer in operation, and noted that documentation in support of license revocation had been placed on file with the Dockets Management Branch (HFA–305), Food and Drug Administration, 5600 Fishers Lane, rm. 1061 Rockville, MD 20852. The notice provided the firm 30 days to submit a written request for a hearing and 60 days to submit any data and information justifying a hearing. The notice provided other interested persons with 60 days to submit written comments on the proposed revocation. The firm did not respond within the 30-day time period with a written request for a hearing. The 30-day time period prescribed in the notice of opportunity for a hearing and in the regulations, may not be extended. No other comments were received.

Accordingly, under 21 CFR 12.38, section 351 of the Public Health Service Act (42 U.S.C. 262), and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Biologics Evaluation and Research (21 CFR 5.68) the establishment license (U.S. License No. 1116) and the product licenses issued to Bestblood, Ltd., are revoked, effective February 8, 2000.

Dated: January 13, 2000.

**Mark Elengold,**

*Deputy Director for Operations, Center for Biologics Evaluation and Research.*

[FR Doc. 00–2768 Filed 2–7–00; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Oncologic 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:* Oncologic 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 March 16, 2000, from 8:30 a.m. to 5:30 p.m., and March 17, 2000, from 8 a.m. to 1 p.m.

*Location:* Holiday Inn, Versailles Ballroom, 8120 Wisconsin Ave., Bethesda, MD.

*Contact Person:* Karen M. Templeton-Somers, 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 12542. Please call the Information Line for up-to-date information on this meeting.

*Agenda:* On March 16, 2000, the committee will discuss: (1) New drug application (NDA) 21–063, Eloxatin® (oxaliplatin), Sanofi Pharmaceuticals, Inc., indicated for the first-line treatment of patients with advanced colorectal cancer in combination with 5–U based chemotherapy; and (2) NDA 20–571/SE1–009, Camptosar® Injection (irinotecan hydrochloride injection), Pharmacia and Upjohn Co., indicated as a component of first-line therapy for patients with metastatic carcinoma of the colon or rectum. On March 17, 2000, the committee will discuss NDA 21–174, gemtuzumab zogamicin, Wyeth-Ayerst Laboratories, indicated for the treatment of patients with CD33 positive acute myeloid leukemia in relapse.

*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 March 8, 2000. Oral presentations from the public will be scheduled between approximately 8:45 a.m. and 9:15 a.m., and 1:30 p.m. and 1:45 p.m. on March 16, 2000, and between approximately 8:15 a.m. and 8:45 a.m. on March 17, 2000. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 8, 2000, 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. After the scientific presentations, a 30-minute open public session may be conducted for interested persons who have submitted their request to speak by March 8, 2000, to address issues specific to the submission or topic before the committee.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 28, 2000.

**Linda A. Suydam,**

*Senior Associate Commissioner.*

[FR Doc. 00–2770 Filed 2–7–00; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 99N–2912]**

### Review of Supplemental Applications for Approved New Animal Drugs; Center Responsibility and Standards for Prompt Review; Availability of Draft Guidance

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

**ACTION:** Notice.

**SUMMARY:** As required by the Food and Drug Administration Modernization Act of 1997 (FDAMA), the Food and Drug Administration's (FDA) Center for Veterinary Medicine (CVM) is making available information regarding the approval of supplemental applications for approved new animal drugs. CVM is publishing standards for the prompt review of supplemental applications and referencing an existing guidance that describes how supplemental applications may qualify for priority review. CVM is also designating an

individual within the Center who is responsible for encouraging the prompt review of supplemental applications and for working with sponsors to facilitate the development and submission of data to support supplemental applications. Further, CVM is describing its efforts to collaborate with other organizations and persons to identify published and unpublished studies that may support supplemental applications and to encourage sponsors to submit supplemental applications based on such studies. In addition, CVM is announcing the availability of a draft guidance entitled ''Guidance for Industry: Development of Supplemental Applications for Approved New Animal Drugs.'' This draft guidance explains how drug sponsors can use data submitted in support of an original application to support supplemental applications.

**DATES:** Written comments should be submitted by May 8, 2000. Written comments on the existing guidance entitled ''CVM's Program Policy and Procedures Guide 1240.3135,'' which describes how supplemental applications qualify for priority review, may be submitted at any time.

**ADDRESSES:** Submit written requests for single copies of ''Guidance for Industry: Development of Supplemental Applications for Approved New Animal Drugs'' or ''CVM's Program Policy and Procedures Guide 1240.3135'' to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Place, Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your request. Copies of the draft guidance and the existing guidance may be obtained on the Internet at http://www.fda.gov/cvm.

Submit written comments on the draft guidance, ''Guidance for Industry: Development of Supplemental Applications for Approved New Animal Drugs'' to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written comments on CVM's ''Program Policy and Procedures Guide 1240.3135'' to the Policy and Regulations Team (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Place, Rockville, MD 20855.

**FOR FURTHER INFORMATION CONTACT:** Marilyn N. Martinez, Office of New Animal Drug Evaluation (HFV–130), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Place, Rockville, MD 20855, 301–827–7577.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Section 403 of the FDAMA (Pub. L. 105–115) instructs FDA to provide certain information regarding approval of supplemental applications for approved products. Among other things, section 403 requires that FDA do the following: (1) Section 403(a) requires that the agency publish standards for the prompt review of supplemental applications; (2) section 403(b)(1) requires that FDA provide guidance to ''clarify circumstances in which published matter may be the basis for the approval of a supplemental application''; (3) section 403(b)(2) requires that FDA provide guidance that specifies ''data requirements that will avoid duplication of previously submitted data by recognizing the availability of data previously submitted in support of an original application.'' (4) section 403(b)(3) requires that FDA provide guidance that defines supplemental applications that are eligible for priority review; (5) section 403(c) requires that FDA designate an individual within each Center to be responsible for encouraging the prompt review of supplemental applications and working with sponsors to facilitate development and submission of data to support supplemental applications; and (6) section 403(d) requires the implementation of programs and policies to foster collaboration between FDA and other organizations and persons to identify published and unpublished studies that might support supplemental applications and to encourage sponsors to submit supplemental applications based on such studies.

This document and the guidance documents discussed in it fulfill the requirements of section 403(a), (b)(2), (b)(3), and (c). This document also discusses FDA's continuing efforts at collaboration as required by section 403(d). Section 403(b)(1) will be addressed in a future **Federal Register** notice.

## II. Section 403(a): Standards

Section 403(a) of FDAMA requires that FDA publish ''standards for the prompt review of supplemental applications submitted for approved articles * * *.'' The legislative history of this section indicates that these performance standards should cover supplements submitted for changes in product use.

Section 512(c)(1) of the Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(c)(1))sets a 180-day time frame for review of new animal drug applications (NADA's). This time frame applies to all applications, including supplements to approved applications.

The agency intends to use the performance goals set forth in the fiscal year (FY) 2001 performance plan to fulfill the requirement of the FDAMA that it establish standards for the prompt review of efficacy supplements. In FY 2000, the agency's goal is to review and act on 65 percent of NADA's and abbreviated new animal drug applications (ANADA's), including supplemental applications, within 180 days of receipt. For FY 2001, the goal is 70 percent.

To facilitate prompt reviews, CVM encourages sponsors of supplemental applications to work closely with CVM personnel through presubmission conferences or other means to aid CVM in assuring that supplemental applications are reviewed promptly.

## III. Section 403(b)(2)(i): Specify Data Requirements That Will Avoid Duplication of Previously Submitted Data by Recognizing the Availability of Data Previously Submitted in Support of an Original Application

CVM has developed and is announcing the availability of a draft guidance, ''Guidance for Industry: Development of Supplemental Applications for Approved New Animal Drugs'' that represents the agency's current thinking. The Center designates two categories of supplemental new animal drug applications (NADA's), Category I and Category II. Ordinarily, for Category I supplemental NADA's, FDA does not require a reevaluation of any of the safety or effectiveness data in the parent application. For Category II supplemental NADA's, FDA may ordinarily require drug sponsors to submit new data. Therefore, the Center may be required to reevaluate certain safety or effectiveness data in the original application. The draft guidance lists the types of supplemental NADA's that fall into each of the categories, and it provides an overview of issues that drug sponsors should consider with respect to safety and effectiveness data and data supporting the environmental and manufacturing controls technical sections when seeking the approval of Category II supplemental NADA's.

The draft guidance is organized by type of Category II supplement. For each type (e.g., a change in the amount of drug administered per dose), the document provides a table and comments. The table lists each technical section for which information would be required for approval of the supplement

and whether the information in a previously approved application is sufficient or new information would be needed. Comments provide additional information to assist the sponsor. In this way, the draft guidance specifies data requirements that will avoid duplication of previously submitted data. It also refers drug sponsors to related guidance documents that will aid them in the preparation of supplemental NADA's.

This draft guidance does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statute, regulations, or both.

### IV. Section 403(b)(3): Define Supplemental Applications That Are Eligible for Priority Review

When CVM determines that a product represents an important advance in animal health, it may expedite the review of original and supplemental applications. The circumstances in which CVM may make such a determination are outlined in an existing guidance entitled ''CVM Program Policy and Procedures Guide 1240.3135,'' available at the address above.

### V. Section 403(c): Responsibilities of Centers

FDA has designated the following individual within CVM to be responsible for encouraging prompt review of supplemental applications for approved articles and for working with sponsors to facilitate the development and submission of data to support the approval of supplemental applications in accordance with section 403(c) of FDAMA:

Director, Office of New Animal Drug Evaluation (ONADE), Center for Veterinary Medicine, (HFV–100), Food and Drug Administration, 7500 Standish Place, Rockville MD 20855, 301–594–1620.

### VI. Section 403(d): Collaboration to Identify Published and Unpublished Studies

CVM currently collaborates with the U.S. Department of Agriculture (USDA) National Research Support Project #7 (NRSP–7) and others, including state agencies, extension agents, universities, the National Coordinator for Aquaculture NADA's, and other USDA agencies, to encourage sponsors to make supplemental applications for minor use new animal drugs by encouraging development of Public Master Files (PMF's). Minor use new animal drugs are drugs used in minor animal species or drugs used in any animal species for the control of a disease that occurs infrequently or occurs in limited geographic areas. Minor species are defined in 21 CFR 514.1(d). PMF's contain public data from unpublished and published studies that can be used in conjunction with data already available in a major use product's original NADA to support a supplemental NADA. The majority of approved minor use drugs have been approved as supplements to products approved for use in major species.

In a notice entitled ''Proposals to Increase the Legal Availability of Animal Drugs for Minor Species and Minor Uses; Availability'' published in the **Federal Register** (63 FR 58056, October 29, 1998), CVM proposed other methods of collaboration to make data available for minor use supplemental applications.

In addition, CVM frequently participates in discussions with animal industry trade associations to help clarify the new animal drug approval process. These discussions encourage university researchers and others to identify or initiate studies that may be used to support supplemental applications.

### VII. Comments

The draft guidance discussed in section III of this document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft guidance. Written comments may be submitted at any time, however, comments should be submitted by May 8, 2000, to ensure adequate consideration in preparation of the final document. Comments should be identified with the full title of the draft guidance and the docket number found in brackets in the heading of this document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 24, 2000.

**Margaret M. Dotzel,**

*Acting Associate Commissioner for Policy.*

[FR Doc. 00–2767 Filed 2–7–00; 8:45 am]

**BILLING CODE 4160–01–F**

## 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.

*Date:* February 28, 2000.

*Time:* 1:30 pm to 6 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

*Contact Person:* Joyce A. Hunter, PHD, NIH, NHLBI, DEA, Rockledge Center, II, 6701 Rockledge Drive, Suite 7192, Bethesda, MD 20892–7924, (301) 435–0287.

(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: January 31, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–2757 Filed 2–7–00; 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 or 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, CONTRACT REVIEW RFP.

*Date:* February 8, 2000.

*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, Scientific Review Administrator, 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 ''Oxidative Stress in Age Associated Neurodegeneration.''

*Date:* February 23, 2000.

*Time:* 1 pm to 3 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* 7201 Wisconsin Ave., Suite 502C, MD 20891, (Telephone Conference Call).

*Contact Person:* Paul Lenz, PhD, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/ Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

*Name of Committee:* National Institute on Aging Initial Review Group, Clinical Aging Review Committee.

*Date:* March 2–3, 2000.

*Time:* 7 pm to 4 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott, 5151 Pooks Hill Rd, Bethesda, MD 20814.

*Contact Person:* William A. Kachadorian, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

*Name of Committee:* National Institute on Aging Initial Review Group, Neuroscience of Aging Review Committee.

*Date:* March 13–15, 2000.

*Time:* 7 pm to 12 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn, 2 Montgomery Village Avenue, Gaithersburg, MD 20879.

*Contact Person:* Louise L. Hsu, 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: January 31, 2000.

**Anna Snouffer,**

*Deputy Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–2754 Filed 2–7–00; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Drug Abuse; 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 or 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 Drug Abuse Special Emphasis Panel, SBIR—''Measurement Modules for Prevention Interventions.''

*Date:* February 3, 2000.

*Time:* 9:30 am to 10:30 am.

*Agenda:* To review and evaluate contract proposals.

*Place:* Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

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 Drug Abuse Special Emphaisis Panel, SBIR—''Develop Prevention Research Dissemination.''

*Date:* February 3, 2000.

*Time:* 10:30 am to 3 pm.

*Agenda:* To review and evaluate contract proposals.

*Place:* Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

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. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: January 31, 2000.

**Anna Snouffer,**

*Deputy Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–2755 Filed 2–7–00; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Environmental Health Sciences; 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 or 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 of Environmental Health Sciences Special Emphasis Panel, Development of Effective Mitigation Methods or Devices for Reduction of Indoor Allergens (SBIR Topic 72 & 73).

*Date:* February 4, 2000.

*Time:* 1 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* NIEHS, 79 T.W. Alexander Drive, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709, (Telephone Conference Call).

*Contact Person:* David P. Brown, MPH, Scientific Review Administrator, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–4964.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Environmental Health Sciences Special Emphasis Panel, Construction of Xenopus cDNA ''chips'' for Analysis of Gene Expression (SBIR Topic 74).

*Date:* February 9, 2000.
*Time:* 1 p.m. to 3:30 p.m.
*Agenda:* To review and evaluate contract proposals.
*Place:* NIEHS-East Campus, Building 4401, Conference Room 122, 79 Alexander Drive, Research Triangle Park, NC 27709, (Telephone Conference Call).
*Contact Person:* David P. Brown, MPH, Scientific Review Administrator, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–4964.
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. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS).

Dated: January 31, 2000.

**Anna Snouffer,**

*Deputy Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–2756 Filed 2–7–00; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; 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/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.
*Date:* February 23, 2000.
*Time:* 3 pm to 5 pm.
*Agenda:* To review and evaluate contract proposals.
*Place:* Residence Inn, Conference Room, 7335 Wisconsin Avenue, Bethesda, MD 20814.
*Contact Person:* Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787, etaylor@niaaa.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: February 1, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–2758 Filed 2–7–00; 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 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 on Aging Special Emphasis Panel, Project Site Visit on Reactive Oxygen Species and Aging.
*Date:* February 17, 2000.
*Time:* 10 am to 12 pm.
*Place:* 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).
*Contact Person:* Ramesh Vemuri, PHD, 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 a Program Project Grant Application.
*Date:* March 2, 2000.
*Time:* 8 am to 4 pm.
*Agenda:* To review and evaluate grant applications.
*Place:* Hampton Inn, 5601 Fortune Circle West, Indianapolis, IN 46241.
*Contact Person:* Arthur Schaerdel, DVM, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

*Name of Committee:* National Institute on Aging Initial Review Group, Sociology Aging Review Committee.
*Date:* March 9, 2000.
*Time:* 9 am to 5 pm.
*Agenda:* To review and evaluate grant applications.
*Place:* Bethesda Hyatt Regency, One Bethesda Metro, Bethesda, MD 20814.
*Contact Person:* Mary Ann Guadagno, PHD, Scientific Review Administrator, The Betsesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

*Name of Committee:* National Institute on Aging Special Emphasis Panel, (SEP) Small Grants in Sociology and Psychology.
*Date:* March 10, 2000.
*Time:* 9 am to 5 pm.
*Agenda:* To review and evaluate grant applications.
*Place:* Bethesda Hyatt Regency, One Bethesda Metro, Bethesda, MD 20814.
*Contact Person:* Mary Ann Guadagno, PHD, Scientific Review Administrator, 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: February 1, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–2759 Filed 2–7–00 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; 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/or contract proposals and the

discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

*Date:* January 31, 2000.

*Time:* 3 pm to 5 pm.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* 6000 Executive Blvd., Suite 409, Rockville, MD 20852, (Telephone Conference Call).

*Contract Person:* Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787, etaylor@niaaa.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

*Name of Committee:* National Institute on Alchol Abuse and Alcoholism Special Emphasis Panel.

*Date:* February 25, 2000.

*Time:* 8 am to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Georgetown Holiday Inn, Washington, DC 20007.

*Contact Person:* Sean O'Rouke, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2861.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: February 1, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–2760 Filed 2–7–00; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institute of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* February 15–16, 2000.

*Time:* 8 am to 4 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

*Contact Person:* Mary Sue Krause, MED, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7848, Bethesda, MD 20892, (301) 435–0681.

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:* February 15–16, 2000.

*Time:* 8:30 am to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Governor's House Hotel, 17th & Rhode Island Avenue, NW, Washington, DC 20036.

*Contact Person:* John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

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:* Cardiovascular Sciences Initial Review Group, Pathology A Study Section.

*Date:* February 15–16, 2000.

*Time:* 8:30 am to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Monarch Hotel, 2400 M Street, NW, Washington, DC 20037.

*Contact Person:* Larry Pinkus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of committee:* Health Promotion and Disease Prevention Initial Review Group, Alcohol and Toxicology Subcommittee 1.

*Date:* February 16–17, 2000.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Madison Hotel, Fifteenth & M Streets NW., Washington, DC 20005.

*Contact Person:* Russell T. Dowell, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7818, Bethesda, MD 20892, (301) 435–1169, dowellr@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* February 16–17, 2000.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Doyle Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

*Contact Person:* Syed Husain, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7850, Bethesda, MD 20892–7850, (301) 435–1224.

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:* Biophysical and Chemical Sciences Initial Review Group, Medicinal Chemistry Study Section.

*Date:* February 16–18, 2000.

*Time:* 8:30 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Chevy Chase Holiday Inn, Terrace Room, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Ronald J. Dubois, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4156, MSC 7806, Bethesda, MD 20892, (301) 435–1722, duboisr@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:* Oncological Sciences Initial Review Group, Chemical Pathology Study Section.

*Date:* February 16–18, 2000.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

*Contact Person:* Syed Quadri, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4144, MSC 7804, Bethesda, MD 20892, (301) 435–1211.

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:* Health Promotion and Disease Prevention Initial Review Group, Epidemiology and Disease Control Subcommittee 1.

*Date:* February 16–18, 2000.

*Time:* 8:30 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* J. Scott Osborne, PHD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–1782.

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:* February 16, 2000.

*Time:* 9 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

*Contact Person:* Anita Miller Sostek, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MS 7848, Bethesda, MD 20892, (301) 435–1260.

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:* February 16, 2000.

*Time:* 6 p.m. to 9 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Alec S. Liacouras, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7842, Bethesda, MD 20892, (301) 435–1740.

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:* February 17–18, 2000.

*Time:* 8 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

*Contact Person:* Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0912, levin@csr.nih.gov.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* February 17–18, 2000.

*Time:* 8 am to 4 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Westin Fairfax Hotel, 2100 Massachusetts Ave, NW., Washington, DC 20008.

*Contact Person:* Gillian Einstein, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5198, MSC 7850, Bethesda, MD 20892, (301) 435–4433.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* February 17–18, 2000.

*Time:* 8 am to 4 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

*Contact Person:* Michael Nunn, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892, (301) 435–0910.

*Name of Committee:* Cell Development and Function Initial Review Group, Cell Development and Function 1.

*Date:* February 17–18, 2000.

*Time:* 8 am to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Georgetown Holiday Inn, 2101 Wisconsin Ave, NW., Washington, DC 20007.

*Contact Person:* Michael H. Sayre, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, Bethesda, MD 20892, (301) 435–1219.

*Name of Committee:* Biophysical and Chemical Sciences Initial Review Group, Biophysical Chemistry Study Section.

*Date:* February 17–18, 2000.

*Time:* 8 am to 4 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Donald Schneider, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892, (301) 435–1727.

*Name of Committee:* Endocrinology and Reproductive Sciences Initial Review Group, Human Embryology and Development Subcommittee 1.

*Date:* February 17–18, 2000.

*Time:* 8 am to 11 am.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

*Contact Person:* Michael Knecht, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046.

*Name of Committee:* Cell Development and Function Initial Review Group, Cell Development and Function 5.

*Date:* February 17–18, 2000.

*Time:* 8:30 an to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

*Contact Person:* Sherry L. Dupere, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7840, Bethesda, MD 20892, (301) 435–1021, duperes@csr.nih.gov.

*Name of Committee:* Oncological Sciences Initial Review Group, Experimental Therapeutics Subcommittee 1.

*Date:* February 17–18, 2000.

*Time:* 8:30 am to 3 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Arlington Hyatt, 1325 Wilson Boulevard, Arlington, VA 22209.

*Contact Person:* Philip Perkins, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892, (301) 435–1718, perkinsp@csr.nih.gov.

*Name of Committee:* Biochemical Sciences Initial Review Group, Biochemistry Study Section.

*Date:* February 17–18, 2000.

*Time:* 8:30 am to 2 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chse, MD 20815.

*Contact Person:* Chhanda L. Ganguly, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–1739.

*Name of Committee:* Biochemical Sciences Initial Review Group, Pathobiochemistry Study Section.

*Date:* February 17–18, 2000.

*Time:* 8:30 am to 12 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Georgetown Holiday Inn, 2101 Wisconsin Ave, NW., Washington, DC 20007.

*Contact Person:* Zakir Bengali, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, MSC 7842, Bethesda, MD 20892, (301) 435–1742.

*Name of Committee:* Immunological Sciences Initial Review Group, Experimental Immunology Study Section.

*Date:* February 17–18, 2000.

*Time:* 8:30 am to 4:30 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

*Contact Person:* Calbert A. 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:* Molecular, Cellular and Developmental Neuroscience Initial Review Group, Visual Sciences A Study Section.

*Date:* February 17–18, 2000.

*Time:* 8:30 am to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20852.

*Contact Person:* Luigi Giacometti, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7850, Bethesda, MD 20892, (301) 435–1246.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 (IFCN–7 (01).

*Date:* February 17–18, 2000.

*Time:* 8:30 am to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* One Washington Circle Hotel, Conference Center, One Washington Circle, Washington, DC 20037.

*Contact Person:* Bernard F. Driscoll, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892, (301) 435–1242.

*Name of Committee:* Infectious Diseases and Microbiology Initial Review Group, Tropical Medicine and Parasitology Study Section.

*Date:* February 17–18, 2000.

*Time:* 8:30 am to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Jean Hickman, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146.

*Name of Committee:* Biochemical Sciences Initial Review Group, Medical Biochemistry Study Section.

*Date:* February 17–18, 2000.

*Time:* 8:30 am to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

*Contact Person:* Alexander S. Liacouras, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 5154, MSC 7842, Bethesda, MD 20892, (301) 435–1740.

*Name of Committee:* Biophysical and Chemical Sciences Initial Review Group, Metallobiochemistry Study Section.

*Date:* February 17–18, 2000.

*Time:* 8:30 am to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* St. James Hotel, 950 24th Street, NW., Washington, DC 20037.

*Contact Person:* John L. Bowers, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1725.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* February 17–18, 2000.

*Time:* 9 am to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

*Contact Person:* Richard Marcus, PHD, 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:* Genetic Sciences Initial Review Group, Mammalian Genetics Study Section.

*Date:* February 17–18, 2000.

*Time:* 9 am to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Camilla Day, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2208, MSC 7890, Bethesda, MD 20892, (301) 435–1037, dayc@drg.nih.gov.

*Name of Committee:* Genetic Sciences Initial Review Group, Genetics Study Section.

*Date:* February 17–19, 2000.

*Time:* 9 am to 1 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* The River Inn, 924 25th Street, Washington, DC 20037.

*Contact Person:* David J. Remondini, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7890, Bethesda, MD 20892, (301) 435–1038.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* February 17–18, 2000.

*Time:* 9 am to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Georgetown Suites Hotel—Harbor Building, 1000 29th Street, NW., Washington, DC 20007.

*Contact Person:* Kathryn Meadow-Orlans, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, (301) 435–0902.

*Name of Committee:* Immunological Sciences Initial Review Group, Immunobiology Study Section.

*Date:* February 17–18, 2000.

*Time:* 9 am to 3 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Omni Shoreham, 2500 Calvert Street, NW., Washington, DC 20008.

*Contact Person:* Betty Hayden, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, (301) 435–1223.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* February 17, 2000.

*Time:* 12 pm to 1 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Georgetown Suites Hotel—Harbor Building, 1000 29th Street, NW., Washington, DC 20007.

*Contact Person:* Kathryn Meadow-Orlans, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, (301) 435–0902.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* February 18, 2000.

*Time:* 8 am to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* The Westin Fairfax Hotel, 2100 Massachusetts Ave., NW., Washington, DC 20008.

*Contact Person:* Nancy Hicks, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695.

(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: February 1, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–2761 Filed 2–7–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Availability of a Draft Revised Recovery Plan for the Southern Sea Otter (Enhydra lutris nereis) for Review and Comment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces the availability of a draft revision of the southern sea otter recovery plan for public review. This species occurs along the central coast of California, from Half Moon Bay south to Gaviota. The Service solicits review and comment from the public on this draft revised plan.

**DATE:** Comments on the draft revised recovery plan must be received on or before April 10, 2000 to receive consideration by the Service.

**ADDRESSES:** Persons wishing to review the draft revised recovery plan may obtain a copy by written request addressed to the Field Supervisor, Ventura Field Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003. Written comments and materials regarding the plan should be addressed to Mr. Carl Benz at the above Ventura, California address. Comments and materials received are available upon request for public inspection, by appointment, during normal business hours at the above Ventura address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Carl Benz at the above Ventura address (telephone 805–644–1766).

**SUPPLEMENTARY INFORMATION:**

**Background**

The southern (California) sea otter (*Enhydra lutris nereis*) was listed as threatened in 1977 under the Endangered Species Act of 1973, as amended. It is also recognized as a depleted population pursuant to the Marine Mammal Protection Act. Reduced range and population size, vulnerability to oil spills, and the oil spill risk from coastal tanker traffic were the primary reasons for the threatened status. The southern sea otter population contains about 2,000 individuals and ranges between Half Moon Bay south to Gaviota, California. Approximately 20 otters, including pups, are at San Nicolas Island as a result of translocation efforts to establish an experimental population. After review of new biological information, the Service, with assistance of the Southern Sea Otter Recovery Team, drafted for public review and comment a revised recovery plan in 1991. A second revision was drafted for public review in 1996. After review of public comments on those drafts, and review of new technical information regarding oil spill risk to southern sea otters, the Service, with assistance of the Southern Sea Otter Recovery Team and technical consultants, has drafted for public review and comment a new draft revised recovery plan.

**Public Comments Solicited**

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

**Authority**

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: February 2, 2000.

**Elizabeth H. Stevens,**

*Acting Manager, California/Nevada Operations Office, Region 1, U.S. Fish and Wildlife Service.*

[FR Doc. 00–2764 Filed 2–7–00; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CA–320–1820-XQ]**

### Notice of Resource Advisory Council Meeting

**AGENCY:** Bureau of Land Management, Interior, Northwest California Resource Advisory Council, Redding, California.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the authorities in the Federal Advisory Committees Act (Public Law 92–463) and the Federal Land Policy and Management Act (Public Law 94–579), the U.S. Bureau of Land Management's Northwest California Resource Advisory Council will meet Thursday and Friday, March 30 and 31, 2000, for a business meeting and field tour. The meeting and tour are open to the public, but anyone attending must provide their own transportation and lunch.

**SUPPLEMENTARY INFORMATION:** The meeting begins at 10 a.m. Thursday, March 30, at the Bureau of Land Management's Redding Field Office, 355 Hemsted Drive, Redding, CA. The members will depart immediately for a tour of public lands managed by the BLM's Redding Field Office. On Friday, March 31, the business meeting begins at 8 a.m. in the Conference Room of the Redding Field Office. Agenda items include an update on the Headwaters Forest, the status of the Redding Resource Management Plan amendment process, a status report on recovery from the Lowden Fire, and a status report on a management feasibility study for the Lake Berryessa region.

Time will be set aside for public comments. Depending on the number of persons wishing to speak, a time limit may be established.

**FOR ADDITIONAL INFORMATION CONTACT:** Lynda J. Roush, BLM Arcata Field Manager, at (707) 825–2300.

**Joseph J. Fontana,**

*Public Affairs Officer.*

[FR Doc. 00–2829 Filed 2–9–00; 8:45 am]

BILLING CODE 4310–40–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 29, 2000. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by February 23, 2000.

**Patrick W. Andrus,**

*Acting Keeper of the National Register.*

**ALABAMA**

**Blount County**

Grififfth, Robert G., Sr., House, 1204 Cty. Rd. 25, Summit, 00000143

**Clarke County**

Airmount Grave Shelter (Clarke County MPS), N side of AL 5, 0.5 mi. W of Cty Line, Thomasville, 00000142

McClellan, Doit W., Lustron House (Lustron Houses in Alabama, MPS), 116 W. Pearl St., Jackson, 00000136

McKee, J.P., Lustron House (Lustron Houses in Alabama, MPS), 519 College Ave., Jackson, 00000132

Nettles, Isaac, Gravestones (Clarke County MPS), E side Mt Nebo Rd., 0.5 mi. S of Cty Rd. 19, Carlton, 00000141

**Colbert County**

Newman, E.L., Lustron House (Lustron Houses in Alabama, MPS), 1406 34th St., Sheffield, 00000134

**Jefferson County**

Gleissner, John D. and Katherine, Lustron House (Lustron Houses in Alabama, MPS), 2420 Cahaba Rd., Birmingham, 00000133

Lustron House on Columbiana Road (Lustron Houses in Alabama, MPS), 430 Columbiana Rd., Birmingham, 00000131

Wright, Bernice L., Lustron House, (Lustron Houses in Alabama, MPS) 2424 Cahaba Rd., Birmingham, 00000130

**Lauderdale County**

Bowen, William, Lustron House, (Lustron Houses in Alabama, MPS) 1145 Wildwood Park Rd., Florence, 00000135

Darby, E. H., Lustron House, (Lustron Houses in Alabama, MPS) 321 Beverly, Florence, 00000127

Forks of Cypress Cemetery, 0.25 mi. N of Jackson Rd., E side of Dowdy Rd., N of Little Cypress Creek, Florence vicinity, 00000140

**Madison County**

Jude, George, House, 2132 Winchester Rd., Huntsville, 00000139

**Montgomery County**

Huntingdon College Campus Historic District, 1500 E. Fairview Ave., Montgomery, 00000138

**Perry County**

Uniontown Historic District, Roughly bounded by Tomasene St., Taylor St., East Ave., and Green St., Uniontown, 00000137

**Tuscaloosa County**

Quayle, Margaret, Lustron House, (Lustron Houses in Alabama, MPS) 27 Parkview Dr., Tuscaloosa, 00000126

**ALASKA**

**Juneau Borough-Census Area**

MacKinnon Apartments, 236 Third St., Juneau, 00000144

**ARIZONA**

**Maricopa County**

Ross, John M., House, 6722 N. Central Ave., Phoenix, 00000145

**MASSACHUSETTS**

**Worcester County**

Warren Public Library, Main St. at Bacon St., Warren, 00000146

**MISSOURI**

**St. Louis Independent City**

Jewel Box, Jct. of Wells Dr. and McKinley Dr., Forest Park, St. Louis, 00000147

**MONTANA**

**Blaine County**

Lodgepole Community Hall, Fort Belknap Indian Community, Lodgepole, 00000148

A request for REMOVAL has been made for the following resource:

**PENNSYLVANIA**

**Greene County**

Kent, Thomas, Jr., Farm 208 Laurel Run Rd., Waynesburg, 98000444

[FR Doc. 00–2745 Filed 2–7–00; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF LABOR

## Pension and Welfare Benefits Administration

## Prohibited Transaction Exemption 2000–05; Exemption Application No. D–10542, et al.; Grant of Individual Exemptions; Business Men's Assurance Company of America, et al.

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

### Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

### Business Men's Assurance Company of America (BMA) Located in Kansas City, MO

[Prohibited Transaction Exemption 2000–05; Exemption Application No. D–10542]

### Exemption

*Section I. Covered Transactions*

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the sales and transfers of assets of an employee benefit plan (the Plan) to BMA pursuant to the terms of a benefit-responsive or a non-benefit responsive synthetic guaranteed investment contract (the Benefit-Responsive BMA Synthetic GIC or the Non-Benefit Responsive BMA Synthetic GIC) entered into by the Plan sponsor with BMA; [1]

(2) Advances made by BMA to a Plan in order to make unanticipated benefit payments, if applicable, under a Benefit-Responsive BMA Synthetic GIC; and (3) the sweeping of interest and other proceeds to BMA from a Plan's Contractholder Custodial Account established under either a Benefit-Responsive BMA Synthetic GIC or a Non-Benefit Responsive BMA Synthetic GIC. This exemption is subject to the general conditions set forth below in Section II.

*Section II. General Conditions*

(a) The decision to enter into a BMA Synthetic GIC is made on behalf of a participating Plan in writing by a fiduciary of such Plan which is independent of BMA.

(b) Only Plans with total assets having an aggregate market value of at least $50 million are permitted to purchase BMA Synthetic GICs; provided however that—

(1) In the case of two or more Plans which are maintained by the same employer, controlled group of corporations or employee organization (*i.e.,* the Related Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are ''plan assets'' under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity has

[1] Unless specifically noted, references to the BMA Synthetic GIC refer to both types of Synthetic GIC products that are offered to Plan investors by BMA.

purchased a BMA Synthetic GIC, the foregoing $50 million requirement is deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that, if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million, or

(2) In the case of two or more Plans which are not maintained by the same employer, controlled group of corporations or employee organization (*i.e.,* the Unrelated Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are ''plan assets'' under the Plan Asset Regulation, which entity has purchased a BMA Synthetic GIC, the foregoing $50 million requirement is deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity —

(i) Has full investment responsibility with respect to Plan assets invested therein, and

(ii) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to Plan investment in the commingled entity, which are in excess of $100 million.

(c) Prior to the execution of a BMA Synthetic GIC, the Plan fiduciary receives a full and detailed written disclosure of all material features concerning the BMA Synthetic GIC, including—

(1) A copy of the underlying agreement for the BMA Synthetic GIC and accompanying application, which stipulate the relevant provisions of the Contract, the applicable fees, if any, and the rights and obligations of the parties;

(2) Investment Guidelines defining the manner in which BMA will manage the assets in the Contractholder Custodial Account;

(3) A copy of the Custodial Agreement between BMA, the Plan fiduciary and the custodian (the Custodian); and

(4) Copies of the proposed exemption and grant notice with respect to the exemptive relief provided herein.

(d) Upon the selection by a Plan fiduciary of a BMA Synthetic GIC, BMA will supply the Plan fiduciary of a Plan [including a Plan that provides for participant investment selection (the Section 404(c) Plan)], a summary of the pertinent features of the documents listed above in paragraphs (c)(1) through (c)(3) of this Section II which the Plan fiduciary, in its discretion, deems appropriate for distribution to such participant, to the extent necessary to satisfy the requirements of section 404(c) of the Act.

(e) Subsequent to a Plan's investment in a BMA Synthetic GIC, the Plan fiduciary will receive the following ongoing disclosures regarding such investment:

(1) A periodic report consisting of a Contract Value Record Report, which specifies the affected Plan's BMA Synthetic GIC Contract Value Record balance for the prior period, contributions, withdrawals [*i.e.,* Scheduled Withdrawals (the Scheduled Withdrawals) and, if applicable, Unscheduled Withdrawals (the Unscheduled Withdrawals)], interest earned, and the current period's ending Contract Value Record balance; (The time periods covered by the Contract Value Record Report will be selected in advance by the independent Plan fiduciary and may be sent monthly, quarterly or annually.)

(2) A periodic Market Value Statement, which is supplied by the Custodian on a quarterly basis, that specifies the prior period's ending market value for the assets in the Contractholder Custodial Account, contributions made by the Plan sponsor to the BMA Synthetic GIC after the initial deposit, Scheduled Withdrawals and, if applicable, Unscheduled Withdrawals, any fees paid to BMA, investment income, realized capital gains and/or losses from sales, changes in unrealized appreciation of assets, the current period's ending market value and rate of return, and a summary of transactions; and

(3) Upon request from the Custodian (*i.e.,* not more often than quarterly), a portfolio listing. (The reports referred to in paragraphs (e)(1)–(e)(3) of this Section II will be made available to the Plan fiduciary, which, in turn, will provide copies to participants in a Section 404(c) Plan upon request, to the extent the Plan fiduciary deems it necessary.)

(f) Each BMA Synthetic GIC specifically provides an objective method for determining the fair market value of the securities owned by the Plan pursuant to such GIC.

(g) Each BMA Synthetic GIC has a predefined, fixed maturity date selected by the Plan fiduciary and agreed to by BMA.

(h) In the event BMA sells assets from a Plan's Contractholder Custodial Account to BMA's general account or to an affiliate during the term of the BMA Synthetic GIC or at such GIC's maturity, the transaction is—

(1) Effected for cash;

(2) The sales price of the security is equal to the fair market value of such asset as of the close of business on the date of the sale, as determined by independent sources; and

(3) The Plan incurs no brokerage or transaction costs in connection with the transaction.

(i) BMA maintains books and records of each BMA Synthetic GIC transaction for a period of six years. Such books and records are subject to annual audit by independent, certified public accountants.

For a more complete statement of the facts and representations supporting this exemption, refer to the notice of proposed exemption published on December 17, 1999 at 64 FR 70732.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

**John Hancock Mutual Life Insurance Company (John Hancock) Located in Boston, MA**

[Prohibited Transaction Exemption 2000–06; Exemption Application No. D–10718]

**Exemption**

*Section I. Covered Transactions*

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the (1) receipt of common stock of John Hancock Financial Services, Inc., the holding company for John Hancock (the Holding Company), or (2) the receipt of cash or policy credits, by or on behalf of any eligible policyholder (the Eligible Policyholder) of John Hancock which is an employee benefit plan (the Plan), subject to applicable provisions of the Act and/or the Code, other than certain Eligible Policyholders which are Plans maintained by John Hancock or an affiliate for their own employees (the John Hancock Plans), in exchange for such Eligible

Policyholder's membership interest in John Hancock, in accordance with the terms of a plan of reorganization (the Plan of Reorganization) adopted by John Hancock and implemented pursuant to Chapter 175 of the Massachusetts General Laws.

In addition, the restrictions of section 406(a)(1)(E) and (a)(2) and section 407(a)(2) of the Act shall not apply to the receipt or holding, by the John Hancock Plans, of employer securities in the form of excess Holding Company stock, in accordance with the terms of the Plan of Reorganization.

This exemption is subject to the conditions set forth below in Section II.

*Section II. General Conditions*

(a) The Plan of Reorganization is implemented in accordance with procedural and substantive safeguards that are imposed under Massachusetts Insurance Law and is subject to review and supervision by the Massachusetts Commissioner of Insurance (the Commissioner).

(b) The Commissioner reviews the terms of the options that are provided to Eligible Policyholders of John Hancock as part of such Commissioner's review of the Plan of Reorganization, and determines, after the hearing, whether the Plan of Reorganization conforms to the requirements of chapter 175, section 19E of the Massachusetts General Laws and whether the Plan is prejudicial to the Eligible Policyholders of John Hancock or the insuring public. The Superintendent may object to the Plan of Reorganization if he or she finds that it is not fair and equitable to New York Eligible Policyholders.

(c) As part of their determinations, both the Commissioner and the Superintendent concur on the terms of the Plan of Reorganization.

(d) Each Eligible Policyholder has an opportunity to vote to approve the Plan of Reorganization after full written disclosure is given to the Eligible Policyholder by John Hancock.

(e) One or more independent fiduciaries of a Plan that is an Eligible Policyholder receives Holding Company stock, cash or policy credits pursuant to the terms of the Plan of Reorganization and neither John Hancock nor any of its affiliates exercises any discretion or provides ''investment advice,'' as that term is defined in 29 CFR 2510.3–21(c), with respect to such acquisition.

