



# Federal Register

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# Rules and Regulations

Federal Register

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

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 98-SW-65-AD; Amendment 39-11563; AD 2000-03-06]

RIN 2120-AA64

#### Airworthiness Directives; Eurocopter France Model SE 3130, SA 3180, SE 313B, SA 318B, and SA 318C Helicopters

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

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to Eurocopter France Model SE 3130, SA 3180, SE 313B, SA 318B, and SA 318C helicopters, that currently requires visual inspections and modification, if necessary, of the horizontal stabilizer spar tube (spar tube). This amendment requires the same actions required by the existing AD, visually inspecting the four half-shell attachment clamps for cracks, and fitting a safety wire around the attachment clamps. This amendment is prompted by an in-service report of fatigue cracks that initiated from corrosion pits. The actions specified by this AD are intended to prevent fatigue failure of the spar tube, separation of the horizontal stabilizer and impact with the main or tail rotor, and subsequent loss of control of the helicopter.

**DATES:** Effective March 21, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 21, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas

75053-4005, telephone (972) 641-3460, fax (972) 641-3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:**

Richard Monschke, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222-5116, fax (817) 222-5961.

**SUPPLEMENTARY INFORMATION:**

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98-12-20, Amendment 39-10574 (63 FR 31350, June 9, 1998), which is applicable to Eurocopter France Model SE 3130, SA 3180, SE 313B, SA 318B, and SA 318C helicopters, was published in the *Federal Register* on November 18, 1999 (64 FR 62988). That action proposed to require visually inspecting and modifying, if necessary, the spar tube, visually inspecting the four half-shell attachment clamps for cracks, and fitting a safety wire around the attachment clamps.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 14 helicopters of U.S. registry will be affected by this AD. It will take approximately 0.5 work hour per helicopter to accomplish the inspection, 3 work hours per helicopter to accomplish the modification, and 1 work hour per helicopter to accomplish the attachment clamp inspection and install the safety wire. Required parts will cost approximately \$1,100 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$19,180.

The regulations adopted herein 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. Therefore, it is determined that this final rule does not

have federalism implications under Executive Order 13132.

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

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

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

#### Adoption of the Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-10574 (63 FR 31350, June 9, 1998), and by adding a new airworthiness directive (AD), Amendment 39-11563, to read as follows:

#### AD 2000-03-06 Eurocopter France:

Amendment 39-11563. Docket No. 98-SW-65-AD. Supersedes AD 98-12-20, Amendment 39-10574, Docket No. 98-SW-03-AD.

**Applicability:** Model SE 3130, SA 3180, SE 313B, SA 318B, and SA 318C helicopters with horizontal stabilizer, part number (P/N) 3130-35-60-000, 3130-35-60-000-1, 3130-35-60-000-2, 3130-35-60-000-3, 3130-35-60-000-4 or higher dash numbers, installed, certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this

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

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

To prevent fatigue failure of the horizontal stabilizer spar tube (spar tube), separation of the horizontal stabilizer and impact with the main or tail rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight:

(1) Inspect the aircraft records and the horizontal stabilizer to determine whether Modification 072214 (installing the spar tube without play) or Modification 072215 (adding two half-shells on the spar) has been accomplished.

(2) If Modification 072214 has not been installed, comply with paragraphs 2.A., 2.B.1), 2.B.2)a), and 2.B.2)b) of the Accomplishment Instructions of Eurocopter France SA3130/3180 Service Bulletin No. 55.10, Revision 3, dated May 4, 1998 (SB). If the fit and dimensions of the components specified in paragraph 2.B.2)a) exceed the tolerances in the applicable structural repair manual, replace with airworthy parts.

(3) If Modification 072215 has not been installed, first comply with paragraphs 2.A., 2.B.1), and 2.B.3), and then comply with paragraph 2.B.2)c) of the Accomplishment Instructions of the SB.

**Note 2:** Modification kit P/N 315A-07-0221571 contains the necessary materials to accomplish this modification.

(b) Before the first flight of each day:

(1) Visually inspect the installation of the half-shells, the horizontal stabilizer supports, and the horizontal stabilizer for corrosion or cracks. Repair any corroded parts in accordance with the applicable maintenance manual. Replace any cracked components with airworthy parts before further flight.

(2) Confirm that there is no play in the horizontal stabilizer supports by lightly shaking the horizontal stabilizer. If play is detected, comply with paragraphs 2.A. and 2.B.2)a) of the SB. If the fit and dimensions of the components specified in paragraph 2.B.2)a) exceed the tolerances in the applicable structural repair manual, replace with airworthy parts before further flight.

(c) At intervals not to exceed 400 hours time-in-service (TIS) or four calendar months, whichever occurs first, inspect and lubricate the spar tube attachment bolts.

(d) For stabilizers, P/N 3130-35-60-000, 3130-35-60-000-1, 3130-35-60-000-2, or 3130-35-60-000-3, within 90 days and thereafter at intervals not to exceed 18 calendar months, visually inspect the inside of the horizontal spar tube in accordance with paragraph 2.A. and 2.B.1) of the SB.

(1) If corrosion is found inside the tube, other than in the half-shell area, replace the tube with an airworthy tube within the next

500 hours TIS or 24 calendar months, whichever occurs first.

(2) If corrosion is found inside the tube in the half-shell area, apply a protective treatment as described in paragraph 2.B.1)b) of the SB.

(e) For stabilizers, P/N 3130-35-60-000-4 or higher dash numbers, accomplish the following:

(1) At or before the next major inspection, 3,200 hours total TIS, or 144 calendar months total TIS, whichever occurs first, and thereafter at each major inspection, visually inspect the inside of the horizontal spar tube in accordance with paragraph 2.A. and 2.B.1) of the SB.

(2) If corrosion is found inside the tube, other than in the half-shell area, replace the tube with an airworthy tube within the next 500 hours TIS or 18 calendar months, whichever occurs first. If corrosion is found inside the tube in the half-shell area, apply a protective treatment as described in paragraph 2.B.1)b) of the SB.

(f) Within 30 calendar days, visually inspect the four attachment clamps of the half-shells and install a safety wire around the four attachment clamps in accordance with paragraph 2.B.2)d) of the SB. If any attachment clamp is found cracked, replace it with an airworthy attachment clamp and install a safety wire around the replacement attachment clamp before further flight.

(g) 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, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(h) 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 helicopter to a location where the requirements of this AD can be accomplished.

(i) The inspections and modifications shall be done in accordance with paragraphs 2.A., 2.B.1), 2.B.1)b), 2.B.2)a), 2.B.2)b), 2.B.2)c), 2.B.2)d), and 2.B.3) of the Accomplishment Instructions of Eurocopter France SA3130/3180 Service Bulletin No. 55.10, Revision 3, dated May 4, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053-4005, telephone (972) 641-3460, fax (972) 641-3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment becomes effective on March 21, 2000.

**Note 4:** The subject of this AD is addressed in Direction Generale De L'Aviation Civile

(France) AD 96-278-054(A)R2, dated July 29, 1998.

Issued in Fort Worth, Texas, on February 7, 2000.

**Henry A. Armstrong,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 00-3223 Filed 2-14-00; 8:45 am]

**BILLING CODE 4910-13-U**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 99-SW-71-AD; Amendment 39-11564; AD 99-25-08]

RIN 2120-AA64

#### Airworthiness Directives; MD Helicopters Inc. Model 500N and 600N Helicopters

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

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

**SUMMARY:** This document publishes in the **Federal Register** an amendment adopting Emergency Priority Letter Airworthiness Directive (AD) 99-25-08, which was sent previously to all known U.S. owners and operators of MD Helicopters Inc. (MDHI) Model 500N and 600N helicopters by individual letters. This AD requires, within the next 5 hours time-in-service (TIS) or before further flight after December 31, 1999, whichever occurs first, inspecting the thruster control cable conduit cap (cap) for corrosion or a crack. This AD also requires, within the next 100 hours TIS or before further flight after February 19, 2000, whichever occurs first, inspecting the cap at a specified area of the forward and center thruster cables for corrosion or a crack. If an unacceptable crack is found, replacing the unairworthy thruster cable with an airworthy thruster cable is required. This amendment is prompted by the discovery of stress corrosion cracks on an MDHI Model 500N helicopter. The actions specified by this AD are intended to prevent failure of the cap causing a fixed thruster condition and subsequent loss of normal anti-torque directional control of the helicopter.

**DATES:** Effective March 1, 2000, to all persons except those persons to whom it was made immediately effective by Emergency Priority Letter AD 99-25-08, issued on November 26, 1999, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 1, 2000.

Comments for inclusion in the Rules Docket must be received on or before April 17, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99-SW-71-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The applicable service information may be obtained from MD Helicopters Inc., Attn: Customer Support Division, 5000 E. McDowell Rd., Mail Stop M615-GO48, Mesa, Arizona 85215-9797, telephone 1-800-388-3378 or 480-891-6342, fax 480-891-6782. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Fred A. Guerin, Aerospace Engineer, Airframe Branch, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627-5232, fax (562) 627-5210.

**SUPPLEMENTARY INFORMATION:** On November 26, 1999, the FAA issued Emergency Priority Letter AD 99-25-08, applicable to MDHI Model 500N and 600N helicopters, which requires, within the next 5 hours time-in-service (TIS) or before further flight after December 31, 1999, inspecting the cap for corrosion or a crack. The emergency priority letter AD also requires, within the next 100 hours TIS or before further flight after February 19, 2000, inspecting the cap for corrosion or a crack. If an unacceptable crack is found, replacing the unairworthy thruster cable with an airworthy thruster cable is required. That action was prompted by the discovery of stress corrosion cracks in the forward cap at the telescopic swivel end and the relieved area on an MDHI Model 500N helicopter. The forward thruster control cable in conjunction with the center thruster control cable simultaneously control the NOTAR directional control thruster and the left vertical stabilizer. This condition, if not corrected, could result in failure of the cap causing a fixed thruster condition and subsequent loss of normal anti-torque directional control of the helicopter.

The FAA has reviewed MDHI Service Bulletin (SB) SB500N-021 SB600N-028, dated November 19, 1999, and SB500N-020R1 SB600N-027R1, dated November 24, 1999, which describe procedures for inspecting the cap telescopic swivel end and the cap relieved area for corrosion or a crack and repairing or replacing the forward and center thruster control cables as specified.

Since the unsafe condition described is likely to exist or develop on other MDHI Model 500N and 600N helicopters, which use the same forward thruster cable, the FAA issued Emergency Priority Letter AD 99-25-08 to prevent failure of the cap causing a fixed thruster condition and subsequent loss of normal anti-torque directional control of the helicopter. The AD requires, within the next 5 hours TIS or before further flight after December 31, 1999, whichever occurs first, inspecting the cap at the telescopic swivel end of the forward and center thruster cables, part number (P/N) 500N7201-5, -7, -37, -45, or -51, for corrosion or a crack in accordance with SB500N-021 SB600N-028, dated November 19, 1999. This AD also requires, within the next 100 hours TIS or before further flight after February 19, 2000, whichever occurs first, inspecting the cap at the relieved area of the forward and center thruster cables, part number (P/N) 500N7201-5, -7, -37, -45, or -51, for corrosion or a crack in accordance with SB500N-020R1 SB600N-027R1, dated November 24, 1999. If an unacceptable crack is found, replacing the unairworthy thruster cable with an airworthy thruster cable is required. The actions must be accomplished in accordance with the SB's described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, inspecting the cap for corrosion or a crack is required before further flight and inspecting the cap at a specified area is required within 100 hours TIS or before further flight after February 19, 2000, whichever occurs first, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on November 26, 1999, to all known U.S. owners and operators of MDHI Model 500N and 600N helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to

section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

The FAA estimates that 89 helicopters of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per helicopter, per inspection, and 8 work hours to replace a thruster cable, if necessary. The average labor rate is \$60 per work hour. Required parts will cost approximately \$1,000 for each thruster cable replaced. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$67,040, assuming 2 inspections per helicopter, per year, and replacement of 2 thruster cables.

#### Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99-SW-71-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein 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. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

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

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

#### Adoption of the Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

##### AD99-25-08 MD Helicopters INC.:

Amendment 39-11564. Docket No. 99-SW-71-AD.