(f) After each Eligible Policyholder is allocated 17 shares of Holding Company stock, additional consideration is allocated to Eligible Policyholders who own participating policies based on actuarial formulas that take into account each participating policy's contribution to the surplus of John Hancock which formulas have been approved by the Commissioner.

(g) With respect to a John Hancock Plan, where the consideration may be in the form of Holding Company stock an independent Plan fiduciary—

(1) Determines whether the Plan of Reorganization is in the best interest of the John Hancock Plans and their participants and beneficiaries.

(2) Votes at the special meeting of Eligible Policyholders on the proposal to approve or not to approve the Plan of Reorganization.

(3) If the vote is to approve the Plan or Reorganization,

(i) Decides whether the affected John Hancock Plan should receive Holding Company stock or cash (should the latter option be available) and instructs the appropriate Plan trustee to receive such consideration on behalf of the affected John Hancock Plan;

(ii) Monitors, on behalf of the affected John Hancock Plan, the acquisition and holding of the shares of any Holding Company stock received;

(iii) Makes determinations on behalf of the John Hancock Plan with respect to voting and the continued holding of the shares of Holding Company stock received by such Plan; and

(iv) Disposes of any Holding Company stock held by the John Hancock Plan which exceeds the limitation of section 407(a)(2) of the Act as reasonably as practicable but in no event later than six months year following the effective date of the demutualization;

(v) Takes all actions that are necessary and appropriate to safeguard the interests of the John Hancock Plans; and

(vi) Provides the Department with a complete and detailed final report as it relates to the John Hancock Plans prior to the effective date of the demutualization.

(h) All Eligible Policyholders that are Plans participate in the transactions on the same basis within their class groupings as other Eligible Policyholders that are not Plans.

(i) No Eligible Policyholder pays any brokerage commissions or fees in connection with their receipt of Holding Company stock or in connection with the implementation of the commission-free sales and purchase programs.

(j) All of John Hancock's policyholder obligations remain in force and are not affected by the Plan of Reorganization.

*Section III. Definitions*

For purposes of this exemption:

(a) The term ''John Hancock'' means The John Hancock Mutual Life Insurance Company and any affiliate of John Hancock as defined in paragraph (b) of this Section III.

(b) An ''affiliate'' of John Hancock includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with John Hancock. (For purposes of this paragraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(2) Any officer, director or partner in such person, and

(3) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

(c) The term ''Eligible Policyholder'' means a policyholder whose name appears on the conversion date on John Hancock's records as the owner of a policy under which there is a right to vote and which, on both the December 31 immediately preceding the conversion date an the date the John Hancock's Board of Directors first votes to convert to stock form, is in full force for its full basic benefits with no unpaid premiums or consideration at the expiration of any applicable grace period, or which is being continued under a nonforfeiture benefit and continues to be eligible for participation in John Hancock's annual distribution of divisible surplus.

(d) The term ''policy credit'' means (i) for an individual or joint participating whole life insurance policy, the crediting of paid-up additions which will increase the cash value and death benefit of the policy; and (ii) for all other individual or joint life policies and annuities, (x) if the policy or contract has a defined account value, an increase in the account value, or, (y) if the policy or contract does not have a defined account value, the crediting of dividends left on deposit under the policy or contract.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) that was published on October 22, 1999 at 64 FR 57136.

**Written Comments**

The Department received 45 written comments with respect to the proposed exemption. Forty-four of the comments were submitted by Eligible Policyholders and one comment was submitted by John Hancock.

Of the Eligible Policyholder comments received, fourteen commenters said they were in favor of the exemption and urged the Department to approve it. Six commenters requested information that

was pertinent to their insurance policies, but was not germane to the exemption request. Twenty-four commenters expressed their objection to the exemption for various reasons, which could be categorized in the following areas: (a) the effect of John Hancock's demutualization on policyholder benefits; (b) risks inherent in the demutualization; (c) the lack of benefits to Plan participants if the exemption is granted; and (d) whether the formula utilized by John Hancock to determine the amount of consideration to be allocated to Eligible Policyholders was adequate.

John Hancock's comment requested clarification to the Notice. The comment also sought to expand upon the description of the transactions described therein.

Discussed below are the substantive comments that were submitted by the Eligible Policyholders as well as John Hancock's responses to the issues raised in comment letters. Also discussed is John Hancock's comment and the Department's responses to specific areas of technical clarification in the operative language and definitions of the Notice and the Summary of Facts and Representations (the Summary).

**Eligible Policyholder Comments**

Sixteen commenters questioned the effect of John Hancock's demutalization on a policyholder's benefits or tax-exempt status. In response these comments, John Hancock represents that the concerns of the policyholders have been addressed in the Policyholder Information Statement which was sent to all Eligible Policyholders. According to John Hancock, the document clearly states that the conversion of the company to a stock company will not reduce the benefits, values, guarantees or dividend rights of any policy, nor adversely affect any grandfathering or special tax status of any policy.

Also in connection with the effect of the demutualization on existing policyholder benefits, another commenter asserted that two representations made by John Hancock in the proposed exemption were false. First, the commenter noted that on page 57139 of the Summary, the second para graph of Representation 6 states that—

> John Hancock believes these consequences of the conversion will benefit all of its policyholders. John Hancock further explains that its insurance policies will remain in force and policyholders will be entitled to receive the benefits under their policies and contracts to which they would have been entitled if the Plan of Reorganization had not been adopted.

Second, the commenter noted that on page 57141 of the Summary, paragraph (h) of Representation 13 states that—

> The Plan of Reorganization will not change premiums or reduce policy benefits, values, guarantees or other policy obligations of John Hancock to its policyholders and contractholders.

The commenter believed that, as a result of the demutualization, John Hancock's proposed changes to products and services offered under its health insurance program would constitute an unlawful termination of its group insurance policy which was not authorized under such policy. The commenter also argued that these material breaches would have severe consequences and an adverse effect upon its organization.

In response to this comment, John Hancock explains that it sold its group benefit operations to the Unicare Life and Health Insurance Company (Unicare) and the sale was structured as a reinsurance transaction so that John Hancock would still be the insurer of record until the next renewal of the contract. John Hancock explains that the correspondence between Unicare and the commenter stems from an attempt by Unicare to modify its product line with respect to its association business (*i.e.*, business sold to associations on behalf of many employers within the association). John Hancock acknowledges that Unicare is attempting to standardize its product mix for this type of business for the next contract cycle. In any event, John Hancock states that ongoing discussions between Unicare and the commenter do not relate to the demutualization and that John Hancock's statement in the Plan of Reorganization and Policyholder Information Statement regarding no changes to existing contracts as a result of the demutualization are entirely accurate. Further, John Hancock points out that none of the changes to the commenter's policy, if implemented, would be as a result of, or caused by the Plan of Reorganization.

Four commenters described the increased risk that would be caused by John Hancock's conversion to a stock company. However, in response to these commenters, John Hancock asserts that the policyholders lacked an understanding of the transaction and had every right to be heard at the hearing that was held on November 17, 1999.

Still another commenter suggested that there would be ''no possible benefit to Plan participants'' if the exemption is granted. In response to this commenter, John Hancock asserts that the policyholder's notion is incorrect inasmuch as Eligible Policyholders that are Plans will receive Holding Company stock, cash or policy credits in exchange for their illiquid membership interests in John Hancock.

Finally, a commenter expressed concern about the adequacy of the formula utilized by John Hancock to determine the amount of consideration to be allocated to Eligible Policyholders. Based on prior experience with another insurance company demutualization, the commenter questioned John Hancock's characterization of certain investment contracts as ''nonparticipating'' as well as the resulting allocation formula.

In response to this comment, John Hancock asserts that only ''participating'' contractholders will be eligible for both the fixed and variable components of compensation, with the variable component being dependent on the policy's contribution to the surplus of the insurer, both historically and prospectively. John Hancock notes that the fixed component will be based upon a policy's voting interest while the variable component will be given in respect of a policy's contribution to the insurer's surplus. John Hancock further notes that only participating policies will have rights to divisible surplus and these views are consistent with the approach taken in insurance company demutualizations that have occurred in the United States over the past decade.

John Hancock explains that while the commenter may represent Plans that have non-participating policies with John Hancock, these Plans may have contracts with another insurer that are deemed participating. Although many of the features of the contracts may be similar, John Hancock explains that the difference in the participating status of the contracts is paramount for purposes of determining eligibility for the fixed component.

*John Hancock's Comments*

1. *Insurance Regulator Roles.* On page 57136 of the Notice, paragraphs (b) and (c) of the General Conditions describe the respective roles of the Massachusetts Insurance Commissioner and the New York Superintendent of Insurance with respect to John Hancock's Plan of Reorganization. John Hancock states that these paragraphs are not entirely clear. In the case of Massachusetts, John Hancock points out that the Commissioner must determine, after the hearing, whether the Plan of Reorganization conforms to the requirements of chapter 175, section 19E of the Massachusetts General Laws and whether the Plan is prejudicial to

the policyholders of John Hancock or the insuring public. John Hancock also points out that the Superintendent may object to the Plan of Reorganization if he finds that it is not fair and equitable to New York Eligible Policyholders.

Paragraph (c) of Section II states that both the Commissioner and the Superintendent must concur on the terms of the Plan of Reorganization. However, John Hancock states that while it is true that both regulators must be satisfied that the Plan of Reorganization meets the appropriate statutory standard, there is no formal process in which they ''concur on the terms of the Plan of Reorganization.''

In response to these comments, the Department has revised paragraphs (b) and (c) of Section II to read as follows:

(b) The Commissioner reviews the terms of the options that are provided to Eligible Policyholders of John Hancock as part of such Commissioner's review of the Plan of Reorganization, and determines, after the hearing, whether the Plan of Reorganization conforms to the requirements of chapter 175, section 19E of the Massachusetts General Laws and whether the Plan is prejudicial to the Eligible Policyholders of John Hancock or the insuring public. The Superintendent may object to the Plan of Reorganization if he or she finds that it is not fair and equitable to New York Eligible Policyholders.

(c) As part of their determinations, both the Commissioner and the Superintendent concur on the terms of the Plan of Reorganization.

John Hancock also wishes to acknowledge that there are differences between the statutory language describing the Commissioner's standard of review and those of the Superintendent. As noted above, the Massachusetts standard requires the Commissioner to find whether the Reorganization Plan is ''prejudicial to the Eligible Policyholders of John Hancock or the insuring public.'' John Hancock believes the Massachusetts standard is broader because it focuses not only on ''the eligible policyholders'' of the demutualizing company but also on ''the insuring public.'' In contrast, John Hancock explains that the New York standard requires the Superintendent to find that the transaction is ''fair and equitable'' to New York policyholders of the insurer and can, therefore, be viewed somewhat more narrowly than the Massachusetts standard.

John Hancock represents that it sees no substantive difference between the ''not prejudicial'' concept and the ''fair and equitable concept.'' In John Hancock's view, the phrase ''not prejudicial'' implies ''fairness.'' From John Hancock's past experience, it believes the Commissioner also shares this view.

2. *John Hancock Plans.* On pages 57136 and 57141 of the Notice, paragraph (g)(3)(i) of Section II of the General Conditions and Representation 11 of the Summary, indicate that an independent fiduciary ''receives such consideration on behalf of the affected John Hancock Plan.'' John Hancock wishes to clarify that while U.S. Trust Company, N.A. (U.S. Trust), the independent fiduciary for the John Hancock Plans, will make the decision as to what each Plan receives, the consideration, itself, is received by the Plan trustee based on the instructions of the independent fiduciary.

The Department concurs with this comment and has revised paragraph (g)(3)(i) of Section II and the second sentence of Representation 11 by adding the phrase ''* * * and instructs the appropriate Plan trustee to receive such consideration on behalf of the affected John Hancock Plan'' after the parenthetical.

3. *Definition of ''Policy Credit.''* On page 57137 of the Notice, in Section III(d) of the Definitions, the term ''policy credit'' is defined as follows:

* * * (1) for an individual or joint ordinary life insurance policy, an increase to the paid-up dividend addition value, and (2) for all other individual or joint life policies and annuities, (i) if the policy or contract has a defined account value, an increase in the account value, or
(ii) if the policy or contract does not have a defined account value, an increase to the dividend accumulation fund.

John Hancock concedes that this definition is generally correct. However, it does not correspond exactly with the definition of the term in John Hancock's final Plan of Reorganization which defines the term as follows:

''Policy Credit'' means (i) for an individual or joint participating whole life insurance policy, the crediting of paid-up additions which will increase the cash value and death benefit of the policy, and (ii) for all other individual or joint life policies and annuities, (x) if the policy or contract has a defined account value, an increase in the account value, or, (y) if the policy or contract does not have a defined account value, the crediting of dividends left on deposit under the policy or contract.

For the sake of conformity with John Hancock's final Plan of Reorganization, the Department has revised the definition of the term ''policy credit,'' accordingly.

4. *Holding Company Formation.* On page 57138 of the Notice, in Representation 4 of the Summary, the third sentence of paragraph three states that the Holding Company will own 100 percent of two new holding companies being established to own existing subsidiaries of John Hancock and most other foreign insurance subsidiaries. John Hancock states that this sentence should be deleted as this aspect of its reorganization is no longer contemplated. In response to this change, the Department has deleted this sentence from the Summary.

5. *Date of Demutualization.* On page 57139 of the Notice, in Representation 5 of the Summary, the second sentence of paragraph (b) states that John Hancock's expected date of demutualization will occur during early February 2000. John Hancock wishes to clarify that the actual date of its demutualization will occur on February 1, 2000.

6. *Risk-Based Capital Ratio Formula.* On page 57139 of the Notice, in Representation 5 of the Summary, paragraph (c) states, in part, that the Holding Company will contribute cash raised in the initial public offering to John Hancock in an amount at least equal to the amount required for John Hancock to maintain a risk-based capital ratio of not less than 200 percent following the payment and crediting of cash and establishment of reserves for policy credits called for by the Plan of Reorganization. John Hancock represents that the 200 percent risk-based capital ratio formula was revised at the request of the Commissioner during her informal review of the draft Plan of Reorganization and was subsequently incorporated into the final Plan of Reorganization. John Hancock explains that the Commissioner required the change to a more complicated formula in order to maximize the amount of IPO proceeds that would be available to be contributed to the insurer and used to fund distributions of cash to policyholders who do not elect Holding Company stock. Because its risk-based capital ratio is in excess of 200 percent, John Hancock states that the old formula would have permitted more IPO proceeds to be retained by the Holding Company.

Therefore, in accordance with the formula revision, John Hancock requests that Representation 5(c) be modified to read as follows:

(c) *Contribution to the Capital of John Hancock.* Following the transactions described above, the Holding Company will contribute cash raised in the IPO (after the payment of transaction expenses and the retention of a certain amount by the Holding Company, as permitted under both the old and the new formulas) to John Hancock, which shall apply substantially all such

proceeds to fund cash and policy credit consideration to policyholders.

The Department concurs with this change and has made the requested modification to the Summary. The Department also wishes to note that while both formulas would allow the Holding Company to retain a certain amount of cash raised in the IPO, under the new formula, more cash will be contributed by the Holding Company to John Hancock.

7. *Time Frame For Eligible Policyholder Submission of Election Form.* On page 57140 of the Notice, the first paragraph of Representation 10 of the Summary states, in pertinent part, that an Eligible Policyholder will be entitled to receive Holding Company stock if such Policyholder affirmatively elects, on a form provided to such Eligible Policyholder that has been properly completed and received by John Hancock prior to the date of the special policyholder meeting, a preference to receive stock. John Hancock notes that the time within which an Eligible Policyholder may submit the election form, indicating a preference to receive shares of Holding Company stock, has been extended until December 31, 1999.

8. *Role of U.S. Trust.* On pages 57136 and 57141 of the Notice, Section II(g)(3)(ii) and (iii) and Representation 11 of the Summary describe the role of U.S. Trust, the independent fiduciary for the John Hancock Plans in connection with the demutualization. Specifically, U.S. Trust will vote and make elections (*i.e.,* stock or cash) which are available to the John Hancock Plans under the Plan of Reorganization. However, once the demutualization is completed, John Hancock represents that U.S. Trust will have an ongoing role only with respect to those John Hancock Plans which continue to hold Holding Company stock that is in excess of the limitations of section 407(a) of the Act. Thus, once the stock holdings of an affected John Hancock Plan are brought within the 10 percent limit, which must occur within six months of the effective date of the demutualization, John Hancock explains that the retention of U.S. Trust will no longer be required.

The Department concurs with John Hancock's understanding with respect to the retention of U.S. Trust following the demutualization.

For further information regarding the comments and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–10718) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Accordingly, after giving full consideration to the entire record, including the written comments, the Department has decided to grant the exemption subject to the modifications and clarifications described above.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

### Cassano's Inc. 401(k) Plan and Trust (the Plan) Located in Dayton, Ohio

[Prohibited Transaction Exemption 2000–07; Exemption Application Number D–10734]

### Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale (the Sale) of an improved parcel of real property (the Property) by the Plan to Cassano's, Inc. (Cassano's), a party in interest and disqualified person with respect to the Plan, provided that the following conditions are met:

(a) The Sale is a one-time transaction for cash;

(b) The terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;

(c) The Plan receives the greater of $155,500 or the fair market value of the Property as of the date of the Sale;

(d) The Plan is not required to pay any commissions, costs or other expenses in connection with the Sale; and

(e) Cassano's files Form 5330 with the Internal Revenue Service (the Service) and pays certain excise taxes with respect to the past prohibited leasing of the Property within 90 days of the date this notice granting this exemption is published in the **Federal Register**.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to notice of proposed exemption published on November 9, 1999 at 64 FR 61134

**FOR FURTHER INFORMATION CONTACT:** Mr. J. Martin Jara, telephone (202) 219–8881. (This is not a toll-free number.)

### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 3rd day of Febraury, 2000.

**Ivan Strasfeld,**

*Director of Exemption Determination, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 00–2858 Filed 2–7–00; 8:45 am]

**BILLING CODE 4510–29–P**

## DEPARTMENT OF LABOR

## Pension and Welfare Benefits Administration

## Exemption Application No. D–10384; Deutsche Bank AG, et al. (Deutsche Bank)

**AGENCY:** Pension and Welfare Benefits Administration, Labor (the Department).

**ACTION:** Notice of technical correction.

On February 1, 2000, the Department published in the **Federal Register** (65 FR 4843) a notice of proposed exemption for Deutsche Bank which

would allow the assets of certain employee benefit plans to be invested in synthetic guaranteed investment contracts (the Buy & Hold Synthetic GICs) that would be offered by Deutsche Bank. Due to a printing error, appearing on page 4846 of the proposed exemption in Representation 7, the formula for computing the Crediting Rate for each Buy & Hold Synthetic GIC, was stated as follows:

$$BV = \sum_{k=n.}^{N}((\text{net cashflow}_k)/((1\ IRR^k))$$

The Department notes that the correct formula for calculating the Crediting Rate is

$$BV = \sum_{k=n}^{N}((\text{net cashflow}_k)/((1+IRR^{k-n}))$$

and it hereby amends the proposal.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan D. Broady of the Department at (202) 219–8881. (This is not a toll-free number.)

Signed at Washington, DC this 3rd day of February, 2000.

**Ivan L. Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.*

[FR Doc. 00–2857 Filed 2–7–00; 8:45 am]

**BILLING CODE 4510–29–P**

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

**[Application Nos. D–10119 and D–10120, et al.]**

### Morgan Guaranty Trust Company of New York, et al.

**AGENCY:** Pension and Welfare Benefits Administration, Department of Labor.

**ACTION:** Notice of proposed exemptions.[1]

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from the taxes imposed by the Internal Revenue Code of 1986 (the Code).

The exemptions, if granted, would permit purchases of securities by the applicants' asset management affiliate on behalf of employee benefit plans for which such asset management affiliate is a fiduciary, from underwriting or selling syndicates where the applicants' broker-dealer affiliate participates as a manager or syndicate member. The exemptions, if granted, would affect participants and beneficiaries of the plans investing in such securities.

**EFFECTIVE DATE:** The exemptions, if granted, would be effective as of the date of publication of this notice in the **Federal Register**.

**DATES:** Written comments and/or requests for a public hearing must be received by the Department by March 24, 2000.

**ADDRESSES:** All written comments and/or requests for a public hearing (preferably, three copies) should be sent to the Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Attention: Application Nos. D–10119 and D–10120, *et al.* The applications pertaining to the proposed exemptions and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

**FOR FURTHER INFORMATION CONTACT:** Andrea W. Selvaggio, Janet L. Schmidt, or Karin Weng of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** Notice is hereby given of the pendency before the Department of five applications for exemption from the restrictions of section 406 of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) of the Code. The exemptions were requested in separate applications filed pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990), by the following entities: Morgan Guaranty Trust Company of New York and J.P. Morgan Investment Management Inc., Goldman, Sachs & Co., The Chase Manhattan Bank, Citigroup Inc., and Morgan Stanley Dean Witter & Co. Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), generally transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this notice of pendency is being issued solely by the Department.[2]

**Summary of Facts and Representations**

The facts and representations contained in the applications are summarized below. Interested persons are referred to the applications on file with the Department for the complete representations of the applicants.

*The Applicants*

The five applicants, diversified financial services firms, have requested similar exemptive relief. It is represented that the applicants and their various affiliates are all regulated by other federal government agencies such as the Securities and Exchange Commission (the SEC), as well as state government agencies, and securities regulatory organizations. For convenience, following the initial description of each of the applicants, below, the applicants and their affiliates shall be referred to in the remainder of the notice in generic terms that denote certain roles, namely, ''the Applicant,'' ''the Asset Manager,''[3] or ''the Affiliated Broker-Dealer.''[4]

1. Morgan Guaranty Trust Company of New York (MGT) is a New York Trust Company. J.P. Morgan Investment Management Inc. (JPMIM), is a registered investment adviser. Both MGT and JPMIM are wholly owned subsidiaries of J.P. Morgan & Co. (JPM), a Delaware corporation. MGT and JPMIM (together, the Applicant) provide investment management and investment advisory services. Hereinafter, the Applicant shall be referred to as ''the Asset Manager'' when discussing the Applicant's activities relating to investment management or investment advisory services. J.P. Morgan Securities Inc., a wholly owned indirect subsidiary of JPM, is a registered broker-dealer (hereinafter, the Affiliated Broker-Dealer). It is represented that, as of December 31, 1998, the last day of the

[1] The term ''Proposed Exemptions'' refers to the following individual exemption applications: Application Nos. D–10119 and D–10120, Morgan Guaranty Trust Company of New York and J.P. Morgan Investment Management Inc.; Application No. D–10587, Goldman, Sachs & Co.; Application No. D–10779, The Chase Manhattan Bank; Application No. D–10820, Citigroup Inc; and Application No. D–10832, Morgan Stanley Dean Witter & Co.

[2] All references in the remainder of the preamble to specific provisions of Title I of the Act shall refer also to the corresponding provisions of the Code (if any).

[3] To the extent that the Applicant has more than one asset management affiliate, all references to the Asset Manager herein shall refer also to the other asset management entity or entities.

[4] To the extent that the Applicant has more than one registered broker-dealer affiliate that participates in underwriting or selling syndicates, all references to the Affiliated Broker-Dealer herein shall refer also to the other broker-dealer entity or entities.

most recent fiscal year for which information is available, JPMIM and MGT had $316 billion in total client assets under management. As of that date, approximately 40 percent of client assets under management were attributable to employee benefit plans (Client Plans) subject to the fiduciary responsibility provisions of the Act, including Client Plans investing in a pooled fund (Pooled Fund).

2. Goldman, Sachs & Co. (Goldman), a New York limited partnership, is a wholly owned subsidiary and the principal operating subsidiary of The Goldman Sachs Group, Inc. Goldman is a registered broker-dealer and investment adviser. Hereinafter, Goldman shall be referred to, generally, as ''the Applicant'' and, specifically, as ''the Affiliated Broker-Dealer'' when discussing Goldman's activities as an underwriter. Goldman, Sachs Asset Management (hereinafter, the Asset Manager) is a separate operating division of the Applicant and is engaged in the investment management and investment advisory business. It is represented that, as of November 26, 1999, the last day of the Applicant's most recent fiscal year, the Asset Manager had total client assets under management of $241.4 billion. As of that date, approximately 12.7 percent of client assets under management were attributable to Client Plans, including those investing in a Pooled Fund.

3. The Chase Manhattan Bank (CMB), a New York State bank, is a subsidiary of The Chase Manhattan Corporation (CMC). Chase Asset Management (CAM), a registered investment adviser, is a subsidiary of CMB. CMB and CAM (together, the Applicant) provide investment management and investment advisory services. Hereinafter, the Applicant shall be referred to as ''the Asset Manager'' when discussing the Applicant's activities relating to investment management or investment advisory services. Chase Securities Inc., a subsidiary of CMC, is a registered broker-dealer (hereinafter, the Affiliated Broker-Dealer). It is represented that, as of December 31, 1998, the last day of its most recent fiscal year for which information is available, CMB had total client assets under management of approximately $31 billion. As of that date, CAM had total client assets under management of approximately $48 billion. As of December 31, 1998, approximately 1.0 percent of client assets of CMB, and approximately 9.6 percent of client assets of CAM, were attributable to Client Plans, including those investing in a Pooled Fund.

4. Citigroup, Inc. (Citigroup or the Applicant) is a Delaware corporation and a diversified holding company. Salomon Smith Barney Inc. (SSB or the Applicant), a New York corporation, is an indirect subsidiary of Citigroup. SSB is a registered broker-dealer and investment adviser. Hereinafter, SSB shall be referred to, generally, as the ''the Applicant'' and, specifically, as ''the Affiliated Broker-Dealer'' when discussing SSB's activities as an underwriter. Salomon Smith Barney Asset Management (hereinafter, the Asset Manager) is a separate operating division of SSB and is engaged in the investment management and investment advisory business. It is represented that, as of September 30, 1999, the last day of its most recent fiscal year, all of Citigroup's asset management affiliates had, in the aggregate, client assets under management of approximately $351 billion. As of that date, approximately 3.7 percent of client asset under management were attributable to Client Plans, including those investing in a Pooled Fund.

5. Morgan Stanley Dean Witter & Co. (hereinafter, the Applicant) is a publicly traded Delaware corporation. The Applicant is a registered investment adviser. Morgan Stanley Dean Witter Investment Management Inc. (hereinafter, the Asset Manager) is a wholly owned subsidiary of the Applicant. The Asset Manager is a registered investment adviser. Morgan Stanley & Co. Incorporated (hereinafter, the Affiliated Broker-Dealer) is another wholly owned subsidiary of the Applicant. The Affiliated Broker-Dealer is a registered investment adviser and broker-dealer. It is represented that all of the Applicant's asset management affiliates had, in the aggregate, client assets under management of approximately $425 billion, as of November 30, 1999, the last day of their most recent fiscal year. As of that date, approximately 20 percent of client assets under management were attributable to Client Plans, including those investing in a Pooled Fund.

*Requested Exemption*

6. Each Applicant requests exemptive relief permitting purchases of securities by the Asset Manager, for the Asset Manager's Client Plans, including Pooled Funds, from underwriting or selling syndicates in which the Affiliated Broker-Dealer participates as a manager or member. Each Applicant states that such purchases would be made from an underwriter or broker-dealer other than the Affiliated Broker-Dealer and that the Affiliated Broker-Dealer would not receive any selling concessions with respect to the securities sold to Client Plans.

7. Each Applicant represents that where the Affiliated Broker-Dealer is a member of an underwriting or selling syndicate, the Asset Manager makes purchases of securities for its Client Plans in compliance with Prohibited Transaction Exemption (PTE) 75–1 (40 FR 50845, October 31, 1975), Part III. PTE 75–1, Part III, provides a class exemption, under certain conditions, for a plan fiduciary to purchase securities from an underwriting or selling syndicate of which the fiduciary or an affiliate is a member. However, relief under PTE 75–1 is unavailable if the fiduciary or its affiliate is a manager of the underwriting or selling syndicate.

8. Regardless of whether the fiduciary or its affiliate is a manager or member of the underwriting or selling syndicate, PTE 75–1 is also unavailable for the purchase of unregistered securities, including securities that have been purchased by an underwriter for resale to ''qualified institutional buyers'' (QIBs), pursuant to SEC Rule 144A (17 CFR 230.144A) under the Securities Act of 1933 (the 1933 Act)(Rule 144A Securities). Rule 144A is frequently used for sales of securities of foreign issuers to U.S. investors who are QIBs. Each Applicant states that syndicates selling securities pursuant to Rule 144A are functionally equivalent to syndicates selling securities in registered offerings.

9. Each Applicant represents that the Affiliated Broker-Dealer is frequently involved in securities offerings as a manager of underwriting or selling syndicates, or as a manager or member of a syndicate selling Rule 144A Securities. Each Applicant further asserts that the inability of the Asset Manager to purchase securities for its Client Plans from such syndicates can be detrimental to those accounts because the accounts can lose important investment opportunities.

10. According to each Applicant, there has been considerable consolidation in the nation's financial services industry since 1975, resulting in more situations where a plan fiduciary may be affiliated with the manager of an underwriting syndicate.[5]

[5] For further background, see ''The Costs Imposed on Pension Plans by ERISA's Prohibited Transactions Provisions,'' December 1998, Anthony Saunders and Ingo Walter. This study, by Professors Saunders and Walter of the Stern School of Business of New York University, discusses the consolidation of the financial services industry. It was privately commissioned by J.P. Morgan (see Application Nos. D–10119 and D–10120). The study estimates the economic loss to plans resulting from their investment managers' inability to purchase securities from affiliated underwritings by examining the one-day, one-week, and one-month investment returns on various initial public offerings (IPOs) during the years 1991 through 1996. In response to the Department's request for

In addition, many plans have expanded their investment portfolios in recent years to include foreign securities. As a result, the exemption provided in PTE 75–1, Part III, is often unavailable for purchases of certain securities that may be appropriate plan investments.[6]

*Investments in Offered Securities*

11. Each Applicant represents that the Asset Manager makes investment decisions on behalf of, or renders investment advice to, its Client Plans in accordance with the governing document of the particular Client Plan or Pooled Fund and the guidelines and objectives established in the investment management or advisory agreement. Since the Client Plans are covered by Title I of the Act, such investment decisions are also subject to the fiduciary responsibility provisions of the Act.

12. Each Applicant states, therefore, that a decision to invest in particular securities is made on the basis of price, value, and a Client Plan's investment criteria, not on whether the securities are currently being sold through an underwriting or selling syndicate. Each Applicant further asserts that the Asset Manager has little incentive to make purchases from offerings for which the Affiliated Broker-Dealer is an underwriter that are not in the interests of the Client Plans because the Asset Manager's compensation for its services is generally based upon assets under management. If the assets under its management do not perform well, the Asset Manager will receive less compensation and could lose clients.

13. Each Applicant states that the Asset Manager generally purchases securities in large blocks because the same investments will be made across several of its accounts. If there is a new offering of an equity or fixed income security that the Asset Manager had otherwise intended to purchase, it may be able to purchase the security through the offering syndicate at a lower price than it would pay in the open market, without transaction costs and with a reduced market impact if it is buying a relatively large quantity. This is because a large purchase in the open market can cause an increase in the market price and, consequently, in the cost of the securities. Purchasing from an offering syndicate can thus reduce the costs to the Asset Manager's Client Plans.

14. However, absent an individual exemption, if the Affiliated Broker-Dealer is a manager of the syndicate underwriting the offering, the Asset Manager is currently foreclosed from purchasing any securities from that underwriting syndicate. If the Asset Manager then purchases the same securities in the secondary market, the Client Plans may incur greater costs because the market price is often higher than the offering price, and because of transaction and market impact costs. Alternatively, the Asset Manager may have foregone other investment opportunities because of its decision to purchase in the offering, and these opportunities, if still available, may have become more expensive.

*Underwriting of Securities Offerings*

15. Each Applicant represents that the Affiliated Broker-Dealer manages and participates in firm commitment underwriting syndicates for registered offerings of both equity and debt securities. While equity and debt underwritings may operate differently with regard to the actual sales process, the basic structures are the same. In a firm commitment underwriting, the underwriting syndicate acquires the securities from the issuer and then sells the securities to investors.

16. Each Applicant represents that while, as a legal matter, the syndicate assumes the risk that the securities might not be distributable, as a practical matter, this risk is reduced, in marketed deals, through ''building a book'' (*i.e.*, taking indications of interest) prior to pricing the securities. Each Applicant asserts that, consequently, there is little incentive for the underwriters to use their discretionary accounts (or the discretionary accounts of their affiliates) to buy up the securities as a way to avoid underwriting liabilities.

17. Each syndicate has a lead manager, who is the principal contact between the syndicate and the issuer and who is responsible for organizing and coordinating the syndicate. The syndicate may also have co-managers, who generally assist the lead manager in working with the issuer to prepare the registration statement to be filed with the SEC and in distributing the underwritten securities. While equity syndicates typically include additional members that are not managers, more recently, membership in many debt syndicates has been limited to lead and co-managers.

18. Where more than one underwriter is involved, the lead manager, who has been selected by the issuer, contacts other underwriters, and the underwriters enter into an Agreement Among Underwriters. Most lead managers have a form of agreement. This document is then supplemented for the particular deal by sending an ''invitation telex'' setting forth particular terms to the other underwriters.

19. The arrangement between the syndicate and the issuer is embodied in an underwriting agreement, which is signed on behalf of the underwriters by one or more of the managers. The underwriting agreement provides, subject to certain closing conditions, that the underwriters are obligated to purchase the underwritten securities from the issuer in accordance with their respective commitments. This obligation is met by using the proceeds received from the buyers of the securities in the offering, although there is a risk that the underwriters will have to pay for a portion of the securities, in the event that not all of the securities are sold.

20. However, each Applicant represents that, generally, the risk that the securities will not be sold is small because the underwriting agreement is not executed until after the underwriters have obtained indications of interest in purchasing the securities from a sufficient number of investors to acquire all the securities being offered. Once the underwriting agreement is executed, the underwriters immediately begin contacting the investors to confirm the sales, first orally and then by written confirmation, and sales are finalized within hours and sometimes minutes. The underwriters are anxious to complete the sales as soon as possible because until they ''break syndicate,'' they cannot enter the market. In many cases, the underwriters will act as market-markers for the security. A market-maker holds itself out as willing to buy or sell the security for its own account on a regular basis.

21. Each Applicant represents that the process of ''building a book'' or soliciting interest occurs as follows. In an equity offering, after a registration statement is filed with the SEC and while it is under review by the SEC

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additional information, Professor Walter explained, in a letter dated August 20, 1999, why short periods were selected for calculating the hypothetical returns: ''The fact that IPOs do not have significant excess performance over the long run is well documented in finance and is known to all mutual and pension fund managers. Indeed, long-term relative performance of IPOs (*i.e.*, those held for a period over 3 years) is significantly below market performance as measured by standard indices such as the S&P 500 . . .''

[6] Under the Gramm-Leach-Bliley Act, signed into law by the President on November 12, 1999, certain provisions of the Glass-Steagall Act and the Bank Holding Company Act of 1956, as amended, are repealed. The Department notes that the effect of such law will likely be further consolidation of the financial services industry. The new law will facilitate cross-ownership and control among bank holding companies and securities firms through the creation of ''financial holding companies'' that will be permitted to engage in a broad range of financial and related activities, including underwriting and dealing activities.

staff, representatives of the issuer and the managers conduct meetings with potential investors, who learn about the company and the securities and receive a preliminary prospectus. The underwriters cannot make any firm sales until the registration statement is declared effective by the SEC. Prior to the effective date, while the investors thus cannot become legally obligated to make a purchase, they indicate whether they have an interest in buying, and the managers compile a ''book'' of investors who are willing to ''circle'' a particular portion of the issue. These indications of interest are sometimes referred to as a ''soft circle'' because investors cannot be legally bound to buy the securities until the registration statement is effective. However, each Applicant represents that investors generally follow through on their indications of interest, and would be expected to do so, barring any sudden adverse developments (in which case it is likely that the offering would be withdrawn), because if they do not follow through, the underwriters will be reluctant to sell to them in future offerings.

22. Assuming that the meetings have produced sufficient indications of interest, each Applicant represents that the issuer and the managers together will set the price of the securities and ask the SEC to declare the registration effective. After the registration statement becomes effective and the underwriting agreement is executed, the underwriters contact those investors who have indicated an interest in purchasing securities in the offering to execute the sales. Each Applicant represents that offerings are often oversubscribed, and many have an over-allotment option that the underwriters can exercise to acquire additional shares from the issuer. Where an offering is oversubscribed, the underwriters decide how to allocate the securities among the potential purchasers. However, if an issue is a ''hot issue,'' i.e., it is selling in the market at a premium above its offering price, the underwriters may not hold this hot issue in their own accounts, nor sell it to their officers and directors. A hot issue may also not be sold to the personal accounts of those responsible for investing for others, such as officers of banks, insurance companies, mutual funds, and investment advisers. (NASD Manual & Notices to Members, IM–2110–1)

23. Each Applicant represents that debt offerings may be ''negotiated'' offerings, ''competitive bid'' offerings, or ''bought deals.'' ''Negotiated'' offerings, which often involve non-investment grade securities, are conducted in the same manner as an equity offering with regard to when the underwriting agreement is executed and how the securities are offered. ''Competitive bid'' offerings, in which the issuer determines the price for the securities through competitive bidding rather than negotiating the price with the underwriting syndicate, are performed under ''shelf'' registration statements pursuant to SEC Rule 415 under the 1933 Act (17 CFR 230.415).[7]

24. In a competitive bid offering, prospective lead underwriters will bid against one another to purchase debt securities, based upon their determinations of the degree of investor interest in the securities. Depending on the level of investor interest and the size of the offering, a bidding lead underwriter may bring in co-managers to assist in the sales process. Most of the securities are frequently sold within hours, or sometimes even less than an hour, after the securities are made available for purchase.

25. Because of market forces and the requirements of Rule 415, the competitive bid process is generally available only to issuers of investment-grade securities who have been subject to the reporting requirements of the Securities Exchange Act of 1934 (the 1934 Act) for at least one year.

26. Occasionally, in highly-rated debt issues, underwriters ''buy'' the entire deal off of a ''shelf registration'' before obtaining indications of interest. These ''bought'' deals involve issuers whose securities enjoy a deep and liquid secondary market, such that an underwriter has confidence without pre-marketing that it can identify purchasers for the bonds.

*Structure of Diversified Financial Services Firms*

27. Each Applicant represents that there are internal policies in place that restrict contact and the flow of information between investment management personnel and non-investment management personnel. These policies are designed to protect against ''insider trading,'' i.e., trading on information not available to the general public that may affect the market price of the securities. Diversified financial services firms must be concerned about insider trading problems because one part of the firm—e.g., the mergers and acquisitions group—could come into possession of non-public information regarding an upcoming transaction involving a particular issuer, while another part of the firm—e.g., the investment management group—could be trading in the securities of that issuer for its clients.[8]

28. Each Applicant states that its business separation policies and procedures are also designed to restrict the flow of any information to or from the Asset Manager that could limit its flexibility in managing client assets, and of information obtained or developed by the Asset Manager that could be used by other parts of the organization, to the detriment of the Asset Manager's clients.

29. Each Applicant states that major clients of the Affiliated Broker-Dealer include investment management firms that are competitors of the Asset Manager. Similarly, the Asset Manager deals on a regular basis with broker-dealers that compete with the Affiliated Broker-Dealer. If special consideration were shown to an affiliate, such conduct would likely adversely affect the relationships of the Affiliated Broker-Dealer and of the Asset Manager with firms that compete with that affiliate. Therefore, a goal of each Applicant's business separation policy is to avoid any possible perception of improper flows of information between the Affiliated Broker-Dealer and the Asset Manager, in order to prevent any adverse impact on client and business relationships.

*Underwriting Compensation*

30. Each Applicant represents that the underwriters are compensated through the ''spread,'' or difference, between the price at which the underwriters buy the securities from the issuer and the price at which the securities are sold to the public. The spread is divided into three components.

31. The first component includes the management fee, which generally represents an agreed upon percentage of the overall spread and is allocated among the lead manager and co-managers. Where there is more than one managing underwriter, the way the management fee will be allocated among the managers is generally agreed upon prior to soliciting indications of interest (the process of ''building a book''). Thus, according to each Applicant, such management fee allocations are not

[7] Rule 415 permits an issuer to sell debt as well as equity securities under an effective registration statement previously filed with the SEC by filing a post-effective amendment or supplemental prospectus.