**Applicability:** Model 500N helicopters, serial numbers (S/N) 001 through 099 with a prefix of "LN", and Model 600N helicopters, S/N 003 through 074 with a prefix of "RN", certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in

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

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

To prevent failure of the thruster control cable conduit cap (cap) at the telescopic swivel end or relieved area and subsequent loss of normal anti-torque directional control of the helicopter, accomplish the following:

(a) Within 5 hours time-in-service (TIS) or before further flight after December 31, 1999, whichever occurs first, inspect the forward and center thruster control cables, part number (P/N) 500N7201-5, -7, -37, -45, or -51, installed in affected helicopters, for a crack, corrosion, or damage in the cap at the telescopic swivel end in accordance with the following paragraphs of the Accomplishment Instructions, Section 2, of MD Helicopters Inc. (MDHI) Service Bulletin SB500N-021 SB600N-028, dated November 19, 1999 (SB 021/028).

(1) Inspect the forward thruster control cables in accordance with paragraphs A.(1) through (5) of SB 021/028. Install safety wire in accordance with paragraph A.(7) of SB 021/028.

(2) Inspect the center thruster control cable in accordance with paragraphs B.(1) through (4) and (6) of SB 021/028.

(3) If an unacceptable crack or ball separation from the cap is found, remove and replace the unairworthy forward or center thruster control cable with an airworthy cable prior to further flight.

(b) Within 100 hours TIS or before further flight after February 19, 2000, whichever occurs first, inspect the forward and center thruster control cables, P/N 500N7201-5, -7, -37, -45, or -51, installed in affected helicopters in the cap relieved area for a crack, corrosion, or damage in accordance with the Accomplishment Instructions, Section 2, of MDHI SB SB500N-020R1 SB600N-027R1, dated November 24, 1999 (SB 020/027).

(1) Inspect the forward thruster control cable for a crack or corrosion in accordance with paragraphs B.(1) through (5) and (7) of SB 020/027.

(2) Inspect the center thruster control cable for a crack or corrosion in accordance with paragraphs C.(1) through (4), (6), and (for Model 600N only) (7) of SB 020/027.

(3) If an unacceptable crack is found, remove and replace the unairworthy forward or center thruster control cable with an airworthy cable prior to further flight.

(c) Repeat the inspections of paragraphs (a) and (b) of this AD at intervals not to exceed 100 hours TIS or 3 calendar months, whichever occurs first.

(d) On or before December 1, 2000, replace the forward and center thruster control cables, part number (P/N) 500N7201-5, -7, -37, and -45, and -51, with P/N 500N7201-55 and -57 on the MDHI Model 500N or P/N 500N7201-55 and -59 on the MDHI Model

600N. Accomplishment of the requirements of this paragraph is terminating action for the requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

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

(f) Special flight permits will not be issued.

(g)(1) The inspections required within 5 hours time-in-service or before further flight after December 31, 1999, whichever occurs first, shall be done in accordance with the following paragraphs of the Accomplishment Instructions, Section 2, of MD Helicopters Inc. Service Bulletin SB500N-021 SB600N-028, dated November 19, 1999:

(i) Paragraphs A.(1) through (5);

(ii) Paragraph A.(7);

(iii) Paragraphs B.(1) through (4) and (6).

(2) The inspections required within 100 hours time-in-service shall be done in accordance with the following paragraphs of the Accomplishment Instructions, Section 2, of MDHI SB SB500N-020R1 SB600N-027R1, dated November 24, 1999:

(i) Paragraphs B.(1) through (5) and (7);

(ii) Paragraphs C.(1) through (4), (6), and (for Model 600N only) (7).

(3) This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from MD Helicopters Inc., Attn: Customer Support Division, 5000 E. McDowell Rd., Mail Stop M615-GO48, Mesa, Arizona 85215-9797, telephone 1-800-388-3378 or 480-891-6342, fax 480-891-6782. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on March 1, 2000, to all persons except those persons to whom it was made immediately effective by Emergency Priority Letter AD 99-25-08, issued November 26, 1999, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on February 7, 2000.

**Henry A. Armstrong,**

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00-3222 Filed 2-14-00; 8:45 am]

**BILLING CODE 4910-13-U**

**DEPARTMENT OF THE INTERIOR****Bureau of Indian Affairs****25 CFR Part 170**

RIN 1076-AD99

**Distribution of Fiscal Year 2000 Indian Reservation Roads Funds****AGENCY:** Bureau of Indian Affairs, Interior.**ACTION:** Temporary Rule and Request for Comments.

**SUMMARY:** We are issuing a temporary rule requiring that we distribute one-half of the Fiscal Year 2000 Indian Reservation Roads (IRR) funds to projects on or near Indian reservations using the Relative Need Formula adopted in 1993. We are also requesting comments on the formula for distribution of the remaining portion of the Fiscal Year 2000 funds. After consideration of comments, we will issue a final rule for distribution of the remaining portion of the Fiscal Year 2000 IRR funds.

**DATES:** This temporary rule is effective on February 15, 2000. Comments on the formula for distribution of the remaining portion of the Fiscal Year 2000 IRR funds must be postmarked by March 16, 2000.

**ADDRESSES:** You may send comments on the formula for distribution of the remaining portion of the Fiscal Year 2000 IRR funds to: LeRoy Gishi, Chief, Division of Transportation, Office of Trust Responsibility, Bureau of Indian Affairs, 1849 C Street, NW, MS-4058-MIB, Washington, DC 20240. Mr. Gishi may also be reached at 202-208-4359 (phone), 202-208-4696 (fax), or leroygishi@bia.gov (electronic mail).

**FOR FURTHER INFORMATION CONTACT:** LeRoy Gishi, 202-208-4359.

**SUPPLEMENTARY INFORMATION:****Background***What Is the IRR Program?*

Indian Reservation Roads (IRR) are typically among the most poorly maintained roads in the nation, in great need of development and repair. Many tribes do not even have road systems. This creates great difficulty in meeting everyday needs such as busing school students or getting medical attention for the sick and elderly. Tribes are dependent on timely distribution of IRR funds to develop and complete construction on projects started in previous years, especially since weather and time can cause damage to a partially completed project or prevent a project from being started and since many tribes

will be moving into rainy seasons in the near future. The inability to enter construction contracts in a timely fashion further delays and hinders a tribe's ability to provide for its transportation needs.

The IRR program is jointly administered by the Bureau of Indian Affairs (BIA) and the Federal Lands Highway office (FLH) of the Federal Highway Administration. The IRR program governs the planning, design, construction, maintenance and general administrative responsibility for IRR. The duties of each agency under the IRR program are set forth in a Memorandum of Agreement between the two agencies. In brief, the BIA works with tribal governments and tribal organizations to develop an annual priority program of construction projects which is submitted to the FLH for review and approval. Each fiscal year FLH determines the amount of funds available for construction. Then, the FLH and the BIA develop an IRR program funding plan for the fiscal year. Funds are allocated from the FLH to the BIA and distributed by the Secretary of the Interior (Secretary) to IRR projects on or near Indian reservations. Since 1993, IRR funds have been distributed according to the Relative Need Formula.

*What Is the Relative Need Formula?*

The Relative Need Formula is the method by which we have distributed IRR funds each fiscal year for IRR projects in each of the BIA's twelve regions. The Relative Need Formula we are adopting in this temporary rule is based on 20 percent population, 30 percent vehicle miles traveled (average daily traffic multiplied by the total miles in the IRR system), and 50 percent cost-to-improve roads in the IRR system. It will be used to compute the percentage of Highway Trust Funds we distribute to our Regional Offices for use on approved projects in a uniform, equitable manner based on the relative needs of the various Indian reservations. The Relative Need Formula ranks road and bridge improvements by the estimated cost to bring roads and bridges located within or providing access to an Indian reservation to an adequate and safe standard. We have used this funding formula since it was generally accepted by tribes and approved in 1993.

*What Is the Status of the TEA-21 Rule Making Process?*

In 1998, Congress passed the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178. Under TEA-21, the Secretary must issue regulations governing the IRR program

and establish a formula distributing IRR funds for Fiscal Year (FY) 2000 and subsequent years. The Secretary must develop the regulations and funding formula through the use of a negotiated rulemaking process and must issue them by September 1999.

Accordingly, the Secretary established the TEA-21 Negotiated Rulemaking Committee (Committee). As required by TEA-21, tribal representation on the Committee reflects a balance of interests including: geographically diverse small, medium and large tribes; direct service, self-determination and self-governance tribes; and tribes with various levels and types of experience in the diverse concerns of transportation development and management. The Committee consists of 29 tribal representatives and 13 Federal members.

The Committee has met monthly since March 1999 in locations that permit the greatest attendance and participation by tribal members. Among the earliest actions of the Committee was to divide into four workgroups to address the broad areas of concern for the IRR program: the Technical Standards workgroup, the Delivery of Services workgroup, the Policy workgroup and the Funding Formula workgroup. Each of the workgroups works closely with the full Committee to identify specific problems and develop a regulation and formula to address those problems. Despite the diligence of the Committee, it was unable until recently to reach a consensus on a funding formula that would permit the distribution of IRR funds for FY 2000. As a result, there has been no mechanism in place for the distribution of funds during FY 2000.

Recognizing that an inability to distribute IRR funds (totaling approximately \$200 million for FY 2000) causes undue hardship to tribes, the Committee reached a consensus at its January 2000 meeting in Albuquerque, New Mexico, concerning the distribution of funds. The Committee recommended that for FY 2000, the Secretary should distribute funds to IRR projects according to the Relative Need Formula as used in FY 1998 and 1999 (the same formula adopted in 1993 and described above). This recommendation reflects the consensus of the Committee's tribal representatives who are in the best position to articulate what is acceptable to the tribes. Federal members of the Committee agreed to the recommendation, as it allows us to distribute needed money and permits the Federal government to fulfill its duties under the IRR program. This recommendation is consistent with the

TEA-21 requirement that the Secretary distribute funds according to a formula recommended by the Committee. Moreover, it frees the Committee to continue its work toward a final formula and regulations.

This temporary rule will allow the Secretary to distribute one-half of FY 2000 IRR funds according to the Relative Need Formula. As noted above, the temporary rule is effective on the publication of this notice. We are also requesting comments from the public regarding the distribution of the remainder of FY 2000 IRR funds. The Committee will also use those comments in its continuing work towards a final formula for future fiscal years.

*Why Does the Secretary Need To Publish This Temporary Rule in the Federal Register?*

With the Committee's consensus on the tribal Committee members' proposal to distribute FY 2000 IRR funds using the Relative Need Formula, the Secretary is proceeding with this temporary rule to ensure distribution of FY 2000 IRR funds during this fiscal year. Tribes depend on continued funding during their planned one-to-three year road and bridge construction projects. There are approximately 950 ongoing road and bridge construction projects on over 25,000 road miles and 740 bridges on or near Indian reservations that will not continue without FY 2000 funding. This temporary rule allows the Secretary to continue to fund the IRR program to provide safe and adequate bridges and road access to and within Indian reservations, Indian lands and communities by distributing funds through FY 2000. Furthermore, the Committee and the Secretary agreed to use the Relative Need Formula to distribute these funds because both the tribes and the BIA understand its use and because there is currently no potentially effective and reasonably feasible alternative formula.

*Why Does This Temporary Rule Not Allow For Notice and Comment on the Distribution of One-Half of the FY 2000 IRR Funds, and Why Is It Effective Immediately?*

Under 5 U.S.C. 553(b)(3)(B), notice and public procedure on this temporary rule are impracticable, unnecessary, and contrary to the public interest. In addition, we have good cause for making this rule effective immediately under 5 U.S.C. 553(d)(3). Notice and public procedure would be impracticable because of the urgent need to distribute the first half of the FY

2000 IRR funds. Approximately 950 road and bridge construction projects are at various phases that depend on this fiscal year's funds, including 169 deficient bridges and the construction of approximately 400 miles of roads. The FY 2000 IRR funds would be used to design, plan, and construct improvements (and, in some cases, to reconstruct bridges). Designing and planning improvements must take place before the construction season (which is very short for some of the reservations) begins in the next few months.

Waiting for notice and comment on this temporary rule would be contrary to the public interest. In some of our Regions, approximately 80 percent of the roads in the IRR system (and the majority of the bridges) are designated school bus routes. Roads are essential access to schools, jobs, and medical services. Many of the priority tribal roads are also emergency evacuation routes and represent the only access to tribal lands. Two-thirds of the road miles in Indian country are unimproved roads. Deficient bridges and roads are health and safety hazards. Partially constructed road and bridge projects jeopardize the health and safety of the traveling public. Further, over 200 current projects (for which funding would be jeopardized by waiting) are directly associated with environmental protection and preservation of historic and cultural properties. This temporary rule is going into effect immediately because of the urgent need for these construction projects and the short time available for planning and construction.