[8] The Insider Trading and Securities Fraud Enforcement Act of 1988 required brokers and dealers to maintain and enforce written policies and procedures that are ''reasonably designed . . . to prevent the misuse in violation of [the federal securities laws] . . . of material, nonpublic information by such broker or dealer or any person associated with such broker or dealer.'' (Section 15(f) of the 1934 Act (15 U.S.C. 780(f)); see also Rules 342 and 351 of the NYSE and SEC Regulation M (17 CFR 242.100(a)(3)).

reflective of the amount of securities that particular managers sell in an offering.

32. The second component is the underwriting fee, which represents compensation to the underwriters (including the non-managers, if any) for the risks they assume in connection with the offering and for the use of their capital. This component of the spread is also used to cover the expenses of the underwriting that are not otherwise reimbursed by the issuer.

33. The first and second components are received without regard to how the underwritten securities are allocated for sales purposes or to whom the securities are sold. The third component of the spread is the selling concession, which generally constitutes 60 percent or more of the spread. The selling concession compensates the underwriters for their actual selling efforts. The allocation of selling concessions among the underwriters follows the allocation of the securities for sales purposes, except to the extent that buyers designate other broker-dealers (who may be other underwriters as well as broker-dealers outside the syndicate) to receive the selling concessions from the securities they purchase.

34. Securities are allocated for sales purposes into two categories. The first and larger category is the ''institutional pot,'' which is the pool of securities from which sales are made to institutional investors. Selling concessions for securities sold from the institutional pot are generally designated by the purchaser to go to particular underwriters or broker-dealers. When securities are sold from the institutional pot, the managers sometimes receive a portion of the selling concessions, referred to as a ''fixed designation,'' [9] attributable to securities sold in this category, without regard to who sold the securities or to whom they were sold. For securities covered by this proposed exemption, however, the Affiliated Broker-Dealer may not receive, either directly or indirectly, any compensation that is attributable to the fixed designation generated by purchases of securities by the Asset Manager on behalf of its Client Plans.

35. The second category of allocated securities is ''retail,'' which are the securities retained by the underwriters for sale to their retail customers. The underwriters receive the selling concessions from their respective retail retention allocations. Securities may be shifted between the two categories based upon whether either category is oversold or undersold during the course of the offering.

36. Each Applicant asserts that the Affiliated Broker-Dealer's inability to receive any selling concessions, or any compensation attributable to the fixed designations generated by purchases of securities by the Asset Manager's Client Plans, removes the primary economic incentive for the Asset Manager to make purchases that are not in the interests of its Client Plans from offerings for which the Affiliated Broker-Dealer is an underwriter. The reason is that the Affiliated Broker-Dealer will not receive any additional fees as a result of such purchases by the Asset Manager.

*Rule 144A Securities*

37. Each Applicant represents that a number of the offerings of Rule 144A Securities in which the Affiliated Broker-Dealer participates represent good investment opportunities for the Asset Manager's Client Plans. Particularly with respect to foreign securities, a Rule 144A offering may provide the least expensive and most accessible means for obtaining the securities. However, PTE 75–1, Part III, does not include a category for Rule 144A Securities, regardless of whether the Affiliated Broker-Dealer is a manager or member of the underwriting or selling syndicate. Therefore, absent an individual exemption, the Asset Manager is foreclosed from purchasing such securities for its Client Plans in offerings in which the Affiliated Broker-Dealer participates.

38. Each Applicant states that Rule 144A, which was adopted in 1990, acts as a ''safe harbor'' exemption from the registration provisions of the 1933 Act for sales of certain types of securities to QIBs. QIBs include several types of institutional entities, such as employee benefit plans and commingled trust funds holding assets of such plans, which own and invest on a discretionary basis at least $100 million in securities of unaffiliated issuers.

39. Any securities may be sold pursuant to Rule 144A except for those of the same class or similar to a class that is publicly traded in the United States, or certain types of investment company securities. This limitation is designed to prevent side-by-side public and private markets developing for the same class of securities.

40. Buyers of Rule 144A Securities must be able to obtain, upon request, basic information concerning the business of the issuer and the issuer's financial statements, much of the same information as would be furnished if the offering were registered. This condition does not apply, however, to an issuer filing reports with the SEC under the 1934 Act, for which reports are publicly available. The condition also does not apply to a ''foreign private issuer'' for whom reports are furnished to the SEC under Rule 12g3–2(b) of the 1934 Act (17 CFR 240.12g3–2(b)), or to issuers who are foreign governments or political subdivisions thereof and are eligible to use Schedule B under the 1933 Act (which describes the information and documents required to be contained in a registration statement filed by such issuers).

41. Sales under Rule 144A, like sales in a registered offering, remain subject to the protections of the anti-fraud rules of federal and state securities laws. These rules include Section 10(b) of the 1934 Act and Rule 10b–5 thereunder (17 CFR 240.10b–5) and Section 17(a) of the 1933 Act (15 U.S.C. 77a). Through these and other provisions, the SEC may use its full range of enforcement powers to exercise its regulatory authority over the market for Rule 144A Securities, in the event that it detects improper practices.

42. Each Applicant asserts that this potential liability for fraud provides a considerable incentive to the issuer and offering syndicate to insure that the information contained in a Rule 144A offering memorandum is complete and accurate in all material respects. Among other things, the lead manager typically obtains an opinion from a law firm, commonly referred to as a ''10b–5'' opinion, stating that the law firm has no reason to believe that the offering memorandum contains any untrue statement of material fact or omits to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, are not misleading.

43. Each Applicant represents that Rule 144A offerings generally are structured in the same manner as underwritten registered offerings. The major difference is that a Rule 144A offering uses an offering memorandum rather than a prospectus that is filed with the SEC. The marketing process is the same in most respects, except that the selling efforts are generally limited to contacting QIBs and that there are no general solicitations for buyers (e.g., no general advertising). In addition, the Affiliated Broker-Dealer's role in these offerings has been as a lead or co-manager. While, generally, there are no non-manager members in the syndicate, each Applicant also requests relief for situations where the Affiliated Broker-Dealer acts only as a syndicate member, not as a manager.

44. According to each Applicant, one of the policy objectives of Rule 144A

[9] A fixed designation is sometimes referred to as an ''auto pot split.''

was to attract more foreign issuers to the United States, and Rule 144A has been achieving this objective—from April 1990 through December 1993, the first three years of Rule 144A, over $25.6 billion in foreign securities was sold under Rule 144A, representing more than one-fourth of Rule 144A placements. See SEC Staff Report on Rule 144A (August 18, 1994), [1994–95 Transfer Binder] Fed. Sec. L. Rep. ¶ 85,428 (Question 1). This figure continued to hold in 1998, at 30.4 percent, so that foreign issuer Rule 144A offerings have kept pace with the rapid growth of Rule 144A offerings overall. (Securities Data Company, Inc.)

*Summary*

In summary, the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) The Client Plans will gain access to desirable investment opportunities; (b) in each offering, the Asset Manager will purchase the securities for its Client Plans from an underwriter or broker-dealer other than the Affiliated Broker-Dealer; (c) conditions similar to those of PTE 75–1, Part III, will restrict the types of securities that may be purchased, the types of underwriting or selling syndicates and issuers involved, and the price and timing of the purchases; (d) the amount of securities that the Asset Manager may purchase on behalf of Client Plans will be subject to percentage limitations; (e) the Affiliated Broker-Dealer will not be permitted to receive, either directly, indirectly, or through designation, any selling concessions with respect to the securities sold to the Asset Manager; (f) prior to any purchase of securities, the Asset Manager will make the required disclosures to an independent fiduciary (Independent Fiduciary) of each Client Plan and obtain written authorization; (g) the Asset Manager will provide regular reporting to an Independent Fiduciary of each Client Plan with respect to all securities purchased pursuant to the exemption, if granted; (h) each Client Plan will be subject to a minimum size requirement of at least $50 million ($100 million for ''Eligible Rule 144A Offerings''),[10] with certain exceptions for Pooled Funds; and (i) the Asset Manager must have total assets under management in excess of $5 billion and shareholders' or partners' equity in excess of $1 million.

**Discussion of Proposed Exemption**

1. The exemptive relief for underwritings proposed herein is similar to that provided in PTE 75–1, Part III. Under PTE 75–1, exemptive relief is subject to a number of conditions and limitations, including the following: (1) The plan fiduciary or its affiliate may not be a manager of the underwriting or selling syndicate; (2) the purchase must be from a person other than the plan fiduciary or its affiliate; (3) the types of securities that may be purchased and the price and timing of the purchases are circumscribed; (4) the amount of securities purchased on behalf of each plan may not exceed three percent of the offering; and (5) the consideration paid may not exceed three percent of the plan's total net assets (one percent, if the consideration involved exceeds $1 million).

2. The exemptive relief proposed herein differs from that provided by PTE 75–1 in the following respects: (1) The proposed exemption covers transactions where the plan fiduciary is affiliated with a manager, as well as a member, of the underwriting or selling syndicate; [11] (2) the proposed exemption covers purchases of Rule 144A Securities; [12] (3) percentage limitations on the amount of securities that may be purchased have been modified to provide an aggregate limitation on a fiduciary's purchases for all Client Plans from a particular offering; and (4) the proposed exemption provides additional conditions, including: (a) The transaction is not part of an agreement, arrangement, or understanding designed to benefit the plan fiduciary or its affiliate; (b) neither a manager nor a member of the underwriting or selling syndicate may receive any selling concessions with respect to the securities purchased for Client Plans by its affiliate; (c) prior to any purchase of securities on behalf of a Client Plan, certain disclosures are provided to an Independent Fiduciary of each such Client Plan and written authorization is obtained; (d) periodic reporting regarding the covered transactions is provided to an Independent Fiduciary of each Client Plan; and (e) investing plans and their investment managers must meet certain minimum size requirements.

*Types of Securities and Offerings*

3. Paragraphs (a) and (b) of the proposed exemption are derived from PTE 75–1, Part III, and provide the following: (1) The securities [13] are part of an issue registered under the 1933 Act, or if exempt from registration under such Act, fall within specified categories: issued or guaranteed by the United States; issued by a bank; exempt from registration under a federal statute other than the 1933 Act; registered under the 1934 Act; or are part of an Eligible Rule 144A Offering—a change from PTE 75–1, Part III, as noted

[10] SEC Rule 10f–3(a)(4) (17 CFR 270.10f–3(a)(4)) states that the term ''Eligible Rule 144A Offering'' means an offering of securities that meets the following conditions:

(i) The securities are offered or sold in transactions exempt from registration under section 4(2) of the Securities Act of 1933 [15 U.S.C. 77d(2)], rule 144A thereunder [Sec. 230.144A of this chapter], or rules 501–508 thereunder [Secs. 230.501–230.508 of this chapter];

(ii) The securities are sold to persons that the seller and any person acting on behalf of the seller reasonably believe to include qualified institutional buyers, as defined in Sec. 230.144A(a)(1) of this chapter; and

(iii) The seller and any person acting on behalf of the seller reasonably believe that the securities are eligible for resale to other qualified institutional buyers pursuant to Sec. 230.144A of this chapter.

[11] In restricting the scope of PTE 75–1, Part III, to exclude transactions where the plan fiduciary is affiliated with the syndicate manager, the Department was concerned that the syndicate manager, as distinguished from a mere member of a syndicate, has a greater interest in the success of the sale of the new securities. If an affiliate of the managing underwriter is an investment manager for plans, those plans could provide a potential market for the less attractive offerings of underwritten securities. This proposed exemption contains certain safeguards and conditions that are designed to address these potential conflict of interest situations.

[12] The Department notes that the provisions of the Act do not preclude plans from investing in any securities sold by an underwriting or offering syndicate, including those securities sold pursuant to Rule 144A. The exemptive relief provided by PTE 75–1, Part III, and the additional relief sought here are required because of the affiliation between the plan fiduciary and a member of the underwriting or selling syndicate.

[13] With respect to any purchase of asset-backed securities by a Client Plan, the Department notes that this proposed exemption provides relief only for the transactions described herein and does not cover any additional prohibited transactions that may occur as a result of a purchase of such securities. For example, additional prohibited transactions may occur by operation of the ''look-through rule'' contained in the Department's regulation defining ''plan assets'' for purposes of plan investments (see 29 CFR 2510.3–101). Such additional prohibited transactions may be covered by one of the Department's existing individual exemptions for asset-backed securities. A listing of such exemptions is provided in the text of the operative language of PTE 97–34 (62 FR 39021, July 21, 1997), which granted an amendment to these exemptions.

Further, the Department notes that, under the Department's plan asset regulation, if a plan invests in a publicly-offered security, the plan's assets will not include, solely by reason of such investment, any of the underlying assets of the entity issuing the security (*i.e.,* the ''look-through rule'' will not apply and the operations of the entity will not be subject to scrutiny under the prohibited transaction provisions of the Act). The regulation defines a ''publicly-offered'' security as one that is freely transferable, widely-held, and registered under the federal securities laws. For this purpose, a class of securities is considered ''widely held'' if it is owned by 100 or more investors who are independent of the issuer and of one another (see 29 CFR 2510.3–101(b)(3)).

above; [14] (2) the securities are purchased for not more than the offering price within a specific time period,[15] subject to certain specified exceptions for rights offerings and debt offerings; [16] (3) the securities are sold pursuant to a firm-commitment offering, in which the syndicate members are committed to purchasing all the securities being offered, subject to certain exceptions for rights offerings and over-allotment options; and (4) the issuer of the securities has been in continuous operation for not less than three years, with certain exceptions.

*Percentage Limitations on the Amount of Purchased Securities*

4. Paragraphs (c) and (d) of the proposed exemption contain percentage limitations applicable to the amount of purchased securities. The first percentage test in paragraph (c) provides that the amount of securities to be purchased by the Asset Manager on behalf of a particular Client Plan or Pooled Fund may not exceed three percent of the total amount of securities being offered. Paragraph (c) further provides percentage limitations on the aggregate amount of securities that the Asset Manager may purchase for all its Client Plans, including Pooled Funds, from the total amount of securities being offered: 10 percent for equity securities; 35 percent for debt securities rated in one of the four highest rating categories by at least one nationally recognized statistical rating organization, *i.e.,* Standard & Poor's Rating Services, Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., or Fitch IBCA, Inc., or their successors (collectively, the Rating Organizations); and 25 percent for debt securities rated in the fifth or sixth highest rating categories by at least one of the Rating Organizations.[17]

5. Paragraph (d) provides that the consideration to be paid by the Client Plan or Pooled Fund in purchasing the offered securities may not exceed three percent of the fair market value of such Client Plan's or Pooled Fund's total net assets. However, paragraph (d) eliminates the requirement contained in PTE 75–1, Part III, that, if the consideration involved exceeds $1 million, it may not exceed one percent of the fair market value of the plan's total assets. This modification by the Department parallels the amendment in 1997 of SEC Rule 10f–3.

*Underwriting Compensation*

6. The proposed exemption requires in paragraph (e) that any purchase of securities by the Asset Manager pursuant to the exemption may not be part of an agreement, arrangement, or understanding designed to benefit the Asset Manager or an affiliate.[18] Paragraph (f) further provides that the Affiliated Broker-Dealer may not receive, either directly, indirectly, or through designation, any selling concession, or other consideration that is based upon the amount of securities purchased by the Asset Manager's Client Plans pursuant to the exemption. Those selling concessions would be allocated to members of the syndicate who are not affiliated with the Asset Manager. The Affiliated Broker-Dealer may also not receive, either directly or indirectly, that portion of the fixed designation that is attributable to securities purchased pursuant to the exemption. The Affiliated Broker-Dealer is not precluded from receiving management fees, underwriting fees, or other consideration that is not based upon the amount of securities actually sold to the Asset Manager's Client Plans.

7. Paragraph (g) provides that the amount the Affiliated Broker-Dealer receives in management fees, underwriting fees, or other consideration may not be increased for the purpose of offsetting the reduction of the Affiliated Broker-Dealer's compensation from selling concessions. Further, the Affiliated Broker-Dealer must provide the Asset Manager with a written certification that the Affiliated Broker-Dealer complied with the underwriting compensation requirements found in paragraphs (e), (f), and (g) of the proposed exemption, in any offering where the Asset Manager purchased securities for its Client Plans. This certification will also be part of the quarterly report which the Asset Manager provides to the Independent Fiduciaries of the Client Plans.[19]

*Disclosures*

8. The proposed exemption requires in paragraphs (h) and (l) that the Asset Manager obtain written authorization from an Independent Fiduciary of each Client Plan, including each fiduciary of a plan that invests in a Pooled Fund, before engaging in the covered transactions.[20] Prior to, and subsequent

[14] Paragraph (a)(1)(ii) of the proposed exemption requires that if the securities are equity securities in an Eligible Rule 144A Offering, the offering syndicate shall obtain a legal opinion regarding the adequacy of the disclosure in the offering memorandum. This condition may be satisfied by the type of ''10b–5'' opinion customarily obtained in connection with such offerings. The Department believes that requiring such review by a law firm will help insure that the offering memorandum meets federal securities law standards. The Department notes that paragraph (c) of the proposed exemption requires debt securities to be rated by at least one independent nationally recognized statistical rating organization, thus insuring that sufficient information about those securities and their issuer will be available to investors.

[15] The language regarding the timing of the purchase differs slightly from PTE 75–1, Part III. This language is based upon Rule 10f–3, as amended in 1997 (17 CFR 270.10f–3; 62 FR 42401, August 7, 1997).

[16] Paragraph (a)(2)(ii) of the proposed exemption permits certain purchases of debt after the first day of the offering. Should the debt be downgraded after the offering commences and prior to being purchased for a Client Plan, the Department expects that the Asset Manager would consider whether, prior to purchase, the price was adjusted to reflect the downgrade.

[17] Paragraph (c)(4) of the proposed exemption requires that when calculating the percentages of securities purchased in an Eligible Rule 144A Offering, one must consider any concurrent public offering. The Department notes that any concurrent offering will necessarily be in a foreign securities market, since Rule 144A is unavailable where there is a concurrent domestic offering.

[18] The Department notes that the intent of the condition in paragraph (e) of the proposed exemption was not to deny direct benefits to other parties to a transaction but, rather, to exclude relief for transactions that are part of a broader overall agreement, arrangement, or understanding designed to benefit parties in interest.

[19] The certification required in paragraph (g)(2) of the proposed exemption is necessary because the Asset Manager and its Client Plans must monitor compliance with all the conditions of the exemption, if granted. However, the Asset Manager would not normally have access to the Affiliated Broker-Dealer's records detailing each underwriter's share of the compensation from a particular underwriting, as those records are considered confidential. Such records are required to be maintained pursuant to SEC and NASD rules and would, of course, be made available to the Department pursuant to the terms of the exemption, if granted.

[20] In this regard, the Department notes that the fiduciary responsibility provisions of the Act apply to the decision of an Independent Fiduciary to authorize the Asset Manager to invest in securities covered by this proposed exemption (Covered Securities) and to the decision to continue such authorization. Section 404(a)(1) of the Act requires, among other things, that a fiduciary of a plan must act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries. Accordingly, the Independent Fiduciary must act ''prudently'' with respect to the decision to authorize investment in these Covered Securities and the decision to continue such authorization.

The Department wishes to emphasize that it expects that the Independent Fiduciary, prior to authorizing investment in these Covered Securities, will fully understand the potential risks and rewards associated with investing in the initial offering of a security, following disclosure by the Asset Manager of all relevant information pertaining to the proposed transactions. Such consideration must necessarily include the fact that the Asset Manager's affiliate may be the managing underwriter. In addition, the Independent Fiduciary must be capable of periodically monitoring the actions taken by the Asset Manager in the performance of its duties. Thus, in considering whether to enter into transactions of the kind described herein, the Independent Fiduciary should take into account its ability to provide adequate oversight of the Asset Manager.

The Department further notes that, under section 405(a) of the Act, any plan fiduciary (including an investment manager) will have co-fiduciary liability

Continued

to, execution of the written authorization, the Asset Manager must provide certain disclosures described in paragraphs (i), (j), (k), and (m) to an Independent Fiduciary of each Client Plan. In addition, the Asset Manager must provide a termination form, at least annually, that enables the Independent Fiduciary to terminate the authorization without penalty.

*Periodic Reporting*

9. Paragraph (n) of the proposed exemption requires that at least once every three months, the Asset Manager provide a report to an Independent Fiduciary of each Client Plan containing information about the Covered Securities purchased during the previous quarter. The Department modeled paragraph (n), in part, on the reporting provisions of Rule 10f–3 (17 CFR 270.10f–3).[21] The preamble to the 1997 amendments to Rule 10f–3 states that this rule ''permits an investment company that is related to certain participants in an underwriting to purchase securities during an offering, if certain conditions are met.'' [22] The SEC explained the origin of its rule as follows:

Section 10(f) of the Investment Company Act was designed to address one of the major abuses noted in the period before enactment of the Investment Company Act—the use of funds by underwriters that controlled these funds as a ''dumping ground'' for unmarketable securities. [23]

Under Rule 10f–3, the Board of Directors of the investment company (including the directors who are not ''interested persons'' of the investment company) is responsible for monitoring compliance.[24]

10. Because the transactions covered by this proposed exemption are similar in nature to those covered by Rule 10f–3, the Department has determined that it is appropriate to adopt similar reporting requirements as in that rule. In addition to the items required to be reported by investment companies under Rule 10f–3, the proposed exemption requires that the Asset Manager report to the Independent Fiduciary the price at which any securities purchased during the reporting period were sold and the market value at the end of the reporting period of each security purchased during such period.[25]

11. The additional information should help the Independent Fiduciary monitor compliance with the exemption, if granted. The Independent Fiduciaries of the Client Plans would play a similar role to that of the Board of Directors of an investment company, *i.e.,* they have a fiduciary duty to monitor the activities of the Asset Manager.[26] In monitoring compliance, the Independent Fiduciary should bear in mind that the Asset Manager's subsequent decision to hold or sell a security purchased pursuant to the exemption, would not be covered by the exemption, if granted.[27]

12. Further, the Asset Manager must report any instance during the past quarter where the Asset Manager was precluded from trading in any security purchased under the exemption for any period of time because of its status as an affiliate of the Affiliated Broker-Dealer. For example, the security could be placed on a watch or restricted list due to activities of the Affiliated Broker-Dealer, and these restrictions could prevent the Asset Manager from trading the security. Such a situation could arise where a security was purchased by the Asset Manager pursuant to this proposed exemption on the first day of the offering and the rest of the offering was not selling well. In this situation, SEC Regulation M, [28] or the general anti-fraud or anti-manipulation provisions of the securities laws, [29] may limit the Asset Manager's ability to subsequently trade in that security, although these restrictions will generally not apply to the Asset Manager if the proper business separations are in place between the Affiliated Broker-Dealer and the Asset Manager (see, *e.g.,* Regulation M, 17 CFR 242.100(b)(3)). Should the Asset Manager's ability to trade a security purchased on behalf of a Client Plan be restricted, this information may be relevant to the decision whether or not to continue to permit purchases under the exemption.

*Minimum Size Requirements*

13. The proposed exemption applies only to Client Plans with total net assets of at least $50 million, as provided in paragraph (o). In the case of a Pooled Fund, however, the $50 million requirement will be met if 50 percent or more of the units of beneficial interest in such Pooled Fund are held by plans having total net assets of at least $50

for any breach of fiduciary responsibility of another plan fiduciary: (1) if he knowingly participates in or conceals such breach; (2) if, by his failure to comply with section 404(a)(1) of the Act, he enables another fiduciary to commit such a breach; or (3) if he has knowledge of the breach of another fiduciary and he fails to make a reasonable effort, under the circumstances, to remedy the breach.

Finally, the granting of the exemption proposed herein should not be viewed as an endorsement by the Department of any plans' participation in the covered transactions.

[21] PTE 75–1, Part III, was based, in part, on a prior version of Rule 10f–3.

[22] 62 FR 42401, Aug. 7, 1997.

[23] *Id.*

[24] The information that the Board of Directors uses to monitor compliance must be included as an exhibit to the fund's semi-annual publicly available reports to the SEC, known as the Form N–SAR.

[25] See paragraph (n) of the proposed exemption.

[26] With respect to the directors' duty, the SEC stated in the preamble to Rule 10f–3:

A fund's board should be vigilant in reviewing the procedures and transactions required by 10f–3 as well as in conducting any additional reviews that it determines are needed to protect the interests of investors, particularly if the fund purchases significant amounts of securities in reliance on 10f–3. For example, the board should consider monitoring how the performance of securities purchased in reliance on rule 10f–3 compares to securities not purchased in reliance on the rule, or to a benchmark such as a comparable market index. Such monitoring would enable the board to determine not only whether existing procedures are being followed, but whether the procedures are effective in fulfilling the policies underlying section 10(f). (62 FR at 42406) (See also footnote 52, 62 FR at 42406.)

[27] The Department notes that this proposed exemption would provide relief from the self-dealing and conflict of interest provisions of Part 4 of Title I of the Act for purchases of securities by the Asset Manager from an underwriting or selling syndicate in which an affiliate of the Asset Manager participates as a manager or member of such syndicate. It would not provide relief from any acts of self-dealing not directly arising from a purchase of the Covered Securities. Thus, no relief would be available for any violation of section 406(b) of the Act that may arise after the purchase. For example, because it is well-documented that securities purchased in IPOs may not perform well in the long term (see footnote 4), a violation of the Act could occur if the Asset Manager's decision regarding the holding or sale of the Covered Securities by the Client Plan was influenced by the interests of the Affiliated Broker-Dealer.

The Affiliated Broker-Dealer's interest in the security may extend beyond the sale of the security. As the SEC noted in its preamble to Regulation M, addressing Regulation M's protections against price manipulation: ''[I]mmediately following an offering * * * underwriters now engage in substantial syndicate-related market activity, and enforce penalty bids in order to reduce volatility in the market for the offering security.'' 62 FR 519, 521 (January 3, 1997). The SEC defines penalty bid as ''an arrangement that permits the managing underwriter to reclaim a selling concession from a syndicate member in connection with an offering when the securities originally sold by the syndicate member are purchased in syndicate covering transactions.'' SEC Regulation M (17 CFR 242.100(b)). For further background on the role of underwriters, see ''Corporate Finance and the Securities Laws, (2d ed. 1997),'' Charles J. Johnson, Jr. and Joseph McLaughlin, Aspen Publishers; ''Securities Industry Association: Capital Markets Handbook,'' edited by Bruce S. Foester, Aspen Publishers (1999). Recent Developments in Underwriting of IPO's: Spinning and Penalty Bids, Meredith B. Cross and Christine Sarudy Roberts, 1084 PLI/Corp 595 (Nov. 1998).

[28] A security might be put on a restricted list, for example, if the offering was not completely sold before the security began trading in the market. In this instance, the restricted period for purposes of Regulation M (17 CFR 242.101(a)) continues until all securities are sold. See, generally, ''Corporate Finance and the Securities Laws, (2d ed. 1997),'' Charles J. Johnson, Jr. and Joseph McLaughlin, Aspen Publishers; ''Securities Industry Association: Capital Markets Handbook,'' edited by Bruce S. Foester, Aspen Publishers (1999).

[29] These rules include Section 17(a) of the 1933 Act (15 U.S.C. 77q(a)) and Sections 9, 10(b), and 15(c) of the 1934 Act (15 U.S.C. 78i, 78j(b) and 78o(c)).

million. In the case of an Eligible Rule 144A Offering, each Client Plan must have at least $100 million in securities. For a Pooled Fund, the $100 million requirement will be met if 50 percent or more of the units of beneficial interest in such Pooled Fund are held by plans having at least $100 million in assets and the Pooled Fund itself qualifies as a QIB, as determined pursuant to Rule 144A (17 CFR 230.144A(a)(F)). The Department believes that these minimum size requirements will help insure that the Client Plans have the resources and investment sophistication needed in order to monitor the Asset Manager's investment performance with respect to the covered transactions.

14. Further, the proposed exemption applies only if the Asset Manager is a ''qualified professional asset manager'' (QPAM), as defined under Part V(a) of PTE 84–14, (49 FR 9494, 9506, March 13, 1984),[30] subject to the following modifications: The Asset Manager has as of the last day of its most recent fiscal year, total client assets under its management and control in excess of $5 billion and shareholders' or partners' equity in excess of $1 million.

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, that a fiduciary discharge his or her duties respecting a plan solely in the interest of the participants and beneficiaries of such plan and in a prudent manner in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the affected plans and their participants and beneficiaries, and protective of the rights of those participants and beneficiaries; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is, in fact, a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in the applications accurately describe all material terms of the transactions that are the subject of the exemptions.

**Proposed Exemption**

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974 (the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986 (the Code) and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990).

*Section I—Transactions*

If the exemption is granted, the restrictions of section 406 of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) of the Code, shall not apply to the purchase of any securities by the Asset Manager on behalf of employee benefit plans (Client Plans), including Client Plans investing in a pooled fund (Pooled Fund), for which the Asset Manager acts as a fiduciary, from any person other than the Asset Manager or an affiliate thereof, during the existence of an underwriting or selling syndicate with respect to such securities, where the Affiliated Broker-Dealer is a manager or member of such syndicate, provided that the following conditions are satisfied:

(a) The securities to be purchased are—

(1) either:

(i) part of an issue registered under the Securities Act of 1933 (the 1933 Act) (15 U.S.C. 77a et. seq.) or, if exempt from such registration requirement, are (A) issued or guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States, (B) issued by a bank, (C) exempt from such registration requirement pursuant to a federal statute other than the 1933 Act, or (D) are the subject of a distribution and are of a class which is required to be registered under section 12 of the Securities Exchange Act of 1934 (the 1934 Act) (15 U.S.C. 781), and the issuer of which has been subject to the reporting requirements of section 13 of that Act (15 U.S.C. 78m) for a period of at least 90 days immediately preceding the sale of securities and has filed all reports required to be filed thereunder with the Securities and Exchange Commission (SEC) during the preceding 12 months; or

(ii) part of an issue that is an ''Eligible Rule 144A Offering,'' as defined in SEC Rule 10f–3 (17 CFR 270.10f–3(a)(4)). Where the Eligible Rule 144A Offering is of equity securities, the offering syndicate shall obtain a legal opinion regarding the adequacy of the disclosure in the offering memorandum;

(2) purchased prior to the end of the first day on which any sales are made, at a price that is not more than the price paid by each other purchaser of securities in that offering or in any concurrent offering of the securities, except that—

(i) if such securities are offered for subscription upon exercise of rights, they may be purchased on or before the fourth day preceding the day on which the rights offering terminates; or

(ii) if such securities are debt securities, they may be purchased at a price that is not more than the price paid by each other purchaser of securities in that offering or in any concurrent offering of the securities and may be purchased on a day subsequent to the end of the first day on which any sales are made, provided that the interest rates on comparable debt securities offered to the public subsequent to the first day and prior to the purchase are less than the interest rate of the debt securities being purchased; and

(3) offered pursuant to an underwriting or selling agreement under which the members of the syndicate are committed to purchase all of the securities being offered, except if—

(i) such securities are purchased by others pursuant to a rights offering; or

(ii) such securities are offered pursuant to an over-allotment option.

(b) The issuer of such securities has been in continuous operation for not less than three years, including the operation of any predecessors, unless—

(1) such securities are non-convertible debt securities rated in one of the four highest rating categories by at least one nationally recognized statistical rating organization, *i.e.,* Standard & Poor's

[30] PTE 84–14 provides a class exemption, under certain conditions, for transactions between a party in interest with respect to an employee benefit plan and an investment fund (including a single customer or pooled separate account) in which the plan has an interest and which is managed by a QPAM.

Rating Services, Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., or Fitch IBCA, Inc., or their successors (collectively, the Rating Organizations); or

(2) such securities are issued or fully guaranteed by a person described in paragraph (a)(1)(i)(A) of this exemption; or

(3) such securities are fully guaranteed by a person who has issued securities described in (a)(1)(i)(B), (C), or (D) and this paragraph (b).

(c) The amount of such securities to be purchased by the Asset Manager on behalf of any single Client Plan or any Pooled Fund, does not exceed three percent of the total amount of the securities being offered. Notwithstanding the foregoing, the aggregate amount of any securities purchased with assets of all Client Plans (including Pooled Funds) managed by the Asset Manager (or with respect to which the Asset Manager renders investment advice within the meaning of 29 CFR 2510.3–21(c)) does not exceed:

(1) 10 percent of the total amount of any equity securities being offered;

(2) 35 percent of the total amount of any debt securities being offered that are rated in one of the four highest rating categories by at least one of the Rating Organizations; or

(3) 25 percent of the total amount of any debt securities being offered that are rated in the fifth or sixth highest rating categories by at least one of the Rating Organizations; and

(4) if purchased in an Eligible Rule 144A Offering, the total amount of the securities being offered for purposes of determining the percentages for (1)–(3) above is the total of:

(i) the principal amount of the offering of such class sold by underwriters or members of the selling syndicate to ''qualified institutional buyers'' (QIBs), as defined in SEC Rule 144A (17 CFR 230.144A(a)(1)); plus

(ii) the principal amount of the offering of such class in any concurrent public offering.

(d) The consideration to be paid by the Client Plan or Pooled Fund in purchasing such securities does not exceed three percent of the fair market value of the total net assets of the Client Plan or Pooled Fund, as of the last day of the most recent fiscal quarter of the Client Plan prior to such transaction.

(e) The transaction is not part of an agreement, arrangement, or understanding designed to benefit the Asset Manager or an affiliate.

(f) The Affiliated Broker-Dealer does not receive, either directly, indirectly, or through designation, any selling concession or other consideration that is based upon the amount of securities purchased by Client Plans pursuant to this exemption. In this regard, the Affiliated Broker-Dealer may not receive, either directly or indirectly, any compensation that is attributable to the fixed designations generated by purchases of securities by the Asset Manager on behalf of its Client Plans.

(g)(1) The amount the Affiliated Broker-Dealer receives in management, underwriting or other compensation is not increased through an agreement, arrangement, or understanding for the purpose of compensating the Affiliated Broker-Dealer for foregoing any selling concessions for those securities sold pursuant to this exemption. Except as described above, nothing in this paragraph shall be construed as precluding the Affiliated Broker-Dealer from receiving management fees for serving as manager of the underwriting or selling syndicate, underwriting fees for assuming the responsibilities of an underwriter in the underwriting or selling syndicate, or other consideration that is not based upon the amount of securities purchased by the Asset Manager on behalf of Client Plans pursuant to this exemption; and

(2) The Affiliated Broker-Dealer shall provide to the Asset Manager a written certification, signed by an officer of the Affiliated Broker-Dealer, stating the amount that the Affiliated Broker-Dealer received in compensation during the past quarter, in connection with any offerings covered by this exemption, was not adjusted in a manner inconsistent with Section I, paragraphs (e), (f), or (g), of this exemption.

(h) In the case of a single Client Plan, the covered transaction is performed under a written authorization executed in advance by an independent fiduciary (Independent Fiduciary) of the Client Plan.

(i) Prior to the execution of the written authorization described in paragraph (h) above, the following information and materials must be provided by the Asset Manager to the Independent Fiduciary of each single Client Plan:

(1) a copy of this notice of proposed exemption and of the final exemption, if granted, as published in the **Federal Register**;

(2) any other reasonably available information regarding the covered transactions that the Independent Fiduciary requests; and

(3) a termination form, with instructions specifying how to use the form, expressly providing that the authorization described in paragraph (h) may be terminated without penalty by the Independent Fiduciary on no more than five days' notice.

(j) Subsequent to an Independent Fiduciary's initial authorization permitting the Asset Manager to engage in the covered transactions on behalf of a single Client Plan, the Asset Manager will, at least annually, provide the Independent Fiduciary with another termination form and the information specified in subparagraph (i)(2) and (3) above.

(k) In the case of existing plan investors in a Pooled Fund, such Pooled Fund may not engage in any covered transactions pursuant to this exemption, unless the Asset Manager has provided the written information described below to the Independent Fiduciary of each plan participating in the Pooled Fund. The following information and materials shall be provided not less than 45 days prior to the Asset Manager's engaging in the covered transactions on behalf of the Pooled Fund pursuant to the exemption:

(1) a notice of the Pooled Fund's intent to purchase securities pursuant to this exemption and a copy of this notice of proposed exemption and of the final exemption, if granted, as published in the **Federal Register**;

(2) any other reasonably available information regarding the covered transactions that the Independent Fiduciary requests; and

(3) a termination form expressly providing an election for the Independent Fiduciary to terminate the plan's investment in the Pooled Fund without penalty to the plan. Such form shall include instructions specifying how to use the form. Specifically, the instructions will explain that the plan has an opportunity to withdraw its assets from the Pooled Fund for a period at least 30 days after the plan's receipt of the initial notice described in subparagraph (1) above and that the failure of the Independent Fiduciary to return the termination form by the specified date shall be deemed to be an approval by the plan of its continued participation in covered transactions as a Pooled Fund investor.

For purposes of this paragraph, the requirement that the authorizing fiduciary be independent of the Asset Manager shall not apply in the case of an in-house plan sponsored by the Applicant or an affiliate thereof.

(l) In the case of a plan whose assets are proposed to be invested in a Pooled Fund subsequent to implementation of the procedures to engage in the covered transactions, the plan's investment in the Pooled Fund is subject to the prior written authorization of an Independent Fiduciary, following the receipt by the Independent Fiduciary of the materials

described in subsections (1), (2), and (3) of paragraph (k) and an explanation of the plan's ability to terminate its investment in the Pooled Fund. For purposes of this paragraph, the requirement that the authorizing fiduciary be independent of the Asset Manager shall not apply in the case of an in-house plan sponsored by the Applicant or an affiliate thereof.

(m) Subsequent to an Independent Fiduciary's initial authorization of a plan's investment in a Pooled Fund that engages in the covered transactions, the Asset Manager will, at least annually, provide the Independent Fiduciary with a termination form and the information specified in subparagraph (k)(3) above.

(n) At least once every three months, and not later than 45 days following the period to which such information relates, the Asset Manager shall:

(1) furnish the Independent Fiduciary of each single Client Plan, and of each plan investing in a Pooled Fund, with a report (which may be provided electronically) disclosing all securities purchased on behalf of that Client Plan or Pooled Fund pursuant to the exemption during the period to which such report relates, and the terms of the transactions, including:

(i) the type of security (including the rating of any debt security);

(ii) the price at which the securities were purchased;

(iii) the first day on which any sale was made during this offering;

(iv) the size of the issue;

(v) the number of securities purchased by the Asset Manager for the specific Client Plan or Pooled Fund;

(vi) the identity of the underwriter from whom the securities were purchased;

(vii) the spread on the underwriting;

(ix) the price at which any securities purchased during the period were sold; and

(x) the market value at the end of such period of each security purchased during the period and not sold;

(2) provide to the Independent Fiduciary written certifications signed by an officer of the Affiliated Broker-Dealer, as described in paragraph (g)(2), affirming that, as to each offering covered by this exemption during the past quarter, the Affiliated Broker-Dealer acted in compliance with Section I, paragraphs (e), (f), and (g) of this exemption;

(3) disclose to the Independent Fiduciary that, upon request, any other reasonably available information regarding the covered transactions that the Independent Fiduciary requests will be provided, including, but not limited to:

(i) the date on which the securities were purchased on behalf of the plan;

(ii) the percentage of the offering purchased on behalf of all Client Plans and Pooled Funds; and

(iii) the identity of all members of the underwriting syndicate; and

(4) disclose to the Independent Fiduciary in the next quarterly report, whether at any time during the preceding quarter, the Asset Manager was precluded from trading in a security purchased under this exemption for any period of time because of its status as an affiliate of the Affiliated Broker-Dealer and the reason for this restriction.

(o) Each single Client Plan shall have total net assets with a value of at least $50 million. In addition, in the case of a transaction involving an Eligible Rule 144A Offering on behalf of a single Client Plan, each such Client Plan shall have at least $100 million in securities, as determined pursuant to SEC Rule 144A (17 CFR 230.144A). In the case of a Pooled Fund, the $50 million requirement will be met if 50 percent or more of the units of beneficial interest in such Pooled Fund are held by plans having total net assets with a value of at least $50 million. For purchases involving an Eligible Rule 144A Offering on behalf of a Pooled Fund, the $100 million requirement will be met if 50 percent or more of the units of beneficial interest in such Pooled Fund are held by plans having at least $100 million in assets and the Pooled Fund itself qualifies as a QIB, as determined pursuant to SEC Rule 144A (17 CFR 230.144A(a)(F)).

For purposes of the net asset tests described above, where a group of Client Plans is maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act, the $50 million net asset requirement or the $100 million net asset requirement may be met by aggregating the assets of such Client Plans, if the assets are pooled for investment purposes in a single master trust.

(p) The Asset Manager qualifies as a ''qualified professional asset manager'' (QPAM), as that term is defined under Part V(a) of Prohibited Transaction Exemption 84–14 (49 FR 9494, 9506, March 13, 1984) and, in addition, has, as of the last day of its most recent fiscal year, total client assets under its management and control in excess of $5 billion and shareholders' or partners' equity in excess of $1 million.

(q) No more than 10 percent of the assets of a Pooled Fund, at the time of a covered transaction, are comprised of assets of employee benefit plans maintained by the Asset Manager, the Affiliated Broker-Dealer, or an affiliate for their own employees, for which the Asset Manager, the Affiliated Broker-Dealer, or an affiliate exercises investment discretion.

(r) The Asset Manager and the Affiliated Broker-Dealer maintain, or cause to be maintained, for a period of six years from the date of any covered transaction such records as are necessary to enable the persons described in paragraph (s) of this exemption to determine whether the conditions of this exemption have been met, except that—

(1) no party in interest with respect to a Client Plan, other than the Asset Manager and the Affiliated Broker-Dealer, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required by paragraph (s); and

(2) a prohibited transaction shall not be considered to have occurred if, due to circumstances beyond the control of the Asset Manager or the Affiliated Broker-Dealer, such records are lost or destroyed prior to the end of the six-year period.

(s)(1) Except as provided in subparagraph (2) of this paragraph (s) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (r) are unconditionally available at their customary location for examination during normal business hours by—

(i) any duly authorized employee or representative of the Department, the Internal Revenue Service, or the SEC; or

(ii) any fiduciary of a Client Plan, or any duly authorized employee or representative of such fiduciary; or

(iii) any employer of participants and beneficiaries and any employee organization whose members are covered by a Client Plan, or any authorized employee or representative of these entities; or

(iv) any participant or beneficiary of a Client Plan, or duly authorized employee or representative of such participant or beneficiary;

(2) none of the persons described in paragraphs (s)(1)(ii)–(iv) shall be authorized to examine trade secrets of the Asset Manager or the Affiliated Broker-Dealer, or commercial or financial information which is privileged or confidential; and

(3) should the Asset Manager or the Affiliated Broker-Dealer refuse to disclose information on the basis that such information is exempt from disclosure pursuant to paragraph (s)(2)

above, the Asset Manager shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

*Section II—Definitions*

(a) The term ''the Affiliated Broker-Dealer'' means any broker-dealer affiliate of the Applicant (as ''affiliate'' is defined in paragraph (c)) that meets the requirements of this exemption.

(b) The term ''the Asset Manager'' means any asset management affiliate of the Applicant (as ''affiliate'' is defined in paragraph (c)) that meets the requirements of this exemption.

(c) The term ''affiliate'' of a person includes:

(1) any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with such person;

(2) any officer, director, partner, employee, or relative (as defined in section 3(15) of the Act) of such person; and

(3) any corporation or partnership of which such person is an officer, director, partner, or employee.

(d) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(e) The term ''Client Plan'' means an employee benefit plan that is subject to the fiduciary responsibility provisions of the Act and whose assets are under the management of the Asset Manager, including a plan investing in a Pooled Fund (as ''Pooled Fund'' is defined in paragraph (f) below).

(f) The term ''Pooled Fund'' means a common or collective trust fund or pooled investment fund maintained by the Asset Manager.

(g) The term ''Independent Fiduciary'' means a fiduciary of a Client Plan who is unrelated to, and independent of, the Asset Manager. For purposes of this exemption, a Client Plan fiduciary will not be deemed to be unrelated to, and independent of, the Asset Manager if:

(1) such fiduciary directly or indirectly controls, is controlled by, or is under common control with the Asset Manager;

(2) such fiduciary, or any officer, director, partner, employee, or relative of such fiduciary is an officer, director, partner, or employee of the Asset Manager (or is a relative of such persons); or

(3) such fiduciary directly or indirectly receives any compensation or other consideration from the Asset Manager for his or her own personal account in connection with any transaction described in this exemption.

If an officer, director, partner, or employee of the Asset Manager (or a relative of such persons), is a director of such Independent Fiduciary, and if he or she abstains from participation in (A) the choice of the Plan's investment manager/adviser and (B) the decision to authorize or terminate authorization for transactions described in Section I, then paragraph (g)(2) of this Section II, shall not apply.

(h) The term ''security'' shall have the same meaning as defined in section 2(36) of the Investment Company Act of 1940 (the 1940 Act), as amended (15 U.S.C. 80a–2(36)(1996)).

(i) The term ''Eligible Rule 144A Offering'' shall have the same meaning as defined in SEC Rule 10f–3(a)(4) (17 CFR 270. 10f–3(a)(4)) under the 1940 Act.

(j) The term ''qualified institutional buyer'' or ''QIB'' shall have the same meaning as defined in SEC Rule 144A (17 CFR 230.144A(a)(1)) under the 1933 Act.

(k) The term ''Rating Organizations'' means Standard & Poor's Rating Services, Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., or Fitch IBCA, Inc., or their successors.

Signed at Washington, D.C., this 3rd day of February, 2000.

**Ivan L. Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

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## EXECUTIVE OFFICE OF THE PRESIDENT

### National Partnership for Reinventing Government

### BEST Communities: Boosting Education, Skills and Training

**AGENCY:** National Partnership for Reinventing Government.

**ACTION:** Notice of performance partners with community-based coalitions.

**AUTHORITY CITATION:** Non-statutory.

**BACKGROUND:** The number one problem facing American business today is a shortage of highly skilled workers. America's competitiveness and the prosperity of the American people will depend increasingly upon high-skill, high-wage jobs. Realizing this potential will require investing in education and learning so all of our people can continue to learn throughout their lifetime and get the skills they need to succeed in the 21st century.

The BEST Communities initiative was recommended by the 21st Century Leadership Group—a forum of leaders from business, organized labor, education, and all levels of government—convened by the Vice President in January 1999. The Vice President asked the group to develop a set of recommendations to their peers that would help ensure a prepared and thriving workforce in the next century.

Their report, Skills for a New Century: A Blueprint for Lifelong Learning, presented to the Vice President in November 1999, outlined five broad recommendations to provide adults the skills they need and employers the skilled employees needed to remain competitive.

(1) Deliver education and training that is tied to high standards, leads to useful credentials and meets labor market needs.

(2) Improve access to financial resources for lifetime learning for all adult Americans, including those in low-wage jobs.

(3) Promote learning at a time, place, and manner that meets worker needs and interests, including through the use of learning technologies to enable learning at home, the workplace, or elsewhere.

(4) Encourage and motivate adults to pursue further education and training and inform them of resources available to help them do so.

(5) Form partnerships among a wide array of organizations and stakeholders to support workforce development and lifelong learning for adults.

Based on the Leadership Group's recommendation, the Vice President announced a new initiative to assist local communities interested in developing and implementing community-wide strategies to help adults get the skills they need to succeed. This effort would support community-based partnerships involving business, labor, education and government that develop plans focused on clear, objective, measurable goals for adult learning and skill development across a community. Existing web sites will be used to share key information and best practices across a broader network of communities.

*Announcement:* The National Partnership for Reinventing Government is seeking ten performance partners with community-based coalitions that want to work with Federal partners to enhance education, skills, training and lifelong learning for adults in their community. Community-based partnerships that are not selected as one

of the performance partners will be invited to become charter members of the larger BEST Network.

The BEST Network will connect communities across the country to demonstrate model ways to encourage lifelong learning. The overall initiative also seeks to minimize administrative barriers to problem solving and help communities maximize currently available federal resources.

This is the first step toward creating a national network of communities working together and sharing best practices to help more adults get 21st century skills and find more opportunities for lifelong learning. The network will help communities collaborate with each other, across sectors and with the federal partners to:

- Increase the number of Americans with 21st century skills and help them find high-skill, high-wage jobs;
- Close the Skills Gap;
- Promote lifelong learning;
- Address barriers at the federal, state, and local level—in ways allowable under current law—to increase the flexibility and effectiveness of resources;
- Obtain technical support and facilitate access to best practices employed in various communities; and
- Share lessons with other communities.

*What Are The Benefits To Communities?* This is not a grant program and includes no new Federal funds. To help community, State and local partners, Federal partners will:

- Participate in the formation of a national ''community of practice'' that shares best practices and works together to solve problems and get results.
- Assign a federal ''champion'' to each performance partner to help communities navigate the hallways of inter-governmental programs, policies, and federal resources across government;
- Help create solid management systems that focus on meaningful outcomes for learners;
- Provide increased access to federal data and geographic information related to 21st century skills, jobs and work trends; and
- Facilitate consolidated reporting and increased flexibility in administration—within existing legal requirements—for communities that use Federal funds from different government departments and agree to public measures of outcomes and results.

The larger BEST Network will:

- Connect communities and relevant agencies with peers working on similar issues;
- Share lessons learned;
- Give national recognition to innovative communities for their effective strategies and results;
- Link to other, related federal initiatives; and
- Help communities and local agencies measure results and obtain expert advice in devising strategies for collecting, analyzing, and using data to achieve results.

*Who Can Apply To Be a Local Partner?* Expressions of Interest can be submitted by the head of a community-based partnership, local government, network of local governments, state or local workforce development agency, or network of state or local agencies or organizations. Where state funds or agencies are involved or where federal funds flow through the state, there must be clear evidence of state partnership.

*How Does My Community Express Interest in the BEST Network?* Potential partners should submit a brief Expression of Interest. To minimize any burden, submissions should be under ten pages in length. Communities are encouraged to use existing plans and documents wherever possible.

*Selection Criteria:* A cross-agency team will select local partners based on:

- Existence of a partnership that crosses sectors such as business, labor, education and government.
- A community-wide plan for adult learning and skill development that has clear, objective, measurable goals.
- Effective leadership and participation of key stakeholders such as community, business, labor, and educational leaders; federal, state, and local officials; faith community representatives; and others.
- Readiness and commitment of partners to work together, cut red tape, coordinate operations, use current funding more effectively, and achieve better results.
- Potential impact of proposed performance partnership on closing the skills gap in the local community, as demonstrated by a focus on one or more of the five broad recommendations in the report Skills for a New Century: A Blueprint for Lifelong Learning;
- Balance in terms of geography, demographic characteristics, and areas of focus.

The BEST Network will be supported by the Lifelong Learning Inter-Agency Strategy Group that includes representatives of the U.S. Departments of Labor, Education, and Commerce, facilitated by the Vice President's National Partnership for Reinventing Government.

*Expressions of Interest:* Expressions of Interest in partnerships must be received by close of business on February 25, 2000. They may be submitted by mail, fax or electronically to: BEST Communities, National Partnership for Reinventing Government, Suite 200, 750 17th Street NW, Washington, DC 20007, Fax: (202) 632–0390, or e:mail at *BEST@npr.gov.*

**FOR FURTHER INFORMATION CONTACT:** Dr. Lynn S. Kahn, (202) 694–0038, *lynn.kahn@npr.gov;* or Meshell Jones, (202) 694–0122; *meshell.jones@npr.gov.*

Dated: January 20, 2000.

**Lynn S. Kahn,**

*Team Leader.*

[FR Doc. 00–2814 Filed 2–7–00; 8:45 am]

**BILLING CODE 3115–01–P**

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Advanced Networking and Infrastructure Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

*Name:* Special Emphasis Panel in Advanced Networking and Infrastructure Research (#1207).

*Date/Time:* February 22 and 23, 2000; 8:30 AM–5:00 PM.

*Place:* Room 1120, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Persons:* Darleen Fisher and Karen Sollins, Division of Advanced Networking Infrastructure Research, Room 1175, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1950.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate proposals submitted to the Networking Research Program as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 1, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–2743 Filed 2–7–00; 8:45 am]

**BILLING CODE 7555–01–M**

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Advanced Networking and Infrastructure Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

*Name:* Special Emphasis Panel in Advanced Networking and Infrastructure Research (#1207).

*Date/Time:* March 2 and 3, 2000; 8:30 a.m.–5:00 p.m.

*Place:* Room 1120, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Persons:* Darleen Fisher and Karen Sollins, Division of Advanced Networking Infrastructure Research, Room 1175, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1950.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate proposals submitted to the Networking Research Program as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: February 1, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–2744 Filed 2–7–00; 8:45 am]

**BILLING CODE 7555–01–M**

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Computer-Communications Research Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Computer-Communications Research (1192).

*Date/Time:* March 2 and 3, 2000; 8:00 a.m. to 5:00 p.m.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Yechezkel Zalcstein, Program Director, Theory of Computing Program, CISE/C–CR, Room 1145, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 306–1914.

*Purpose of Meeting:* to provide advice and recommendations for the Theory of Computing Program (TOC) by providing review of approximately 60 proposals with special attention to changing emphasis for that program.

*Agenda:* Review and evaluate TOC proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 1, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–2738 Filed 2–7–00; 8:45am]

**BILLING CODE 7555–01–M**

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Design, Manufacturing, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name*: Special Emphasis Panel in Design, Manufacturing, and Industrial Innovation (61).

*Date/Time*: March 7, 8, 14–17, 20–24, 28, 29, & 31, 2000; 8:30 a.m.–5:00 p.m.

*Place*: Rooms 130, 310, 330, 360, 370, 380, and 580, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

*Type of Meeting*: Closed.

*Contact Person*: Joseph Hennessey, Program Manager, Small Business Innovation Research and Small Business Technology Transfer Programs, Room 590, Division of Design, Manufacturing, and Industrial Innovation, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 306–1395, extension 5283.

*Purpose of Meeting*: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda*: To review and evaluate proposals submitted to the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs as part of the selection process for awards.

*Reason for Closing*: The proposals being reviewed include information of a proprietary of confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 1, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–2739 Filed 2–7–00; 8:45 am]

**BILLING CODE 7555–01–M**

## NATIONAL SCIENCE FOUNDATION

### Earth Sciences Proposal Review Panel; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting.

*Name:* Earth Sciences Proposal Review Panel (1569).

*Date/Time:* March 8–10, 15–17, 22–24 & 27–29, 2000; 8:00 a.m. to 6:00 p.m. each day.

*Place:* Rooms 340, 360, 380 & 770, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Herman B. Zimmerman, Division Director, Division of Earth Sciences, Room 785, National Science Foundation, Arlington, VA, (703) 306–1550.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate earth sciences proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 1, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–2735 Filed 2–7–00; 8:45 am]

**BILLING CODE 7555–01–M**

## NATIONAL SCIENCE FOUNDATION

### Advisory Panel for Neuroscience; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Advisory Panel for Neuroscience (1158).

*Date/Time:* April 26–28, 2000; 8:00 a.m. to 5:00 p.m.

*Place:* Room 330, 4201 Wilson Boulevard, Arlington, VA.

*Type of Meeting:* Part-Open.

*Contact Person:* Dr. Sonya Sobrian, Program Director, Behavioral Neuroscience; Dr. Roy White, Program Director, Computational Neuroscience; Division of

Integrative Biology and Neuroscience, Suite 685, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. (703) 306–1416.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Minutes:* May be obtained from the contact person listed above.

*Agenda:* Open Session: April 28, 2000; 10:00 a.m. to 11:00 a.m., to discuss goals and assessment procedures. Closed Session: April 26–27; 8:00 a.m. to 5:00 p.m.; April 28, 9:00 a.m. to 10:00 a.m., and 11:00 a.m. to 5:00 p.m. To review and evaluate Behavioral Computational Neuroscience proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: February 1, 2000.

**Karen J. York,**

*Committee Meeting Officer.*

[FR Doc. 00–2736 Filed 2–7–00; 8:45 am]

**BILLING CODE 7555–01–M**

## NATIONAL SCIENCE FOUNDATION

### Advisory Panel for Neuroscience; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Advisory Panel for Neuroscience (1158).

*Date/Time:* May 1–2, 2000; 8 a.m. to 5 p.m.

*Place:* Room 365, 4201 Wilson Boulevard, Arlington, VA.

*Type of Meeting:* Part-Open.

*Contact Person:* Dr. Soo-Siang Lim, Program Director, Neuronal & Glial Mechanisms; Division of Integrative Biology and Neuroscience, Suite 685, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. (703) 306–1416.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Minutes:* May be obtained from the contact person listed above.

*Agenda:* Open Session: May 1, 2000; 4 p.m. to 4:30 p.m., to discuss goals and assessment procedures. Closed Session: May 1, 2000; 8 a.m. to 4 p.m.; and 4:30 p.m. to 5 p.m. May 2, 2000; 8 a.m. to 5 p.m. To review and evaluate Neuronal Glial Mechanisms proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 1, 2000.

**Karen J. York,**

*Committee Meeting Officer.*

[FR Doc. 00–2737 Filed 2–7–00; 8:45 am]

**BILLING CODE 7555–01–M**

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463), as amended, the National Science Foundation announces the following meeting.

*Name:* Special Emphasis Panel In Physics (1208).

*Date/Time:* March 27–29, 2000; 8:00 a.m.–6:30 p.m.

*Place:* Room 365, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Winston Roberts, Program Director for Nuclear Theory, Division of Physics, Room 1015, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1805.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate proposals submitted to the Nuclear Theory Program as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: February 1, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–2742 Filed 2–7–00; 8:45 am]

**BILLING CODE 7555–01–M**

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Undergraduate Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Undergraduate Education (1214).

*Date/Time:* Thursday, February 17, 2000; 8:00 am–6 pm, Rooms 830 and 880 [Closed]. Friday, February 18, 2000; 8:00 am–2:00 pm, Room 830 and 880 [Closed]. Friday, February 18, 2000; 2:00–3:30 pm, room 830 [Open].

*Place:* National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230.

*Type of Meeting:* Part Open (see Agenda, below).

*Contact Person:* Dr. Herbert Levitan, National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230. Telephone: (703) 306–1681.

*Purpose of Meeting:* To carry out a Committee of Visitors (COV) review of the CCLI and ATE programs over the past three fiscal years, including program evaluation, examination of decisions on proposals, reviewer comments, and to access other privileged information.

*Agenda:* February 17, 2000, 8:00 am–6:00 pm, Closed review of privileged documents. February 18, 2000, 8:00 am–2 pm. Closed review of privileged documents. February 18, 2:00 pm–3:30 pm, Open discussion on the impact of the projects funded and an evaluation of the programs. Session is open to meet requirements of Government Performance and Results Act (GPRA).

*Reason for Closing:* During the closed session, the COV will be reviewing proposals which include information of a proprietary or confidential nature, including technical information; financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 1, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–2741 Filed 2–7–00; 8:45 am]

**BILLING CODE 7555–01–M**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–269, 50–270, and 50–287]**

### Oconee Nuclear Station Units 1, 2, and 3; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–38, DPR–47, and DPR–55 issued to Duke Energy Corporation (the licensee) for operation of the Oconee Nuclear Station, Units 1, 2 and 3 located in Oconee County, Seneca, South Carolina.

The proposed amendment would update the Oconee Nuclear Station Units 1, 2, and 3 Facility Operating Licenses by (a) deleting the license conditions that have been fulfilled by actions that have been completed, (b) changing the license conditions that have been superseded by the current

plant status, and (c) incorporating other administrative changes.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The following discussion is a summary of the evaluation of the changes contained in this proposed amendment against the 10 CFR 50.92(c) requirements to demonstrate that all three standards are satisfied. A no significant hazards consideration is indicated if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated, or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated, or

3. Involve a significant reduction in a margin of safety.

**First Standard**

The proposed amendment to the Oconee FOLs [Facility Operating Licenses] involves administrative changes only. No actual plant equipment, operating practices, or accident analyses are affected by this amendment. Therefore, implementation of this amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

**Second Standard**

The proposed amendment to the Oconee FOLs involves administrative changes only. No actual plant equipment, operating practices, or accident analyses are affected by these amendments. No new accident causal mechanisms are created as a result of NRC approval of this amendment request. This amendment request does not impact any plant systems that are accident initiators; neither does it adversely impact any accident mitigating systems. Therefore, implementation of this amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

**Third Standard**

Implementation of this amendment would not involve a significant reduction in a margin of safety. Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of these fission product barriers will not be impacted by implementation of this amendment. The changes are adminstrative in nature and eliminate outdated or completed requirements; therefore, no reduction in any existing margin of safety is involved.

Based upon the preceding discussion, Duke Energy Corporation has concluded that the proposed amendment does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 9, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first

prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 27, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 2nd day of February, 2000.

For the Nuclear Regulatory Commission.

**David E. LaBarge,**

*Senior Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–2834 Filed 2–7–00; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 55–32443–SP]**

### In the Matter of Michel A. Philippon (Denial of Senior Reactor Operator) License Application; Notice of Appointment of Adjudicatory Employee

Commissioners: Richard A. Meserve, Chairman, Greta J. Dicus, Nils J. Diaz, Edward McGaffigan, Jr., Jeffrey S. Merrifield.

Pursuant to 10 CFR 2.4, notice is hereby given that Mr. Richard Baldwin, a Commission employee in Region II, Division of Reactor Safety, Operator Licensing and Human Performance Branch, has been appointed as a Commission adjudicatory employee within the meaning of section 2.4, to advise the Commission regarding issues relating to the pending petition for review of the Presiding Officer's Initial Decision, LBP–99–44. Mr. Baldwin has not previously performed any investigative or litigating function in connection with this or any related proceeding. Until such time as a final decision is issued in this matter, interested persons outside the agency and agency employees performing investigative or litigating functions in this proceeding are required to observe the restrictions of 10 CFR 2.780 and 2.781 in their communications with Mr. Baldwin.

It is so ordered.

For the Commission.

Dated at Rockville, Maryland, this 2nd day of February, 2000.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 00–2832 Filed 2–7–00; 8:45 am]

**BILLING CODE 7590–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 24274; 812–11898]**

### The Victory Portfolios, et al.; Notice of Application

February 1, 2000.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of an application under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 12(d)(1)(A) and 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

**SUMMARY:** Applicants seek to amend a prior order that permits non-money market series of a registered open-end management investment company to purchase shares of one or more of the money market series of such registered investment company by adding one registered open-end management investment company and one investment adviser as applicants.

*Applicants:* The Victory Portfolios (formerly known as The Society Funds), The Highmark Group, The Parkstone Group of Funds, The Conestoga Family of Funds, The AmSouth Funds (formerly known as The ASO Outlook Group), The Sessions Group, American Performance Funds, The Coventry Group, BB&T Mutual Funds Group (collectively, the ''Original Funds''); Society Asset Management, Inc., Union

Bank of California, N.A. (formerly known as The Bank of California), First of America Investment Corporation, Meridian Investment Company, AmSouth Bank (formerly known as AmSouth Bank, N.A.), National Bank of Commerce, BancOklahoma Trust Company, AMR Investment Services, Inc., Boatmen's Trust Company, AMCORE Capital Management, Inc., and Branch Banking and Trust Company (collectively, the ''Original Advisers''); BISYS Fund Services Limited Partnership (formerly known as The Winsbury Company) (''BISYS''), BISYS Fund Services Ohio, Inc. (formerly known as The Winsbury Service Corporation) (all of the above entities collectively, the ''Original Applicants''); BISYS Fund Services, Inc. (''BISYS Services''); Martindale Andres & Company, Inc. and 1st Source Bank (collectively, the ''First Additional Advisers''); Eureka Funds, Performance Funds Trust, and Centura Funds, Inc. (collectively, the ''First Additional Funds''); Sanwa Bank California, Trustmark National Bank and Centura Bank (collectively, the ''Second Additional Advisers''); The Infinity Mutual Funds, Inc. (the ''Second Additional Fund''); First American National Bank (the ''Third Additional Adviser''); Magna Funds (the ''New Fund'') and Union Planters Bank, National Association (the ''New Adviser'').

The Sessions Group, BISYS, BISYS Fund Services Ohio, Inc. and the First Additional Advisers are also referred to as the ''First Subsequent Applicants.'' BISYS, BISYS Services, the First Additional Funds, and the Second Additional Advisers are also referred to as the ''Second Subsequent Applicants.'' BISYS, BISYS Fund Services Ohio, Inc., the Second Additional Fund and the Third Additional Adviser are referred to collectively as the ''Third Subsequent Applicants.'' The Original Applicants, the First Subsequent Applicants, the Second Subsequent Applicants and the Third Subsequent Applicants are also referred to collectively as the ''Prior Applicants.'' BISYS, BISYS Services, the New Fund, and the New Adviser are referred to collectively as the ''New Applicants.''

**FILING DATE:** The application was filed on December 22, 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 Commission's Secretary 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 February 28, 2000, 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 Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. Applicants, c/o Charles H. Hire, Esq., Baker & Hostetler LLP, 65 East State Street—Suite 2100, Columbus, Ohio 43215.

**FOR FURTHER INFORMATION CONTACT:** Lawrence W. Pisto, Senior Counsel, at (202) 942–0527, or Mary Kay Frech, Branch Chief, at (202) 942–0564, Office of Investment Company Regulation, Division of Investment Management.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, DC 20549–0102 (tel. (202) 942–8090).

**Applicants' Representations**

1. On October 5, 1993, the Commission issued an order (the ''Original Order'') under sections 6(c) and 17(b) of the Act that exempted the Original Applicants from the provisions of sections 12(d)(1)(A) and 17(a) of the Act and that permitted, pursuant to rule 17d–1, certain joint transactions in accordance with section 17(d) and rule 17d–1.[1] The Original Order permitted: (i) the non-money market series of an Original Fund to utilize cash reserves that have not been invested in portfolio securities (''Uninvested Cash'') to purchase shares of one or more of the money market series of such Original Fund; and (ii) the sale of shares by the money market series of an Original Fund to the non-money market series of such Original Fund, and the purchase (or redemption) of their shares by the money market series of the Original Fund from the non-money market series of such Original Fund.

2. On May 20, 1997, the Commission issued an order that amended the Original Order (together with the Original Order, the ''First Amended Order''), by extending the relief granted in the Original Order to the First Subsequent Applicants.[2]

3. On September 15, 1998, the Commission issued an order that amended the Original Order for the second time (together with the First Amended Order, the ''Second Amended Order''), by extending the relief granted in the Original Order to the Second Subsequent Applicants.[3]

4. On September 21, 1999, the Commission issued an order that amended the Original Order for the third time (together with the Second Amended Order, the ''Third Amended Order''), by extending the relief granted in the Original Order to the Third Subsequent Applicants.[4] The Original Order, the First Amended Order, the Second Amended Order and the Third Amended Order are referred to herein collectively as the ''Amended Order.''

5. The New Fund is an open-end management investment company registered under the Act and organized as a Massachusetts business trust. The New Fund currently offers three series, one of which is a money market fund, and is advised by the New Adviser. The New Adviser is not registered under the Investment Advisers Act of 1940 (the ''Advisers Act'') in reliance upon the exclusion from the definition of investment adviser set forth in section 202(a)(11)(A) of the Advisers Act. BISYS, one of the Prior Applicants, is the principal underwriter and administrator for each series of the New Fund. BISYS Services, also one of the Prior Applicants, is the transfer agent and fund account for each series of the New Fund.

6. The New Applicants seek to have the exemptive relief granted under the Amended Order extended to include them so as to permit the non-money market series of the New Fund which are advised by the New Adviser to utilize Uninvested Cash to purchase shares of one or more of the money market series of the New Fund which are advised by the New Adviser.[5] The New Applicants consent to the

[1] Investment Company Act Release Nos. 19695 (Sept. 9, 1993) (notice) and 19759 (Oct. 5, 1993) (order).

[2] Investment Company Act Release Nos. 22636 (April 24, 1997) (notice) and 22677 (May 20, 1997) (order).

[3] Investment Company Act Release Nos. 23393 (Aug. 18, 1998) (notice) and 23436 (Sept. 15, 1998) (order).

[4] Investment Company Act Release Nos. 23962 (Aug. 23, 1999) (notice) and 24021 (Sept. 21, 1999) (order).

[5] The requested relief also would extend to any other registered open-end management investment companies advised by the New Adviser or any person directly or indirectly controlling, controlled by, or under common control with the New Adviser, and for which BISYS or any person directly or indirectly controlling, controlled by, or under common control with BISYS, now or in the future serves as principal underwriter.

conditions set forth in the application for the Amended Order and agree to be bound by the terms and provisions of the Amended Order to the same extent as the Prior Applicants. The New Applicants believe that granting the requested order is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–2746 Filed 2–7–00; 8:45 am]

**BILLING CODE 8010–01–M**

## SOCIAL SECURITY ADMINISTRATION

### Agency Information Collection Activities: Emergency Consideration Request

In compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, the Social Security Administration (SSA) is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is requesting emergency consideration from OMB by 02/16/2000 of the information collections listed below.

1. Request to be Selected as Payee—0960–0014. The information collected on Form SSA–11–BK is used to determine the proper payee for a Social Security beneficiary, and it is designed to aid in the investigation of a payee applicant. The form will establish the applicant's relationship to the beneficiary, the justification, the concern for the beneficiary and the manner in which the benefits will be used. The respondents are applicants for selection as representative payee for Old Age, Survivors and Disability Insurance (OASDI), Supplemental Security Income (SSI), Black Lung benefits and title-VIII Special Veterans Benefits.

*Number of Respondents:* 2,121,686.

*Frequency of Response:* 1.

*Average Burden Per Response:* 10.5 minutes.

*Estimated Annual Burden:* 371,295 hours.

2. Application for Special Benefits for World War II Veterans–0960–NEW. The information collected on Form SSA–2000 will be used by the Social Security Administration to elicit the information necessary to determine entitlement of an individual to benefits under title VIII of the Social Security Act. Respondents are certain World War II Veterans as identified under title VIII.

*Number of Respondents:* 12,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 20 minutes.

*Estimated Annual Burden:* 4,000 hours.

**Background Information**

In November 1999, Congress passed the Foster Care Independence Act, and on December 14, 1999, the President signed it into law (Pub. L. 106–169). An important part of this legislation, section 251, creates a new title VIII of the Social Security Act, which is a new program for SSA to administer. Title VIII provides for a program of special benefits for certain World War II veterans as defined below:

Veterans of the U.S. military and the organized military forces of the Philippines (while in the service of the U.S. Armed Forces) during World War II, who are age 65 or older on or before December 14, 1999 and who are eligible for SSI benefits in both the month of enactment and the month of application for the Special Veterans Benefit (SVB), and whose total benefit income is less than the title VIII benefit amount, are entitled to a title VIII benefit for each month the individual resides outside the United States.

The law provides that an individual who meets all statutory requirements will be entitled to title VIII benefits beginning with October 2000, or such earlier month that the Commissioner determines is administratively feasible.

In recognition of the stated desire of many foreign-born potential applicants for special benefits under SVB to return to their homelands, SSA is targeting its implementation efforts to begin payments as early as May 2000.

Accordingly SSA has revised the SSA–11–BK, Request to be Selected as Payee, to include payee applicants under title VIII, and has developed the new SSA–2000, Application for Special Benefits for World War II Veterans, in order to administer the title VIII program.

You can obtain a copy of the collection instruments and/or OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at: Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

Dated: February 1, 2000.

**Frederick W. Brickenkamp,**

*Reports Clearance Officer.*

[FR Doc. 00–2727 Filed 2–7–00; 8:45 am]

**BILLING CODE 4190–29–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Aviation Proceedings, Agreements Filed During the Week Ending January 28, 2000

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

*Docket Number:* OST–2000–6826.

*Dated Filed:* January 27, 2000.

*Parties:* Members of the International Air Transport Association.

*Subject:* PTC3 0408 dated 28 January 2000; Mail Vote 060—Resolution 043i; TC3 Intermediate Class Fares between Japan, Korea and South East Asia—Amend Fares from Singapore to Japan; Intended effective date: 1 April 2000.

*Docket Number:* OST–2000–6830.

*Dated Filed:* January 27, 2000.

*Parties:* Members of the International Air Transport Association.

*Subject:* CAC/27/Meet/008/Expedited/99; Cargo Agency Expedited Resolution 809; Intended effective date: January 1, 2000.

*Docket Number:* OST–2000–6837.

*Dated Filed:* January 28, 2000.

*Parties:* Members of the International Air Transport Association.

*Subject:* CTC Comp 0052 dated 12 August 1997—Mail Vote 875; Resolution 116ss; Airline Justifications; Intended effective date—Upon Government Approvals.

**Dorothy W. Walker,**

*Federal Register Liaison.*

[FR Doc. 00–2775 Filed 2–7–00; 8:45 am]

**BILLING CODE 4910–62–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending January 28, 2000

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures.

Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* OST–1995–196.

*Date Filed:* January 18, 2000.

*Due Date for Answers, Conforming Applications, or Motions to Modify Scope:* February 15, 2000.

*Description:* Application of United Air Lines, Inc. (''United'') pursuant to 49 U.S.C. 41101 and subpart Q, applies for renewal of its certificate of public convenience and necessity for Route 669, authorizing United to engage in foreign air transportation of persons, property and mail between a point or points in the United States and the terminal point Kiev, Ukraine via the intermediate point Frankfurt, Germany.P=’02’≤

*Docket Number:* OST–2000–6831.

*Date Filed:* January 27, 2000.

*Due Date for Answers, Conforming Applications, or Motions to Modify Scope:* February 24, 2000.

*Description:* Application of Delta Air Lines, Inc. (''Delta'') pursuant to 49 U.S.C. 41102 and 41108, part 201, and subpart Q, applies for renewal of its certificate of public convenience and necessity for Route 667, which authorizes Delta to engage in foreign air transportation of persons, property and mail between a point or points in the United States; the intermediate point Vienna, Austria; and the coterminal points Kiev and Odessa, Ukraine.P=’02’≤

*Docket Number:* OST–2000–6835.

*Date Filed:* January 28, 2000.

*Due Date for Answers, Conforming Applications, or Motions to Modify Scope:* February 25, 2000.

*Description:* Application of Trans Continental Airlines, Inc. (''TCA'') pursuant to 49 U.S.C. 41105 and subpart Q, requests that the Department disclaim jurisdiction over or, in alternative, approve the transfer of the TCA certificate of public convenience and necessity authorizing it to provide interstate scheduled air transportation of property and mail to EXPRESS.NET AIRLINES LLC, reissue the certificate in the name EXPRESS.NET AIRLINES LLC.P=’02’≤

*Docket Number:* OST–2000–6836.

*Date Filed:* January 28, 2000.

*Due Date for Answers, Conforming Applications, or Motions to Modify Scope:* February 25, 2000.

*Description:* Application of Northwest Airlines, Inc. (''Northwest'') pursuant to 49 U.S.C. 41102, 41108 and subpart Q, applies for renewal of its experimental certificate of public convenience and necessity for Route 668 authorizing it to engage in foreign air transportation of persons, property and mail ''between a point or points in the United States; the intermediate point Amsterdam, The Netherlands; and the terminal point Kiev, Ukraine.''

**Dorothy W. Walker,**

*Federal Register Liaison.*

[FR Doc. 00–2776 Filed 2–7–00; 8:45 am]

**BILLING CODE 4910–62–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

### Transfer of Federally Assisted Land or Facility

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

**ACTION:** Notice of intent to transfer Federally assisted land or facility.

**SUMMARY:** 49 U.S.C. 5334(g), (formerly called section 12(k) of The Federal Transit Act), permits the Administrator of the Federal Transit Administration (FTA) to authorize a recipient of FTA funds to transfer land or a facility to a public body for any public purpose with no further obligation to the Federal Government if, among other things, no Federal agency is interested in acquiring the asset for Federal use. Accordingly, FTA is issuing this Notice to advise Federal agencies that the Missouri Department of Transportation intends to transfer an extension on the City of Sedalia's maintenance building, consisting of approximately 5,600 square feet, to the City of Sedalia, Missouri.

**EFFECTIVE DATE:** Any Federal agency interested in acquiring the facility must notify the FTA Kansas City Regional Office of its interest by March 9, 2000.

**ADDRESSES:** Interested parties should notify the Regional Office by writing to Mr. Mokhtee Ahmad, Regional Administrator, Federal Transit Administration, 901 Locust, Room 404, Kansas City, Missouri 64106.

**FOR FURTHER INFORMATION CONTACT:** Louise Lloyd, Transportation Program Specialist, Region 7, at 816/329–3938 or Ann Catlin, Real Estate Specialist, Office of Program Management at 202/366–1647.

**SUPPLEMENTARY INFORMATION:**

#### Background

49 U.S.C. Section 5334 (g) provides guidance on the transfer of capital assets. Specifically, if a recipient of FTA assistance decides an asset acquired under this chapter and at least in part with that assistance is no longer needed for the purpose for which it was acquired, then the Secretary of Transportation may authorize the recipient to transfer the asset to a local governmental authority to be used for a public purpose with no further obligation to the Government.

*49 U.S.C. Section 5334(g) Determinations*

The Secretary may authorize a transfer for a public purpose other than mass transportation only if the Secretary decides:

(A) The asset will remain in public use for not less than 5 years after the date the asset is transferred;

(B) There is no purpose eligible for assistance under this chapter for which the asset should be used;

(C) The overall benefit of allowing the transfer is greater than the interest of the Government in liquidation and return of the financial interest of the Government in the asset, after considering fair market value and other factors; and

(D) Through an appropriate screening or survey process, that there is no interest in acquiring the asset for Government use if the asset is a facility or land.

#### Federal Interest in Acquiring Land or Facility

This document implements the requirements of 49 U.S.C. 5334(g). Accordingly, FTA hereby provides notice of the availability of the facility further described below. Any Federal agency interested in acquiring the affected facility should promptly notify the FTA.

If no Federal agency is interested in acquiring the existing facility, FTA will make certain that the other requirements specified in 49 U.S.C. 5334(g)(1)(A) through (1)(D) are met before permitting the asset to be transferred.

#### Additional Description of Land or Facility

The subject building was built as a butler style extension onto the City of Sedalia's maintenance facility in 1983. The extension contains approximately 5,600 square feet and is 70 feet by 80 feet in dimension. Six vans can be stored inside the extension. There is no federal interest in the land and any interested party would need to negotiate a ground lease with the City of Sedalia.

Issued on: February 2, 2000.

**Mokhtee Ahmad,**

*Regional Administrator.*

[FR Doc. 00–2777 Filed 2–7–00; 8:45 am]

**BILLING CODE 4910–57–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD–2000–6856]**

### Information Collection Available for Public Comments and Recommendations

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

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD) intentions to request approval for three years of an existing information collection entitled ''Determination of Fair and Reasonable Rates for the Carriage of Bulk and Packaged Cargoes on U.S.-flag Commercial Vessels.''

**DATES:** Comments should be submitted on or before April 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Thomas Olsen, Office of Financial and Rate Approvals, Maritime Administration, 400 Seventh Street, SW, Room 8117, Washington, DC 20590, telephone number—202–366–2313. Copies of this collection can also be obtained from that office.

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Determination of Fair and Reasonable Rates for the Carriage of Bulk and Packaged Cargoes on U.S.-flag Commercial Vessels.

*Type of Request:* Approval of an existing information collection.

*OMB Control Number:* 2133–0514.

*Form Number:* None.

*Expiration Date of Approval:* Three years from the date of approval.

*Summary of Collection of Information:* This collection of information requires U.S.-flag operators to submit vessel operating costs and capital costs data to MARAD officials on an annual basis. The costs are used by MARAD in determining fair and reasonable guideline rates for the carriage of preference cargoes on U.S.-flag vessels. In addition, U.S.-flag vessel operators are required to submit Post Voyage Reports to MARAD after completion of a cargo preference voyage.

*Need and Use of the Information:* The information collection is used by MARAD officials to calculate fair and reasonable rates for U.S.-flag vessels engaged in the carriage of preference cargoes.

*Description of Respondents:* U.S. citizens that own and/or operate U.S.-flag vessels.

*Annual Responses:* 160 responses.

*Annual Burden:* 640 hours.

*Comments:* Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at http://dmses.dot.gov.submit. Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., et Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

By Order of the Maritime Administrator.P='02<

Dated: February 2, 2000.

**Joel C. Richard,**

*Secretary.*

[FR Doc. 00–2749 Filed 2–7–00; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–99–6478; Notice 2]**

### Advanced Bus Industries, LLC; Grant of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 105

For the reasons given below, we are granting the application by Advanced Bus Industries, LLC, of Columbus, Ohio, (''ABI'') for a temporary exemption for its MSV small bus from the requirement of Motor Vehicle Safety Standard No. 105 *Hydraulic and Electric Brake Systems* that a service brake system be provided on all wheels. ABI applied for the exemption on the basis that it ''is otherwise unable to sell a motor vehicle whose overall level of safety is equivalent to or exceeds the overall level of safety of nonexempted motor vehicles.'' 49 CFR 555.6(d).