Under this temporary rule, we are distributing only one-half of the FY 2000 IRR funds to address the most urgent needs while allowing for public comment on distribution of the other half of the FY 2000 IRR funds. In addition, the Committee is working on a permanent formula, which if adopted by the Secretary will be subject to full public notice and comment before we promulgate it as a final rule.

*Clarity of This Temporary Rule*

Executive Order 12866 requires each agency to write regulations that are easy to understand. In addition to the comments requested above, we invite your comments on how to make this temporary rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the temporary rule clearly stated? (2) Does the temporary rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the temporary rule (grouping and order of sections, paragraphing, etc.) aid or reduce its clarity? (4) Is the

description of the temporary rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the temporary rule? What else could we do to make the temporary rule easier to understand?

*Regulatory Planning and Review (E.O. 12866)*

Under the criteria in Executive Order 12866, this temporary rule is a significant regulatory action, and the Office of Management and Budget has reviewed it, because it will have an annual effect of \$100 million or more on the economy. As noted above, the total amount of FY 2000 IRR funds is approximately \$200 million, \$100 million of which we would distribute to IRR projects under this temporary rule. Congress has already appropriated these funds and FLH has already allocated them to BIA. The cost to the government of distributing the IRR funds, especially under the Relative Need Formula with which the tribal governments and tribal organizations and the BIA are already familiar, is therefore negligible. The distribution of the IRR funds does not require the tribal governments and tribal organizations to expend any of their own funds; in fact, distribution of the IRR funds is a benefit. Approximately 950 road and bridge construction projects are at various phases that depend on this fiscal year's funds, including 169 deficient bridges and the construction of approximately 400 miles of roads. Leaving these projects unfunded in FY 2000 would create undue hardship on tribes and tribal members. Lack of funding would also pose safety threats by leaving partially constructed road and bridge projects to jeopardize the health and safety of the traveling public. Thus, the benefits of this rule far outweigh the costs.

This temporary rule conforms to the policies and practices that currently guide our distribution of IRR funds. We do not anticipate that this regulation will have a significant effect on which IRR projects are eligible for funding. It 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. This temporary rule simply adopts the Relative Need Formula that we have used since 1993. In addition, the temporary rule only applies to a portion of the available funds for Fiscal Year 2000, and the final distribution formula may include an adjustment to account for any differences between the amounts distributed under this temporary rule and the distributions under the final formula.

This temporary rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another Federal agency. FLH has transferred the IRR funds to us, and the FLH representatives on the Committee have joined in the consensus mentioned above.

This temporary rule does not alter the budgetary effects or entitlement, grants, user fees, or loan programs or the rights or obligations of their recipients. This temporary rule simply uses the Relative Need Formula that we have used since 1993. In addition, the temporary rule only applies to a portion of the available funds for Fiscal Year 2000, and the final distribution formula may include an adjustment to account for any differences between the amounts distributed under this temporary rule and the distributions under the final formula.

This temporary rule does not raise novel legal or policy issues. This temporary rule is based on the Relative Need Formula, in use since 1993. We are not changing the current practice with this temporary rule, except by dividing the distribution into two parts.

#### *Regulatory Flexibility Act*

A Regulatory Flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required for this temporary rule because it applies only to tribal governments, not State and local governments.

#### *Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act, because it has an annual effect on the economy of \$100 million or more. As noted above, the total amount of FY 2000 IRR funds is approximately \$200 million, \$100 million of which we would distribute to IRR projects under this temporary rule. Congress has already appropriated these funds and FLH has already allocated them to BIA. The cost to the government of distributing the IRR funds, especially under the Relative Need Formula with which the tribal governments and tribal organizations and the BIA are already familiar, is therefore negligible. The distribution of the IRR funds does not require the tribal governments and tribal organizations to expend any of their own funds; in fact, distribution of the IRR funds is a benefit. Approximately 950 road and bridge construction projects are at various phases that depend on this fiscal year's funds, including 169 deficient bridges and the construction of approximately 400 miles

of roads. Delaying work on many of these projects in FY 2000 would create undue hardship on tribes and tribal members, since partially constructed road and bridge projects would jeopardize the health and safety of the traveling public. Thus, the benefits of this rule far outweigh the costs.

This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Actions under this rule will distribute Federal funds to Indian tribal governments and tribal organizations for road improvements.

This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. In fact, actions under this rule will provide a beneficial effect on employment through funding for construction jobs.

Under 5 U.S.C. 808(2), this temporary rule may take effect immediately upon publication in the **Federal Register** (as noted above in the **DATES** section) because notice and public procedure thereon are impracticable, unnecessary, and contrary to the public interest. Notice and public procedure would be impracticable because of the urgent need to distribute the first half of the FY 2000 IRR funds. Approximately 950 road and bridge construction projects are at various phases that depend on this fiscal year's funds, including 169 deficient bridges and the construction of approximately 400 miles of roads. The FY 2000 IRR funds would be used to design, plan, and construct improvements (and, in some cases, to reconstruct bridges). Designing and planning improvements must take place before the construction season (which is very short for some of the reservations) begins in the next few months.

Waiting for notice and comment on this temporary rule would be contrary to the public interest. In some of our Regions, approximately 80 percent of the roads in the IRR system (and the majority of the bridges) are designated school bus routes. Roads are essential access to schools, jobs, and medical services. Many of the priority tribal roads are also emergency evacuation routes and represent the only access to tribal lands. Two-thirds of the road miles in Indian country are unimproved roads. Defective bridges and roads are health and safety hazards. Partially constructed road and bridge projects jeopardize the health and safety of the traveling public. Further, over 200 current projects (for which funding

would be jeopardized by waiting) are directly associated with environmental protection and preservation of historic and cultural properties.

Under this temporary rule, we are distributing only one-half of the FY 2000 IRR funds to address the most urgent needs while allowing for public comment on distribution of the other half of the FY 2000 IRR funds. In addition, the Committee's recommendation for the ultimate distribution formula for IRR funds (after FY 2000) is undergoing public notice and comment as part of the negotiated rulemaking process, and that ultimate formula, if adopted by the Secretary, will again be subject to full public notice and comment before we promulgate it as a final rule.

#### *Unfunded Mandates Reform Act*

Under the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*), the temporary rule will not significantly or uniquely affect small governments, or the private sector. A Small Government Agency Plan is not required.

This temporary rule will not produce a federal mandate that may result in an expenditure by State, local, or tribal governments of \$100 million or greater in any year. Rather, the overall effect of this temporary rule is to provide money to tribal governments for IRR construction projects.

#### *Takings (E.O. 12630)*

With respect to Executive Order 12630, the temporary rule does not have significant takings implications since it involves no transfer of title to any property. A takings implication assessment is not required.

#### *Federalism (E.O. 13132)*

With respect to Executive Order 13132, the temporary rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment. This temporary rule should not affect the relationship between State and Federal governments because this temporary rule concerns administration of a fund dedicated to IRR projects on or near Indian reservations that has no effect on Federal funding of State roads. Therefore, the rule has no Federalism effects within the meaning of E.O. 13132.

#### *Civil Justice Reform (E.O. 12988)*

This temporary rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988. This temporary rule contains no drafting errors or ambiguity and is written to minimize litigation, provides clear

standards, simplifies procedures, reduces burden, and is clearly written. This temporary rule does not preempt any statute. We are still pursuing the TEA-21 mandated negotiated rulemaking process, and the final distribution formula may include an adjustment to account for any differences between the amounts distributed under this temporary rule and the distributions under the final formula. The temporary rule is not retroactive with respect to any funding from any previous fiscal year (or prospective to funding from any future fiscal year), but applies only to pending FY 2000 funding.

#### *Paperwork Reduction Act*

The Paperwork Reduction Act does not apply because this temporary rule does not impose recordkeeping or information collection requirements or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 501 *et seq.* We already have all of the necessary information to implement this rule.

#### *National Environmental Policy Act*

This temporary rule is categorically excluded from the preparation of an environmental assessment or an environmental impact statement under the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, because its environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and the road projects funded as a result of this temporary rule will be subject later to the National Environmental Policy Act process, either collectively or case-by-case. Further, no extraordinary circumstances exist to require preparation of an environmental assessment or environmental impact statement.

#### *Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of May 14, 1998, "Consultation and Coordination with Indian Tribal Governments" (63 FR 27655) and 512 DM 2, we have evaluated any potential effects upon federally recognized Indian tribes and have determined that there are no potential adverse effects. This temporary rule is based on the Relative Need Formula, in use since 1993. We are not changing the current practice with this temporary rule. Consultation with tribal governments and tribal organizations is ongoing as part of the negotiated rulemaking process.

#### Comments

Our practice is to make comments, including the names and addresses of persons commenting, available for public review during regular business hours. Persons commenting as private individuals may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may also be circumstances in which we would withhold from the rulemaking record a commenter's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will not consider anonymous comments. Comments from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

#### List of Subjects in 25 CFR Part 170

Indians—Highways and Roads.

For the reasons set out in the preamble, we are temporarily amending Part 170 in Chapter I of Title 25 of the Code of Federal Regulations as follows.

#### PART 170—ROADS OF THE BUREAU OF INDIAN AFFAIRS

1. The authority citation for part 170 continues to read as follows:

**Authority:** 36 Stat. 861; 78 Stat. 241, 253, 257; 45 Stat. 750 (25 U.S.C. 47; 42 U.S.C. 2000e(b), 2000e-2(i); 23 U.S.C. 101(a), 208, 308), unless otherwise noted.

2. Add § 170.4b to read as follows:

#### § 170.4b What formula will you use to distribute Fiscal Year 2000 Indian Reservation Roads Funds?

From February 15, 2000 through September 30, 2000, the Secretary will distribute one-half of the Fiscal Year 2000 funds authorized under Section 1115 of the Transportation Equity Act for the 21st Century, Pub. L. 105-178, to Indian Reservation Roads and Bridges projects on or near Indian reservations under the Relative Need Formula established and approved in January 1993. (23 U.S.C. 202(d)).

Dated: February 8, 2000.

**Kevin Gover,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 00-3512 Filed 2-14-00; 8:45 am]

BILLING CODE 4310-02-P

#### OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

#### 29 CFR Part 2200

#### Rules of Procedure

**AGENCY:** Occupational Safety and Health Review Commission.

**ACTION:** Final Rule; Extension of Expiration Date.

**SUMMARY:** On February 19, 1999 the Occupational Safety and Health Review Commission issued a final rule amending its rules of procedure to add a new Subpart H consisting of § 2200.120 to 29 CFR. 64 FR 8243. In that section the Commission established a mandatory settlement process known as the Settlement Part as a pilot program for a one-year trial period.

In order to evaluate the Settlement Part, the Commission has concluded that it is necessary to continue the pilot program beyond the original one-year trial period. The Commission will continue to evaluate the results in order to decide whether it should establish the Settlement Part procedure on a permanent basis and whether any modifications should be made. Accordingly, the period during which Subpart H consisting of § 2200.120 is effective is extended to and including September 30, 2000.

**EFFECTIVE DATE:** As of February 15, 2000, the expiration date for Subpart H consisting of § 2200.120 added in the **Federal Register** of February 19, 1999 (64 FR 8246) is extended to and including September 30, 2000. After September 30, 2000, Subpart H consisting of § 2200.120 will no longer be in effect unless extended by the Commission by publication in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Earl R. Ohman, Jr., General Counsel, One Lafayette Center, 1120 20th St., NW 9th Floor, Washington, DC 20036-3419, phone 202-606-5410.

Dated: February 10, 2000.

**Thomasina V. Rogers,**

*Chairman.*

**Gary L. Visscher,**

*Commissioner.*

**Stuart E. Weisberg,**

*Commissioner.*

[FR Doc. 00-3559 Filed 2-14-00; 8:45 am]

BILLING CODE 7600-01-M

**PENSION BENEFIT GUARANTY CORPORATION**

**29 CFR Part 4044**

**Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans prescribes interest assumptions for valuing benefits under terminating single-employer plans. This final rule amends the regulation to adopt interest assumptions for plans with valuation dates in March 2000. Interest assumptions are also published on the PBGC's web site (<http://www.pbgc.gov>).

**EFFECTIVE DATE:** March 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202-326-4024. (For TTY/TDD users, call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

**SUPPLEMENTARY INFORMATION:** The PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions for valuing plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974.

Among the actuarial assumptions prescribed in part 4044 are interest assumptions. These interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Two sets of interest assumptions are prescribed, one set for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. This amendment adds to appendix B to part 4044 the annuity and lump sum interest assumptions for valuing benefits in plans with valuation dates during March 2000.