We published notice of receipt of the application on November 17, 1999 (64 FR 62740), and received no comments on it.

The discussion that follows is based on information contained in ABI's application.

**ABI's Reasons Why it Needs a Temporary Exemption**

Paragraph S5.1 of Standard No. 105 requires motor vehicles to which the standard applies to be equipped with a service brake system acting on all wheels. ABI applied on behalf of its ''MSV Test and Development Vehicle,'' a small bus with a GVWR of 13,500 pounds.

ABI described the configuration of the MSV by saying that the four-wheel independent-suspension support is augmented by a small-wheeled tag axle. The tag axle is located behind the two rear-independent suspension wheels. The four independent-suspension wheels are fitted with hydraulic-caliper disc brakes but the two small wheels of the tag axle are not fitted with brakes. ABI asked to be excused from providing brakes for the wheels of the tag axle.

The MSV was originally developed without the tag axle, but pre-production changes increased the gross weight on the two rear wheels beyond the rated load capacity of the rear tires. ABI has added a Dexter tag axle to support the additional weight.

The standard-equipment brakes operate with a low displacement of hydraulic fluid at a pressure of approximately 1,600 psi. The vehicle is equipped with an antilock braking system (ABS). However, ''there is no commercially-available tag axle with a braking system that is compatible with the vehicle's main service brake system.'' Absent an exemption, ABI will not be able to sell the production version of the MSV. While any exemption provided is in effect, ABI intends ''to develop a new higher-capacity, rear wheel suspension system that will eliminate the need for the tag axle'', and does not anticipate selling more than 75 vehicles for any 12-month period that the exemption is in effect.

**ABI's Reasons Why the Overall Level of Safety of the MSV Is at Least Equal to That of a Complying Motor Vehicle**

Although the MSV does not contain any safety features other than those required by the Federal motor vehicle safety standards, ABI argued that it otherwise exceeds the requirements of Standard No. 105 ''and easily complies with brake-in-turn (stability and control) standards expected to be proposed by NHTSA in the near future.''

The company has tested the MSV service brake system to the requirements of Standard No. 105, and enclosed a copy of the test report with its petition. The report stated that ''even without brakes on the tag axle, the vehicle was still able to meet all of the performance

requirements of FMVSS 105 by a significant margin.'' (Test No. RAI–ABI–01, Radlinski & Associates, Inc., August 1999, p. 2). The report also concluded that the results demonstrated ''that the tag axle, which only carries 1,500 lbs (11 percent of the total weight), does not really need brakes in order for the vehicle to provide safe stopping performance as defined by the requirements of the standard'' (*id.,* p. 2).

**ABI's Reasons Why an Exemption Would Be Consistent With the Public Interest and Objectives of Motor Vehicle Safety**

ABI argued that an exemption would be in the public interest and consistent with traffic safety objectives because granting the exemption ''will permit public-transit use of the advanced features of the MSV bus while fulfilling the letter, and the intent, of the FMVSS standards.'' These advanced features are ''significantly improved ride and handling characteristics compared to existing small buses and the MSV's stainless steel frame and FRP body will be more durable than conventionally-constructed buses in this class.'' In addition, the company argued that the test report shows that the braking performance, even without brakes on the tag axle, significantly exceeds the requirements of Standard No. 105.

**Our Findings**

ABI is presently unable to sell its MSV because the bus does not provide a service brake system acting on all wheels as required by S5.1 of Standard No. 105. Although the four principal wheels are part of the service brake system, the two smaller wheels of the bus's tag axle are not part of the overall service brake system. The lack of a service brake system on the tag axle wheels does not create a noncompliance with the stopping distance specifications of Standard No. 105. Indeed, the bus is designed to exceed these by, in its words, ''a significant margin.'' In this sense, the overall level of safety of the MSV may exceed that of a similar bus with a complying brake system.

Even though the anticipated production of the bus is small, the vehicles serve the public interest by providing mass transportation in the markets where they will be sold and operated.

Accordingly we find that, to require compliance would prevent ABI from selling a motor vehicle whose overall level of safety is equivalent to or exceeds the overall level of safety of nonexempted motor vehicles, and that a temporary exemption is in the public interest and consistent with the objectives of traffic safety. Accordingly, Advanced Bus Industries is hereby granted NHTSA Exemption No. 2000–1 from the requirement in S5.1 of 49 CFR 571.105 Standard No. 105, *Hydraulic and electric brake systems,* that its MSV bus be equipped with a service brake system on the two wheels of the bus's tag axle. The exemption shall expire January 1, 2002.

**Authority:** 49 U.S.C. 30113; delegation of authority at 49 CFR 1.50.

Issued on: February 2, 2000.

**Rosalyn G. Millman,**

*Acting Administrator.*

[FR Doc. 00–2719 Filed 2–7–00; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–99–6586; Notice 01]**

**RIN 2127–AH76**

### Preliminary Theft Data; Motor Vehicle Theft Prevention Standard

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

**ACTION:** Publication of preliminary theft data; request for comments.

**SUMMARY:** This document requests comments on data about passenger motor vehicle thefts that occurred in calendar year (CY) 1998, including theft rates for existing passenger motor vehicle lines manufactured in model year (MY) 1998. The theft data preliminarily indicate that the vehicle theft rate for CY/MY 1998 vehicles (2.53 thefts per thousand vehicles) decreased by 17.05 percent from the theft rate for CY/MY 1997 vehicles (3.05 thefts per thousand vehicles).

Publication of these data fulfills NHTSA's statutory obligation to periodically obtain accurate and timely theft data, and publish the information for review and comment.

**DATES:** Comments must be submitted on or before April 10, 2000.

**ADDRESSES:** All comments should refer to the docket number and notice number cited in the heading of this document and be submitted, preferably with two copies to: U.S. Department of Transportation, Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are from 10:00 am to 5:00 pm, Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

**SUPPLEMENTARY INFORMATION:** NHTSA administers a program for reducing motor vehicle theft. The central feature of this program is the Federal Motor Vehicle Theft Prevention Standard, 49 CFR Part 541. The standard specifies performance requirements for inscribing or affixing vehicle identification numbers (VINs) onto certain major original equipment and replacement parts of high-theft lines of passenger motor vehicles.

The agency is required by 49 U.S.C. 33104(b)(4) to periodically obtain, from the most reliable source, accurate and timely theft data, and publish the data for review and comment. To fulfill the § 33104(b)(4) mandate, this document reports the preliminary theft data for CY 1998, the most recent calendar year for which data are available.

In calculating the 1998 theft rates, NHTSA followed the same procedures it used in calculating the MY 1997 theft rates. (For 1997 theft data calculations, see 64 FR 41183, July 29, 1999). As in all previous reports, NHTSA's data were based on information provided to the agency by the National Crime Information Center (NCIC) of the Federal Bureau of Investigation. The NCIC is a governmental system that receives vehicle theft information from nearly 23,000 criminal justice agencies and other law enforcement authorities throughout the United States. The NCIC data also include reported thefts of self-insured and uninsured vehicles, not all of which are reported to other data sources.

The 1998 theft rate for each vehicle line was calculated by dividing the number of reported thefts of MY 1998 vehicles of that line stolen during calendar year 1998, by the total number of vehicles in that line manufactured for MY 1998, as reported by manufacturers to the Environmental Protection Agency.

The preliminary 1998 theft data show a decrease in the vehicle theft rate when compared to the theft rate experienced in CY/MY 1997. The preliminary theft rate for MY 1998 passenger vehicles stolen in calendar year 1998 decreased to 2.53 thefts per thousand vehicles produced, a decrease of 17.05 percent from the rate of 3.05 thefts per thousand vehicles experienced by MY 1997 vehicles in CY 1997. For MY 1998 vehicles, out of a total of 196 vehicle lines, 41 lines had a theft rate higher than 3.5826 per thousand vehicles, the

established median theft rate for MYs 1990/1991. (See 59 FR 12400, March 16, 1994). Of the 41 vehicle lines with a theft rate higher than 3.5826, 35 are passenger car lines, six are multipurpose passenger vehicle lines, and none are light-duty truck lines.

In Table I, NHTSA has tentatively ranked each of the MY 1998 vehicle lines in descending order of theft rate. Public comment is sought on the accuracy of the data, including the data for the production volumes of individual vehicle lines.

Comments must not exceed 15 pages in length (49 CFR Part 553.21). Attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and two copies from which the purportedly confidential information has been deleted should be submitted to Dockets. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for this document will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments on this document will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available for inspection in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

**Authority:** 49 U.S.C. 33101, 33102 and 33104; delegation of authority at 49 CFR 1.50.

PRELIMINARY REPORT OF THEFT RATES OF 1998 MODEL YEAR PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1998

| | Manufacturer | Make/model (line) | Thefts 1998 | Production (Mfr's) 1998 | 1998 theft rate (per 1,000 vehicles produced) |
|---|---|---|---|---|---|
| 1 | Mitsubishi | Diamante | 87 | 6,584 | 13.2139 |
| 2 | Lamborghini | DB132/Diablo | 1 | 104 | 9.6154 |
| 3 | Saab | 9000 | 12 | 1,335 | 8.9888 |
| 4 | Honda | Acura Integra | 314 | 36,253 | 8.6614 |
| 5 | Mitsubishi | Mirage | 357 | 41,904 | 8.5195 |
| 6 | Toyota | Tercel | 92 | 11,207 | 8.2092 |
| 7 | Chrysler Corp | Dodge Stratus | 750 | 107,276 | 6.9913 |
| 8 | Mitsubishi | Montero Sport/Nativa [1] | 318 | 45,772 | 6.9475 |
| 9 | General Motors | Oldsmobile Achieva | 181 | 26,922 | 6.7231 |
| 10 | General Motors | GMC Safari Van | 161 | 24,451 | 6.5846 |
| 11 | General Motors | Buick Skylark | 122 | 18,851 | 6.4718 |
| 12 | Hyundai | Sonata | 101 | 16,406 | 6.1563 |
| 13 | Suzuki | X–90 | 3 | 500 | 6.0000 |
| 14 | Chrysler Corp | Plymouth Breeze | 393 | 66,612 | 5.8998 |
| 15 | Mitsubishi | Galant | 172 | 29,618 | 5.8073 |
| 16 | Chrysler Corp | Plymouth Neon | 499 | 87,055 | 5.7320 |
| 17 | Chrysler Corp | Dodge Neon | 725 | 130,154 | 5.5703 |
| 18 | Mitsubishi | Eclipse | 307 | 56,294 | 5.4535 |
| 19 | Nissan | Maxima | 682 | 130,862 | 5.2116 |
| 20 | Chrysler Corp | Sebring Convertible | 251 | 50,812 | 4.9398 |
| 21 | Ford Motor Co | Mercury Tracer | 177 | 35,850 | 4.9372 |
| 22 | Hyundai | Elantra | 169 | 35,792 | 4.7217 |
| 23 | Suzuki | Swift | 15 | 3,265 | 4.5942 |
| 24 | General Motors | Pontiac Sunfire | 409 | 90,469 | 4.5209 |
| 25 | Mitsubishi | Montero | 38 | 8,506 | 4.4674 |
| 26 | Suzuki | Esteem | 67 | 15,222 | 4.4015 |
| 27 | Chrysler Corp | Jeep Grand Cherokee | 1,085 | 249,097 | 4.3557 |
| 28 | BMW | M3 | 50 | 11,537 | 4.3339 |
| 29 | Toyota | Supra | 3 | 697 | 4.3042 |
| 30 | Mazda | Millenia | 82 | 19,908 | 4.1189 |
| 31 | Toyota | Lexus GS | 124 | 30,810 | 4.0247 |
| 32 | Toyota | 4-Runner | 489 | 121,745 | 4.0166 |
| 33 | BMW | 7 | 73 | 18,179 | 4.0156 |
| 34 | Ford Motor Co | Contour | 866 | 217,548 | 3.9807 |
| 35 | Hyundai | Accent | 123 | 31,692 | 3.8811 |
| 36 | General Motors | Pontiac Grand AM | 386 | 101,814 | 3.7912 |
| 37 | Mitsubishi | 3000GT | 18 | 4,753 | 3.7871 |
| 38 | Nissan | Altima | 602 | 159,224 | 3.7808 |
| 39 | Chrysler Corp | Eagle Talon | 16 | 4,317 | 3.7063 |
| 40 | Audi | Cabriolet | 3 | 829 | 3.6188 |
| 41 | Ford Motor Co | Mustang | 612 | 170,587 | 3.5876 |
| 42 | Mercedes Benz | 140 (CL-Class & SL-Class) | 34 | 9,593 | 3.5443 |

PRELIMINARY REPORT OF THEFT RATES OF 1998 MODEL YEAR PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1998—Continued

| | Manufacturer | Make/model (line) | Thefts 1998 | Production (Mfr's) 1998 | 1998 theft rate (per 1,000 vehicles produced) |
|---|---|---|---|---|---|
| 43 | Suzuki | Sidekick | 65 | 18,396 | 3.533 |
| 44 | Nissan | Sentra/200SX | 395 | 111,821 | 3.5324 |
| 45 | Mazda | Protege | 201 | 57,165 | 3.5161 |
| 46 | General Motors | Chevrolet Blazer S10/T10 | 759 | 216,854 | 3.5001 |
| 47 | KIA Motors | Sephia | 156 | 45,860 | 3.4017 |
| 48 | General Motors | Chevrolet Prizm | 153 | 45,000 | 3.4000 |
| 49 | General Motors | Pontiac Firebird/Formula | 107 | 32,228 | 3.3201 |
| 50 | General Motors | Chevrolet Camaro | 159 | 48,562 | 3.2742 |
| 51 | Ford Motor Co | Mercury Mystique | 195 | 59,826 | 3.2595 |
| 52 | Isuzu | Rodeo | 223 | 68,558 | 3.2527 |
| 53 | Chrysler Corp | Cirrus | 121 | 37,295 | 3.2444 |
| 54 | Porsche | 911 | 8 | 2,474 | 3.2336 |
| 55 | General Motors | Chevrolet Metro | 104 | 32,499 | 3.2001 |
| 56 | Chrysler Corp | Dodge Avenger | 85 | 26,634 | 3.1914 |
| 57 | General Motors | Chevrolet Cavalier | 844 | 270,401 | 3.1213 |
| 58 | Ford Motor Co | Mercury Sable | 282 | 91,297 | 3.0888 |
| 59 | Ford Motor Co | Lincoln Town Car | 253 | 82,965 | 3.0495 |
| 60 | Toyota | Corolla | 690 | 228,197 | 3.0237 |
| 61 | Mercedes Benz | 129 (SL-Class) | 25 | 8,315 | 3.0066 |
| 62 | Ford Motor Co | Lincoln Mark VIII | 43 | 14,357 | 2.9951 |
| 63 | General Motors | Chevrolet Corvette | 86 | 28,732 | 2.9932 |
| 64 | Chrysler Corp | Jeep Cherokee | 439 | 148,207 | 2.9621 |
| 65 | Nissan | Infiniti I30 | 92 | 31,060 | 2.9620 |
| 66 | Ford Motor Co | Escort | 995 | 336,729 | 2.9549 |
| 67 | General Motors | Cadillac Deville | 305 | 104,209 | 2.9268 |
| 68 | General Motors | Chevrolet Malibu | 669 | 231,143 | 2.8943 |
| 69 | General Motors | GMC Jimmy S–15 | 204 | 71,583 | 2.8498 |
| 70 | Ford Motor Co | Taurus | 943 | 332,243 | 2.8383 |
| 71 | Toyota | Tacoma Pickup Truck | 484 | 170,992 | 2.8305 |
| 72 | Honda | Prelude | 45 | 15,973 | 2.8173 |
| 73 | Jaguar | XJ8 | 32 | 11,374 | 2.8134 |
| 74 | Mazda | 626 | 246 | 87,448 | 2.8131 |
| 75 | General Motors | Oldsmobile Bravada | 77 | 27,790 | 2.7708 |
| 76 | Chrysler Corp | Sebring Coupe | 93 | 35,035 | 2.6545 |
| 77 | Hyundai | Tiburon | 17 | 6,444 | 2.6381 |
| 78 | Chrysler Corp | Dodge Intrepid | 182 | 70,283 | 2.5895 |
| 79 | Nissan | Infiniti QX4 | 44 | 17,109 | 2.5717 |
| 80 | Honda | Passport | 63 | 25,435 | 2.4769 |
| 81 | General Motors | Chevrolet Lumina/Monte Carlo | 616 | 255,423 | 2.4117 |
| 82 | General Motors | Chevrolet Tracker | 50 | 20,999 | 2.3811 |
| 83 | Nissan | Pathfinder | 186 | 81,428 | 2.2842 |
| 84 | Honda | Civic | 838 | 368,876 | 2.2718 |
| 85 | General Motors | Pontiac Bonneville | 146 | 65,539 | 2.2277 |
| 86 | Volkswagen | Golf/GTI | 40 | 17,971 | 2.2258 |
| 87 | Mercedes Benz | 208 (CLK-Class) | 11 | 5,103 | 2.1556 |
| 88 | Chrysler Corp | Jeep WRangler | 185 | 90,341 | 2.0478 |
| 89 | BMW | 3 | 76 | 38,098 | 1.9949 |
| 90 | Volkswagen | Jetta | 149 | 74,701 | 1.9946 |
| 91 | Chrysler Corp | Stratus[2] | 1 | 505 | 1.9802 |
| 92 | BMW | 5 | 70 | 35,631 | 1.9646 |
| 93 | Ford Motor Co | F–150 Pickup Truck | 805 | 409,940 | 1.9637 |
| 94 | Jaguar | XJR | 3 | 1,534 | 1.9557 |
| 95 | Toyota | Camry | 790 | 404,850 | 1.9513 |
| 96 | Ford Motor Co | Windstar Van | 646 | 333,746 | 1.9356 |
| 97 | Chrysler Corp | Neon[2] | 1 | 518 | 1.9305 |
| 98 | Kia Motors | Sportage | 51 | 26,455 | 1.9278 |
| 99 | Volvo | S70/V70 | 167 | 87,069 | 1.9180 |
| 100 | Chrysler Corp | Plymouth Voyager/Grand | 299 | 156,440 | 1.9113 |
| 101 | Toyota | Lexus ES | 96 | 50,585 | 1.8978 |
| 102 | Chrysler Corp | Dodge Caravan/Grand | 538 | 288,662 | 1.8638 |
| 103 | General Motors | Cadillac Eldorado | 33 | 17,950 | 1.8384 |
| 104 | General Motors | Oldsmobile Intrigue | 180 | 99,035 | 1.8175 |
| 105 | Honda | Acura TL | 33 | 18,337 | 1.7996 |
| 106 | Toyota | Lexus SC | 5 | 2,801 | 1.7851 |
| 107 | Isuzu | Trooper | 33 | 18,657 | 1.7688 |
| 108 | Isuzu | Oasis Van | 3 | 1,702 | 1.7626 |
| 109 | Ford Motor Co | Mercury Grand Marquis | 154 | 87,762 | 1.7547 |

PRELIMINARY REPORT OF THEFT RATES OF 1998 MODEL YEAR PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1998—Continued

| | Manufacturer | Make/model (line) | Thefts 1998 | Production (Mfr's) 1998 | 1998 theft rate (per 1,000 vehicles produced) |
|---|---|---|---|---|---|
| 110 | Ford Motor Co | Explorer | 773 | 446,467 | 1.7314 |
| 111 | General Motors | Cadillac Seville | 47 | 27,650 | 1.6998 |
| 112 | Chrysler Corp | Dodge Dakota Pickup Truck | 245 | 144,215 | 1.6989 |
| 113 | Mercedes Benz | 210 (E-Class) | 72 | 42,466 | 1.6955 |
| 114 | Volvo | C70 | 4 | 2,394 | 1.6708 |
| 115 | Toyota | T100 Pickup Truck | 18 | 10,783 | 1.6693 |
| 116 | General Motors | Cadillac Catera | 46 | 27,571 | 1.6684 |
| 117 | Mazda | MPV | 25 | 15,037 | 1.6626 |
| 118 | General Motors | Oldsmobile Cutlass | 86 | 52,679 | 1.6325 |
| 119 | General Motors | Oldsmobile Aurora | 39 | 23,955 | 1.6281 |
| 120 | Isuzu | Hombre Pickup Truck | 32 | 20,289 | 1.5772 |
| 121 | General Motors | Buick Century | 198 | 128,899 | 1.5361 |
| 122 | Ford Motor Co | Ranger Pickup Truck | 451 | 297,551 | 1.5157 |
| 123 | Ford Motor Co | Mercury Mountaineer | 77 | 51,022 | 1.5092 |
| 124 | General Motors | Pontiac Grand Prix | 188 | 127,838 | 1.4706 |
| 125 | Mazda | B Series Pickup Truck | 70 | 48,270 | 1.4502 |
| 126 | Toyota | RAV4 | 93 | 64,298 | 1.4464 |
| 127 | General Motors | Buick Regal | 101 | 70,556 | 1.4315 |
| 128 | Honda | Acura CL | 36 | 25,471 | 1.4134 |
| 129 | General Motors | Chevrolet S–10 Pickup Truck | 348 | 248,330 | 1.4014 |
| 130 | Isuzu | Amigo | 13 | 9,374 | 1.3868 |
| 131 | Jaguar | XK8 | 8 | 5,792 | 1.3812 |
| 132 | Porsche | Boxster Convertible | 10 | 7,253 | 1.3787 |
| 133 | Mercedes Benz | 202 (C-Class) | 45 | 34,100 | 1.3196 |
| 134 | General Motors | GMC Sonoma Pickup Truck | 77 | 59,359 | 1.2972 |
| 135 | General Motors | Buick Park Avenue | 80 | 62,015 | 1.2900 |
| 136 | General Motors | Pontiac Trans Sport Van | 70 | 54,839 | 1.2765 |
| 137 | Nissan | Frontier Pickup Truck | 111 | 89,266 | 1.2435 |
| 138 | General Motors | Saturn SC | 42 | 34,035 | 1.2340 |
| 139 | General Motors | Buick Riviera | 13 | 10,601 | 1.2263 |
| 140 | Volkswagen | Cabrio | 15 | 12,252 | 1.2243 |
| 141 | Honda | Accord | 490 | 403,085 | 1.2156 |
| 142 | BMW | Z3 | 20 | 16,482 | 1.2134 |
| 143 | Toyota | Lexus LS | 27 | 22,840 | 1.1821 |
| 144 | Subaru | Impreza | 23 | 19,550 | 1.1765 |
| 145 | Chrysler Corp | Concorde | 52 | 46,543 | 1.1172 |
| 146 | Mercedes Benz | 163 (ML-Class) | 44 | 39,493 | 1.1141 |
| 147 | Honda | Acura SLX | 2 | 1,800 | 1.1111 |
| 148 | Mercedes Benz | 170 (SLK-Class) | 14 | 12,658 | 1.1060 |
| 149 | General Motors | Oldsmobile 88/Regency | 69 | 64,116 | 1.0762 |
| 150 | Toyota | Avalon | 80 | 76,189 | 1.0500 |
| 151 | Subaru | Legacy | 95 | 90,721 | 1.0472 |
| 152 | General Motors | Chevrolet Venture Van | 93 | 93,027 | 0.9997 |
| 153 | General Motors | Saturn SL | 146 | 147,604 | 0.9891 |
| 154 | Honda | Acura RL | 14 | 14,182 | 0.9872 |
| 155 | Nissan | Quest | 26 | 26,388 | 0.9853 |
| 156 | Ford Motor Co | Lincoln Continental | 38 | 38,671 | 0.9826 |
| 157 | Chrysler Corp | Dodge Viper | 1 | 1,067 | 0.9372 |
| 158 | Volvo | S90/V90 | 12 | 12,825 | 0.9357 |
| 159 | Volkswagen | Passat | 24 | 25,869 | 0.9278 |
| 160 | Nissan | 240SX | 2 | 2,178 | 0.9183 |
| 161 | Nissan | Infiniti Q45 | 7 | 7,795 | 0.8980 |
| 162 | Toyota | Celica | 3 | 3,343 | 0.8974 |
| 163 | Audi | A4 | 21 | 24,225 | 0.8669 |
| 164 | Chrysler Corp | Town and Country MPV | 52 | 62,976 | 0.8257 |
| 165 | General Motors | Buick Lesabre | 111 | 143,354 | 0.7743 |
| 166 | Honda | CR–V | 74 | 96,828 | 0.7642 |
| 167 | Jaguar | Vanden Plas | 4 | 5,284 | 0.7570 |
| 168 | Ford Motor Co | Mercury Villager MPV | 28 | 37,471 | 0.7472 |
| 169 | Toyota | Sienna Van | 48 | 73,777 | 0.6506 |
| 170 | Subaru | Forester | 28 | 43,490 | 0.6438 |
| 171 | Audi | A6 | 10 | 16,938 | 0.5904 |
| 172 | Volkswagen | New Beetle | 22 | 38,999 | 0.5641 |
| 173 | Honda | Odyssey Van | 8 | 14,633 | 0.5467 |
| 174 | Ford Motor Co | Crown Victoria | 43 | 85,305 | 0.5041 |
| 175 | General Motors | Oldsmobile Silhouette Van | 17 | 35,827 | 0.4745 |
| 176 | General Motors | Saturn SW | 8 | 18,322 | 0.4366 |

PRELIMINARY REPORT OF THEFT RATES OF 1998 MODEL YEAR PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1998—Continued

| Manufacturer | Make/model (line) | Thefts 1998 | Production (Mfr's) 1998 | 1998 theft rate (per 1,000 vehicles produced) |
|---|---|---|---|---|
| 177 Saab | 900 | 5 | 12,003 | 0.4166 |
| 178 General Motors | Chevrolet Astro Van | 34 | 83,317 | 0.4081 |
| 179 Aston Martin | DB7 | 0 | 213 | 0.0000 |
| 180 Audi | A8 | 0 | 1,978 | 0.0000 |
| 181 Chrysler Corp | Intrepid [2] | 0 | 171 | 0.0000 |
| 182 Fiat | Ferrari | 456 | 25 | 0.0000 |
| 183 Fiat | Ferrari 550 | 0 | 149 | 0.0000 |
| 184 Fiat | Ferrari F355 | 0 | 511 | 0.0000 |
| 185 General Motors | Buick Funeral Coach | 0 | 1,061 | 0.0000 |
| 186 General Motors | Cadillac Limousine | 0 | 1,134 | 0.0000 |
| 187 Honda | Acura NSX | 0 | 254 | 0.0000 |
| 188 Lotus | Esprit | 0 | 54 | 0.0000 |
| 189 Rolls-Royce | Bentley Azure | 0 | 99 | 0.0000 |
| 190 Rolls-Royce | Bentley Brooklands | 0 | 39 | 0.0000 |
| 191 Rolls-Royce | Bentley Continental R | 0 | 24 | 0.0000 |
| 192 Rolls-Royce | Bentley Continental T | 0 | 20 | 0.0000 |
| 193 Rolls-Royce | Bentley Turbo R/RT | 0 | 25 | 0.0000 |
| 194 Rolls-Royce | Silver Spur Park Ward | 0 | 12 | 0.0000 |
| 195 Rolls-Royce | Silver Spur | 0 | 30 | 0.0000 |
| 196 Vector Auto | Avtech SC/M12 | 0 | 5 | 0.0000 |

[1] Nativa is the name applied to Montero Sport vehicles that are manufactured for sale only in Puerto Rico.
[2] These vehicles were manufactured for sale only in U.S. territories under the Chrysler name plate.

Issued on: February 2, 2000.

**Stephen R. Kratzke,**

*Acting Associate Administrator for Safety Performance Standards.*

[FR Doc. 00–2723 Filed 2–7–00; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF THE TREASURY

### Customs Service

### Solicitation of Applications for Membership on Customs Cobra Fees Advisory Committee

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** General notice.

**SUMMARY:** This notice establishes criteria and procedures for the selection of members and requests applications for membership on the Customs COBRA Fees Advisory Committee.

**DATES:** Applications will be accepted until March 9, 2000.

**ADDRESSES:** Applications should be addressed to Richard Coleman, Trade Compliance Team, United States Customs Service, 1300 Pennsylvania Avenue NW., Room 5.2, Washington, DC 20229, Attention: COBRA 1999.

**FOR FURTHER INFORMATION CONTACT:** Richard Coleman, Trade Compliance Team, U.S. Customs Service, 202–927–0563.

**SUPPLEMENTARY INFORMATION:**

**Background**

By enactment of Pub. L. 106–36, the Miscellaneous Trade and Technical Corrections Act of 1999, section 13031 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (19 U.S.C. 58c) was amended by adding language which directs the Commissioner of Customs to establish an advisory committee (the Customs COBRA Fees Advisory Committee) whose membership shall consist of representatives from the airline, cruise ship and other transportation industries who may be the subject of fees under section 13031.

The Committee will advise the Commissioner of Customs on issues related to the performance of inspectional services of the United States Customs Service. Such advice shall include, but not be limited to, such issues as the time periods during which such services should be performed, the proper number and deployment of inspectional officers, the level of fees and the appropriateness of any proposed fee.

The Committee will consist of eight industry members and one U.S. Customs representative. The Deputy Commissioner of the U.S. Customs Service will be the Customs representative and chair the Committee. Two senior managers representing the Office of Finance and the Office of Field Operations of the U.S. Customs Service will serve as technical representatives to the chairperson. The Committee shall be in existence unless, or until, such time as its establishment is repealed by Congress.

The members shall be selected by the Commissioner of Customs from applicants representing the transportation industry served by Customs, such as but not limited to, the following: commercial cargo vessels, commercial passenger vessels, rail transportation, trucking transportation, air passenger, barge operators and general aviation.

The members must demonstrate professional or personal qualifications relevant to the purpose, functions and tasks of the Committee. Appointments will be made with the objective of creating a diverse and balanced body with a variety of interests, backgrounds and viewpoints represented. In addition, the members shall represent as much as possible all geographical regions of the country. Persons who serve on another advisory committee will not be eligible to serve on this Committee.

The Deputy Commissioner may designate another official to serve in his absence as Acting Chairperson for purposes of presiding over a meeting of the Committee or performing any other duty of the chairperson. Not more than four meetings will be held during a two year period, in accordance with the Federal Advisory Committee Act. Regular meetings will be held at six

month intervals. An occasional special meeting may be held at the discretion of the chairperson and the members. Meetings will generally be held at the U.S. Customs Service headquarters in Washington, DC. On occasion, meetings may be held outside of Customs Headquarters, generally at a Customs port.

The meetings are open to public observers, including the press, unless special procedures have been followed to close a meeting to the public. The Committee may elect to receive oral or written presentations by parties not directly represented by a member of the Committee where such presentations would contribute to committee deliberations.

No person who is required to register under the Foreign Agents Registration Act as an agent or representative of a foreign principal may serve on the advisory committee. Members shall not be paid compensation, nor shall they be considered federal government employees for any reason. No per diem, transportation or other expenses will be reimbursed for the cost of attending committee meetings at any location.

Membership on the Committee is personal to the appointees. Regular attendance is essential to the effective operation of the Committee. Members are selected based on their individual credentials and qualifications. Members may not designate alternates to represent them at Committee meetings. In the event of an unavoidable absence of a member, even if the meeting is closed to the public, a representative of the member's organization may attend the session as a nonparticipating observer.

Initially, four members will be appointed for a term of twelve months and four members will be appointed for a term of twenty four months. Thereafter members will serve for a period of twenty four months. Members who served on the Committee during a prior two year term or terms are eligible to reapply for membership. However, it is expected that approximately half of the seats on the Committee will be filled with new members.

Any interested person wishing to serve on the Customs COBRA Fees Advisory Committee must provide the following: a statement of interest and reasons for application and a complete professional biography or resume. In addition, applicants must state in their applications that they agree to submit to preappointment security and tax checks. There is no prescribed format for the application. Applicants may send a cover letter describing their interest and qualifications, along with a resume.

Dated: February 2, 2000.

**Raymond W. Kelly,**

*Commissioner of Customs.*

[FR Doc. 00–2724 Filed 2–7–00; 8:45 am]

**BILLING CODE 4820–02–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Forms 6559 & 6559–A

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

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

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 6559, Transmitter Report and Summary of Magnetic Media and Form 6559–A, Continuation Sheet for Form 6559.

**DATES:** Written comments should be received on or before April 10, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:**

Requests for additional information or copies of the forms and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, Room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Transmitter Report and Summary of Magnetic Media (Form 6559) and Continuation Sheet for Form 6559 (Form 6559–A).

*OMB Number:* 1545–0441.

*Form Number:* 6559 & 6559–A.

*Abstract:* Forms 6559 and 6559–A are used by filers of Form W–2 Wage and Tax Data to transmit filings on magnetic media. SSA and IRS need signed jurat and summary data for processing purposes. The forms are used primarily by large employers and tax filing services (service bureaus).

*Current Actions:* There are no changes being made to the forms at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

*Estimated Number of Respondents:* 90,000.

*Estimated Time Per Respondent:* 18 min.

*Estimated Total Annual Burden Hours:* 27,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 28, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–2731 Filed 2–7–00; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of Citizen Advocacy Panel, Brooklyn District

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

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Brooklyn District Citizen Advocacy

Panel will be held in Brooklyn, New York.

**DATES:** The meeting will be held Friday, February 25, 2000.

**FOR FURTHER INFORMATION CONTACT:** Eileen Cain at 1–888–912–1227 or 718–488–3555.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Friday, February 25, 2000, 6:00 p.m. to 9:00 p.m. at the Internal Revenue Service Brooklyn Building located at 625 Fulton Street, Brooklyn, NY 11201. For more information or to confirm attendance, notification of intent to attend the meeting must be made with Eileen Cain. Mrs. Cain can be reached at 1–888–912–1227 or 718–488–3555. The public is invited to make oral comments from 8:30 p.m. to 9:00 p.m. on Friday Feb. 25, 2000. Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 718–488–3555, or write Eileen Cain, CAP Office, P.O. Box R, Brooklyn, NY, 11201. The Agenda will include the following: various IRS issues. Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: January 29, 2000.

**John J. Mannion,**

*Program Manager, Taxpayer Advocate Service.*

[FR Doc. 00–2732 Filed 2–7–00; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of Citizen Advocacy Panel, South Florida District

**AGENCY:** Internal Revenue Service.

**ACTION:** Notice.

**SUMMARY:** A public meeting of the South Florida District Citizen Advocacy Panel will be held in Fort Myers, Florida.

**DATES:** The meeting will be held Saturday, February 26, 2000.

**FOR FURTHER INFORMATION CONTACT:** Nancy Ferree at 1–888–912–1227 or 954–423–7974.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a Public meeting of the Citizen Advocacy Panel will be held Saturday, February 26, 2000, 9:00 a.m. to Noon at the Edison Community College, Learning Resource Building, J–103 Corbin Auditorium, 8099 College Parkway SW, Fort Myers, FL 33919.

For more information contact Nancy Ferree at 1–888–912–1227 or 954–423–7974. The public is invited to make oral comments. Individual comments will be limited to 10 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 954–423–7974, or write Nancy Ferree, CAP Office, 7771 W. Oakland Park Blvd #225, Sunrise, FL 33351. The Agenda will include the following: various IRS issues.

**Note:** Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: January 29, 2000.

**John J. Mannion,**

*Program Manager, Taxpayer Advocate Service.*

[FR Doc. 00–2733 Filed 2–7–00; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Citizen Advocacy Panel, Brooklyn District

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

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Brooklyn District Citizen Advocacy Panel will be held in Uniondale, New York.

**DATES:** The meeting will be held Thursday, March 2, 2000.

**FOR FURTHER INFORMATION CONTACT:** Eileen Cain at 1–888–912–1227 or 718–488–3555.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Thursday, March 2, 2000, 7:30 p.m. to 9:30 p.m. at the Long Island Marriott Hotel at 101 James Doolittle Boulevard 9, Uniondale, NY 11553. For more information or to confirm attendance, notification of intent to attend the meeting must be made with Eileen Cain. Mrs. Cain can be reached at 1–888–912–1227 or 718–488–3555. The public is invited to make oral comments from 7:30 p.m. to 9:30 p.m. on Thursday, March 2, 2000. Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 718–488–3555, or write Eileen Cain, CAP Office, P.O. Box R, Brooklyn, NY 11202. The Agenda will include the following: introductions of the panel and open discussions with the public.

**Note:** Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: January 29, 2000.

**John J. Mannion,**

*Program Manager, Taxpayer Advocate Service.*

[FR Doc. 00–2734 Filed 2–7–00; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

### Summary of Precedent Opinions of the General Counsel

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Department of Veterans Affairs (VA) is publishing a summary of legal interpretations issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. These interpretations are considered precedential by VA and will be followed by VA officials and employees in future claim matters. The summary is published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue.

**FOR FURTHER INFORMATION CONTACT:** Jane L. Lehman, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–6558.

**SUPPLEMENTARY INFORMATION:** VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel that must be followed in future benefit matters and to

assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

**VAOPGCPREC 11–99**

*Question Presented*

a. To the extent that provisions in the Veterans Benefits Administration (VBA) (formerly Department of Veterans Benefits) Adjudication Procedures Manual M21–1 extant in 1964 purported to constitute an absolute bar to service connection for retinitis pigmentosa, were such provisions a valid exercise of regulatory authority?

b. To the extent that provisions in VBA Manual M21–1 extant in 1964 created a valid limitation on the grant of service connection for retinitis pigmentosa, did such a limitation bar service connection for the in-service aggravation of preexisting retinitis pigmentosa?

c. If there was no previous bar to the award of service connection for retinitis pigmentosa, what statutory and regulatory provisions are for consideration in determining the effective date for the award of service connection for retinitis pigmentosa in the case giving rise to this opinion request?

d. If the award of service connection for retinitis pigmentosa was barred at the time of a claimant's application for benefits, does the application of 38 U.S.C. § 5110(g) and 38 CFR § 3.114(a) permit assignment of an effective date based on the effective date of Op. G.C. 1–85 (reissued as VAOPGCPREC 82–90); Op. G.C. 8–88 (reissued as VAOPGCPREC 67–90) or a 1986 revision to VBA Manual M21–1?

*Held*

a. The provisions in paragraph 50.05 of chapter 50 of the Veterans Benefits Administration (VBA) (formerly Department of Veterans Benefits) Adjudication Procedures Manual M21–1 extant in 1964 did not purport to bar service connection for the in-service aggravation of preexisting retinitis pigmentosa.

b. The effective date of the award of compensation for retinitis pigmentosa in the case giving rise to the opinion request is governed by the generally-applicable provisions of 38 U.S.C. § 5110(a), unless the Board determines, based on its review of the record, that another provision in chapter 51 of title 38, United States Code, is applicable to that effective-date determination.

c. Because the statutes and regulations existing at the time of the veteran's claim for benefits permitted an award of service connection for in-service aggravation of retinitis pigmentosa, subsequent Department of Veterans Affairs General Counsel opinions and changes to VBA Manual M21–1 cannot be considered ''liberalizing'' changes which created the right to such benefits. Accordingly, the effective dates of those documents do not govern the effective date of the veteran's award under 38 U.S.C. § 5110(g) and 38 CFR § 3.114(a).

*Effective Date:* September 2, 1999.

**VAOPGCPREC 12–99**

*Question Presented*

a. What is the definition of the phrase ''engaged in combat with the enemy,'' as used in 38 U.S.C. § 1154(b)?

b. What evidence is considered satisfactory proof that a veteran engaged in combat with the enemy?

c. Besides recognized military citations, what other supportive evidence may be used to support a determination that a veteran engaged in combat with the enemy?

d. Is a statement in service personnel records indicating that a veteran participated in certain military campaigns or operations—such as ''participated in operations against Viet Cong, Chu Lai, South Vietnam'' during a specified time period—sufficient in itself to establish engagement in combat, or is further evidence of actual or threatened exposure to hostile fire or some other similar type of event or threat required?

e. How does the benefit-of-the-doubt rule under 38 U.S.C. § 5107(b) apply in determining whether a veteran engaged in combat with the enemy for purposes of 38 U.S.C. § 1154(b)?