For annuity benefits, the interest assumptions will be 7.10 percent for the first 25 years following the valuation date and 6.25 percent thereafter. The annuity interest assumptions are unchanged from those in effect for February 2000.

For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 5.25 percent for the period during which a benefit is in pay status, 4.50 percent during the seven-year period directly preceding the benefit's placement in pay status, and 4.00 percent during any other years preceding the benefit's placement in pay status. The lump sum interest assumptions are unchanged from those in effect for February 2000.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as

accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans with valuation dates during March 2000, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

**List of Subjects in 29 CFR Part 4044**

Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

**PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS**

1. The authority citation for part 4044 continues to read as follows:

**Authority:** 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, a new entry is added to Table I, and Rate Set 77 is added to Table II, as set forth below. The introductory text of each table is republished for the convenience of the reader and remains unchanged.

**Appendix B to Part 4044—Interest Rates Used to Value Annuities and Lump Sums**

TABLE I.—ANNUITY VALUATIONS

[This table sets forth, for each indicated calendar month, the interest rates (denoted by  $i_1, i_2, \dots$ , and referred to generally as  $i_t$ ) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.]

For valuation dates occurring in the month—	The values of $i_t$ are:					
	$i_t$	for t =	$i_t$	for t =	$i_t$ for t =	
* * * * *		*		*	*	
March 2000 .....	.0710	1-25	.0625	>25	N/A	N/A.

TABLE II.—LUMP SUM VALUATIONS

[In using this table: (1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply; (2) For benefits for which the deferral period is  $y$  years (where  $y$  is an integer and  $0 < y \leq n_1$ ), interest rate  $i_1$  shall apply from the valuation date for a period of  $y$  years, and thereafter the immediate annuity rate shall apply; (3) For benefits for which the deferral period is  $y$  years (where  $y$  is an integer and  $n_1 < y \leq n_1 + n_2$ ), interest rate  $i_2$  shall apply from the valuation date for a period of  $y - n_1$  years, interest rate  $i_1$  shall apply for the following  $n_1$  years, and thereafter the immediate annuity rate shall apply; (4) For benefits for which the deferral period is  $y$  years (where  $y$  is an integer and  $y > n_1 + n_2$ ), interest rate  $i_3$  shall apply from the valuation date for a period of  $y - n_1 - n_2$  years, interest rate  $i_2$  shall apply for the following  $n_2$  years, interest rate  $i_1$  shall apply for the following  $n_1$  years, and thereafter the immediate annuity rate shall apply.]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		$i_1$	$i_2$	$i_3$	$n_1$	$n_2$
* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *
77	3-1-00	4-1-00	5.25	4.50	4.00	4.00	7	8

Issued in Washington, DC, on this 4th day of February, 2000.

**David M. Strauss,**

*Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 00-3458 Filed 2-14-00; 8:45 am]

**BILLING CODE 7708-01-P**

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 117**

**[CGD01-00-006]**

**Drawbridge Operation Regulations: Norwalk River, CT**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Washington Street S136 Bridge, mile 0.0, across the Norwalk River at Norwalk, Connecticut. This deviation from the regulations allows the bridge owner to keep the bridge in the closed position from 8 a.m. on February 29, 2000, to 4:30 p.m. on March 2, 2000. This action is necessary to facilitate structural repairs at the bridge.

**DATES:** This deviation is effective February 29, 2000, through March 2, 2000.

**FOR FURTHER INFORMATION CONTACT:** Joseph Schmied, Project Officer, First Coast Guard District, at (212) 668-7165.

**SUPPLEMENTARY INFORMATION:** The Washington Street S136 Bridge, mile 0.0, across the Norwalk River at Norwalk, Connecticut, has a vertical clearance of 9 feet at mean high water,

and 16 feet at mean low water in the closed position. The bridge owner, Connecticut Department of Transportation, requested a temporary deviation from the operating regulations to facilitate structural repairs at the bridge. The existing operating regulations listed at 33 CFR 117.217 require the bridge to open on signal, except that, from 7 a.m. to 8:45 a.m., 11:45 a.m. to 1:15 p.m., and 4 p.m. to 6 p.m., Monday through Friday, except holidays, the draw need not be opened for the passage of vessels that draw less than 14 feet of water.

This deviation to the operating regulations allows the owner of the bridge to keep the bridge in the closed position from 8 a.m. on February 29, 2000, through 4:30 p.m. on March 2, 2000. Vessels that can pass under the bridge without an opening may do so at all times.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: February 8, 2000.

**R.M. Larrabee,**

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

[FR Doc. 00-3495 Filed 2-14-00; 8:45 am]

**BILLING CODE 4910-15-U**

**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Part 8**

**RIN 2900-AJ78**

**National Service Life Insurance**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Department of Veterans Affairs regulations regarding payments of premiums for National Service Life Insurance. We are revising provisions for purposes of clarity and making other non-substantive changes.

**DATES:** *Effective date:* February 15, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jeanne Derrick, Attorney-Advisor, Department of Veterans Affairs Regional Office and Insurance Center, P.O. Box 8079, Philadelphia, Pennsylvania 19101, telephone number (215) 842-2000, ext. 4277, fax number (215) 381-3504.

**SUPPLEMENTARY INFORMATION:** This document revises provisions for purposes of clarity and makes other non-substantive changes. Accordingly, we are dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. This final rule does not make substantive changes. Pursuant to 5 U.S.C. 605(b), this final rule is, therefore, exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

The Catalog of Federal Domestic Assistance Program number for this regulation is 64.103.

**List of Subjects in 38 CFR Part 8**

Disability benefits, Life insurance, Loan programs—veterans, Military personnel, Veterans.

Approved: February 2, 2000.

**Togo D. West, Jr.**,  
Secretary of Veterans Affairs.

For the reasons explained above, the Department of Veterans Affairs amends 38 CFR part 8 as set forth below:

**PART 8—NATIONAL SERVICE LIFE INSURANCE**

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

**Authority:** 38 U.S.C. 501, 1901–1929, 1981–1988, unless otherwise noted.

2. Section 8.2 is revised to read as follows:

**§ 8.2 Payment of premiums.**

(a) *What is a premium?* A premium is a payment that a policyholder is required to make for an insurance policy.

(b) *How can policyholders pay premiums?* Premiums can be paid by:

(1) Cash, check, or money order directly to VA.

(2) Allotment from service or retirement pay.

(3) Automatic deduction from VA benefits (pension, compensation or insurance dividends (see § 8.4)).

(4) Pre-authorized debit from a checking account.

(c) *When should policyholders pay premiums?* (1) Unless premiums are paid in advance, policyholders must pay premiums on the effective date shown on the policy and on the same date of each following month. This is called the “due date.”

(2) Policyholders may pay premiums quarterly, semi-annually, or annually in advance.

(d) *What happens if a policyholder does not pay a premium on time?* (1) When a policyholder pays a premium within 31 days from the “due date,” the policy remains in force. This 31-day

period is called a “grace period.” If the insured dies within the 31-day grace period, VA deducts the unpaid premium from the amount of insurance payable.

(2) If a policyholder pays a premium after the 31-day grace period, VA will not accept the payment and the policy lapses effective the date the premium was due; Except that VA will accept a premium paid after the 31-day grace period as a timely payment if:

(i) The policyholder pays the premium within 61 days of the due date; and

(ii) The policyholder is alive at the time the payment is mailed.

(3) When a policyholder pays the premium by mail, the postmark date is the date of payment.

(4) When a policyholder pays a premium by check or money order which is not honored and it is shown by satisfactory evidence that:

The bank did not pay the check or money order because of:	Then:
An error by the bank .....	The policyholder has an additional 31 days (from the date stamped on VA's notification letter) to pay the premium and any other premiums due through the current month.
An error in the check or money order .....	The policyholder has an additional 31 days (same as above).
Lack of funds .....	The premium is considered not paid.

**§§ 8.3 and 8.4 [Removed]**

3. Sections 8.3 and 8.4 are removed.

**§ 8.6 [The 1st § 8.6 is Removed]**

4. The first § 8.6 entitled “§ 8.6 Payment of premiums; insured in active service or entitled to retirement pay.” is removed.

**§§ 8.5 through 8.8 [Redesignated as §§ 8.3 through 8.6]**

5. Sections 8.5 through 8.8 are redesignated as §§ 8.3 through 8.6, respectively.

**§ 8.9 [Removed]**

6. Section 8.9 and the undesignated center heading immediately preceding the section are removed.

**§§ 8.10 through 8.36 [Redesignated as §§ 8.7 through 8.33]**

7. Sections 8.10 through 8.36 are redesignated as §§ 8.7 through 8.33, respectively.

[FR Doc. 00–3456 Filed 2–14–00; 8:45 am]

BILLING CODE 8320–01–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[KY–109–1–200007a; FRL–6533–2]

**Approval and Promulgation of Implementation Plans— State: Approval of Revisions to Kentucky State Implementation Plan**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a revision to the Jefferson County portion of the Kentucky State Implementation Plan (SIP) to allow the Air Pollution Control District of Jefferson County (APCDJC) to issue Federally enforceable district origin operating permits (FEDOOP). On November 10, 1998, the APCDJC through the Kentucky Natural Resources and Environmental Protection Cabinet (KNREPC) submitted a SIP revision fulfilling the requirements necessary for the FEDOOP program to become federally enforceable.

**DATES:** This direct final rule is effective April 17, 2000 without further notice, unless EPA receives adverse comment by March 16, 2000. If adverse comment is received, EPA 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:** All comments should be addressed to Gregory Crawford at the U.S. Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601. Air Pollution Control District of Jefferson County, 850 Barret Avenue, Suite 205, Louisville, Kentucky 40204.

**FOR FURTHER INFORMATION CONTACT:** Gregory Crawford, Regulatory Planning Section, Air Planning Branch, Air, Pesticides and Toxics Management Division at 404/562–9046.

**SUPPLEMENTARY INFORMATION:****I. Background**

On November 10, 1998, the APCDJC, through the KNREPC, submitted a SIP revision to make certain permits issued under the APCDJC existing minor source operating permit program Federally enforceable. The revision was added to comply with EPA requirements specified in the **Federal Register** notice entitled "Requirements for the Preparation, Adoption, and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans" (see 54 FR 27274, June 28, 1989).

EPA has always had and continues to have the authority to enforce state and local permits that are issued under permit programs approved into the SIP. However, EPA has not always recognized as valid certain state and local permits which purport to limit a source's potential to emit. The principle purpose for adopting this regulation is to give APCDJC a Federally recognized means of expeditiously restricting potential emissions such that sources can avoid major source permitting requirements. A key mechanism for such limitations is the use of the Federally enforceable state or local operating permits. The term "Federally enforceable," when used in the context of permits which limit potential to emit, means "Federally recognized." The voluntary revision that is the subject of this action approves Regulation 2.17, Federally Enforceable District Origin Operating Permits, into the Jefferson County portion of the Kentucky SIP. This rule and the materials provided by the APCDJC satisfy the five criteria outlined in the June 28, 1989, **Federal Register** notice. Refer to section II of this notice for the analysis of each of the criteria.

**II. Analysis of the Submittal**

*Criterion 1.* The county's operating permit program (*i.e.* the regulations or other administrative framework describing how such permits are issued) must be submitted to and approved by EPA as a SIP revision.

On November 10, 1998, the APCDJC through the KNREPC submitted a SIP revision request to EPA consisting of revisions to Regulation 2.17, Federally Enforceable District Origin Operating Permits, amending the APCDJC existing stationary source requirements to include provisions to issue FEDOOP.

*Criterion 2.* The SIP revision must impose a legal obligation that operating permit holders adhere to the terms and limitations of such permits (or subsequent revisions of the permit made

in accordance with the approved operating permit program) and provide that permits which do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed not "Federally enforceable" by EPA. Regulation 2.17, sections 3.1 and 3.2 address this criterion and meet this requirement. The source shall comply with all terms and conditions in a FEDOOP, including subsequent revisions. All terms and conditions in a FEDOOP, including those requirements designed to limit a source's potential to emit, are enforceable by EPA.

*Criterion 3.* The state operating permit program must require that all emission limitations, controls, and other requirements imposed by such permits will be at least as stringent as any applicable limitations and requirements contained in the SIP, or enforceable under the SIP, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the SIP, or that are otherwise "federally enforceable" (*e.g.* standards established under sections 111 and 112 of the Clean Air Act (CAA)).

Regulation 2.17, section 3.4 contains regulatory provisions which state that permits issued by the APCDJC will be at least as stringent as standards established pursuant to sections 111 and 112 of the CAA.

*Criterion 4.* The limitations, controls, and requirements of the state's operating permits must be permanent, quantifiable, and otherwise enforceable as a practical matter. Regulation 2.17, section 5.3 contains regulatory provisions which satisfy this criterion. The terms and conditions of all permits issued must be permanent, quantifiable, and otherwise enforceable as a practical matter.

*Criterion 5.* The state operating permits must be issued subject to public participation. This means that the APCDJC agrees, as part of their program, to provide EPA and the public with timely notice of the proposal and issuance of such permits, and to provide EPA, on a timely basis, with a copy of each proposed (or draft) and final permit intended to be "Federally enforceable." This process must also provide for an opportunity for public comment on the permit applications prior to issuance of the final permits.

Regulation 2.17, sections 6.1 and 8.1 meet this criterion. Jefferson County will provide EPA with notice of proposed issuance, renewal, or revision of a FEDOOP or, pursuant to section 8.5, administrative incorporation of a

construction permit, at the time of public notice. Jefferson County will provide public notice of proposed issuance, renewal, or revision of a FEDOOP in the newspaper having the largest bona fide paid circulation in Jefferson County, Kentucky.

**III. Final Action**

EPA is approving the aforementioned changes to the SIP because they are consistent with the Clean Air Act and EPA requirements. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal 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 SIP revision should adverse comments be filed. This rule will be effective April 17, 2000 without further notice unless the Agency receives adverse comments by March 15, 2000.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on April 17, 2000 and no further action will be taken on the proposed rule.

Nothing in this action should be construed as making any determination or expressing any position regarding Kentucky's audit privilege and penalty immunity law Kentucky—"KRS 224.01-040" or its impact upon any approved provision in the SIP, including the revision at issue here. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act program resulting from the effect of Kentucky's audit privilege and immunity law. A state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a state audit privilege or immunity law.

#### IV. Administrative Requirements

##### A. Executive Order 12866

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

##### B. Executive Orders on Federalism

###### 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. 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 Executive Order 12866, and (2) concerns an

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

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

##### D. Executive Order 13084

Under Executive Order 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, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 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. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General

of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **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 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

#### *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 17, 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).)

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

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: January 14, 2000.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

#### **PART 52—[AMENDED]**

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

**Authority:** 42.U.S.C. 7401 *et seq.*

#### **Subpart S—Kentucky**

2. Section 52.939 is amended by adding paragraph (c)(95) to read as follows:

#### **§ 52.939 Original identification of plan section.**

\* \* \* \* \*

(c) \* \* \*

(95) Revisions to the Jefferson County portion of the Kentucky State Implementation Plan submitted by the Kentucky Natural Resources and Environmental Protection Cabinet on November 10, 1998. The regulation being added is Regulation 2.17, Federally Enforceable District Origin Operating Permits.

(i) Incorporation by reference. Air Pollution Control District of Jefferson County Regulation 2.17, Federally Enforceable District Origin Operating Permits effective June 21, 1995.

(ii) Other material. None.

[FR Doc. 00-3207 Filed 2-14-00; 8:45 am]

**BILLING CODE 6560-50-P**

#### **FEDERAL EMERGENCY MANAGEMENT AGENCY**

#### **44 CFR Part 65**

[Docket No. FEMA-7305]

#### **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) (FIRMs) 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 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, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-3461, or (email) 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.

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, Mitigation Directorate, 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 National Flood Insurance Program. 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.
Alabama:					
Jefferson .....	City of Birmingham	Sept. 20, 1999, Sept. 27, 1999, <i>Birmingham News</i> .	The Honorable William A. Bell, Sr., Mayor of the city of Birmingham, 710 North 20th Street, Birmingham, Alabama 35203.	Dec. 26, 1999 .....	010116 E
Jefferson .....	Unincorporated areas.	Sept. 20, 1999, Sept. 27, 1999, <i>Birmingham News</i> .	Mr. Gary White, President of the Jefferson County Commission, 716 21st Street, Birmingham, Alabama 35263.	Dec. 26, 1999 .....	010217 E
Talladega .....	City of Sylacauga	Oct. 1, 1999, Oct. 8, 1999, <i>Daily Home</i> .	The Honorable Jesse L. Cleveland, mayor of the city of Sylacauga, P.O. Box 390, Sylacauga, Alabama 35150.	Sep. 21, 1999 .....	010199 C
Connecticut:					
Fairfield .....	Town of Darien .....	Oct. 28, 1999, Nov. 4, 1999, <i>Darien News Review</i> .	Mr. Robert F. Harrel, town of Darien First Selectman, 2 Renshaw Road, Darien, Connecticut 06820.	Oct. 18, 1999 .....	090005 d&e
Fairfield .....	Town of Greenwich.	Oct. 4, 1999, Oct. 11, 1999, <i>Greenwich Times</i> .	Mr. Thomas Ragland, Selectman for the town of Greenwich, Town Hall, 101 Field Point Road, Greenwich, Connecticut 06836.	Sept. 24, 1999 .....	090008 d&e
Fairfield .....	City of Stamford ...	June 24, 1999, July 1, 1999, <i>The Advocate</i> .	The Honorable Dannel P. Malloy, mayor of the city of Stamford, 888 Washington, Boulevard, P.O. Box 10152, Stamford, Connecticut 06904.	Sept. 29, 1999 .....	090015 D
Florida:					
Dade .....	City of Miami .....	Oct. 7, 1999, Oct. 14, 1999, <i>The Miami Herald</i> .	Mr. Donald H. Warshaw, Miami city Manager, 444 SW 2nd Avenue, 10th floor, Miami, Florida 33130.	Sept. 24, 1999 .....	120650 J
Sumter .....	Unincorporated areas.	Oct. 14, 1999, Oct. 21, 1999, <i>Sumter County Times</i> .	Mr. Benny Strickland, Chairman of the Sumter County Board of Commissioners, 209 North Florida Street, room 206, Bushnell, Florida 33513.	Oct. 5, 1999 .....	120296 B
Georgia:					
Henry .....	Unincorporated areas.	Nov. 17, 1999, Nov. 24, 1999, <i>The Daily Herald</i> .	Mr. Jim Joyner, Chairman of the Henry County Board of Commissioners, 345 Phillips Drive, McDonough, Georgia 30253.	Feb. 22, 2000 .....	130468 B
Fulton .....	Unincorporated areas.	Dec. 15, 1999, Dec. 22, 1999, <i>The Atlanta Journal &amp; Constitution</i> .	Ms. Cecelia Corbin-Hunter, Interim Fulton County Manager, 141 Pryor Street, S.W., Tenth Floor, Atlanta, Georgia 30303.	Dec. 7, 1999 .....	135160 E
Henry .....	City of Stockbridge	Nov. 17, 1999, Nov. 24, 1999, <i>The Daily Herald</i> .	The Honorable Rudy Kelley, mayor of the city of Stockbridge, 4545 North Henry Boulevard, Stockbridge, Georgia 30281.	Feb. 22, 2000 .....	130468 B
Illinois:					
Cook .....	Unincorporated areas.	July 28, 1999, Aug. 4, 1999, <i>The Daily Southtown</i> .	Mr. John H. Stroger, president of the Cook County Board of Commissioners, 118 North Clark Street, room 537, Chicago, Illinois 60602.	Nov. 2, 1999 .....	170054 F

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
DuPage .....	City of Naperville ..	Dec. 8, 1999, Dec. 17, 1999, <i>The Herald News</i> .	The Honorable A. George Pradel, mayor of the city of Naperville, 400 South Eagle Street, Naperville, Illinois 60566.	Mar. 14, 2000 .....	170213 C
Cook .....	Village of Schaumburg.	Sept. 24, 1999, Oct. 1, 1999, <i>The Daily Herald</i> .	Mr. Al Larson, village of Schaumburg president, 101 Schaumburg Court, Schaumburg, Illinois 60193-1899.	Sept. 17, 1999 .....	170158 D
Will .....	Village of Beecher	Sept. 22, 1999, <i>Beecher Herald</i> .	Mr. Paul Lohmann, Beecher Village president, P.O. Box 1154, 7224 Penfield Road, Beecher, Illinois 60401.	Oct. 18, 1999 .....	170696 E
Will .....	Unincorporated areas.	Dec. 8, 1999, Dec. 17, 1999, <i>The Herald News</i> .	Mr. Charles R. Adelman, Will County Executive, 302 North Chicago Street, Joliet, Illinois 60432.	Mar. 14, 2000 .....	170695 E
Indiana: Madison ..	City of Anderson ..	Dec. 1, 1999, Dec. 8, 1999, <i>The Herald Bulletin</i> .	The Honorable J. Mark Lawler, mayor of the city of Anderson, 120 East Eighth Street, P.O. Box 2100, Anderson, Indiana 46016.	Nov. 24, 1999 .....	180150 C
Mississippi:					
Lauderdale ....	Unincorporated areas.	Oct. 5, 1999, Oct. 12, 1999, <i>The Meridian Star</i> .	Mr. Rex Hiatt, Lauderdale County administrator, 410 Constitution Avenue, 11th Floor, Meridian, Mississippi 39301.	Sept. 30, 1999 .....	280224 D
Lauderdale ....	City of Meridian ....	Oct. 5, 1999, Oct. 12, 1999, <i>The Meridian Star</i> .	The Honorable John Robert Smith, mayor of the city of Meridian, P.O. Box 1430, Meridian, Mississippi 39302-1430.	Sept. 30, 1999 .....	280096 D
Rankin .....	City of Pearl .....	Nov. 24, 1999, Dec. 1, 1999, <i>Rankin County News</i> .	The Honorable Jimmy Foster, mayor of the city of Pearl, P.O. Box 5948, Pearl, Mississippi 39288-5948.	Feb. 28, 2000 .....	280145 D
New Hampshire:					
Hillsborough ..	Town of Bedford ..	Sept. 9, 1999, Sept. 16, 1999, <i>Bedford Bulletin</i> .	Ms. Catherine Debo, Bedford Town manager, Town Office Building, 24 North Amherst Road, Bedford, New Hampshire 03110.	July 15, 1999 .....	330083 C
Merrimack ....	Town of Epsom ....	Oct. 1, 1999, <i>Concord Monitor</i> .	Mr. John Hickey, Chairman of the Town of Epsom Board of Selectmen, P.O. Box 10, Epsom, New Hampshire 03234.	Nov. 1, 1999 .....	330112 B
Ohio: Lucas .....	Unincorporated areas.	Nov. 17, 1999, Nov. 24, 1999, <i>The Blade</i> .	Ms. Sandy Isenberg, President of the Lucas County Board of Commissioners, One Government Center, Suite 800, Toledo, Ohio 43604-2259.	Feb. 22, 2000 .....	390359 D
South Carolina:					
Richland.	Unincorporated areas.	Sept. 23, 1999, Sept. 30, 1999, <i>The State</i> .	Mr. T. Cary McSwain, Richland County Administrator, P.O. Box 192, Columbia, South Carolina 29202.	Sept. 15, 1999 .....	450170 D
Tennessee:					
Hamilton .....	City of East Ridge	Sept. 10, 1999, Sept. 17, 1999, <i>Chattanooga Times Free Press</i> .	The Honorable Fred Pruett, mayor of the city of East Ridge, 1517 Tombras Avenue, East Ridge, Tennessee 37412.	Sept. 2, 1999 .....	475424 D
Shelby .....	Town of Collierville	Sept. 23, 1999, Sept. 30, 1999, <i>Collierville Herald</i> .	The Honorable Herman W. Cox, Jr., mayor of the town of Collierville, 101 Walnut Street, Collierville, Tennessee 38017-2671.	Sept. 15, 1999 .....	470263 D
Shelby .....	City of Germantown.	Nov. 18, 1999, Nov. 25, 1999, <i>Germantown News</i> .	The Honorable Sharon Goldsworthy, mayor of the city of Germantown, P.O. Box 38809, Germantown, Tennessee 38183-0809.	Nov. 10, 1999 .....	470353 D
Wisconsin: Wash- ington.	Unincorporated areas.	Oct. 5, 1999, Oct. 12, 1999, <i>The Daily News</i> .	Mr. Kenneth F. Miller, Chairman of the Washington County Board of Commissioners, 432 East Washington Street, P.O. Box 1986, West Bend, Wisconsin 53095.	Jan. 10, 2000 .....	550471 B

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

**Michael J. Armstrong,**  
Associate Director for Mitigation.  
[FR Doc. 00-3522 Filed 2-14-00; 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 DATES:** 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 maps are available for inspection as indicated on 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.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA or 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.