*Held*

a. The ordinary meaning of the phrase ''engaged in combat with the enemy,'' as used in 38 U.S.C. § 1154(b), requires that a veteran have participated in events constituting an actual fight or encounter with a military foe or hostile unit or instrumentality. Nothing in the language or history of that statute or any Department of Veterans Affairs (VA) regulation suggests a more specific definition. The issue of whether any particular set of circumstances constitutes engagement in combat with the enemy for purposes of section 1154(b) must be resolved on a case-by-case basis. VA may issue regulations clarifying the types of activities that will be considered to fall within the scope of the term.

b. The determination as to what evidence may be satisfactory proof that a veteran ''engaged in combat with the enemy'' necessarily depends on the facts of each case. Determining whether evidence establishes that a veteran engaged in combat with the enemy requires evaluation of all pertinent evidence in each case, and assessment of the credibility, probative value, and relative weight of the evidence.

c. There is no statutory or regulatory limitation on the types of evidence that may be used in any case to support a finding that a veteran engaged in combat with the enemy. Accordingly, any evidence which is probative of that fact may be used by a veteran to support an assertion that the veteran engaged in combat with the enemy, and VA must consider any such evidence in connection with all other pertinent evidence of record.

d. Whether a particular statement in service-department records indicating that the veteran participated in a particular ''operation'' or ''campaign'' is sufficient to establish that the veteran engaged in combat with the enemy depends upon the language and context of the records in each case. As a general matter, evidence of participation in an ''operation'' or ''campaign'' often would not, in itself, establish that a veteran engaged in combat, because those terms ordinarily may encompass both combat and non-combat activities. However, there may be circumstances in which the context of a particular service-department record indicates that reference to a particular operation or campaign reflects engagement in combat. Further, evidence of participation in a particular ''operation'' or ''campaign'' must be considered by VA in relation to other evidence of record, even if it does not, in itself, conclusively establish engagement in combat with the enemy.

e. The benefit-of-the-doubt rule in 38 U.S.C. § 5107(b) applies to determinations of whether a veteran engaged in combat with the enemy for purposes of 38 U.S.C. § 1154(b) in the same manner as it applies to any other determination material to resolution of a claim for VA benefits. VA must evaluate the credibility and probative value of all pertinent evidence of record and determine whether there is an approximate balance of positive and negative evidence or whether the evidence preponderates either for or against a finding that the veteran engaged in combat. If there is an approximate balance of positive and negative evidence, the issue must be resolved in the veteran's favor.

*Effective Date:* October 18, 1999.

**VAOPGCPREC 13–99**

*Question Presented*

1. Does a liberalizing precedent opinion of General Counsel have the effect of overruling previous final decisions of the VA agency of jurisdiction?

2. If the answer is affirmative, is VA obligated to award retroactive educational assistance benefits based on new evidence received in support of a claim finally denied before the liberalizing General Counsel opinion was issued?

3. May VA pay benefits under the Montgomery GI Bill (MGIB) when no claim was filed by the veteran, but proof of enrollment in qualifying training is submitted by or on behalf of the veteran?

*Held*

1. A precedent VA General Counsel opinion that invalidates or liberalizes an existing regulatory or statutory interpretation may have retroactive effect in regard to a claim still open on direct review, but can have no such effect on a finally adjudicated agency decision.

2. In view of the preceding conclusion, it is unnecessary to address the second inquiry.

3. Under the facts given, potentially the earliest indication of the veteran's intent to claim benefits for education he pursued in 1995 would be the submission in 1999 of an enrollment certification form. Those facts, however, are insufficient to enable forming an opinion about whether submission of the enrollment form constituted an ''informal claim'' within the meaning of 38 CFR § 21.1029(d)(2) and, consequently, about the nature of VA's responsibility to act on that submission. It does seem clear that the veteran, thereafter, did not file a formal claim for his 1995 enrollment, as required by 38 U.S.C. § 5101(a). Nevertheless, even if he had, we find the provisions of 38 CFR § 21.7131(a) would have precluded paying benefits based on that claim. That regulation provides that no educational assistance benefits may be paid for education/training received prior to a date 1 year before a claim therefor is filed.

*Effective Date:* October 28, 1999.

**VAOPGCPREC 14–99**

*Issue*

Is an individual who successfully completes all requirements for eligibility for educational assistance benefits under the Montgomery GI Bill (MGIB) barred, under 38 U.S.C. § 3011(c)(2), from receiving those benefits if he or she graduates from one of the U. S. military academies and receives a commission in the Armed Forces?

*Conclusion*

As provided by 38 CFR § 21.7042(f)(3), an individual who has met all the military service requirements to become entitled to MGIB benefits, as set forth in 38 U.S.C. § 3011(a)(1)(A) or § 3012(a)(1)(A), and who subsequently graduates from a military academy and is commissioned an officer in the Armed Forces is not barred by 38 U.S.C. § 3011(c)(2) or § 3012(d)(2) from receiving the vested MGIB benefits. However, if an individual is commissioned upon graduating from a military academy after December 31, 1976, and before completing the military service needed to establish MGIB entitlement, that individual is disqualified by section 3011(c)(2) and section 3012(d)(2) from MGIB eligibility.

*Effective Date:* November 4, 1999.

**VAOPGCPREC 15–99**

*Question Presented*

Are the provisions of 38 CFR § 3.311(b)(3) and (4) valid insofar as they appear to preclude claimants from establishing that polycythemia vera was incurred as the result of exposure to ionizing radiation in service?

*Held*

Paragraphs (b)(3) and (b)(4) of 38 CFR § 3.311 are inconsistent with 38 U.S.C. § 1113(b) to the extent that those regulatory provisions purport to preclude a claimant from establishing by evidence that a particular veteran incurred polycythemia vera as the result of exposure to ionizing radiation in service. The Department of Veterans Affairs (VA) may not rely upon 38 CFR § 3.311(b)(3) and (4) as a basis for summarily denying any claim that polycythemia vera was incurred as a result of exposure to ionizing radiation in service. Rather, VA must give a claimant the opportunity to submit evidence to establish that a particular veteran incurred polycythemia vera as the result of exposure to ionizing radiation in service.

*Effective Date:* November 16, 1999.

**VAOPGCPREC 16–99**

*Questions Presented*

a. May a claimant who has been discharged from active duty with an entry level separation due to fraudulent enlistment and credited with zero net active service time by the Air Force be considered a veteran under 38 U.S.C. § 101(2)?

b. Should VA consider an Air Force enlistment which is terminated with an entry level separation to have been voided by the service department under 38 CFR § 3.14?

c. For purposes of 38 CFR § 3.14(a), if the service department has voided an enlistment, is concealment of past illegal behavior a basis for considering the discharge to have been under dishonorable conditions?

d. Does 38 CFR § 3.12(k)(1) compel a finding that a claimant's military service terminated by an uncharacterized entry level separation was ''under conditions other than dishonorable,'' regardless of the circumstances surrounding the separation from service?

*Held*

a. A claimant who served on active duty in the Air Force and was discharged from such service with an entry level separation due to fraudulent enlistment may qualify as a veteran under the provisions of 38 U.S.C. )101(2), even though the claimant was not credited with any net active service time.

b. Section 3.12(k)(1) of title 38, Code of Federal Regulations, requires a finding that an individual who was released from military service with an uncharacterized entry level separation was separated ''under conditions other than dishonorable.'' In such a case, the provisions of 38 CFR § 3.14(a) and (b) concerning enlistments voided by the service department are not controlling for purposes of determination of character of discharge.

*Effective Date:* December 15, 1999.

By Direction of the Secretary.

**Leigh A. Bradley,**

*General Counsel.*

[FR Doc. 00–2762 Filed 2–7–00; 8:45 am]

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Federal Register

**Tuesday,**
**February 8, 2000**

## Part II

# Department of the Interior

**Bureau of Land Management**

**43 CFR Part 2560**

**Alaska Native Veterans Allotments; Proposed Rule**

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**43 CFR Part 2560**

**[WO–350–1410–00–24 1A]**

**RIN 1004–AD34**

## Alaska Native Veterans Allotments

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Bureau of Land Management (BLM) proposes to amend its regulations to allow certain Alaska Native veterans another opportunity to apply for a Native allotment under the repealed Native Allotment Act of 1906. Congress passed the Alaska Native Veterans Law in 1998 which mandates regulations to implement it. This action would enable certain Alaska Native veterans who, because of their military service, were not able to apply for an allotment during the early 1970s, to do so now.

**DATES:** *Comments:* Send your comments to reach BLM by April 10, 2000. BLM will not necessarily consider any comments received after the above date during its decision on the proposed rule.

**ADDRESSES:** *Comments:* You may mail comments to Bureau of Land Management, Administrative Record, Room 401 LS, 1849 C Street, NW., Washington, DC 20240. You may also hand-deliver comments to BLM at Room 401, 1620 L Street, NW., Washington, DC. For information about filing comments electronically, see the **SUPPLEMENTARY INFORMATION** section under ''Electronic access and filing address.''

**FOR FURTHER INFORMATION CONTACT:** Connie Van Horn, Division of Conveyance Management, Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599; telephone (907) 271–3767; or Frank Bruno, Bureau of Land Management, Regulatory Affairs Group (WO–630), Mail Stop 401, 1620 L Street, NW., Washington, DC 20036; telephone (202) 452–0352. To reach Ms. Van Horn or Mr. Bruno, individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 24 hours a day, seven days a week.

**SUPPLEMENTARY INFORMATION:**

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

### I. Public Comment Procedures

*Electronic Access and Filing Address*

You may view an electronic version of this proposed rule at BLM's Internet home page: www.blm.gov. You may also comment via the Internet to: WOComment@blm.gov. Please also include ''Attention: '1004–AD34' and your name and return address in your Internet message.'' If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (202) 452–5030.

*Written Comments*

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal which the commenter is addressing. BLM may not necessarily consider or include in the Administrative Record for the final rule comments which BLM receives after the close of the comment period (See **DATES**) or comments delivered to an address other than those listed above (See **ADDRESSES**).

Comments, including names, street addresses, and other contact information of respondents, will be available for public review at this address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except Federal holidays. Individual respondents may request confidentiality. If you wish to request that BLM consider withholding your name, street address, and other contact information (such as: Internet address, FAX or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. BLM will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. BLM will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

### II. Background

The Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA; 43 U.S.C. 1601 *et seq.*) repealed the Native Allotment Act of 1906 (34 Stat. 197, as amended, 42 Stat. 415 and 70 Stat. 954, 43 U.S.C. 270–1 through 270–3 (1970) on December 18, 1971. During the time just before the 1906 Act was repealed, certain Alaska Natives who were eligible to apply for allotments were serving in the U.S. military and may have missed their opportunity to apply because of their military service.

Section 432 of Public Law 105–276 (43 U.S.C. 1629g) of October 21, 1998, allows certain Alaska Native veterans a new opportunity to apply for allotments under the1906 Act as it was in effect before its repeal. Public Law 105–276 amended ANCSA by adding section 41, requiring the Department of the Interior to create regulations within 18 months to carry it out.

### III. Discussion of Proposed Rule

*A. How To Read This Rulemaking*

What Is the Best Way To Read This Rulemaking To Understand What BLM Is Proposing and Why?

The part you are reading now is called the preamble. It discusses why BLM is proposing the regulatory text and expands on elements of it.

The ''regulatory text'' is the part that follows the authorization of the rulemaking by the Assistant Secretary of the Interior, and begins with ''Part 2568—Alaska Native Allotments for Certain Veterans.''

This regulatory text is what would become the regulation in the Code of Federal Regulations to implement the Alaska Native Veterans program should this proposed rulemaking become final. It is what BLM is proposing.

*B. The Laws Which Authorize This Rulemaking*

What Authorizes BLM To Grant an Allotment To Certain Veterans?

Section 432 of Public Law 105–276 (43 U.S.C. 1629g) of October 21, 1998 (hereafter referred to as the Alaska Native Veterans law) and ANCSA authorize this proposed rulemaking.

Why Was the 1998 Law Enacted?

Alaska Native Allotments were originally authorized by the Native Allotment Act of 1906, which was repealed by Section 18 of ANCSA on December 18, 1971. In the years before the repeal, several Native advocacy groups had anticipated that the law would be repealed. Between 1969 and 1971, they contacted eligible Alaska Natives who had not applied for allotments to help them with their applications. However, Alaska Natives who were in the military just before the repeal could not be readily reached. The 1998 law allows certain Alaska Native veterans another opportunity to file allotment applications.

*C. Regulations Which Affect This Rulemaking*

Would Existing Regulations Also Apply To Those Filing Under These Proposed Regulations?

Yes. Existing regulations implement the 1906 Native Allotment Act (43 CFR part 2561), shorespace limitations and waivers (43 CFR part 2094), and the Department of the Interior's hearings and appeals procedures (43 CFR part 4).

How Do These Existing Regulations Relate to the Proposed Regulations?

Persons applying under these proposed regulations must also comply with the existing regulations. In the event that the regulations are inconsistent, these rules must be followed.

*D. Interested Parties*

Is BLM Required To Consult With Anyone on These Regulations?

Yes. Section 41(e) of ANCSA requires BLM to consult with Alaska Native groups before enacting regulations which affect them.

Which Interested Parties Were Involved in This Rulemaking?

The Bureau of Land Management, Bureau of Indian Affairs, National Park Service, Fish and Wildlife Service, and the Office of the Special Assistant to the Secretary for Alaska met several times with:

- The Land Committee of the Alaska Federation of Natives (AFN).
- Various ANCSA corporations.
- Native groups providing Bureau of Indian Affairs realty services under Indian Self Determination and Education Assistance Act (ISDEA; Pub. L. 93–638) contracts.
- Other Native individuals.

How Were They Involved?

Before BLM wrote this proposed regulation it asked them to comment on the Alaska Native Veterans Law, and on how it should be implemented:

- Interior Department representatives met twice with members of the AFN Land Committee to discuss the statute and its implementation.
- During the annual ISDEA Tribal Service Providers Conference in Anchorage in December, 1998, BIA, BLM, and the Special Assistant's Office held two meetings to field questions and to record suggestions from realty service providers and others.
- Also in December 1998, BLM and BIA addressed the shareholders of Bristol Bay Native Corporation to explain the Alaska Native Veterans law, and the process of developing regulations.
- A February 5, 1999, letter from the BIA Area Director to Native leaders was distributed to hundreds of tribal and corporate Native groups in Alaska. In the letter BIA asked for comments on the existing Native allotment regulations and the Alaska Native Veterans law. Several realty contractors and ANCSA corporations submitted detailed written comments and suggestions. The Interior agencies studied these and considered them in the drafting of these proposed regulations.
- In early May 1999 BLM sent copies of the draft regulations to about 450 Native individuals and groups, and invited them to attend meetings in Anchorage on May 19 and Fairbanks on May 21, to review the draft in detail with Interior Department representatives and to discuss and record comments and suggested changes. BLM published notices of these two meetings in the Anchorage Daily News and the Fairbanks Daily News Miner. BLM also encouraged the Native entities to submit written comments. After the meetings, BLM thoroughly reviewed written comments, oral comments they had recorded, and the draft regulations to see how many suggested changes BLM could adopt. BLM did not adopt changes that were contrary to law or would have created different allotment requirements for Alaska Native veterans than those that the original allottees had to meet under the 1906 Act.

*E. Qualifications for an Alaska Native Veteran Allotment*

How Did BLM Choose the Definitions of ''Alaska Native'' and ''Veteran'' in These Regulations?

The definition of ''Alaska Native'' is the same as the one currently used for the Native Allotment Act of 1906. BLM chose this definition because Native veterans must meet the same Native status requirements as persons who applied under the Native Allotment Act of 1906 while it was in effect.

Congress said in the Alaska Native Veterans law that the term ''veteran'' would have the same meaning as it has in 38 U.S.C. 101, paragraph 2, which is the Department of Veterans Affairs' legal definition.

*F. Applying for an Allotment*

Who Is Eligible for an Allotment?

You may be eligible for an allotment if:

(1) You would have been eligible for an allotment under the Native Allotment Act as it was in effect before December 18, 1971;

(2) You are a veteran who served at least six months between January 1, 1969, and June 2, 1971, or enlisted or was drafted after June 2, 1971, but before December 3, 1971.

You are not eligible for an allotment if you already received an allotment under the Native Allotment Act (unless you received an allotment interest by inheritance, devise, gift, or purchase) or if you had a pending allotment application on October 21, 1998.

May a Personal Representative Apply on Behalf of an Eligible Deceased Veteran?

Yes, a personal representative who acts for the benefit of the deceased veteran's heirs may apply on behalf of an eligible deceased veteran. The personal representative must prove either (1) that he or she has been appointed by the proper court or (2) that the appointment process has begun. A personal representative may apply only on behalf of an individual who, between January 1, 1969, and December 31, 1971: (1) Was killed in action; (2) was wounded in action and was later determined by the Department of Veterans Affairs to have died as a direct consequence of that wound; or (3) died while a prisoner of war.

Under What Circumstances Will BLM Accept or Reject the Appointment of a Personal Representative?

BLM will accept an appointment of a personal representative made any time after an eligible person dies, even if that appointment was made before the Alaska Native Veterans law was enacted.

BLM will reject an appointment of a personal representative if the appointment process is incomplete when the allotment application is filed and the prospective personal representative does not file proof of the appointment within 18 months after the application filing deadline.

When Must I Apply for an Allotment?

You must apply no later than 18 months after this rule becomes effective.

What Information Must I Include in My Application?

You must include the following information in your application: Name, address, date of birth, telephone number, dates of military service, branch of service, legal description of land for which you are applying, dates of occupancy of land, description and value of improvements on land, and an explanation of your specific uses of land. You must also file a Certificate of

Indian Blood, which is a Bureau of Indian Affairs form, and verification of your qualifying military service obtained from the Department of Defense.

Do I Have To Pay Any Fees To File My Application?

Under the proposed regulations, no.

Since the Alaska Native Veterans Law gives eligible veterans a chance to file applications under the 1906 Act as it was in effect before it was repealed, a Native veteran would have to meet the same filing requirements that existed before December 18, 1971. At no time were there ever any fees required for applications under the 1906 Act. Therefore, we made the initial decision that no fees will be charged.

However, we would like those who comment on this rulemaking to give us their views on the following:

(a) Should we charge a fee for filing an application?

(b) If so, should this fee be refundable if you do not receive an allotment?

What Else Must I Do When I File My Application?

The proposed rulemaking states you must:

(1) Post the land in your application by marking all corners on the ground with your name and address, but only after these regulations are put into effect;

(2) give an adequate legal description of the parcel of land; and

(3) provide a map at a scale of 1:63,360 or larger.

However, we would like those who comment on this rulemaking to give us their views on the following: Should we consider an alternative to physical posting of corners on the ground which provides certainty of the location of the allotment application and provides notice to subsequent claimants?

Is This Application Information Different From What Previous Applicants Had To File?

The application for Alaska Native Veterans allotments is different from the application for an allotment under the 1906 Act in that you must provide information about your military service. You must do this because your eligibility for a veteran allotment is based partly on your military service and BLM needs to know this information to determine that you qualify.

Why Would I Need To File Proof of Military Service and the BIA ''Certificate of Indian Blood'' Form?

BLM would need to verify that you have enough military service during the proper time frame to be eligible for an allotment under the Alaska Native Veterans law.

Since the Alaska Native Veterans law also requires you to have been eligible for an allotment under the Native Allotment Act of 1906, you would need to show proof that BIA has determined you are an Alaska Native under the 1906 Act and the regulations (43 CFR 2561.0–3) associated with the 1906 Act.

May I File Additional Information To Prove My Use and Occupancy?

You may file supporting evidence such as photographs and statements from knowledgeable witnesses describing when and how you used the allotment for which you are applying. You may also accompany the BLM field examiner to the land and show physical evidence of your use.

Why Would I Have To Prove Use and Occupancy That Began More Than Thirty Years Ago? Why Can't I Simply Apply for Available Land?

To be eligible for this new opportunity, a veteran must prove use and occupancy as if he or she had applied for an allotment before the Native Allotment Act was repealed in 1971. The Alaska Native Veterans law allows veterans who missed, due to their military service, their opportunity to apply for an allotment by 1971 to apply now for an allotment under the Native Allotment Act of 1906.

If BLM Finds Errors in My Application Will BLM Give Me a Chance To Correct the Application?

Yes. BLM will give you at least 60 days to correct errors. If you fail to do so within the time we give, BLM will reject your application.

*G. The Type of Land Available for an Allotment*

If I Am Eligible, What Land May BLM Convey to Me?

The BLM may only convey land that is currently owned by the federal government, is not a regularly used and recognized campsite, is not valuable for minerals, and does not have a special status. The special status may include land:

(a) Selected but not conveyed to either the State of Alaska or a Village or Regional Corporation,

(b) Withdrawn for any reason,

(c) Selected or claimed, but not conveyed, under a public land law.

How Much Land May I Apply For?

You may apply for one or two parcels which may not total more than 160 acres. In the case of water frontage you may apply for a half mile (160 rods) but if you apply for more than a half-mile BLM will treat your application as a request to waive this limitation.

What Happens if the Land for which I Qualified is no Longer Owned by the Government?

The Alaska Native Veterans law allows eligible veterans only to receive allotments of land that are currently owned by the Federal government. BLM has no authority to convey land to you that is not now owned by the Federal government, even if it was Federal land when you first began to use and occupy it. If you apply for this type of land BLM must reject your application.

May I Choose an Alternative Allotment If My Original Allotment Choice Is Unavailable?

You may be able to choose an alternative allotment if your original choice was for certain types of Federal land that BLM cannot convey to you. Section 2568.110 lists the types of land for which you may apply. The land must be within the same ANCSA region as the land in your original application.

Only applicants whose original choice is for land in a National Park unit, and who meet the use and occupancy requirements for that land, can qualify to receive an allotment of National Park land. You cannot choose an alternative allotment on National Park land if your original choice of land cannot be conveyed to you.

You cannot choose an alternative allotment if your original choice was for land that is not currently owned by the Federal government.

If I Have To Apply for an Alternative Allotment, When Do I Have To Apply?

BLM must receive your request within 12 months of when you received notification that you are eligible for an alternative allotment or within the original 18-month deadline if that is longer.

Can BLM Convey to Me Both the Land and the Rights to Valuable Minerals?

No. The Native Allotment Act of 1906 authorized allotment of only nonmineral land. A 1956 amendment to the Act allowed allotment of land known to be valuable for coal, oil, or gas. However, ownership of those minerals, along with the right to extract them, remains with the Federal government when BLM conveys the land.

BLM cannot convey a Native allotment on land known to be valuable for minerals like gold or silver or other hardrock minerals. If you apply for an

allotment of land known to be valuable for such minerals BLM must reject your application.

What If the land Is Valuable for Sand and Gravel?

Alaska Native veterans cannot receive allotments of land known to be valuable for sand or gravel. The Alaska Native Veterans law says that the eligibility for allotments is under the 1906 Act as it was in effect before December 18, 1971. Since the law at that time considered land valuable for sand or gravel to be mineral and not available for allotment, BLM cannot convey such land to Alaska Native veterans.

Some Alaska Natives who applied under the 1906 Act for land known to be valuable for sand or gravel have received their allotments. This is because Section 905(a)(3) of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA) states that land valuable for sand or gravel is ''nonmineral'' under the 1906 Act. Since the authority under the Alaska Native Veterans Law is the 1906 Act as it was in effect in 1971, this 1980 amendment cannot be applied to Alaska veteran allotments.

What Is a Conservation System Unit (CSU)?

A CSU is an Alaska unit of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, National Trails System, National Wilderness Preservation System, or a National Forest Monument.

Can I Receive Title to an Allotment in Any One of the CSU's?

No. It may be possible for you to receive title to an allotment in certain CSU's, but you cannot receive title to an allotment of any land designated as wilderness by statute or of any land in a National Forest Monument CSU because the Alaska Native Veterans law specifically prohibits conveyance of such land.

In Those CSU Units Where I Am Permitted To Receive an Allotment, Are There Any Special Limitations or Procedures?

Congress provided that the CSU manager may find that conveyance of the land in your allotment application would be inconsistent with the purposes for which the CSU was established. However, you would still be able to receive an alternative allotment from other lands in or outside the CSU, other than in a National Park.

You must show that you used and occupied your original allotment choice to be able to choose an alternative allotment. You would not have to show use and occupancy of your alternative allotment.

The Alaska Native Veterans law emerged after long discussions between Congressional staff and Department of the Interior officials. Congress could have decided not to allow any veterans' allotments within CSU's. However, to balance the rights of Native veterans and the desire to protect the unique values of the CSU's, Congress and the Department agreed to this compromise which allows allotments within certain CSU's if the allotment is consistent with the purpose of the CSU.

How Will a CSU Manager Determine If Conveyance of My Allotment Would Be Consistent With CSU Purposes?

Each CSU was created by a law or withdrawal order which explains the reasons the CSU was created. The manager of the CSU will make each determination on a case-by-case basis, taking into account such factors as:

(a) The law or withdrawal order which created the CSU,

(b) The mission of the agency that manages the CSU,

(c) The proximity of the allotment to land that has already been conveyed to a Native corporation,

(d) Issues relating to access to and from the allotment, and

(e) The possible cumulative effects on the CSU of all the activities that would take place on the allotment.

Is It Possible That I Might Not Receive Any Land at All, Even If I Qualify To Apply for an Allotment?

Yes, it is possible that you might not receive an allotment even if you are a qualified Alaska Native Veteran. For example, if you apply for land that is not currently owned by the Federal government, BLM would have to reject your application and you would not be able to choose an alternative allotment. BLM would also reject your application if you apply for land known to be valuable for certain minerals and you would not be able to choose land elsewhere. If you fail to correct errors or fail to complete an application in a timely manner, your application may be rejected.

*H. Appeals*

What can I do if I disagree with any of the decisions?

You may appeal all decisions, except for the CSU compatibility decisions or determinations made by the Department of Veterans Affairs, to the Interior Board of Land Appeals. There is an appeal process for CSU compatibility decisions that is described in §§ 2568.121 through 2568.123. Determinations made by the Department of Veterans Affairs have to be appealed through that department's process.

Why Is The Appeal Process for CSU Decisions Different From the Appeal Process for Other Types of Allotment Decisions?

Most allotment decisions issued by BLM that are appealed to the Interior Board of Land Appeals (IBLA) involve questions of law or evaluation of facts and evidence to determine eligibility. However, the question of whether an allotment is incompatible within a given CSU requires the technical knowledge of that CSU's managers. The three Department of the Interior agencies (Bureau of Land Management, National Park Service, Fish and Wildlife Service) responsible for CSU's already have resource decision appeal processes similar to the one contained in this proposed regulation. The Department believes this proposed CSU appeal process would be the most efficient.

The time frames in these proposed regulations would ensure that disagreements are resolved as quickly as possible so that conveyance of allotments would not be excessively delayed.

**IV. Procedural Matters**

*Executive Order 12866, Regulatory Planning and Review*

These proposed regulations are not a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. These proposed regulations will not have an effect of $100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These proposed regulations will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. These proposed regulations do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; nor do they raise novel legal or policy issues. The effect of these proposed regulations will be on a limited number of individuals who are qualified to apply for allotments and on the Interior Department agencies responsible for administering the allotment program. The allotment application period is limited by law to 18 months, and

existing staff of responsible agencies will process applications following most of the same rules that are currently in effect for allotment applications under the 1906 Native Allotment Act.

*Clarity of the Regulations*

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the proposed regulations contain technical language or jargon that interferes with their clarity? (3) Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing etc.) aid or reduce their clarity? (4) Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading, for example **Sec. 2568.61 Where do I file my application?**) (5) Is the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand?

Please send any comments you have on the clarity of the regulations to the address specified in the **ADDRESSES** section.

*National Environmental Policy Act*

Section 910 of the Alaska National Interest Lands Conservation Act (ANILCA) of December 2, 1980, 43 U.S.C. 1638, made conveyances, regulations, and other actions which lead to the issuance of conveyances to Natives under ANCSA exempt from NEPA compliance requirements. Since Congress made the Veterans's Allotment Act a part of ANCSA, NEPA does not apply.

*Regulatory Flexibility Act*

Congress enacted the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. This proposed rule would apply only to certain Alaska Native veterans eligible to apply for allotments. This rule applies only to Alaska Native veterans as individuals. Therefore, the Department of the Interior certifies that this document will not have any significant impacts on small entities under the Regulatory Flexibility Act.

*Small Business Regulatory Enforcement Fairness Act (SBREFA)*

These proposed regulations are not a ''major rule'' as defined at 5 U.S.C. 804(2). This proposed rule does not meet any of the criteria for a ''major rule'' under the definition contained in SBREFA. The proposed rule would result in some costs to allotment applicants, and to the Department of the Interior to implement the allotment program over the next several years. It would not result in major cost or price increases for consumers, industries, or regions, and the cost increases for government agencies would be small. This proposed rule would have no significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The total annual effect on the economy would be far below $100 million. Based on Department of Veterans Affairs data, BLM estimates that about 1,100 individuals with at least one quarter Alaska Native blood meet the military service criteria in the Alaska Native Veterans law and may be eligible to apply for allotments. If each applicant were to choose the maximum number of land parcels allowed (2), the total number of parcels involved would be 2,200. BLM estimates the cost of processing an application for a single allotment parcel does not exceed $25,000, including the cost of adjudication, examination, survey, and conveyance. This estimate is based on the average cost of processing allotment applications originally filed under the Alaska Native Allotment Act of 1906. The total cost to process 2,200 parcels would be $55 million over the life of the program, which is, the statutory 18-month application period and as many additional years as necessary to complete all applications. In no case would these costs approximate the $100 million annual impact threshold.

*Unfunded Mandates Reform Act*

These proposed regulations do not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year; nor do these proposed regulations have a significant or unique effect on State, local, or tribal governments or the private sector. The only mandate imposed on State governments would be for the State court appointment of personal representatives in cases involving the estates of certain deceased applicants, but this mandate would cost far below $100 million per year. These proposed regulations impose no mandate on local or tribal governments or the private sector. Program costs would fall primarily on the Department of the Interior. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

*Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)*

The proposed rule does not represent a government action capable of interfering with constitutionally protected property rights. The proposed rule would allow BLM to convey Federal land only under certain circumstances, and land containing other applications or entries is specifically forbidden by law from being conveyed to Native veterans. Even if a Native veteran could show use and occupancy of land before another application or entry was made, the Native would have no vested property right until he or she filed an application for an allotment under Section 41 of ANCSA. No existing applications or entries or other private property interests would be affected by this proposed rule. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

*Executive Order 13132, Federalism*

The proposed rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Section 41 of ANCSA does not allow any land selected by the State of Alaska to be conveyed to a Native veteran, so there would be no effect on the State's ability to reach its full acreage entitlement from the Federal government. Native veterans would not be able to apply for land already owned by the State, even if they could show that they used and occupied the land before the State applied for it. Allotments conveyed under Section 41 of ANCSA are not taxable, just as allotments conveyed under the 1906 Act are not taxable, so there would be no

effect on State or local property tax revenue. Therefore, in accordance with Executive Order 13132, BLM has determined that this proposed rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. Representatives of the State of Alaska and the BLM Alaska have had general discussions on the content of the statute and the proposed regulations. Representatives of the State of Alaska and of the Natives recognize that lands selected by the State or conveyed to the State are prohibited from land availability under this statute.

*Executive Order 12988, Civil Justice Reform*

Under Executive Order 12988, the Office of the Solicitor has determined that this proposed rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

*Paperwork Reduction Act*

This proposed rule contains information collection requirements covered under the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C 3501 *et seq.* All the information requirements pertain to an application form, whereby Alaska veterans may apply for the benefits described in this proposed rule. BLM has prepared and requested OMB to review and approve an information collection package for the application form. Because all the information requirements are contained in the application form and covered by that information collection package, BLM has not prepared a separate information collection package for these regulations.

The information BLM asks for in the form identified in Section 2568.73 will be collected through the allotment application form ''Alaska Native Vietnam Veteran Allotment Application,'' under an OMB form number to be assigned when OMB approves the collection. BLM would require individual Alaska Native veterans who apply for allotments under Section 41 of ANCSA or, in the case of certain deceased veterans, the personal representatives of their estates to comply with the information collection requirement.

Specific information to be collected is as follows:

Name, address, date of birth, telephone number, dates of military service, branch of service, legal description of land for which veteran or representative is applying, dates of occupancy of land, description and value of improvements on land, and specific uses of land.

BLM estimates the total number of respondents will be approximately 1,100 and the burden on new respondents will be approximately 30,800 hours. These estimates apply to the entire 18-month application period. For a 12-month period this works out to 732 applicants and 20,496 hours. The estimate of the number of respondents is based on computer data from the Department of Veterans Affairs concerning Alaska Native veterans with at least one quarter Alaska Native blood who served in the U.S. military between January 1, 1969, and December 31, 1971. This data was further screened to identify those persons who met the 6 months' service requirement in Section 41 of ANCSA. BLM derived the total estimated burden hours by multiplying the number of potential respondents by an estimate of the 28 hours required to complete the application form and obtain the other documentation required by the form. The majority of questions on the form require brief answers, many of them simply ''yes'' or ''no.'' Only two questions require narrative responses and in both cases responses are not required from all applicants.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Department of the Interior.

BLM considers comments by the public on this proposed collection of information in—

Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of BLM, including whether the information will have practical use;

Evaluating the accuracy of BLM's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; Enhancing the quality, usefulness, and clarity of the information to be collected; and Minimizing 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; such as permitting electronic submittal of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to BLM on the proposed regulations.

**Author**

The principal author of this rule is Connie Van Horn, Division of Conveyance Management, Bureau of Land Management, Anchorage, Alaska; assisted by Frank Bruno of BLM's Regulatory Affairs Group, Bureau of Land Management, Washington, DC.

**List of Subjects in 43 CFR Part 2560**

Alaska, Homesteads, Indian Lands, Public Lands, Public Lands-Sale, and Reporting and Recordkeeping requirements.

Dated: February 2, 2000.

**Sylvia V. Baca,**

*Acting Assistant Secretary, Land and Minerals Management.*

Accordingly, BLM proposes to amend 43 CFR part 2560 as follows:

1. The authority citation for part 2560 continues to read as follows:

**Authority:** 43 U.S.C. 1201, 1740.

2. Add subpart 2568 to read as follows:

**Subpart 2568—Alaska Native Allotments for Certain Veterans**

Purpose

Sec.

2568.10 What Alaska Native allotment benefits are available to certain Alaska Native veterans?

Regulatory Authority

2568.20 What is the legal authority for these allotments?

2568.21 Do other regulations directly apply to these regulations?

Definitions

2568.30 What terms do I need to know to understand these regulations?

Information Collection

2568.40 Does BLM have the authority to ask me for the information required in these regulations?

Who Is Qualified for an Allotment

2568.50 What qualifications do I need to be eligible for an allotment?

Personal Representatives

2568.60 May the personal representatives of eligible deceased veterans apply on their behalf?

2568.61 What are the requirements for a personal representative?

2568.62 Under what circumstances does BLM accept the appointment of a personal representative?

2568.63 Under what circumstances does BLM reject the appointment of a personal representative?

2568.64 Are there different requirements for giving an allotment to the estate of a deceased veteran?

Applying for an Allotment

2568.70 If I am qualified for an allotment, when can I apply?
2568.71 Where do I file my application?
2568.72 When does BLM consider my application to be filed too late?
2568.73 Do I need to fill out a special application form?
2568.74 What else must I file with my application?
2568.75 Must I include a Certificate of Indian Blood as well as Department of Defense verification of qualifying military service when I file my application with BLM? Also, if I am a personal representative filing on behalf of the estate of a deceased veteran, must I also file the Department of Veterans Affairs verification of cause of death at this time?
2568.76 Do I need to pay any fees when I file my application?
2568.77 Do I have to post the land in my application on the ground?
2568.78 Will my application segregate the land for which I am applying from other applications or land actions?
2568.79 Are there any rules about the number and size of parcels?
2568.80 Does the parcel have to be surveyed before I can receive title to it?
2568.81 If BLM finds errors in my application, will BLM give me a chance to correct them?
2568.82 If BLM decides that I have not submitted enough information to show qualifying use and occupancy, will it reject my application or give me a chance to submit more information?

Available Lands General

2568.90 If I qualify for an allotment, what land may BLM convey to me?
2568.91 Is there land owned by the Federal government that BLM cannot convey to me even if I qualify?
2568.92 Is there a limit to how much water frontage my allotment can include?
2568.93 Can I receive an allotment of land that is valuable for minerals?

Available Lands-Conservation System Units (CSU)

2568.100 What is a Conservation System Unit?
2568.101 If the land I used and occupied is within a Conservation System Unit (CSU) other than a National Wilderness or any part of a National Forest, can I receive title to it?
2568.102 Is the process by which the managing agency decides whether my allotment is not inconsistent with the CSU the same as other such determination processes?
2568.103 By what process does the managing agency of a CSU decide if my allotment would be consistent with the CSU?
2568.104 How will a CSU manager determine if my allotment is consistent with the CSU?
2568.105 In what situations could a CSU manager likely find an allotment to be consistent with the CSU?
2568.106 In what situations could a CSU manager generally find an allotment to be inconsistent with the purposes of a CSU?

Alternative Allotments

2568.110 If I qualify for Federal land in one of the categories BLM cannot convey, is there any other way for me to receive an allotment?
2568.111 What if BLM decides that I qualify for land that is in the category of Federal land that BLM cannot convey?
2568.112 What do I do if BLM notifies me that I am eligible to choose an alternative allotment?
2568.113 How do I apply for an alternative allotment if the CSU manager determines my application is inconsistent with a CSU?
2568.114 When must I apply for an alternative allotment if the CSU manager determines my application is inconsistent with a CSU?

Appeals

2568.120 What can I do if I disagree with any of the decisions that are made about my allotment application?
2568.121 If an agency determines my allotment is inconsistent with the purposes of a CSU, what can I do if I disagree?
2568.122 What then does the CSU manager do with my request for reconsideration?
2568.123 Can I appeal the CSU Manager's reconsidered decision if I disagree with it?

## Subpart 2568-Alaska Native Allotments for Certain Veterans

### Purpose

#### § 2568.10 What Alaska Native allotment benefits are available to certain Alaska Native veterans?

Eligible Alaska Native veterans may receive an allotment of one or two parcels of Federal land in Alaska totaling no more than 160 acres.

### Regulatory Authority

#### § 2568.20 What is the legal authority for these allotments?

(a) The Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.* (ANCSA), as amended.

(b) Section 432 of Public Law 105–276, the Appropriations Act for the Departments of Veterans Affairs and Housing and Urban Development for fiscal year 1999, which amended ANCSA by adding section 41.

(c) The Native Allotment Act of 1906, 34 Stat. 197, as amended, 42 Stat. 415 and 70 Stat. 954, 43 U.S.C. 270–1 through 270–3 (1970).

#### § 2568.21 Do other regulations directly apply to these regulations?

Yes. The regulations implementing the Native Allotment Act of 1906, 43 CFR Subpart 2561, also apply to Alaska Native Veteran Allotments to the extent they are not inconsistent with section 41 of ANCSA or any provisions in this Subpart.

### Definitions

#### § 2568.30 What terms do I need to know to understand these regulations?

*Alaska Native* is defined in the Native Allotment Act of 1906 as amended by the Act of August 2, 1956, 70 Stat. 954.

*Allotment* has the same meaning as in 43 CFR 2561.0–5(b).

*Conservation System Unit (CSU)* has the same meaning as under Sec. 102(4) of the Alaska National Interest Lands Conservation Act of December 2, 1980 (ANILCA), 16 U.S.C. 3102(4).

*Veteran* has the same meaning as in 38 U.S.C. 101, paragraph 2.

### Information Collection

#### § 2568.40 Does BLM have the authority to ask me for the information required in these regulations?

(a) Yes. The Office of Management and Budget has approved, under 44 U.S.C. 3507, the information collection requirements contained in this subpart 2568 and has assigned them clearance number xxxx-xxxx for Form AK–2561–10. BLM uses this information to determine if using the public lands is appropriate. You must respond to obtain a benefit.

(b) BLM estimates that the public reporting burden for this information is as follows: 28 hours per response to fill out form AK–2561–10. These estimates include the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed and completing the collection of information.

(c) Send comments regarding this burden estimate or any other aspect of this collection to the Information Collection Clearance Officer, Bureau of Land Management, 1849 C St. N.W., Mail Stop 401 LS, Washington, D.C. 20240.

### Who Is Qualified for an Allotment

#### § 2568.50 What qualifications do I need to be eligible for an allotment?

To qualify for an allotment you must:

(a) Have been eligible for an allotment under the Native Allotment Act as it was in effect before December 18, 1971; and

(b) Be a veteran who served at least six months between January 1, 1969, and June 2, 1971, or enlisted or was drafted after June 2, 1971, but before December 3, 1971; and

(c) Not have already received conveyance or approval of an allotment.

(However, if you received an allotment interest by inheritance, devise, gift, or purchase you are not disqualified from applying); and

(d) Not have a Native allotment application pending on October 21, 1998.