The Agency 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 Flood Insurance Rate Map 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, Mitigation Directorate, 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 National Flood Insurance Program. 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 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)
<b>MINNESOTA</b>	
<b>Becker (City), Sherburne County (FEMA Docket No. 7295)</b>	
<i>Mississippi River:</i>	
Approximately 1.875 miles upstream of State Highway 25	*913
Approximately 6.56 miles upstream of State Highway 25	936
<i>Elk River:</i>	
Approximately 1.08 miles downstream of County Highway 4 .....	*944
Approximately 2.56 miles upstream of County Highway 4	*951
<b>Maps available for inspection</b> at the Becker City Hall, 12060 Sherburne Avenue, Becker, Minnesota.	
<b>Brown County (Unincorporated Areas) (FEMA Docket No. 7291)</b>	
<i>Minnesota River:</i>	
Approximately 1.1 miles downstream of Chicago and Northwestern Railroad .....	*805
Approximately 800 feet upstream of Chicago and Northwestern Railroad Bridge .....	*809
<i>Cottonwood River:</i>	
At confluence with Minnesota River .....	*807
At New Ulm corporate limits ....	*807
<i>Backwater Effects of the Minnesota River:</i>	
Downstream side of the Brown County corporate limits .....	*823
<b>Maps available for inspection</b> at the Brown County Planning and Zoning Office, Brown County Courthouse, New Ulm, Minnesota.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
<b>Hammond (City), Wabasha County (FEMA Docket No. 7283)</b> <i>Zumbro River:</i> Approximately 0.37 mile downstream of Main Street bridge Approximately 400 feet upstream of Main Street bridge <i>West Zumbro River Tributary:</i> At confluence with Zumbro River ..... Approximately 1,175 feet upstream of Bridge Street ..... <i>South Zumbro River Tributary:</i> Approximately 300 feet upstream of confluence with West Zumbro River Tributary Approximately 100 feet upstream of confluence with West Zumbro River Tributary <b>Maps available for inspection</b> at the City Hall, East Main Street, Hammond, Minnesota.		Approximately 1.70 miles downstream of Maple Street dam ..... <b>Maps available for inspection</b> at the Mazeppa City Hall, 1st and Maple Street, Mazeppa, Minnesota.	*894	<b>Wabasha (City), Wabasha County (FEMA Docket No. 7283)</b> <i>Mississippi River:</i> Approximately 1.54 miles upstream of State Route 60 bridge ..... Approximately 3.41 miles downstream of State Route 60 bridge ..... <b>Maps available for inspection</b> at the City Hall, 900 Hiawatha Drive, Wabasha, Minnesota.	
<b>Elk River (City), Sherburne County (FEMA Docket No. 7295)</b> <i>Trott Brook:</i> Approximately 0.75 mile downstream of divergence of East Channel Trott Brook ..... Approximately 0.53 mile upstream of divergence of East Channel Trott Brook ..... <b>Maps available for inspection</b> at the Elk River City Hall, 13065 Orono Parkway, Elk River, Minnesota.	*805 *808 *807 *808 *807 *807	<b>Millville (City), Wabasha County (FEMA Docket No. 7283)</b> <i>Zumbro River:</i> Approximately 0.5 mile downstream side of CSAH-2 bridge ..... Approximately 1,445 feet upstream side of CSAH-2 bridge ..... <b>Maps available for inspection</b> at the City Hall, 311 Bridge Street, Millville, Minnesota.	*805 *808 *807 *808 *807 *807	<b>Wabasha County (Unincorporated Areas) (FEMA Docket No. 7283)</b> <i>Zumbro River:</i> Approximately 1.34 miles downstream of CSAH-2 bridge ..... Downstream side of Zumbro Lake Dam ..... <i>North Fork Zumbro River:</i> At confluence with Zumbro River ..... Approximately 0.55 mile upstream of Maple Street Dam <i>Mississippi River:</i> Downstream county limits ..... Upstream county boundary ..... <i>Zumbro Lake:</i> Upstream side of Zumbro Lake Dam ..... Upstream county boundary ..... <i>Buckman Coulee:</i> Approximately 850 feet upstream of upstream crossing of U.S. Route 63 ..... Approximately 450 feet downstream of State Route 60 crossing ..... <i>Gilbert Creek:</i> Approximately 2.1 miles upstream of Soo Line Railroad crossing ..... Approximately 1.3 miles downstream of confluence of Sugarloaf Creek .....	*680 *677 *779 *784 *776 *875 *860 *932 *668 *682 *922 *922 *844 *846 *714 *715
<b>Lake City (City), Wabasha County (FEMA Docket No. 7291)</b> <i>Mississippi River:</i> At downstream corporate limits At upstream corporate limits ... <i>Gilbert Creek:</i> Confluence with Mississippi River ..... Downstream of U.S. 61 bridge <i>Miller Creek:</i> Confluence with Mississippi River ..... Approximately 300 feet upstream from U.S. 61 bridge <b>Maps available for inspection</b> at the Lake City Hall, 205 West Center Street, Lake City, Minnesota.	*880 *887 *682 *682 *682 *682 *682 *682	<b>Minneiska (City), Wabasha County (FEMA Docket No. 7283)</b> <i>Mississippi River:</i> At downstream corporate limits At upstream corporate limits ... <b>Maps available for inspection</b> at the City of Minneiska, 325 Taylor Hill Road, Minneiska, Minnesota. <b>New Ulm (City), Brown County (FEMA Docket No. 7287)</b> <i>Minnesota River:</i> Approximately 1,050 feet upstream of 20th S. Street ..... At U.S. Highway #14 ..... <i>Cottonwood River:</i> Approximately 2,200 feet upstream of Dam ..... Approximately 500 feet downstream of County Highway 13 .....	*668 *669 *880 *887 *808 *809 *831 *832	<b>Sherburne County (Unincorporated Areas) (FEMA Docket No. 7295)</b> <i>Mississippi:</i> Approximately 4.1 miles downstream of U.S. Route 101 .... Approximately 0.51 mile downstream of St. Cloud Dam ..... <i>Elk River:</i> Approximately 600 feet upstream of County Highway 4 At Big Elk Lake .....	*860 *932 *860 *869 *844 *846 *714 *715 *682 *682 *682 *856 *971 *946 *968
<b>Mazeppa (City), Wabasha County (FEMA Docket No. 7283)</b> <i>North Fork Zumbro River:</i> Approximately 1,650 feet upstream of Maple Street dam	*932	<b>Maps available for inspection</b> at the Sherburne County Planning and Zoning Department, 13880 Highway 10, Elk River, Minnesota.		<b>Maps available for inspection</b> at the Wabasha County Courthouse, 625 Jefferson Avenue, Wabasha, Minnesota.	*808

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
<p><b>Zumbro Falls (City), Wabasha County (FEMA Docket No. 7283)</b>  <i>Zumbro River:</i>                      Approximately 1,250 feet upstream side of Main Street bridge ..... *842                      Approximately 2,000 feet downstream of Main Street bridge ..... *839  <i>Buckman Coulee:</i>                      At downstream cross of U.S. Route 63 ..... *839                      Approximately 50 feet downstream side of U.S. Highway 63 ..... *41  <b>Maps available for inspection</b> at the Zumbro Falls City Hall, Main Street, Zumbro Falls, Minnesota.</p>		<p><b>Greenwich (Village), Washington County (FEMA Docket No. 7295)</b>  <i>Batten Kill:</i>                      Approximately 1,185 feet downstream of Golden Fleece Dam ..... *314                      Approximately 2,160 feet upstream of the most upstream dam ..... *343  <b>Maps available for inspection</b> at the Greenwich Village Hall, 6 Academy Street, Greenwich, New York.</p>		<p><b>Maps available for inspection</b> at the New York Mills Village Clerk's Office, 1 Maple Street, New York Mills, New York.  <b>Whitesboro (Village), Oneida County (FEMA Docket No. 7291)</b>  <i>Sauquoit Creek:</i>                      At downstream corporate limits ..... *414                      Approximately 1,760 feet upstream of Oriskany Boulevard ..... *428  <i>Mohawk River:</i>                      At confluence of Sauquoit Creek ..... *414                      Approximately 1,000 feet upstream side of Mohawk Street ..... *414</p>	
<b>NEW HAMPSHIRE</b>					
<p><b>Brentwood (Town), Rockingham County (FEMA Docket No. 7287)</b>  <i>Exeter River:</i>                      At downstream corporate limits ..... *50                      Approximately 0.57 mile upstream of corporate limits .... *134  <i>Dudley Brook:</i>                      At downstream corporate limits ..... *80                      At North Road ..... *108  <b>Maps available for inspection</b> at the Selectmen's Office, 1 Dalton Road, Brentwood Town Hall, Brentwood, New Hampshire.</p>		<p><b>Lloyd (Town), Ulster County (FEMA Docket No. 7295)</b>  <i>Black Creek:</i>                      Approximately 100 feet downstream of Pancake Hollow Road ..... *317                      Approximately 1.07 miles upstream of State Route 44 .... *518  <i>Twaalfskill Creek:</i>                      Approximately 140 feet downstream of Van Wagner Road ..... *249                      Approximately 1 mile upstream of Tillison Avenue ..... *337  <b>Maps available for inspection</b> at the Lloyd Town Hall, 12 Church Street, Highland, New York.</p>		<p><b>Maps available for inspection</b> at the Whitesboro Village Hall, 10 Moseley Street, Whitesboro, New York.  <b>Whitestown (City), Oneida County (FEMA Docket No. 7291)</b>  <i>Sauquoit Creek:</i>                      Upstream side of CONRAIL bridge ..... *418                      Upstream side of State Route 5A ..... *461  <i>Mud Creek:</i>                      At confluence with Sauquoit Creek ..... *450                      Approximately 365 feet upstream side of confluence with Sauquoit Creek ..... *450</p>	
<b>NEW JERSEY</b>					
<p><b>Morris Plains (Borough), Morris County (FEMA Docket No. 7295)</b>  <i>Watnong Brook:</i>                      Approximately 40 feet downstream of West Hanover Avenue ..... *371                      Approximately 780 feet upstream of CONRAIL ..... *450  <b>Maps available for inspection</b> at the Morris Plains Borough Clerks Office, 531 Speedwell Avenue, Morris Plains, New Jersey.</p>		<p><b>Lowville (Village), Lewis County (FEMA Docket No. 7291)</b>  <i>Mill Creek:</i>                      At downstream corporate limits ..... *744                      Approximately 500 feet upstream of Cedar Street ..... *873  <b>Maps available for inspection</b> at the Village of Lowville Municipal Building, Code Enforcement Office, 5402 Dayan Street, Lowville, New York.</p>		<p><b>Maps available for inspection</b> at the Whitestown Town Hall, 8 Park Avenue, Whitesboro, New York.  <b>Yorkville (Village), Oneida County (FEMA Docket No. 7291)</b>  <i>Sauquoit Creek:</i>                      At upstream side of CONRAIL bridge ..... *418                      Approximately 310 feet upstream of Oriskany Boulevard ..... *427  <b>Maps available for inspection</b> at the Yorkville Village Hall, 7 7th Street, Yorkville, New York.</p>	
<b>NEW YORK</b>					
<p><b>Cooperstown (Village), Otsego County (FEMA Docket No. 7295)</b>  <i>Otsego Lake:</i>                      Entire shoreline within community ..... *1,194  <b>Maps available for inspection</b> at the Cooperstown Village Hall, 22 Main Street, Cooperstown, New York.</p>		<p><b>New Bremen (Town), Lewis County (FEMA Docket No. 7295)</b>  <i>Black River:</i>                      Approximately 100 feet downstream of State Route 410 .. *737                      Approximately 0.95 mile upstream of Lowville and Beaver River Railroad ..... *743  <b>Maps available for inspection</b> at the New Bremen Town Hall, RR 3, Lowville, New York.  <b>New York Mills (Village), Oneida County (FEMA Docket No. 7291)</b>  <i>Sauquoit Creek:</i>                      Approximately 190 feet downstream of Oriskany Boulevard ..... *422                      Approximately 610 feet upstream of State Route 5A .... *462</p>		<b>NORTH CAROLINA</b>	
				<p><b>Cumberland County (Unincorporated Areas) (FEMA Docket No. 7295)</b>  <i>Tank Creek:</i>                      Approximately 100 feet downstream of Seaboard Coast Line Railroad ..... *174</p>	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 1,800 feet downstream of Seaboard Coast Line Railroad .....	*171	<b>Maps available for inspection</b> at the Brackenridge Borough Office, 1000 Brackenridge Avenue, Brackenridge, Pennsylvania.		<b>Maps available for inspection</b> at the Township of Harmar Municipal Building, 701 Freeport Road, Cheswick, Pennsylvania.	
<b>Maps available for inspection</b> at the Cumberland County Old Courthouse, Engineering Department, 130 Gillespie Street, Room 214, Fayetteville, North Carolina.		<b>Cheswick (Borough), Allegheny County (FEMA Docket No. 7295)</b> <i>Allegheny River:</i> Approximately 0.75 mile upstream of Lock and Dam No. 3 .....		<b>Harrison (Township), Allegheny County (FEMA Docket No. 7295)</b> <i>Allegheny River:</i> Approximately 0.85 mile downstream of Lock and Dam No. 2 .....	*757
<b>Spring Lake (Town), Cumberland County (FEMA Docket No. 7295)</b> <i>Tank Creek Tributary A:</i> At confluence with Tank Creek At CSX Transportation .....	*167 *222	Approximately 1.1 miles upstream of Lock and Dam No. 3 (at upstream corporate limits) .....	*749	Upstream side of Freeport Bridge .....	*768
<b>Maps available for inspection</b> at the Spring Lake Town Hall, Inspection's Department, 300 Ruth Street, Spring Lake, North Carolina.		<b>Maps available for inspection</b> at the Cheswick Borough Office, 220 South Atlantic Avenue, Cheswick, Pennsylvania.	*749	<b>Maps available for inspection</b> at the Township of Harrison Municipal Building, Municipal Drive, Natrona Heights, Pennsylvania.	
<b>OHIO</b>					
<b>Louisville (City), Stark County (FEMA Docket No. 7130)</b> <i>Broad-Monter Creek:</i> At upstream side of U.S. Route 44 (Ravenne Avenue) Just downstream of Meese Road .....	*1,110 *1,161	<b>East Deer (Township), Allegheny County (FEMA Docket No. 7295)</b> <i>Allegheny River:</i> Approximately 0.28 mile upstream of New Kensington Highway .....	*753	<b>Millvale (Borough), Allegheny County (FEMA Docket No. 7295)</b> <i>Allegheny River:</i> Approximately 0.37 mile downstream of Fortieth Street .....	*734
<i>North Chapel Creek:</i> Approximately 450 feet downstream of Frana-Clara Street Approximately 1,500 feet upstream of Reno Drive .....	*1,105 *1,129	Approximately 0.48 mile downstream of Ross Street (New Tarentum Bridge) (at upstream corporate limits) .....	*755	<i>Allegheny River (Herr's Island Back Channel):</i> At downstream corporate limits Approximately 1,400 feet upstream of CSX Transportation .....	*734 *734
<b>Maps available for inspection</b> at the City of Louisville, Planning and Development, 215 South Mill Street, Louisville, Ohio.		<b>Maps available for inspection</b> at the Township of East Deer Municipal Building, 927 Freeport Road, Creighton, Pennsylvania.		<b>Maps available for inspection</b> at the Millvale Borough Hall, 501 Lincoln Avenue, Millvale, Pennsylvania.	
<b>PENNSYLVANIA</b>					
<b>Aspinwall (Borough), Allegheny County (FEMA Docket No. 7295)</b> <i>Allegheny River:</i> Approximately 650 feet downstream of CONRAIL Bridge Approximately 1,050 feet upstream of CONRAIL Bridge .....	*739 *739	<b>Etna (Borough), Allegheny County (FEMA Docket No. 7295)</b> <i>Allegheny River:</i> At confluence of Pine Creek ... Approximately 0.38 mile downstream of Sixty Second Street Bridge .....	*736 *736	<b>O'Hara (Township), Allegheny County (FEMA Docket No. 7295)</b> <i>Allegheny River:</i> Downstream side of Lock and Dam No. 2 .....	*738
<b>Maps available for inspection</b> at the Aspinwall Borough Municipal Building, 217 Commercial Avenue, Aspinwall, Pennsylvania.		<i>Pine Creek:</i> At confluence with Allegheny River .....	*736	Approximately 0.56 mile downstream of Oakmont-Hulton Highway .....	*743
<b>Brackenridge (Borough), Allegheny County (FEMA Docket No. 7295)</b> <i>Allegheny River:</i> Approximately 0.61 mile upstream of Ross Street (New Tarentum Bridge) .....	*756	Just upstream of Poplar Street <b>Maps available for inspection</b> at the Etna Borough Office, 437 Butler Street, Pittsburgh, Pennsylvania.	*736	<b>Maps available for inspection</b> at the O'Hara Township Office, 325 Fox Chapel Road, Pittsburgh, Pennsylvania.	
Approximately 1.18 miles upstream of Ross Street (New Tarentum Bridge) .....	*756	<b>Harmar (Township), Allegheny County (FEMA Docket No. 7295)</b> <i>Allegheny River:</i> Approximately 0.56 mile downstream of Oakmont-Hulton Highway .....	*743	Approximately 1.12 mile downstream of Pennsylvania Turnpike .....	*742
		Approximately 500 feet upstream of Lock and Dam No. 3 .....	*748		*743

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
<p><b>Maps available for inspection</b> at the Borough of Oakmont Municipal Building, Fifth Street and Virginia Avenue, Oakmont, Pennsylvania.</p>		<p><b>Sharpsburg (Borough), Allegheny County (FEMA Docket No. 7295)</b></p>		<p><b>Maps available for inspection</b> at the Springdale Township Hall, 100 Plate Drive, Harwick, Pennsylvania.</p>	
<p><b>Penn Hills (Municipality), Allegheny County (FEMA Docket No. 7295)</b></p>		<p><i>Allegheny River:</i> Approximately 0.38 mile upstream of Sixty Second Street Bridge .....</p>	*737	<p><b>Tarentum (Borough), Allegheny County (FEMA Docket No. 7295)</b></p>	
<p><i>Allegheny River:</i> Approximately 1.1 miles upstream of CONRAIL Bridge At upstream corporate limits ...</p>	*740	<p>Approximately 0.75 mile downstream of Lock and Dam No. 2 .....</p>	*737	<p><i>Allegheny River:</i> Approximately 0.57 mile downstream of Ross Street (New Tarentum Bridge) (at downstream corporate limits) .....</p>	*755
<p><b>Maps available for inspection</b> at the Municipality of Penn Hills Planning Department, 12245 Frankstown Road, Penn Hills, Pennsylvania.</p>	*742	<p><b>Maps available for inspection</b> at the Sharpsburg Borough Office, 10611 Main Street, Pittsburgh, Pennsylvania.</p>		<p>Approximately 0.76 mile upstream of Ross Street (New Tarentum Bridge) (at upstream corporate limits) .....</p>	*756
<p><b>Pittsburgh (City), Allegheny County (FEMA Docket No. 7295)</b></p>		<p><b>South Londonderry (Township), Lebanon County (FEMA Docket No. 7291)</b></p>		<p><b>Maps available for inspection</b> at the Borough of Tarentum Municipal Building, 318 Second Avenue, Tarentum, Pennsylvania.</p>	
<p><i>Allegheny River:</i> Approximately 900 feet upstream of Ninth Street .....</p>	*730	<p><i>Spring Creek:</i> Approximately 480 feet downstream of Yorkshire Road ....</p>	*411	<p><b>Verona (Borough), Allegheny County (FEMA Docket No. 7295)</b></p>	
<p>Approximately 1.1 miles upstream of CONRAIL Bridge</p>	*740	<p>Approximately 650 feet upstream of Lawn Road .....</p>	*466	<p><i>Allegheny River:</i> Approximately 4,400 feet downstream of confluence with Plum Creek (at downstream corporate limits) .....</p>	*742
<p><i>Allegheny River (Herr's Island Back Channel):</i> Just upstream of CONRAIL Bridge .....</p>	*733	<p><i>Tributary to Spring Creek:</i> At the confluence with Spring Creek .....</p>	*441	<p>At confluence with Plum Creek</p>	*742
<p>Approximately 1,400 feet upstream of CSX Transportation .....</p>	*734	<p><b>Maps available for inspection</b> at the South Londonderry Township Hall, 101 Center Street, Campbell, Pennsylvania.</p>	*453	<p><b>Maps available for inspection</b> at the Borough of Verona Municipal Building, 736 East Railroad Avenue, Verona, Pennsylvania.</p>	
<p><b>Maps available for inspection</b> at the Pittsburgh City Planning Office, 200 Ross Street, Pittsburgh, Pennsylvania.</p>		<p><b>Springdale (Borough), Allegheny River (FEMA Docket No. 7295)</b></p>		<b>RHODE ISLAND</b>	
<p><b>Plum (Borough), Allegheny County (FEMA Docket No. 7295)</b></p>		<p><i>Allegheny River:</i> Approximately 1.1 miles upstream of Lock and Dam No. 3 (at downstream corporate limit) .....</p>	*749	<p><b>Providence (City), Providence County (FEMA Docket No. 7291)</b></p>	
<p><i>Allegheny River:</i> At Pennsylvania Turnpike .....</p>	*745	<p>Approximately 2,200 feet downstream of confluence of Pucketa Creek (at upstream corporate limits) .....</p>	*752	<p><i>Ponding Area 4-1A:</i> Entire shoreline within the City of Providence .....</p>	*78
<p><b>Maps available for inspection</b> at the Plum Borough Planning and Zoning Office, 4575 New Texas Road, Pittsburgh, Pennsylvania.</p>	*752	<p><b>Maps available for inspection</b> at the Borough of Springdale Municipal Building, 325 School Street, Springdale, Pennsylvania.</p>		<p><i>Ponding Area 4-1B:</i> Entire shoreline within the City of Providence .....</p>	*73
<p><b>Maps available for inspection</b> at the Shaler Township Hall, 300 Wetzels Road, Glenshaw, Pennsylvania.</p>		<p><b>Springdale (Township), Allegheny County (FEMA Docket No. 7295)</b></p>		<p><i>Ponding Area 4-3:</i> Entire shoreline within the City of Providence .....</p>	*71
<p><i>Allegheny River:</i> Approximately 0.80 mile upstream of Fortieth Street .....</p>	*735	<p><i>Allegheny River:</i> Approximately 0.40 mile downstream of confluence of Pucketa Creek (at downstream corporate limits) .....</p>	*752	<p><i>Ponding Area 4-4:</i> Entire shoreline within the City of Providence .....</p>	*85
<p>Approximately 0.72 mile downstream of 62nd Street .....</p>	*736	<p><b>Maps available for inspection</b> at the Borough of Springdale Municipal Building, 325 School Street, Springdale, Pennsylvania.</p>		<b>VERMONT</b>	
<p><b>Maps available for inspection</b> at the Shaler Township Hall, 300 Wetzels Road, Glenshaw, Pennsylvania.</p>		<p>Approximately 1,790 feet downstream of New Kensington Highway .....</p>	*753	<p><b>Wolcott (Town), Lamoille County (FEMA Docket No. 7291)</b></p>	
				<p><i>Wild Branch:</i></p>	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)	<b>FEDERAL COMMUNICATIONS COMMISSION</b>
At the upstream side of Lamoille Valley Railroad ..... Approximately 625 feet upstream of a private drive (approximately 225 feet downstream of upstream corporate limits) ..... <b>Maps available for inspection</b> at the Wolcott Town Hall, 4186 Vermont Route 15, Wolcott, Vermont.	*677     *927	<i>Mississippi River:</i> Approximately 4 miles downstream of U.S. Highway 18 .. Approximately 0.7 mile downstream of U.S. Highway 18 .. <b>Maps available for inspection</b> at the Crawford County Zoning Department, 111 West Dunn Street, Prairie Du Chien, Wisconsin.	*628     *629	<b>47 CFR PARTS 0, 73 AND 76</b> <b>[MM Docket Nos. 98-204 and 96-16, FCC 00-20]</b>  <b>Revision of Broadcast and Cable EEO Rules and Policies</b>  <b>AGENCY:</b> Federal Communications Commission. <b>ACTION:</b> Final rule.
<b>WEST VIRGINIA</b>				
<b>Logan County (Unincorporated Areas) (FEMA Docket No. 7299)</b> <i>Mud Fork:</i> At the confluence with Copperas Mine Fork ..... Approximately 1,960 feet upstream from CSX Railroad ... <i>Copperas Mine Fork:</i> At the confluence with Island Creek ..... Approximately 1,070 feet downstream from County Route 9 and County Route 4 <i>Island Creek:</i> Approximately 140 feet upstream of confluence of Guyandotte River ..... Approximately 1,425 feet upstream of confluence of Cow Creek ..... <b>Maps available for inspection</b> at the 911 EOC Building, Flood Zoning Office, 28½ Main Avenue, Logan, West Virginia.	*676     *676     *676     *661     *850	<b>Fond du Lac County (Unincorporated Areas) (FEMA Docket No. 7291)</b> <i>Sevenmile Creek:</i> Approximately 845 feet upstream of the confluence with East Branch Fond du Lac River ..... Upstream side of County Route Y ..... <i>De Neveu Creek:</i> Approximately 1,380 feet downstream of U.S. Highway 45 ..... Approximately 1,900 feet upstream of confluence of Unnamed Tributary to De Neveu Creek ..... <i>Unnamed Tributary to Unnamed Tributary to De Neveu Creek:</i> At confluence with Unnamed Tributary to De Neveu Creek ..... At outlet of Lake De Neveu .... <i>Lake De Neveu:</i> Entire shoreline within county <i>Kettle Moraine Lake:</i> Entire shoreline within county <i>Unnamed Tributary to De Neveu Creek:</i> At confluence with De Neveu Creek ..... Just upstream of County Route UU ..... <b>Maps available for inspection</b> at the Code Enforcement Office, 160 South Macy Street, Fond du Lac, Wisconsin.	*839     *879     *810     *826     *826 *824     *864     *1,025     *822     *957	<b>SUMMARY:</b> This document adopts new broadcast Equal Employment Opportunity (EEO) rules and policies and amends its cable EEO rules and policies. The document retains the existing ban on discrimination and promulgates recruitment-oriented outreach rules. The EEO rules make clear that broadcasting and cable entities are not required to employ a staff that reflects the racial or other composition of the community or to use racial preferences in hiring. The intended effect is to adopt effective EEO rules for the broadcasting and cable industries.
<b>Morgan County (Unincorporated Areas) (FEMA Docket No. 7299)</b> <i>Cacapon River:</i> Approximately 200 feet upstream of the confluence with the Potomac River ..... Approximately 1,405 feet upstream of the most upstream crossing of State Route 9 .... <b>Maps available for inspection</b> at the Morgan County Courthouse, 202 Fairfax Street, Berkeley Springs, West Virginia.	*454     *584	(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")  Dated: January 31, 2000. <b>Michael J. Armstrong,</b> <i>Associate Director for Mitigation.</i> [FR Doc. 00-3521 Filed 2-14-00; 8:45 am] <b>BILLING CODE 6718-04-P</b>	<b>DATES:</b> Effective April 17, 2000, except for the amendments to §§ 73.2080; 73.3526; 73.3527; 76.75; 76.77; 76.79; 76.1702; and 76.1802, which contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The FCC will publish a document in the <b>Federal Register</b> announcing the effective date of those amendments.  <b>FOR FURTHER INFORMATION CONTACT:</b> Roy Boyce or Hope Cooper, Mass Media Bureau, EEO Staff. (202) 418-1450. For additional information concerning the information collections, contact Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov.	
<b>WISCONSIN</b>				
<b>Crawford County (Unincorporated Areas) (FEMA Docket No. 7295)</b> <i>Wisconsin River:</i> At confluence with the Mississippi River ..... Approximately 1.88 miles upstream of confluence with Richland Creek .....	*628     *662			<b>SUPPLEMENTARY INFORMATION:</b> This is a synopsis of the Commission's Report and Order in MM Docket Nos. 98-204 and 96-16, adopted January 20, 2000, and released February 2, 2000. The complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC Reference Information, Courtyard Level, 445 12th Street, SW, Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc., at 202-857-3800, CY-B400, 445 12th St., SW, Washington, DC.  <b>Synopsis of Report and Order</b> As proposed in the Notice of Proposed Rule Making (NPRM) in this