**Personal Representatives**

**§ 2568.60 May the personal representatives of eligible deceased veterans apply on their behalf?**

Yes. The personal representative may apply for an allotment, for the benefit of the deceased veteran's heirs, if between January 1, 1969, and December 31, 1971, the deceased veteran:

(a) Was killed in action, or

(b) Was wounded in action and later died as a direct consequence of that wound, as determined and certified by the Department of Veterans Affairs, or

(c) Died while a prisoner of war.

**§ 2568.61 What are the requirements for a personal representative?**

The person filing the application must present proof of a current appointment as personal representative of the estate of the deceased veteran by the proper court, or proof that this appointment process has begun.

**§ 2568.62 Under what circumstances does BLM accept the appointment of a personal representative?**

BLM will accept an appointment of personal representative made any time after an eligible person dies, even if that appointment came before enactment of the Alaska Native Veterans Law.

**§ 2568.63 Under what circumstances does BLM reject the appointment of a personal representative?**

If the appointment process is incomplete at the time of allotment application filing, the prospective personal representative must file the proof of appointment with BLM within 18 months after the application filing deadline or BLM will reject the application.

**§ 2568.64 Are there different requirements for giving an allotment to the estate of a deceased veteran?**

No. The estate of the deceased veteran eligible under section 2568.60 must meet the same requirements for a Native allotment as other living Alaska Native veterans.

**Applying for an Allotment**

**§ 2568.70 If I am qualified for an allotment, when can I apply?**

If you are qualified, you can apply between *(insert the effective date of rule)* and *(insert the date which is 18 months after the effective date of the rule).*

**§ 2568.71 Where do I file my application?**

You must file your application in person or by mail with the BLM Alaska State Office.

**§ 2568.72 When does BLM consider my application to be filed too late?**

BLM will consider applications to be filed too late if they are:

(a) Submitted in person after the deadline in 43 CFR 2568.70, or

(b) Postmarked after the deadline indicated at 43 CFR 2568.70.

**§ 2568.73 Do I need to fill out a special application form?**

Yes. You must complete form no. AK–2561–10, ''Alaska Native Veteran Allotment Application.''

**§ 2568.74 What else must I file with my application?**

You must also file:

(a) A Certificate of Indian Blood, which is a Bureau of Indian Affairs form,

(b) A DD Form 214 ''Certificate of Release or Discharge from Active Duty'' or other documentation from the Department of Defense to verify military service, as well as any information on cause of death supplied by the Department of Veterans Affairs,

(c) A map at a scale of 1:63,360 or larger, sufficient to locate on the ground the land for which you are applying, and

(d) A legal description of the land for which you are applying. If there is a discrepancy between the map and the legal description, the map will control. The map must be sufficient to allow BLM to locate the parcel on the ground. You must also estimate the number of acres in each parcel.

**§ 2568.75 Must I include a Certificate of Indian Blood as well as Department of Defense verification of qualifying military service when I file my application with BLM? Also, if I am a personal representative filing on behalf of the estate of a deceased veteran, must I also file the Department of Veterans Affairs verification of cause of death at this time?**

Yes. If any of these documents is missing when you file the application, BLM will ask you to provide the information within the time specified in a notice. BLM will not process the application until you file the necessary documents but will consider the application as having been timely filed.

**§ 2568.76 Do I need to pay any fees when I file my application?**

No. You do not need to pay a fee to file an application.

**§ 2568.77 Do I have to post the land in my application on the ground?**

(a) Yes. Before you file your application you must post the land by marking all corners on the ground with your name and address.

(b) On land within a CSU, you must get a free special use permit from the CSU manager before you erect any signs or markers. The CSU manager may establish in the permit a maximum size of any signs or markers. If the CSU manager later decides under § 2568.104 that your allotment is not consistent with the CSU, you must promptly remove the signs or markers unless the CSU manager waives this requirement in the special use permit.

**§ 2568.78 Will my application segregate the land for which I am applying from other applications or land actions?**

The filing of an application with a sufficient description to identify the lands will segregate those lands. ''Segregation'' has the same meaning as in 43 CFR 2091.0–5(b).

**§ 2568.79 Are there any rules about the number and size of parcels?**

Yes. You may apply for one or two parcels, but if you apply for two parcels the two combined cannot total more than 160 acres. You may apply for less than 160 acres. Each parcel must be reasonably compact.

**§ 2568.80 Does the parcel have to be surveyed before I can receive title to it?**

Yes. The land in your application must be surveyed before BLM can convey it to you. BLM will survey your allotment at no charge to you, or you may obtain a private survey. BLM must approve the survey if it is done by a private surveyor.

**§ 2568.81 If BLM finds errors in my application, will BLM give me a chance to correct them?**

Yes. If you file your application during the 18-month filing period and BLM finds correctable errors, it will consider the application to be timely filed once you correct them. BLM will send you a notice advising you of any correctable errors and give you at least 60 days to correct them. You must make corrections within the specified time or BLM will reject your application.

**§ 2568.82 If BLM decides that I have not submitted enough information to show qualifying use and occupancy, will it reject my application or give me a chance to submit more information?**

(a) BLM will not reject your application without giving you an opportunity for a hearing to establish the facts of your use.

(b) If BLM cannot determine from the information you submit that you met the use and occupancy requirements of the 1906 Act, it will send you a notice saying that you have not submitted enough evidence and will give you at least 60 days to file additional information.

(c) If you do not submit additional evidence by the end of the time BLM gives you or if you submit additional evidence but BLM still cannot determine that you meet the use and occupancy requirements, the following process will occur:

(1) BLM will issue a formal contest complaint telling you why it believes it should reject your application.

(2) If you answer the complaint and tell BLM you want a hearing, BLM will ask an Administrative Law Judge (ALJ) of the Interior Department, Office of Hearings and Appeals, to preside over a hearing to establish the facts of your use and occupancy.

(3) The ALJ will evaluate all the written evidence and oral testimony and issue a decision.

(4) You can appeal this decision to the Interior Board of Land Appeals according to 43 CFR part 4.

**Available Lands—General**

**§ 2568.90 If I qualify for an allotment, what land may BLM convey to me?**

You may receive title only to:

(a) Land that:

(1) Is currently owned by the Federal government,

(2) Was vacant, unappropriated, and unreserved when you first began to use and occupy it,

(3) Has not been continuously withdrawn since before your 5th birthday,

(4) You started using before December 13, 1968, and

(5) You prove by a preponderance of the evidence that you used and occupied in a substantially continuous, and independent manner, at least potentially exclusive of others, for five or more years. This possession of the land must not be merely intermittent. ''Preponderance of evidence'' means evidence which is more convincing than the evidence offered in opposition to it; that is, evidence which as a whole shows that the fact you are trying to prove is more likely a fact than not.

(b) Substitute land explained in 43 CFR 2568.110.

**§ 2568.91 Is there land owned by the Federal government that BLM cannot convey to me even if I qualify?**

You cannot receive an allotment containing any of the following:

(a) A regularly used and recognized campsite that is primarily used by someone other than yourself. The campsite area that you cannot receive is that which is actually used as a campsite.

(b) Land selected by, but not conveyed to, the State of Alaska;

(c) Land presently selected by, but not conveyed to, a Village Corporation as defined in section 3(j) of ANCSA (43 U.S.C. 1602(j)); a Regional Corporation as defined in section 3(g) of ANCSA (43 U.S.C. 1602(g)); a Native group as defined in section 3(d) of ANCSA (43 U.S.C. 1602(d)); or an urban Native corporation to which conveyance is authorized by section 14(h)(3) of ANCSA (43 U.S.C. 1613(h)(3)). A Native corporation may relinquish up to 160 acres of its selection to allow an eligible Native veteran to receive an allotment, as long as the remaining ANCSA selection comports with the appropriate selection rules in 43 CFR part 2650. Any such relinquishment must not cause the corporation to become underselected. See 43 U.S.C. 1621(j)(2) for a definition of underselection;

(d) Land designated as wilderness by statute;

(e) Land acquired by the Federal government through gift, purchase, or exchange;

(f) Land containing any development owned or controlled by a unit of government, or a person other than yourself;

(g) Land withdrawn or reserved for national defense, other than the National Petroleum Reserve-Alaska;

(h) National Forest land; or

(i) Land selected or claimed, but not yet conveyed, under a public land law, including but not limited to the following:

(1) Land within a recorded mining claim;

(2) Home sites;

(3) Trade and manufacturing sites;

(4) Reindeer sites and headquarters sites;

(5) Cemetery sites.

**§ 2568.92 Is there a limit to how much water frontage my allotment can include?**

Yes, in some cases. You will normally be limited to a half-mile (referred to as160 rods in the regulations at 43 CFR part 2094) along the shore of a navigable water body. If you apply for land that extends more than a half-mile, BLM will treat your application as a request to waive this limitation. As explained in 43 CFR 2094.2, BLM can waive the half-mile limitation if it determines the land is not needed for a harborage, wharf, or boat landing area, and that a waiver would not harm the public interest.

**§ 2568.93 Can I receive an allotment of land that is valuable for minerals?**

BLM can convey an allotment that is known to be or believed to be valuable, for coal, oil, or gas, but the ownership of these minerals remains with the Federal government. BLM cannot convey to you land valuable for other kinds of minerals such as gold, silver, sand or gravel. If BLM conveys an allotment that is valuable for coal, oil, or gas, the allottee owns all minerals in the land except those expressly reserved to the United States in the conveyance.

**Available Lands-Conservation System Units (CSU)**

**§ 2568.100 What is a Conservation System Unit?**

A Conservation System Unit (CSU) is an Alaska unit of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, National Trails System, National Wilderness Preservation System, or a National Forest Monument.

**§ 2568.101 If the land I used and occupied is within a Conservation System Unit (CSU) other than a National Wilderness or any part of a National Forest, can I receive title to it?**

You may receive title if you qualify for that allotment and the managing agency of the CSU agrees that conveyance of that allotment is not inconsistent with the purposes of the CSU.

**§ 2568.102 Is the process by which the managing agency decides whether my allotment is not inconsistent with the CSU the same as other such determination processes?**

No. This process is unique to this regulation. It should not be confused with any similar process under any other act, including the incompatibility process under the National Wildlife Refuge System Improvement Act of 1998.

**§ 2568.103 By what process does the managing agency of a CSU decide if my allotment would be consistent with the CSU?**

(a) BLM conducts a field exam, with you or your representative, to check the boundaries of the land for which you are applying and to look for signs of use and occupancy. The CSU manager or a designated representative may also attend the field exam.

(b) The CSU manager or representative assesses the resources to determine if the allotment would be consistent with CSU purposes at that location. You may submit any other information for the CSU manager to consider. You or your representative may also accompany, at your expense,

the CSU representative on any field exam.

(c) The CSU manager submits a written decision and resource assessment to BLM within 18 months of the BLM field exam. The CSU manager will send you a copy of the decision. You may request a copy of the resource assessment.

**§ 2568.104 How will a CSU manager determine if my allotment is consistent with the CSU?**

The CSU manager will decide this on a case-by-case basis by considering the law or withdrawal order which created the CSU. The law or withdrawal order explains the purposes for which the CSU was created. The manager would also consider the mission of the CSU managing agency as established in law and policy. The manager will also consider how the cumulative impacts of the various activities that would take place on the allotment might affect the CSU.

**§ 2568.105 In what situations could a CSU manager likely find an allotment to be consistent with the CSU?**

An allotment could generally be consistent with the purposes of the CSU if:

(a) You locate an allotment near land that BLM has conveyed to a Native corporation under ANCSA, or

(b) A Native corporation has selected the land under ANCSA and has said it would relinquish such selection, as long as the remaining ANCSA selection comports with the appropriate selection rules in 43 CFR part 2650. Any relinquishment must not cause the corporation to become underselected. See 43 U.S.C. 1621(j)(2) for a definition of underselection.

**§ 2568.106 In what situations could a CSU manager generally find an allotment to be inconsistent with the purposes of a CSU?**

An allotment could generally be inconsistent in situations including, but not limited to, the following:

(a) If, by itself or as part of a group of allotments, it could significantly interfere with biological, physical, cultural, scenic, recreational, natural quiet or subsistence values of the CSU.

(b) If, by itself or as part of a group of allotments, it obstructs access by the public or managing agency to the resource values of surrounding CSU lands.

(c) If, by itself or as part of a group of allotments, it could trigger development or future uses in an area that would adversely affect resource values of surrounding CSU lands.

(d) If it is isolated from existing private properties and opens an area of a CSU to new access and uses that adversely affect resource values of the surrounding CSU lands.

(e) If it interferes with the implementation of the CSU management plan.

**Alternative Allotments**

**§ 2568.110 If I qualify for Federal land in one of the categories BLM cannot convey, is there any other way for me to receive an allotment?**

Yes. In this case, you may choose an alternative allotment from the following types of land within the same ANCSA Region as the land for which you originally qualified:

(a) Land within an original withdrawal under section 11(a)(1) of ANCSA for selection by a Village Corporation which was:

(1) Not selected,

(2) Selected and later relinquished, or

(3) Selected and later rejected by BLM;

(b) Land outside of, but touching a boundary of a Village withdrawal, not including land described in 43 CFR 2568.91 or land within a National Park; or

(c) Vacant, unappropriated, and unreserved land.

**§ 2568.111 What if BLM decides that I qualify for land that is in the category of Federal land that BLM cannot convey?**

BLM will notify you in writing that you are eligible to choose an alternative allotment from lands described in 43 CFR 2568.110.

**§ 2568.112 What do I do if BLM notifies me that I am eligible to choose an alternative allotment?**

You must file a request for an alternative allotment in the Alaska State Office as stated in 43 CFR 2568.71 and follow all the requirements you did for your original allotment application.

**§ 2568.113 How do I apply for an alternative allotment if the CSU manager determines my application is inconsistent with a CSU?**

You should contact the appropriate CSU manager as quickly as possible to discuss resource concerns, potential constraints, and impacts on existing management plans. After you do this you must file a request for an alternative allotment with the BLM Alaska State Office as stated in 43 CFR 2568.71 and follow all the requirements of the original allotment application.

**§ 2568.114 When must I apply for an alternative allotment if the CSU manager determines my application is inconsistent with a CSU?**

Your application for an alternative allotment must be filed:

(a) Within 12 months of when you receive a decision from a CSU manager that says your original allotment is inconsistent with the purposes of the CSU or,

(b) Within six months of when you receive a decision from the CSU manager on your request for reconsideration of the original decision affirming that your original allotment is inconsistent with the purposes of the CSU, or

(c) Within three months of the date an appellate decision from the National Park Service (NPS) Regional Director, U.S. Fish and Wildlife Service (USFWS) Regional Director, or BLM Alaska State Director becomes final.

**Appeals**

**§ 2568.120 What can I do if I disagree with any of the decisions that are made about my allotment application?**

You may appeal all decisions, except for the CSU consistency decisions or determinations by the Department of Veterans Affairs, to the Interior Board of Land Appeals under 43 CFR part 4.

**§ 2568.121 If an agency determines my allotment is inconsistent with the purposes of a CSU, what can I do if I disagree?**

(a) You or your legal representative may request reconsideration of a CSU manager's decision by sending a signed request to that manager.

(b) The request for reconsideration must be submitted in person or postmarked to the CSU manager no later than 90 calendar days of when you received the decision.

(c) The request for reconsideration must include:

(1) The BLM case file number of the application and parcel, and

(2) Your reason(s) for filing the reconsideration, and any new pertinent information.

**§ 2568.122 What then does the CSU manager do with my request for reconsideration?**

(a) The CSU manager will reconsider the original compatibility decision and send you a written decision within 45 calendar days after they receive your request. The 45 days may be extended for a good reason in which case you would be notified of the extension in writing. The reconsideration decision will give the CSU Manager's reasons for this new decision and it will summarize the evidence that was used.

(b) The reconsideration decision will provide information on how to appeal if you disagree with it.

**§ 2568.123 Can I appeal the CSU Manager's reconsidered decision if I disagree with it?**

(a) Yes. If you or your legal representative disagree with the decision you may appeal to the NPS Regional Director, the USFWS Regional Director, or BLM Alaska State Director responsible for the CSU where your proposed allotment is located.

(b) Your appeal must:

(1) Be in writing,

(2) Be submitted in person to the CSU manager or postmarked no later than 45 calendar days of when you received the reconsidered decision.

(3) State any legal or factual reason(s) why you believe the decision is wrong. You may include any additional evidence or arguments to support your appeal.

(c) You may present oral testimony to the NPS Regional Director, USFWS Regional Director, or BLM Alaska State Director to clarify issues raised in the written record.

(d) The NPS Regional Director, USFWS Regional Director, or BLM Alaska State Director will send you their written decision within 45 calendar days of when they receive your appeal. This period can be extended for a good reason. You will be notified.

(e) The decision of the NPS Regional Director, USFWS Regional Director, or BLM Alaska State Director is the final administrative decision of the Department of the Interior.

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## Part III

# Department of Education

**Bilingual Education: Systemwide Improvement Grants; Inviting Applications for New Awards for Fiscal Year (FY) 2000; Notice**

## DEPARTMENT OF EDUCATION

**(CFDA No.: 84.291R )**

### Bilingual Education: Systemwide Improvement Grants; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000

*Note to Applicants:* This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for an award under this program. The statutory authorization for this program, and the application requirements that apply to this competition, are contained in sections 7115 and 7116 of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (Pub. L. 103–382, enacted October 20, 1994 (the Act) (20 U.S.C. 7425 and 7426)).

*Purpose of Program:* This program provides grants to implement districtwide bilingual education programs or special alternative instruction programs to improve, reform, and upgrade relevant programs and operations, within an entire local educational agency (LEA), that serve a significant number of limited English proficient (LEP) children and youth in one or more LEAs with significant concentrations of these children and youth.

*Eligible Applicants:* (a) One or more LEAs; or (b) one or more LEAs in collaboration with an institution of higher education, community-based organizations, other LEAs, or a State educational agency.

*Deadline for Transmittal of Applications:* March 31, 2000.

*Deadline for Intergovernmental Review:* May 30, 2000.

*Available Funds:* $5 million.

*Estimated Range of Awards:* $350,000–$650,000.

*Estimated Average Size of Awards:* $500,000.

*Estimated Number of Awards:* 10.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* 60 months.

*Page Limit:* The application narrative is where you, the applicant, address the selection criteria reviewers use to evaluate your application. You must limit the application narrative to the equivalent of no more than 75 pages or 2,000 characters per page for the page limit specified, using the following standards:

- A page is 8.5 inches x 11 inches, on one side only, with 1-inch margins at the top, bottom, and both sides. For electronic submission a page equals 2,000 characters; and the Department of Education (we) will convert any charts, tables, figures, and graphs from a page equivalency to a character count.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page and character count limits do not apply to the Application for Federal Education Assistance Form (ED 424); the Budget Information—Non-Construction Programs Form (ED 524), including the itemized budget; the other application forms; the assurances and certifications; or the one-page abstract, the table of contents, the resumes, the bibliography, or the letters of support.

If, to meet the page limit, you use more than one side of the page, you use a larger page, or you use a print size, spacing, or margins smaller than the standards in this notice, we will reject your application.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) 34 CFR part 299.

### Description of Program

Funds under this program may be used during the first 12 months exclusively for activities preparatory to the delivery of services. Funds may be used to improve the education of LEP students and their families by reviewing, restructuring, and upgrading—

(A) Educational goals, curriculum guidelines and content, standards and assessments;

(B) Personnel policies and practices including recruitment, certification, staff development, and assignment;

(C) Student grade-promotion and graduation requirements;

(D) Student assignment policies and practices;

(E) Family education programs and parent outreach and training activities designed to assist parents to become active participants in the education of their children;

(F) The instructional program for limited English proficient students by identifying, acquiring, and upgrading curriculum, instructional materials, educational software, and assessment procedures and, if appropriate, applying educational technology;

(G) Tutorials and academic or career counseling for children and youth of limited-English proficiency; and

(H) Such other activities, related to the purposes of this part, as the Secretary may approve.

### Priorities

*Absolute Priority:* The priority in the notice of final priority for this program, as published in the **Federal Register** on October 30, l995 (60 FR 55246–55247) applies to this competition.

Under 34 CFR 75.105(c)(3) and section 7115(a) of the Act, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Projects that serve only LEAs in which the number of LEP students, in each LEA served, is at least 1,000 or at least 25 percent of the total student enrollment.

*Competitive Priority:* Within the absolute priority specified in this notice, the Secretary under 34 CFR 75.105(c)(2)(i) and 34 CFR 299.3(b) gives preference to applications that meet the following competitive priority. The Secretary awards 5 points to an application that meets this competitive priority. These points are in addition to any points the application earns under the selection criteria for the program:

Projects that will contribute to systemic educational reform in an Empowerment Zone, including a Supplemental Empowerment Zone, or an Enterprise Community designated by the United States Department of Housing and Urban Development or the United States Department of Agriculture, and are made an integral part of the Zone's or Community's comprehensive community revitalization strategies.

A list of areas that have been designated as Empowerment Zones and Enterprise Communities is provided at the end of this notice.

*Invitational Priorities:* Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet one or both of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets one or both of these invitational priorities does not receive competitive or absolute preference over other applications.

*Invitational Priority 1—Safe and Drug-Free Schools:* Projects that contribute to the creation and maintenance of a safe and drug-free learning environment for limited English proficient students by being

made an integral part of a comprehensive school safety plan.

Information on developing and implementing a comprehensive school safety plan is found in the 1998 Annual Report on School Safety prepared by the U.S. Departments of Education and Justice.

*Invitational Priority 2—Professional Development:* Applicants that consider the U.S. Department of Education Professional Development Principles in planning and designing a Systemwide Improvement Grant project.

These principles call for educator professional development that focuses on teachers as central to student learning, yet includes all other members of the school community; focuses on individual, collegial, and organizational improvement; respects and nurtures the intellectual and leadership capacity of teachers, principals, and others in the school community; reflects best available research and practice in teaching, learning, and leadership; enables teachers to develop further expertise in subject content, teaching strategies, uses of technologies, and other essential elements in teaching to high standards; promotes continuous inquiry and improvement embedded in the daily life of schools; is planned collaboratively by those who will participate in and facilitate that development; requires substantial time and other resources; is driven by a coherent long-term plan; is evaluated ultimately on the basis of its impact on teacher effectiveness and student learning; and uses this assessment to guide subsequent professional development efforts.

*Selection Criteria*

(a)(1) The Secretary uses the following selection criteria in 34 CFR 75.210 and sections 7116 and 7123 of the Act to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria*—(1) *Extent of need for the project.* (15 points) The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the following factors:

(i) The number of children and youth of limited-English proficiency in the school district to be served

(ii) The characteristics of such children and youth, such as—

(A) Language spoken;

(B) Dropout rates;

(C) Proficiency in English and the native language;

(D) Academic standing in relation to the English-proficient peers of those children and youth; and

(E) If applicable, the recency of immigration.

(Authority: 20 U.S.C. 7426(g)(1)(A))

(2) *Project Design.* (35 points) (i) The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the project design:

(A) Relates to the linguistic and academic needs of the children and youth of limited-English proficiency to be served;

(B) Is coordinated with other programs under this Act, the Goals 2000: Educate America Act and other Acts, as appropriate in accordance with section 14306 of this Act;

(C) Involves the parents of the children and youth of limited-English proficiency to be served;

(D) Ensures accountability in achieving high academic standards; and

(E) Promotes coordination of services for the children and youth of limited-English proficiency to be served and their families.

(ii) If appropriate, the quality of the applicant's proposal to collaborate with institutions of higher education, community-based organizations, local or State educational agencies, private schools, nonprofit organizations, or businesses in carrying out the project.

(iii) The extent to which the project will be integrated with the overall educational program.

(iv) The extent to which the project will provide for training for personnel participating in or preparing to participate in the program which will assist such personnel in meeting State and local certification requirements and that, to the extent possible, will award college or university credit for such training.

(Authority: 20 U.S.C. 7426(g)(1)(B)and (c), (2)(B)(i), and (i)(5))

(3) *Proficiency in English and another language.* (5 points) The Secretary reviews each application to determine the extent to which the project will provide for the development of bilingual proficiency both in English and another language for all participating students.

(Authority: 20 U.S.C. 7426(i)(a)(1)

(4) *Quality of the management plan.* (10 points) The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(Authority: 34 CFR 75.210(g)(1) and (2)(i) and (iv))

(5) *Quality of key personnel.* (10 points) The Secretary reviews each application to determine how well the project meets the following requirements:

(i) Employment of teachers in the proposed program that, individually or in combination, are proficient in English, including written, as well as oral, communication skills.

(ii) Use of qualified personnel, including personnel who are proficient in the language or languages used in instruction.

(Authority: 20 U.S.C. 7426(g)(1)(E) and (h)(1))

(6) *Adequacy of resources.* (5 points) The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The extent to which the budget is adequate to support the proposed project.

(ii) The extent to which costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(Authority: 34 CFR 75.210(f)(1) and (2)(iii)–(iv)).

(7) *Evaluation plan.* (15 points) The Secretary reviews each application to determine how well the proposed project's evaluation will meet the following requirements:

(i) Student evaluation and assessment procedures must be valid, reliable, and fair for limited English proficient students.

(ii) The evaluation must include—

(A) How students are achieving the State student performance standards, if any, including data comparing children and youth of limited-English proficiency with nonlimited English proficient children and youth with regard to school retention, academic achievement, and gains in English (and, if applicable, native language) proficiency;

(B) Program implementation indicators that provide information for informing and improving program management and effectiveness, including data on appropriateness of curriculum in relationship to grade and course requirements, appropriateness of program management, appropriateness of the program's staff professional development, and appropriateness of the language of instruction;

(C) Program context indicators that describe the relationship of the activities funded under the grant to the overall school program and other Federal, State, or local programs serving children and youth of limited English proficiency.

(Authority: 20 U.S.C. 7426(h)(3) and 7433 (c)(1)–(3))

(8) *Capacity building, dissemination, and serving students with disabilities.* (5 points) The Secretary reviews each application to determine the extent to which:

(i) Limited English proficient students who are disabled will be identified and served in accordance with the requirements of the Individuals with Disabilities Education Act (20 U.S.C. 1400 *et seq.*);

(ii) The assistance provided under the application will contribute toward building the capacity of the applicant to provide a program on a regular basis, similar to that proposed for assistance, which will be of sufficient size, scope, and quality to promise significant improvement in the education of students of limited-English proficiency;

(iii) The applicant will have the resources and commitment to continue the program when assistance is reduced or no longer available; and

(iv) The applicant will provide for utilization of the State and national dissemination sources for program design and in dissemination of results and products.

(Authority: 20 U.S.C. 7426(h)(3), (5), and (6))

*Intergovernmental Review of Federal Programs*

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order.

If you want to know the name and address of any State Single Point of Contact (SPOC), see the list published in the **Federal Register** on April 28, 1999 (64 FR 22963), or you may view the latest SPOC list on the OMB Web site at the following address: http://www.whitehouse.gov/omb/grants.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.291R, U.S. Department of Education, 400 Maryland Avenue, SW., Room 7E200, Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Eastern time) on the date indicated in this notice.

Please Note That the Above Address is not the Same ADDRESS as the one to Which the Applicant Submits its Completed Application. *Do not send applications to the above address.*

*Instructions for Transmitting Applications*

**Note:** Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

*Pilot Project for Electronic Submission of Applications*

The US Department of Education is conducting a limited pilot project of electronic submission of discretionary grant applications for selected programs. Bilingual Education: Systemwide Improvement Grants (CFDA No. 84.291R) is one of the programs included in the pilot project. If you are an applicant under Bilingual Education: Systemwide Improvement Grants, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in the e-GAPS pilot project. By participating you will have an opportunity to have input into the overall design and approach of e-GAPS. At the conclusion of the pilot project, we will evaluate its successfulness and solicit suggestions for improvements.

If you participate as a grant applicant in an e-GAPS pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You can submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED Form No. 524), and all necessary assurances and certifications. We may request that you give us original signatures on forms at a later date.

You may access the electronic grant application for Bilingual Education: Systemwide Improvement Grants at:

*http://e-grants.ed.gov*

In the Appendix to this notice, we have placed additional information about the e-GAPS pilot project (see Parity Guidelines between Paper and Electronic Applications).

If you want to apply for a grant and be considered for funding, you must meet the following deadline requirements:

(a) *If You Send Your Application by Mail:*

You must mail the original and two copies of the application on or before the deadline date to:

U.S. Department of Education, Application Control Center, Attention: CFDA# 84,291R, Washington, DC 20202–4725.

You must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If you mail an application through the U.S. Postal Service, we do not accept

either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

(b) *If You Deliver Your Application by Hand:*

You or your courier must hand deliver the original and two copies of the application by 4:30 P.M. (Washington, DC time) on or before the deadline date to:

U.S. Department of Education, Application Control Center, Attention: CFDA# 84.291R, Room 3633, Regional Office Building 3, 7th and D Streets, SW., Washington, DC.

The Application Control Center accepts application deliveries daily between 8:00 a.m. and 4:30 p.m. (Washington, DC time), except Saturdays, Sundays, and Federal holidays. The Center accepts application deliveries through the D Street entrance only. A person delivering an application must show identification to enter the building.

(c) *If You Submit Your Application Electronically:*

You must submit your grant application through the Internet using the software provided on the e-Grants Web site (*http://e-grants.ed.gov*) by 4:30 p.m. (Washington, DC time) on the deadline date.

The regular hours of operation of the e-Grants Web site are 6:00 a.m. till 12:00 midnight (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays. Please note that on Wednesdays the Web site closed for maintenance at 7:00 p.m. (Washington, DC time).

**Notes:** (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

(2) If you send your application by mail or deliver it by hand or by a courier service, the Application Control Center will mail a Grant Application Receipt Acknowledgment to you. If you do not receive the notification of application receipt within 15 days from the date of mailing the application, you should call the U.S. Department of Education Application Control Center at (202) 708–9493.

(3) You must indicate on the envelope and—if not provided by the Department—in Item 3 of the Application for Federal Education Assistance (ED 424; revised January 12, 1999) the CFDA number—and suffix letter—of the competition under which you are submitting your application.

(4) If you submit your application through the Internet via the e-Grants Web site, you will receive an automatic acknowledgment when we receive your application.

*Application Instructions and Forms:*

The appendix to this application contains the following forms and instructions, including a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with section 427 of the General Education Provisions Act (GEPA), a checklist for applicants, and various assurances, certifications, and required documentation:

a. Estimated Burden Statement.
b. Application Instructions.
c. Checklist for Applicants.
d. List of Empowerment Zones and Enterprise Communities.
e. Application for Federal Education Assistance (ED 424) and Instructions.
f. Group Application Certification.
g. Budget Information—Non-Construction Programs (ED 524) and Instructions.
h. Student Data
i. Project Documentation
j. Program Assurances
k. Assurances—Non-Construction Programs (Standard Form 424B) and Instructions.
l. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and Instructions.
m. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014) and Instructions.
n. Disclosure of Lobbying Activities (Standard Form LLL) and Instructions. This document has been marked to reflect statutory changes. See the notice published in the **Federal Register** (61 FR 1413) by the Office of Management and Budget on January 19, 1996.
o. Notice to All Applicants (GEPA Requirement) and Instructions (OMB No. 1801–0004).

An applicant may submit information on a photostatic copy of the application forms, assurances, and certifications. However, if an application is submitted in conventional paper form, one copy of the application forms, assurances, and certifications must have an original signature.

All applicants submitting their applications in conventional paper form must submit ONE original signed application, including ink signatures on all forms and assurances, and TWO copies of the application. Please mark each application as original or copy. No grant may be awarded unless a complete application has been received.

**FOR FURTHER INFORMATION CONTACT:** Lorena Dickerson, Ana Garcia, or Sharon Saez, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5605, Switzer Building, Washington, DC 20202–6510. Telephone: Lorena Dickerson (202) 205–9044, Ana Garcia (202) 205–8077, Sharon Saez (202) 205–9157. E-mail: Lorena__Dickerson@ed.gov; Ana__Garcia@ed.gov; Sharon__Saez@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 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this notice in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph. Please note, however, that the Department is not able to reproduce in an alternate format the standard forms included in the notice.

## Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites: http://ocfo.ed.gov/fedreg.htm; http://www.ed.gov/news.html. To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the PDF, call the U.S. Government Printing Office, toll free, at 1–888–293–6498 or in the Washington, DC area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

**Program Authority:** 20 U.S.C. 7425.

Dated: February 3, 2000.

**Art Love,**

*Acting Director, Office of Bilingual Education and Minority Languages Affairs.*

## Appendix—Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB number. The valid OMB control number for this information collection is OMB No. 1885–0537 (Exp. 12/31/2001). The time required to complete this information collection is estimated to average 120 hours per response, including the time

to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to:* U.S. Department of Education, Washington, DC 20202–4651.

*If you have comments or concerns regarding the status of your individual submission of this form, write directly to:* Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5605, Switzer Building, Washington, DC 20202–6510.

**Application Instructions**

*Parity Guidelines Between Paper and Electronic Applications*

The Department of Education is conducting a limited pilot project that allows applicants to use an Internet-based electronic system for submitting applications under selected discretionary grant programs. This competition is among those that have an electronic submission option available to all applicants. The system, called e-GAPS (Electronic Grant Application Package System), allows an applicant to submit a grant application to the Department (us) electronically, using a current version of the applicant's Internet browser. To see e-GAPS visit the following address: *http://e-grants.ed.gov*

Because we want to ensure parity and a similar look between applications transmitted electronically and applications submitted in conventional paper form, e-GAPS has an impact on all applicants under this competition.

E-GAPS is a data-driven system; that is, e-GAPS users will be entering data on-line while completing their applications. This will be more interactive than just e-mailing a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will go into a database and ultimately will be accessible in electronic form to our reviewers.

However, this pilot project is only the first step in the Department's eventual transition to electronic applications for grants. The pilot project is designed to enable us to evaluate the experience of gathering application data on-line. We will assess the on-line review process separately; so, during this pilot project, we will ultimately review in hard copy all information that we receive.

To help ensure parity and a similar look between electronic and paper copies of grant applications, we are asking each applicant that submits a paper application to adhere voluntarily to the following guidelines:

- Use consistent font throughout your document, with no formatting of any kind (that is, no bolding, underlining, italics, or colored text).
- If you are preparing your application on a conventional typewriter, make sure that the pitch (characters per inch) of the font is consistent throughout your document, and do not use formatting of any kind (for example, underlining or italics).
- For the narrative component, your application should consist of the number and text of each selection criterion followed by the narrative. The text of the selection criterion, if included, does not count against any page or character count limitation. You should append charts, tables, graphs, and graphics of any kind after you have completed the text of the relevant section. We suggest that you begin these items on a separate sheet of paper and refer to them within the text.

*Example*

1. Please describe your project management plan.

Our project plan is composed of three major components: start-up, fulfillment, and closure. The flow of these components into the stated outcomes for this project is described below and presented in figure 3–1.

- Create all illustrations (including charts, tables, graphs, and pictures) in grayscale only.
- Place a page number at the bottom right of each page beginning with 1; and number your pages consecutively throughout your document.
- At the top right of each page, place the name of the applicant, the applicant's DUNS number (if available), and the CFDA number of the competition.

*Abstract*

The narrative section should be preceded by a one-page abstract that includes a short description of the population to be served by the project, project objectives, and planned project activities.

*Selection Criteria*

The narrative should address fully all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. Do not simply paraphrase the criteria. Do not include resumes or curriculum vitae for project personnel; provide position descriptions instead. Do not include bibliographies, letters of support, or appendices in your application.

*Empowerment Zone/Enterprise Community Priority*

Applicants that wish to be considered under the competitive priority for Empowerment Zones and Enterprise Communities, as specified in a previous section of this notice, should identify in Section D of the Project Documentation Form the applicable Empowerment Zone or Enterprise Community. The application narrative should describe the extent to which the proposed project will contribute to systemic educational reform in the particular Empowerment Zone or Enterprise Community and be an integral part of the Zone's or Community's comprehensive revitalization strategies. A list of areas that have been designated as Empowerment Zones and Enterprise Communities is provided at the end of this notice.

*Table of Contents*

The application should include a table of contents listing the various parts of the narrative in the order of the selection criteria. The table should include the page numbers where the parts of the narrative are found.

*Budget*

A separate budget summary and cost itemization must be provided on the Budget Information Form (ED 524) and in the itemized budget for each project year. Budget line items should be directly related to the activities proposed to achieve the goals and objectives of the project.

*Submission of Application to State Education Agency*

Section 7116(a)(2) of the authorizing statute (Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994, Pub. L. 103–382) requires all applicants except schools funded by the Bureau of Indian Affairs to submit a copy of their application to their State educational agency (SEA) for review and comment (20 U.S.C. 7426(a)(2)). Section 75.156 of the Education Department General Administrative Regulations (EDGAR) requires these applicants to submit their application to the SEA on or before the deadline date for submitting the application to the U.S. Department of Education. This section of EDGAR also requires applicants to attach to their application a copy of their letter requesting the SEA to comment on the application (34 CFR 75.156). A copy of this letter should be attached to the Project Documentation Form contained in this application package. Applicants That Do Not Submit a Copy of Their Application to Their State Educational Agency in Accordance with These Statutory and Regulatory Requirements Will Not be Considered for Funding.

*Final Application Preparation*

Use the Checklist for Applicants provided below to verify that your application is complete. If you submit your application in conventional paper form, provide three copies of the application, including one copy with an original signature on each form that requires the signature of the authorized representative. Do not use elaborate bindings, notebooks, or covers. If you mail your application, the application must be postmarked by the deadline date.

**Checklist for Applicants**

*Order of the Forms and Other Items for the Application*

1. Application for Federal Education Assistance Form (ED 424).
2. Group Application Certification Form (if applicable).
3. Budget Information Form (ED 524).
4. Itemized budget for each project year.
5. Student Data Form.
6. Project Documentation Form, including:

Section A—Copy of transmittal letter to SEA (if applicable);

Section B—Documentation of consultation with nonprofit private school officials (if applicable);

Section C—Appropriate box checked;

Section D—Empowerment Zone or Enterprise Community identified (if applicable).

7. Program Assurances Form.
8. Assurances—Non-Construction Programs Form (SF 424B).
9. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements Form (ED 80–0013).
10. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions Form (ED 80–0014) (if applicable).
11. Disclosure of Lobbying Activities Form (SF–LLL).
12. Notice to All Applicants (GEPA Requirement) (OMB No. 1801–0004).
13. One-page abstract.
14. Table of contents.
15. Application narrative.

*Transmittal of the Application*

1. By mail or hand delivery: one original and two copies of the application to the U.S. Department of Education Application Control Center; *or* by electronic transmission: software provided on the e-Grants Web site.
2. One copy to the appropriate State Educational Agency (if applicable).
3. One copy to the appropriate State Single Point of Contact (if applicable).

BILLING CODE 4000–01–P

# Application for Federal Education Assistance

Note: If available, please provide application package on diskette and specify the file format

**U.S. Department of Education**

Form Approved
OMB No. 1875-0106
Exp. 06/30/2001

## Applicant Information

**1.** Name and Address

Legal Name: _____

Address: _____

_____

_____ _____ _____ _____ - _____

City State County ZIP Code + 4

Organizational Unit

_____

**2.** Applicant's D-U-N-S Number: |__|__|__|__|__|__|__|__|__|

**3.** Applicant's T-I-N: |__|__|__|__|__|__|__|__|__|

**4.** Catalog of Federal Domestic Assistance #: **84._2|_9|_1|_R| →**

Title: **Bilingual Education: Systemwide Improvement Grants**

**5.** Project Director: _____

Address: _____

_____ _____ _____ _____

City State Zip code + 4

Tel. #: ( ) _____-_____ Fax #: ( )_____-_____

E-Mail Address: _____

**6.** Is the applicant delinquent on any Federal debt? ___Yes ____No
*If "Yes," attach an explanation.)*

**7.** Type of Applicant *(Enter appropriate letter in the box.)* |_____|

| | |
|---|---|
| A - State | H - Independent School District |
| B - County | I - Public College or University |
| C - Municipal | J - Private, Non-Profit College or University |
| D - Township | K - Indian Tribe |
| E - Interstate | L - Individual |
| F - Intermunicipal | M - Private, Profit-Making Organization |
| G - Special District | N - Other *(Specify):* _____ |

**8.** Novice Applicant ___Yes ____ No

## Application Information

**9.** Type of Submission:

| *-PreApplication* | *-Application* |
|---|---|
| ____Construction | ____Construction |
| ____ Non-Construction | _X__Non-Construction |

**10.** Is application subject to review by Executive Order 12372 process?

____ Yes *(Date made available to the Executive Order 12372 process for review):* ____/____/_____

____ No *(If "No," check appropriate box below.)*

____ Program is not covered by E.O. 12372.

____ Program has not been selected by State for review.

**11.** Proposed Project Dates: ____/____/_____ ____/____/_____

**Start Date:** **End Date:**

**12.** Are any research activities involving human subjects planned at any time during the proposed project period? ____Yes _____No

a. If "Yes," Exemption(s) #: b. Assurance of Compliance #:

_____ ***OR*** _____

c. IRB approval date: ____ Full IRB **or**

_____ ____ Expedited Review

**13.** Descriptive Title of Applicant's Project:

## Estimated Funding

| | | |
|---|---|---|
| **14a.** Federal | $ _____ | **.00** |
| **b.** Applicant | $ _____ | **.00** |
| **c.** State | $ _____ | **.00** |
| **d.** Local | $ _____ | **.00** |
| **e.** Other | $ _____ | **.00** |
| **f.** Program Income | $ _____ | **.00** |
| **g. TOTAL** | $ _____ | **.00** |

## Authorized Representative Information

**15.** To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

**a.** Typed Name of Authorized Representative

_____

**b.** Title: _____

**c.** Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____

**d.** E-Mail Address: _____

**e. Signature of Authorized Representative**

_____ Date: ___/____/_____

ED 424 (rev 1.12.99)

**Instructions for ED 424**

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intlduns.htm.**

3. **Tax Identification Number.** Enter the tax identification number as assigned by the Internal Revenue Service.

4. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

5. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

7. **Type of Applicant.** Enter the appropriate letter in the box provided.

8. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check **"No."**

9. **Type of Submission.** Self-explanatory.

10. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check **"No."**

11. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

12. **Human Subjects.** Check "Yes" or "No" If research activities involving human subjects are **not** planned **at any time** during the proposed project period, check **"No." The remaining parts of item 12 are then not applicable.**

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, **are** planned **at any time** during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If **all** the research activities are designated to be exempt under the regulations, enter, in item 12a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 12a, are appropriate. **Provide this narrative information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 12.**

    If **some or all** of the planned research activities involving human subjects are covered (nonexempt), skip item 12a and continue with the remaining parts of item 12, as noted below. In addition, follow the instructions in **"Protection of Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

    **If the applicant organization has an approved Multiple Project Assurance of Compliance** on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 12b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 12c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 12c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have** on file with GPOS or OPRR **an approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 12b and skip 12c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

13. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor.

Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate **only** the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

**15. Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 14e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

**Paperwork Burden Statement**

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725

## Protection of Human Subjects in Research (Attachment to ED 424)

### I. Instructions to Applicants about the Narrative Information that Must be Provided if Research Activities Involving Human Subjects are Planned.

If you marked item 12 on the application "Yes" and designated exemptions in 12a , **(all research activities are exempt),** provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below. The Narrative must be succinct. **Provide this information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If you marked "Yes" to item 12 on the face page, and designated no exemptions from the regulations **(some or all of the research activities are nonexempt),** address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an **"Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

### II. Information on Research Activities Involving Human Subjects

#### A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

**—Is it a research activity?**

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

**—Is it a human subject?**

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an

individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

**B. Exemptions.**

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of ***exemptions*** are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. ***If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.*** [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

***Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gov/humansub.htm.***

## GROUP APPLICATION CERTIFICATION

**NOTE:** This form must be completed by eligible parties applying as a group for a grant. This form must be accompanied by a group agreement that details the activities that each member of the group plans to perform under the grant.

(34 CFR 75.128(b)-(c)).

To the best of my knowledge and belief, all data in this application are true and correct. I agree to be bound to every statement and assurance made in this application.

| Authorized Representative | | | | | Name of Institution/ Organization |
|---|---|---|---|---|---|
| Typed Name | Title | Signature | Date Signed | Telephone Number (including Area Code) | |
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| U.S. DEPARTMENT OF EDUCATION<br>BUDGET INFORMATION<br>NON-CONSTRUCTION PROGRAMS | OMB Control Number *Draft*<br>Expiration Date: *Pending OMB Clearance* |
|---|---|
| Name of Institution/Organization | Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form. |

**SECTION A - BUDGET SUMMARY**
**U.S. DEPARTMENT OF EDUCATION FUNDS**

| Budget Categories | Project Year 1 (a) | Project Year 2 (b) | Project Year 3 (c) | Project Year 4 (d) | Project Year 5 (e) | Total (f) |
|---|---|---|---|---|---|---|
| 1. Personnel | | | | | | |
| 2. Fringe Benefits | | | | | | |
| 3. Travel | | | | | | |
| 4. Equipment | | | | | | |
| 5. Supplies | | | | | | |
| 6. Contractual | | | | | | |
| 7. Construction | | | | | | |
| 8. Other | | | | | | |
| 9. Total Direct Costs (lines 1-8) | | | | | | |
| 10. Indirect Costs | | | | | | |
| 11. Training Stipends | | | | | | |
| 12. Total Costs (lines 9-11) | | | | | | |

ED Form No. 524

| Name of Institution/Organization | Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form. |
|---|---|

**SECTION B - BUDGET SUMMARY**
**NON-FEDERAL FUNDS**

| Budget Categories | Project Year 1 (a) | Project Year 2 (b) | Project Year 3 (c) | Project Year 4 (d) | Project Year 5 (e) | Total (f) |
|---|---|---|---|---|---|---|
| 1. Personnel | | | | | | |
| 2. Fringe Benefits | | | | | | |
| 3. Travel | | | | | | |
| 4. Equipment | | | | | | |
| 5. Supplies | | | | | | |
| 6. Contractual | | | | | | |
| 7. Construction | | | | | | |
| 8. Other | | | | | | |
| 9. Total Direct Costs (lines 1-8) | | | | | | |
| 10. Indirect Costs | | | | | | |
| 11. Training Stipends | | | | | | |
| 12. Total Costs (lines 9-11) | | | | | | |

**SECTION C - OTHER BUDGET INFORMATION** (see instructions)

ED Form No. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

# INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

| STUDENT DATA | |
|---|---|
| Name of Local Educational Agency | |

**SECTION A**

**NOTE: This section must be completed by applicants under the following programs:**

- **Comprehensive School Grants**
- **Systemwide Improvement Grants**

| | |
|---|---|
| 1. Total number of limited English proficient (LEP) students in the school district | |
| 2. Total number of students in the school district | |
| 3. Percentage of LEP students (line 1 divided by line 2) | % |

**SECTION B**

**NOTE: This section must be completed by applicants under the following program:**

- **Comprehensive School Grants**

| Name of project school | (1) Total number of LEP students in the school | (2) Total number of students in the school | (3) % of LEP students (Column (1) divided by column (2)) |
|---|---|---|---|
| | | | % |
| | | | % |
| | | | % |
| | | | % |
| | | | % |
| | | | % |

BILLING CODE 4000-01-C

Name of Local Educational Agency _____

**STUDENT DATA**
(continued)

**SECTION C**

**NOTE: This section must be completed by applicants under the following programs:**

- **Comprehensive School Grants**
- **Systemwide Improvement Grants**

1. Circle the grade level(s) that will participate in the project: PreK K 1 2 3 4 5 6 7 8 9 10 11 12

2. Total number of language groups that will participate in the project. _____

3. List the five largest participating language groups and the approximate number of students in each group.

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

**Project Documentation**

**Note:** Submit the appropriate documents and information as specified below for the following programs: Comprehensive School Grants and Systemwide Improvement Grants.

*Section A*

A copy of applicant's transmittal letter requesting the appropriate State educational agency to comment on the application. This requirement does not apply to schools funded by the Bureau of Indian Affairs. (See 34 CFR 75.155 and 75.156 below.)

§ 75.155 Review procedure if State may comment on applications: Purpose of §§ 75.156–158.

If the authorizing statute for a program requires that a specific State agency be given an opportunity to comment on each application, the State and the applicant shall use the procedures in §§ 75.156–75.158 for that purpose.

(Authority: 20 U.S.C. 1221e–3(a)(1))

Cross-Reference: See 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities) for the regulations implementing the application review procedures that States may use under E.O. 12372.

(In addition to the requirement in § 75.155 for review by the State educational agency, the application is subject to review by State Executive Order 12372 process. Applicants must complete item 16 of the application face sheet (Standard Form 424, Application for Federal Assistance) by either (a) specifying the date when the application was made available to the State Single Point of Contact for review or (b) indicating that the program has not been selected by the State for review.)

§ 75.156 When an applicant under § 75.155 must submit its application to the State: proof of submission.

(a) Each applicant under a program covered by § 75.155 shall submit a copy of its application to the State on or before the deadline date for submitting its application to the Department.

(b) The applicant shall attach to its application a copy of its letter that requests the State to comment on the application.

(Authority: 20 U.S.C. 1221e–3(a)(1))

*Section B*

Evidence of compliance with the Federal requirements for participation of students enrolled in nonprofit private schools. (See section 7116(h)(2) of Public Law 103–382 and 34 CFR 75.119, 76.652, and 76.656 below.)

Sec. 7116. Applications.

''(2) in designing the program for which application is made, the needs of children in nonprofit private elementary and secondary schools have been taken into account through consultation with appropriate private school officials and, consistent with the number of such children enrolled in such schools in the area to be served whose educational needs are of the type and whose language and grade levels are of a similar type to those which the program is intended to address, after consultation with appropriate private school officials, provision has been made for the participation of such children on a basis comparable to that provided for public school children.''

(Authority: 20 U.S.C. 7426(h)(2))

§ 75.119 Information needed if private schools participate.

If a program requires that applicant to provide an opportunity for participation of students enrolled in private schools, the application must include the information required of subgrantees under 34 CFR 76.656.

(Approved by the Office of Management and Budget under control number 1880–0513)

(Authority: 20 U.S.C. 1221e–3(a)(1))

§ 76.652 Consultation with representatives of private school students.

(a) An applicant for a subgrant shall consult with appropriate representatives of students enrolled in private schools during all phases of the development and design of the project covered by the application, including consideration of:

(1) Which children will receive benefits under the project;

(2 ) How the children's needs will be identified;

(3) What benefits will be provided;

(4) How the benefits will be provided; and

(5) How the project will be evaluated.

(b) A subgrantee shall consult with appropriate representatives of students enrolled in private schools before the subgrantee makes any decision that affects the opportunities of those students to participate in the project.

(c) The applicant or subgrantee shall give the appropriate representatives a genuine opportunity to express their views regarding each matter subject to the consultation requirements in this section.

(Authority: 20 U.S.C. 1221e–3(a)(1))

§ 76.656 Information in an application for a subgrant.

An applicant for a subgrant shall include the following information in its application:

(a) A description of how the applicant will meet the Federal requirements for participation of students enrolled in private schools.

(b) The number of students enrolled in private schools who have been identified as eligible to benefit under the program.

(c) The number of students enrolled in private schools who will receive benefits under the program.

(d) The basis the applicant used to select the students.

(e) The manner and extent to which the applicant complied with § 76.652 (consultation).

(f) The places and times that the students will receive benefits under the program.

(g) The differences, if any, between the program benefits the applicant will provide to public and private school students, and the reasons for the differences.

(Authority: 20 U.S.C. 1221e–3(a)(1))

*Section C*

Check the appropriate box below:

- There are no eligible nonprofit private schools in the proposed service delivery area that wish to participate in the project ☐
- One or more eligible nonprofit private schools in the proposed service delivery area wish to participate in the project and are listed on the enclosed Student Data form ☐
- There are no eligible nonprofit private schools in the proposed service delivery area ☐

*Section D*

If applicable, identify on the *line at the right* the Empowerment Zone, Supplemental Empowerment Zone, or Enterprise Community that the proposed project will serve. (See the competitive priority and the list of designated Empowerment Zones and Enterprise Communities in previous sections of this application package.)

BILLING CODE 4000–01–P

## PROGRAM ASSURANCES

NOTE: **The authorizing statute requires applicants under certain programs to provide assurances. This form must be completed for applications under the following programs:**

- **Comprehensive School Grants**
- **Systemwide Improvement Grants**

As the duly authorized representative of the applicant, I certify that the applicant:

- Will not reduce the level of State and local funds that the applicant expends for bilingual education or special alternative instructional programs if the applicant is awarded a grant under the program.
- Will employ in the proposed project teachers who are proficient in English, including written and oral communication skills.
- Will integrate the proposed project with the applicant's overall educational program.
- Has developed this application in consultation with an advisory council, the majority of whose members are parents and other representatives of the children and youth to be served in the proposed project.

(Authority: 20 U.S.C. 7426(g))

| Authorized Representative | | Applicant Organization |
|---|---|---|
| Signature | Title | |
| Typed Name | Date Signed | |

OMB Approval No. 0348-0040

## ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**NOTE:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

| SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL | TITLE |
|---|---|
| APPLICANT ORGANIZATION | DATE SUBMITTED |

**Standard Form 424B (Rev. 7-97) Back**

## CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

### 1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

### 2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

### 3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

**DRUG-FREE WORKPLACE**
**(GRANTEES WHO ARE INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

| NAME OF APPLICANT | PR/AWARD NUMBER AND / OR PROJECT NAME |
|---|---|
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE | |
| SIGNATURE | DATE |

ED 80-0013 12/98

## Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

**Instructions for Certification**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification**

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

| NAME OF APPLICANT | PR/AWARD NUMBER AND/OR PROJECT NAME |
|---|---|
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE | |
| SIGNATURE | DATE |

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

## DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

| 1. Type of Federal Action: | 2. Status of Federal Action: | 3. Report Type: |
|---|---|---|
| ☐ a. contract<br>b. grant<br>c. cooperative agreement<br>d. loan<br>e. loan guarantee<br>f. loan insurance | ☐ a. bid/offer/application<br>b. initial award<br>c. post-award | ☐ a. initial filing<br>b. material change<br>**For Material Change Only:**<br>year _____ quarter _____<br>date of last report _____ |

| 4. Name and Address of Reporting Entity: | 5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime: |
|---|---|
| ☐ Prime ☐ Subawardee<br>Tier _____, *if known*:<br><br>**Congressional District**, *if known*: | <br><br>**Congressional District**, *if known*: |
| **6. Federal Department/Agency:** | **7. Federal Program Name/Description:**<br><br>CFDA Number, *if applicable*: _____ |
| **8. Federal Action Number**, *if known*: | **9. Award Amount**, *if known*:<br>$ |
| **10. a. Name and Address of Lobbying Registrant**<br>(*if individual, last name, first name, MI*): | **b. Individuals Performing Services** (*including address if different from No. 10a*)<br>(*last name, first name, MI*): |
| **11.** Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure. | Signature: _____<br>Print Name: _____<br>Title: _____<br>Telephone No.: _____ Date: _____ |
| **Federal Use Only:** | Authorized for Local Reproduction<br>Standard Form LLL (Rev. 7-97) |

## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

BILLING CODE 4000-01-C

**Notice To All Applicants**

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103–382).

*To Whom Does This Provision Apply?*

Section 427 of GEPA affects applicants for new grant awards under this program. ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

*What Does This Provision Require?*

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: Gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc., from such access or participation in the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

*What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?*

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct ''outreach'' efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time and estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

**State Single Point of Contact**

(As of April 22, 1999)

**Note:** In accordance with Executive Order 12372, Intergovernmental Review of Federal Programs, this listing represents the designated State Single Points of Contact (SSPOCs). Because participation is voluntary, some States and Territories no longer participate in the process. These include: Alabama, Alaska, American Samoa, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, and Washington.

The jurisdictions not listed no longer participate in the process. However, an applicant is still eligible to apply for a grant or grants even if its respective State, Territory, Commonwealth, etc. does not have a SSPOC.

ARIZONA

Ms. Joni Saad, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone: (602) 280–1315, FAX: (602) 280–8144, jonis@ep.state.az.us

ARKANSAS

Mr. Tracy L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, 1515 W. 7th St., Room 412, Little Rock, Arkansas 72203, Telephone: (501) 682–1074, FAX: (501) 682–5206, tlcopeland@dfa.state.ar.us

CALIFORNIA

Grants Coordination, State Clearinghouse, Office of Planning and Research, 1400 10th Street, Room 121, Sacramento, California 95814, Telephone: (916) 445–0613, FAX: (916) 323–3018, No e-mail address

DELAWARE

Executive Department, Office of the Budget, 540 S. Dupont Highway, Suite 5, Dover, Delaware 19901, Telephone: (302) 739–3326, FAX: (302) 739–5661, No e-mail address

DISTRICT OF COLUMBIA

Mr. Charles Nichols, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street, N.W.—Suite 1200, Washington, D.C. 20005, Telephone: (202) 727–1700 (direct), (202) 727–6537 (secretary), FAX: (202) 727–1617, No e-mail address

FLORIDA

Florida State Clearinghouse, Department of Community Affairs, 2555 Shumard Oak Blvd., Tallahassee, Florida 32399–2100, Telephone: (850) 922–5438, FAX: (850) 414–0479, Contact: Ms. Cherie Trainor, (850) 414–5495, cherie.trainor@dca.state.fl.us

GEORGIA

Ms. Deborah Stephens, Coordinator, Georgia State Clearinghouse, 270 Washington Street, S.W.—8th Floor, Atlanta, Georgia 30334, Telephone: (404) 656–7901, ssda@mail.opb.state.ga.us

ILLINOIS

Ms. Virginia Bova, Single Point of Contact, Illinois Department of Commerce and Community Affairs, James R. Thompson Center, 100 West Randolph, Suite 3–400, Chicago, IL 60601, Telephone: (312) 814–6028, FAX: (312) 814–1800

INDIANA

Ms. Allison Becker, State Budget Agency, 212 State House, Indianapolis, Indiana 46204–2796, Telephone: (317) 232–7221 (direct line), FAX: (317) 233–3323, No e-mail address

IOWA

Mr. Steven R. McCann, Division for Community Assistance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone: (515) 242–4719, FAX: (515) 242–4809, steve.mccann.@ided.state.ia.us

KENTUCKY

Mr. Kevin J. Goldsmith, Director, Sandra Brewer, Executive Secretary, Intergovernmental Affairs, Office of the Governor, 700 Capitol Avenue, Frankfort, Kentucky 40601, Telephone: (502) 564–2611, FAX: (502) 564–0437, kgoldmkgosmith@mail.state.ky.us, sbrewer@mail.state.ky.us

MAINE

Ms. Joyce Benson, State Planning Office, 184 State Street, 38 State House Station, Augusta, Maine 04333, Telephone: (207) 287–h3261, FAX: (207) 287–6489, joyce.benson@state.me.us

MARYLAND

Ms. Linda Janey, Manager, Plan & Project Review, Maryland Office of Planning, 301 W. Preston Street—Room 1104, Baltimore, Maryland 21201–2365, Telephone: (410) 767–4490, FAX: (410) 767–4480, linda@mail.op.state.md.us

MICHIGAN

Mr. Richard Pfaff, Southeast Michigan Council of Governments, 660 Plaza Drive—Suite 1900, Detroit, Michigan 48226, Telephone: (313) 961–4266, FAX: (313) 961–4869, pfaf@semcog.org

MISSISSIPPI

Ms. Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, 550 High Street, 303 Walters Sillers Building, Jackson, Mississippi 39201–3087, Telephone: (601) 359–6762, FAX: (601) 359–6758, No e-mail address

MISSOURI

Ms. Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Jefferson Building, Room 915, Jefferson City, Missouri 65102, Telephone: (573) 751–4834, FAX: (573) 522–4395, pohll__@mail.oa.state.mo.us

NEVADA

Department of Administration, State Clearinghouse, 209 E. Musser Street, Room 200, Carson City, Nevada 89710, Telephone: (702) 684–0222, FAX: (702) 684–0260, Contact; Ms. Heather Elliot, (702) 684–0209, helliot@govmail.state.nv.us

NEW HAMPSHIRE

Mr. Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process, Mr. Mike Blake, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone: (603) 271–4991, FAX: (603) 271–1728, No e-mail address

NEW MEXICO

Mr. Nick Mandell, Local Government Division, Room 201 Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone: (505) 827–4991, FAX: (505) 827–4984, No e-mail address

NEW YORK

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone: (518) 474–1605, Fax: (518) 486–1217, No e-mail address

NORTH CAROLINA

Ms. Jeannette Furney, North Carolina Department of Administration, 116 West Jones Street—Suite 5106, Raleigh, North Carolina 27603–8003, Telephone: (919) 733–7232, FAX: (919) 733–9571, jeannette__furney@mail. doa. state.nc.us

NORTH DAKOTA

North Dakota Single Point of Contact, Office of Intergovernmental Assistance, 600 East Boulevard Avenue Department105, Bismarck, North Dakota 58505–0170, Telephone: (701) 328–2094, FAX: (701) 328–2308, No e-mail address

RHODE ISLAND

Mr. Kevin Nelson, Review Coordinator, Department of Administration, Division of Planning, One Capitol Hill, 4th Floor, Providence, Rhode Island 02908–5870, Telephone: (401) 222–1220 (secretary), FAZ: (401) 222–2093 (direct), knelson@planning.state.ri.us

SOUTH CAROLINA

Ms. Omeagia Burgess, State Single Point of Contact, Budget and Control Board, Office of State Budget, 1122 Ladies Street—12th floor, Columbia, South Carolina 29201, Telephone: (803) 734–0494, FAX: (803) 734–0645, No e-mail address

TEXAS

Mr. Tom Adams, Governors Office, Director, Intergovernmental Coordination P.O. Box 12428, Austin, Texas 78711, Telephone: (512) 463–1771, FAX: (512) 936–2681, tadams@governor.state.tx.us

UTAH

Ms. Carolyn Wright, Utah State Clearinghouse, Office of Planning and Budget, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone: (801) 538–1535 (direct), FAX: (801) 538–1547, cwright@state.ut.us

WEST VIRGINIA

Mr. Fred Cutlip, Director, Community Development Division, W. Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone: (304) 558–4010, FAX: (304) 558–3248, fcutlip@wvdo.org

WISCONSIN

Mr. Jeff Smith, Section Chief, Federal/State Relations, Wisconsin Department of Administration, 101 East Wilson Street—6th Floor, P.O. Box 7868, Madison, Wisconsin 53707, Telephone: (608) 267–6931, FAX: (608) 267–6931, sjt@doa.state.wi.us

WYOMING

Ms. Sandy Ross, State Single Point of Contact, Department of

Administration and Information, 2001 Capitol Avenue, Room 214, Cheyenne, WY 82002, Telephone: (307) 777–5492, FAX: (307) 777–3696, sross1@missc.state.wy.us

*TERRITORIES*

GUAM*

Mr. Joseph Rivera, Acting Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96932, Telephone: (671) 475–9411 or 9412, FAX: (671) 472–2825

PUERTO RICO

Ms. Elsa Luis, Director, Federal Proposals Division, 1100 17th Street, N.W., Suite 800, Washington, D.C. 20036, Telephone: (202) 778–0750, FAX: (202) 530–5559

NORTH MARIANA ISLANDS

Mr. Alvaro A. Santos, Executive Officer, Office of Management and Budget, Office of the Governor, Saipan, MP 96950, Telephone: (670) 664–2256, FAX: (670) 664–2272; *Contact Person:* Ms. Jacoba T. Seman, Federal Programs Coordinator, Telephone: (670) 664–2289, FAX: (670) 664–2272

VIRGIN ISLANDS*

Nellon Bowry, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802; *Please direct all questions and correspondence about intergovernmental review to: Linda Clarke,* Telephone: (809) 774–0750, FAX: (809) 776–0069

**Note:** This list is based on the most current information provided by the States. Information on any changes or apparent errors should be provided to Sherron Duncan at the Office of Management and Budget (202) 395–3914 and to the State in question. Changes to the list will only be made upon formal notification by the State. The list is updated every six months and is also published biannually in the Catalog of Federal Domestic Assistance. The last changes made were to Delaware, Indiana, Missouri, New Mexico, Puerto Rico, Rhode Island, Utah, and Wisconsin.

*Guam and the Virgin Islands are not confirmed.

**Empowerment Zones and Enterprise Communities**

(As of January 13, 1999)

*Empowerment Zones*

California: Los Angeles, Oakland, Santa Ana, Riverside County*
Connecticut: New Haven +
Florida: Miami +
Georgia: Atlanta, Cordele* +
Illinois: Chicago, East St. Louis +, Ullin*
Indiana: Gary, East Chicago
Kentucky: Kentucky Highlands* (Clinton, Jackson, and Wayne Counties)
Maryland: Baltimore
Massachusetts: Boston +
Michigan: Detroit
Minnesota: Minneapolis +
Mississippi: Mid-Delta* (Bolivar, Holmes, Humphreys, LeFlore, Sunflower, Washington Counties)
Missouri/Kansas: Kansas City, Kansas City
Missouri: St. Louis +
New Jersey: Cumberland County
New York: Harlem, Bronx
North Dakota: Lake Agassiz*
Ohio: Cleveland, Cincinnati, Columbus +
Ohio/West Virginia: Ironton/Huntington +
Pennsylvania/New Jersey: Philadelphia/Camden
South Carolina: Columbia/Sumter
South Dakota: Oglala Sioux Reservation in Pine Ridge*
Tennessee: Knoxville
Texas: Houston, El Paso +, Rio Grande Valley* (Cameron, Hidalgo, Starr, and Willacy Counties)
Virginia: Norfolk +/Portsmouth

*Enterprise Communities*

Alabama: Birmingham
Alabama: Chambers County*, Green County*, Sumter County*
Alaska: Juneau*
Arizona: Arizona Border* (Cochise, Santa Cruz and Yuma Counties), Phoenix, Window Rock*
Arkansas: East Central* (Cross, Lee, Monroe, and St. Francis Counties), Mississippi County*, Pulaski County
California: Imperial County*, Los Angeles, Huntington Park, San Diego, San Francisco, Bayview, Hunter's Point, Watsonville*, Orange Cove*
Colorado: Denver
Connecticut: Bridgeport, New Haven
Delaware: Wilmington
District of Columbia: Washington
Florida: Jackson County*, Miami, Dade County, Tampa, Immokalee*
Georgia: Albany, Central Savannah River* (Burke, Hancock, Jefferson, McDuffie, Tallafero, and Warren Counties), Crisp County*, Dooley County*
Hawaii: Kaunakakai*
Illinois: East St. Louis, Springfield
Indiana: Indianapolis, Austin*
Iowa: Des Moines
Kansas: Leoti*
Kentucky: Louisville, Bowling Green*
Louisiana: Macon Ridge* (Catahoula, Concordia, Franklin, Morehouse, and Tensas Parishes), New Orleans, Northeast Louisiana Delta* (Madison parish), Ouachita Parish
Maine: Lewiston*
Massachusetts: Lowell, Springfield
Michigan: Five Cap*, Flint, Muskegon, Harrison*
Minnesota: Minneapolis, St. Paul
Mississippi: Jackson, North Delta Area* (Panola, Quitman, and Tallahatchie Counties)
Missouri: East Prairie*, St. Louis
Montana: Poplar*
Nebraska: Omaha
Nevada: Clarke County, Las Vegas
New Hampshire: Manchester
New Jersey: Newark
New Mexico: Albuquerque, La Jicarita* (Mora, Rio Arriba, Taos Counties), Deming*
New York: Albany, Schenectady, Troy
New York: Buffalo, Rochester
New York: Newburgh, Kingston
North Carolina: Charlotte
North Carolina: Edgecombe, Halifax, Robeson, Wilson Counties*
Ohio: Akron, Columbus, Greater Portsmouth* (Scioto County)
Oklahoma: Choctaw, McCurtain Counties*, Oklahoma City, Ada*
Oregon: Josephine County*, Portland
Pennsylvania: Harrisburg, Lock Haven*, Pittsburgh, Uniontown*
Rhode Island: Providence
South Carolina: Charleston, Williamsburg, Florence County*, Hallandale*
South Dakota: Beadle, Spink Counties*
Tennessee: Fayette, Haywood Counties*, Memphis, Nashville, Rutledge*
Tennessee/Kentucky: Scott, McCreary Counties*
Texas: Dallas, El Paso, San Antonio, Waco, Uvalde*
Utah: Ogden
Vermont: Burlington
Virginia: Accomack (Northampton County)*, Norfolk
Washington: Lower Yakima County*, Seattle, Tacoma, Collie*
West Virginia: Charleston*, Huntington, McDowell County*, West Central Appalachia* (Braxton, Clay, Fayette, Nicholas, and Roane)
Wisconsin: Milwaukee, Keshena*

*Denotes rural designee.
+Also an Enterprise Community, Round One.

For further information consult the following Internet site: http://www.ezec.gov.

[FR Doc. 00–2813 Filed 2–7–00; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Tuesday,
February 8, 2000

Part IV

# Department of Education

**Office of Elementary and Secondary Education—Public Charter Schools Program; Inviting Applications for New Awards for Fiscal Year 2000; Notice**

## DEPARTMENT OF EDUCATION

**[CFDA No.: 84.282A]**

### Office of Elementary and Secondary Education—Public Charter Schools Program (PCSP); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000

*Purpose of Program:* The purpose of the PCSP is to expand the number of high-quality charter schools available to students across the Nation by providing financial assistance for the planning, program design, and initial implementation of charter schools; evaluating the effects of charter schools; and disseminating information about charter schools and successful practices in charter schools.

*Who May Apply:* (a) State educational agencies (SEAs) in States with a specific State statute authorizing the establishment of charter schools. The Secretary awards grants to SEAs to enable them to conduct charter school programs in their States. SEAs use their PCSP funds to award subgrants to ''eligible applicants,'' as defined in this notice, for planning, program design, and initial implementation of a charter school; and to support the dissemination of information about, and successful practices in, charter schools. A charter school may apply for funds to carry out dissemination activities, whether or not the charter school has applied for or received funds under the PCSP for planning or implementation, if the charter school has been in operation for at least 3 consecutive years and has demonstrated overall success, including–

(1) Substantial progress in improving student achievement;

(2) High levels of parent satisfaction; and

(3) The management and leadership necessary to overcome initial start-up problems and establish a thriving, financially viable charter school.

(b) An authorized public chartering agency in partnership with a charter school developer is eligible to receive funding directly from the U.S. Department of Education (Department) if the SEA in the State elects not to participate in the PSCP or does not have an application approved under the program. If an SEA's application is approved in this competition, applications received from non-SEA eligible applicants in that State will be returned to the applicants. In such a case, the non-SEA eligible applicant should contact the SEA for information related to its subgrant competition.

**Note:** The following States currently have approved applications under this program: Alaska, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, Puerto Rico, Texas, Utah, Virginia, and Wisconsin. In these States, only the SEA is eligible to receive an award under this competition. Non-SEA eligible applicants in these States should contact their respective SEAs for information about participation in the State's charter school subgrant program. Non-SEA eligible applicants in States that are not listed above must apply directly to the Department on or before the DEADLINE FOR RECEIPT OF APPLICATIONS in order to be considered for funding in this competition.

*Deadline for Receipt of Applications:* March 22, 2000

**Note:** We must receive all applications on or before this date. This requirement takes exception to the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.102. Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, this exception to EDGAR makes procedural changes only and does not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Assistant Secretary for Elementary and Secondary Education has determined that proposed rulemaking is not required.

*Deadline for Intergovernmental Review:* April 21, 2000.

*Applications Available:* February 8, 2000.

*Estimated Available Funds:* $24,000,000.

*Estimated Range of Awards:*

State educational agencies: $500,000–$5,000,000 per year.

Other eligible applicants: $25,000–$150,000 per year.

*Estimated Average Size of Awards:*

State educational agencies: $3,000,000 per year.

Other eligible applicants: $100,000 per year.

*Estimated Number of Awards:*

State educational agencies: 3–5.

Other eligible applicants: 30–50.

**Note:** These estimates are projections for the guidance of potential applicants. The Department is not bound by any estimates in this notice.

*Project Period*

State educational agencies: Up to 36 months.

Other eligible applicants: Up to 36 months.

**Note:** Grants awarded by the Secretary directly to non-SEA eligible applicants or subgrants awarded by SEAs to eligible applicants will be awarded for a period of up to 36 months, of which the eligible applicant may use—

(a) Not more than 18 months for planning and program design;

(b) Not more than two years for the initial implementation of a charter school; and

(c) Not more than two years to carry out dissemination activities.

*Applicable Regulations and Statute:* The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75 (except § 75.210), 77, 79, 80, 81, 82, 85, 86, and 99. Title X, Part C, Elementary and Secondary Education Act of 1965 (ESEA), *as amended,* 20 U.S.C. 8061–8067.

**SUPPLEMENTARY INFORMATION:** As part of wider education reform efforts to strengthen teaching and learning, charter schools can be an innovative approach to improving public education and expanding public school choice. While there is no one model, public charter schools are exempted from most statutory and regulatory requirements in exchange for performance-based accountability. They are intended to stimulate the creativity and commitment of teachers, parents, students, and citizens and contribute to better student academic achievement.

Congress reauthorized the PCSP in October 1998, by enacting the Charter School Expansion Act of 1998 (Act). Under the new legislation, SEA applicants for funding are required to include in their applications descriptions of how the SEA will (a) inform each charter school in the State about Federal funds the charter school is eligible to receive and Federal programs in which the charter school may participate; (b) ensure that each charter school in the State receives the charter school's commensurate share of Federal education funds that are allocated by formula each year, including during the charter school's first year of operation; and (c) disseminate best or promising practices of charter schools to LEAs in the State. The new legislation also added a requirement that SEA applicants as well as non-SEA eligible applicants include in their applications descriptions of how charter schools that are considered to be LEAs under State law and LEAs in which a charter school is located will comply with sections 613(a)(5) and 613(e)(1)(B) of the Individuals with Disabilities Education Act. Additional information regarding the required contents of applications, diversity of projects, and waivers are provided in the application package for this program.

The following definitions, selection criteria, priority criteria, amount criteria, authorized uses of funds for

dissemination activities, and allowable activities are taken from the Public Charter Schools Program authorizing statute, in Title X, Part C of the ESEA, as amended by the Act. They are being repeated in this application notice for the convenience of the applicant.

**Definitions**

The following definitions apply to this program:

(a) *Charter school* means a public school that—

(1) In accordance with a specific State statute authorizing the granting of charters to schools, is exempted from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements of this definition;

(2) Is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;

(3) Operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the authorized public chartering agency;

(4) Provides a program of elementary or secondary education, or both;

(5) Is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;

(6) Does not charge tuition;

(7) Complies with the Age Discrimination Act of 1975, title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and part B of the Individuals With Disabilities Education Act;

(8) Is a school to which parents choose to send their children, and that admits students on the basis of a lottery, if more students apply for admission than can be accommodated;

(9) Agrees to comply with the same Federal and State audit requirements as do other elementary and secondary schools in the State, unless the requirements are specifically waived for the purposes of this program;

(10) Meets all applicable Federal, State, and local health and safety requirements;

(11) Operates in accordance with State law; and

(12) Has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school.

(b) *Developer* means an individual or group of individuals (including a public or private nonprofit organization), which may include teachers, administrators and other school staff, parents, or other members of the local community in which a charter school project will be carried out.

(c) *Eligible applicant* means an authorized public chartering agency participating in a partnership with a developer to establish a charter school in accordance with this program.

(d) *Authorized public chartering agency* means a State educational agency, local educational agency, or other public entity that has the authority under State law and is approved by the Secretary to authorize or approve a charter school.

**Selection Criteria for SEAs**

The maximum possible score for all of the criteria in this section is 140 points. The maximum possible score for each criterion is indicated in parentheses following each criterion. In evaluating an application from an SEA, the Secretary considers the following criteria:

(a) The contribution that the charter schools grant program will make in assisting educationally disadvantaged and other students to achieve State content standards, State student performance standards, and, in general, a State's education improvement plan (20 points).

(b) The degree of flexibility afforded by the SEA to charter schools under the State's charter schools law (20 points).

(c) The ambitiousness of the objectives for the State charter school grant program (20 points).

(d) The quality of the strategy for assessing achievement of those objectives (20 points).

(e) The likelihood that the charter schools grant program will meet those objectives and improve educational results for students (20 points).

(f) The number of high quality charter schools created under this part in the State (20 points).

(g) In the case of State educational agencies that propose to use grant funds to support dissemination activities under section 10302(c)(2)(C) of the ESEA, the quality of those activities and the likelihood that those activities will improve student achievement (20 points).

**Selection Criteria for Non-SEA Eligible Applicants**

The maximum possible score for all of the criteria in this section is 140 points. The maximum possible score for each criterion is indicated in parentheses following each criterion. In evaluating an application from an eligible applicant other than an SEA the Secretary considers the following criteria:

(a) The quality of the proposed curriculum and instructional practices (20 points).

(b) The degree of flexibility afforded by the SEA and, if applicable, the local educational agency to the charter school (20 points).

(c) The extent of community support for the application (20 points).

(d) The ambitiousness of the objectives for the charter school (20 points).

(e) The quality of the strategy for assessing achievement of those objectives (20 points).

(f) The likelihood that the charter school will meet those objectives and improve educational results for students (20 points).

(g) In the case of an eligible applicant that proposes to use grant funds to support dissemination activities under section 10302(c)(2)(C) of the ESEA, the quality of those activities and the likelihood that those activities will improve student achievement (20 points).

**Priority Criteria**

In awarding grants for FYs 1999, 2000, and 2001 from funds appropriated under section 10311 of the ESEA that are in excess of $51 million for the FY, the Secretary gives priority under this competition to States to the extent that the State meets the criterion described in paragraph (a) below, and one or more of the criteria described in paragraphs (b) through (d) below (20 points).

(a) The State provides for periodic review and evaluation by the authorized public chartering agency of each charter school, at least once every 5 years unless required more frequently by State law, to determine whether the charter school is meeting the terms of the school's charter, and is meeting or exceeding the academic performance requirements and goals for charter schools as set forth under State law or the school's charter.

(b) The State has demonstrated progress, in increasing the number of high quality charter schools that are held accountable in the terms of the schools' charters for meeting clear and measurable objectives for the

educational progress of the students attending the schools, in the period prior to the period for which a State educational agency or eligible applicant applies for a grant under this competition.

(c) The State—

(1) Provides for one authorized public chartering agency that is not a local educational agency, such as a State chartering board, for each individual or entity seeking to operate a charter school pursuant to such State law; or

(2) In the case of a State in which local educational agencies are the only authorized public chartering agencies, allows for an appeals process for the denial of an application for a charter school.

(d) The State ensures that each charter school has a high degree of autonomy over the charter school's budgets and expenditures.

**Amount Criteria**

In determining the amount of a grant to be awarded under this competition to a State educational agency, the Secretary shall take into consideration the number of charter schools that are operating or approved to open in the State.

**Allowable Activities**

An eligible applicant receiving a grant or subgrant under this program may use the grant or subgrant funds for only—

(a) Post-award planning and design of the educational program, which may include—

(1) Refinement of the desired educational results and of the methods for measuring progress toward achieving those results; and

(2) Professional development of teachers and other staff who will work in the charter school; and

(b) Initial implementation of the charter school, which may include—

(1) Informing the community about the school;

(2) Acquiring necessary equipment and educational materials and supplies;

(3) Acquiring or developing curriculum materials; and

(4) Other initial operating costs that cannot be met from State or local sources.

**Use of Funds for Dissemination Activities**

A State educational agency may reserve not more than 10 percent of the grant funds to support dissemination activities. A charter school may use such funds to assist other schools in adapting the charter school's program (or certain aspects of the charter school's program), or to disseminate information about the charter school, through such activities as—

(a) Assisting other individuals with the planning and startup of one or more new public schools, including charter schools, that are independent of the assisting charter school and the assisting charter school's developers, and that agree to be held to at least as high a level of accountability as the assisting charter school;

(b) Developing partnerships with other public schools, including charter schools, designed to improve student performance in each of the schools participating in the partnership;

(c) Developing curriculum materials, assessments, and other materials that promote increased student achievement and are based on successful practices within the assisting charter school; and

(d) Conducting evaluations and developing materials that document the successful practices of the assisting charter school and that are designed to improve student achievement.

**FOR APPLICATIONS OR INFORMATION CONTACT:** Donna M. Hoblit, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3C148, Washington, D.C. 20202–6140. Telephone (202) 205–9178. Internet address: Donna__Hoblit@ed.gov

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**Program Authority:** 20 U.S.C. 8061–8067.

Dated: February 4, 2000.

**Michael Cohen,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 00–2919 Filed 2–7–00; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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A Cumulative List of Public Laws for the first session of the 106th Congress will be published in the **Federal Register** on December 30, 1999.

**Last List December 21, 1999**