proceeding, 63 FR 66104, December 2, 1998, the Report and Order adopts new broadcast and cable EEO rules and policies consistent with the D.C. Circuit's decision in *Lutheran Church—Missouri Synod v. FCC*, 141 F.3d 344 (D.C. Cir. 1998) (*Lutheran Church*), rehearing denied, September 15, 1998. In *Lutheran Church*, the D.C. Circuit held that the Commission's broadcast EEO program requirements were unconstitutional because the court concluded that they pressured stations to maintain a workforce reflecting the racial composition of their communities. The court also remanded the case back to the Commission to determine whether it had the authority to continue its ban on employment discrimination.

As described in the Report and Order, the Commission adopts new broadcast and cable EEO rules that require non-discrimination and outreach in employment. None of the rules creates an incentive to hire on the basis of race or gender. In fact, the proposed rules remove all references to any comparison to minority and female labor force statistics, including sections concerning evaluation of employment profile and job turnover.

In order to ensure fundamental fairness, the EEO rules include broad and inclusive outreach requirements designed to ensure that all qualified applicants have the opportunity to compete for jobs in the broadcast and cable industries on an equal basis. Accordingly, the rules require that a broadcaster or cable entity recruit for its vacancies using recruitment sources sufficient in its judgment to reach all segments of its community. However, to enhance the success of their outreach, broadcasters and cable entities are also required to implement two supplemental recruitment measures: (1) notification of job vacancies to any recruitment organization that requests such notification; and (2) outreach efforts such as job fairs, internship programs, training programs, scholarship programs, mentoring programs, and participation in educational and community activities relating to broadcast employment. Broadcasters and cable entities may choose not to engage in the supplemental recruitment measures as long as they maintain records on the recruitment sources, race, ethnicity and gender of applicants in order to monitor the success of their outreach efforts. However, entities choosing this alternative recruitment option remain subject to the core requirement that information about job vacancies be widely disseminated.

In order to provide guidance to entities, the rules also clearly describe what records of EEO efforts must be kept by broadcasters and cable entities, including the records to be placed in the public file. The Report and Order requires broadcasters and cable entities to file annually an EEO report in their public file, detailing their outreach efforts during the preceding year and the results of those efforts. Broadcasters must also file a Statement of Compliance every second, fourth and sixth year of the license term certifying compliance with the EEO Rule. Television stations and every radio station that is part of an employment unit with more than ten full-time employees will be required to file a copy of their EEO public file report midway through the license term. Stations will also be required to file their EEO public file report with their renewal application and cable entities will be required to file their EEO public report as part of the supplemental information required by statute to be filed every five years.

Along with reinstating other broadcast EEO Forms, the Report and Order reinstates the preexisting EEO requirement that broadcast station employment units with five or more full-time employees file an Annual Employment Report, but with the understanding that the Report's data will only be used to monitor industry employment trends and furnish reports to Congress.

The Report and Order retains the Commission's prohibition against employment discrimination and details the Commission's statutory authority to promulgate an employment non-discrimination rule as well as EEO program requirements. Specifically, the Report and Order outlines the Commission's conclusion that Congress has ratified the Commission's authority to adopt broadcast EEO rules; that equal employment of minorities and women furthers the Commission's public interest goal of diversity of programming; and that the statutory goal of fostering minority and female ownership in the provision of commercial spectrum-based services, as directed by section 309(j) of the Communications Act, is furthered by EEO requirements. With respect to broadcasters, the Report and Order clarifies the anti-discrimination prohibition so that religious radio and television broadcasters may establish religious belief or affiliation as a qualification for all station employees.

The Report and Order notes the Commission's intent to limit undue administrative burdens on broadcasters

and cable entities generally, and particularly on those licensees of smaller stations and similarly situated cable entities, consistent with maintaining an effective EEO program. Specifically, the Report and Order exempts broadcast station employment units with fewer than five full-time employees from the FCC's specific EEO requirements, as well as providing additional relief for employment units that have between five and ten full-time employees. Cable employment units with six to ten full-time employees are also provided some relief from the Report and Order's specific EEO program requirements, and cable employment units with fewer than six full-time employees are not required to demonstrate compliance with the EEO program requirements.

The Report and Order also terminates the Commission's EEO streamlining proceeding in MM Docket No. 96-16, 63 FR 11376, March 9, 1998.

#### **Paperwork Reduction Act of 1995 Analysis**

The actions contained in this Report and Order have been duly analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose a new reporting requirement or burden on the public. Implementation of this new reporting requirement will be subject to approval by the Office of Management and Budget, as prescribed by the Act. The new paperwork requirement contained in the Report and Order is effective April 17, 2000, upon OMB approval.

#### **Final Regulatory Flexibility Analysis**

As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the Notice of Proposed Rule Making (NPRM) in this proceeding. The Commission sought written public comments on the possible significant economic impact of the proposed policies and rules on small entities in the NPRM, including comments on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA, as amended by the Contract with America Advancement Act of 1996 (CWAAA), Public Law 104-121, 110 Stat. 847 (1996). (Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)).

#### *A. Need for and Objectives of the Rules*

The D.C. Circuit court in *Lutheran Church* held that the EEO program requirements of the Commission's EEO Rule for broadcasters were unconstitutional and remanded to the

Commission to determine whether we have authority to enforce an employment nondiscrimination requirement. The Report and Order adopts new EEO rules and policies for broadcasters and cable entities, including multichannel video programming distributors (MVPDs), consistent with the *Lutheran Church* decision. The new EEO rules retain the FCC's anti-discrimination provisions and prohibit broadcasters and cable entities from engaging in discriminatory practices. In addition, the rules require broadcasters and cable entities to establish and maintain an EEO program designed to provide equal opportunity for everyone, including minorities and women. The new rules emphasize inclusive recruitment outreach and prohibit entities from preferring members of any racial, national origin, or gender group in hiring. We note that SBA has approved our approach for small stations and small cable entities in this Report and Order. Letter from Aida Alvarez, Administrator, U.S. Small Business Administration, to Roy Stewart, Chief, Mass Media Bureau, Federal Communications Commission (January 19, 2000).

*B. Summary of Significant Issues Raised by the Public Comments in Response to the IRFA*

Three comments were filed specifically in response to the IRFA. See Comments of Small Cable Business Association (SCBA), U.S. Small Business Administration (SBA), and Congressmen Michael G. Oxley and Ralph M. Hall (Oxley/Hall). SCBA states that EEO recruiting, recordkeeping and reporting requirements substantially impact small cable systems since they have limited financial and administrative resources. It urges the Commission to consider its comments regarding small cable entities filed in response to the NPRM. For the purpose of providing EEO relief to small cable operators, SCBA believes that a small cable company should be defined by its number of employees, and not its amount of gross revenues, as currently defined by the SBA. It states that a cable system's gross revenues or number of subscribers does not correspond well to EEO rules. We note that the Report and Order considers SCBA's concerns and provides relief to small cable employment units on the basis of unit staff size, and by streamlining reporting and recordkeeping requirements for all cable entities.

The SBA urges the FCC to look at the economic impact of its proposed EEO requirements on small stations consistent with the RFA, and if

necessary, to maintain its EEO exemptions for small stations defined as those with fewer than five employees. We note that this FRFA conforms to the RFA, and that the Report and Order continues to exempt broadcast station employment units with fewer than five full-time employees from the FCC's specific EEO requirements, as well as providing additional relief for employment units that have between five and ten full-time employees.

*C. Description and Estimate of the Number of Small Entities to Which the Rules Would Apply*

The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules. 5 U.S.C. 604(a)(3). Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The RFA, 5 U.S.C. 601(3), generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Pursuant to 4 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register.**" (While we stated in the NPRM that we tentatively believe that the SBA's definition of "small business" in this context greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small television and radio stations, for purposes of this FRFA, we include the SBA's definition in determining the number of small businesses to which the rules would apply.) The rules we adopt in this Report and Order will affect broadcast stations and cable entities, including MVPDs.

An element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio or television station is dominant in its field of operation. Accordingly, the following

estimates of small businesses to which the new rules will apply do not exclude any radio or television station from the definition of a small business on this basis and are therefore overinclusive to that extent. An additional element of the definition of "small business" is that the entity must be independently owned and operated. We could not fully apply this criterion, and our estimates of small businesses to which the rules may apply may be overinclusive to this extent. Last, with respect to applying SBA size standards revenue caps, the SBA has defined "annual receipts" specifically in 13 CFR 121.104, and its calculations include an averaging process. We do not currently require submission of financial data from licensees that we could use in applying the SBA's definition of a small business. Thus, for purposes of estimating the number of small entities to which the rules apply, we are limited to considering the revenue data that are publicly available, and those data may not correspond completely with the SBA definition of annual receipts.

Television and Radio Stations: The rules in this Report and Order will apply to television and radio stations. The Small Business Administration defines a television broadcasting station that has no more than \$10.5 million in annual receipts as a small business. 13 CFR 121.201, Standard Industrial Code (SIC) 4833. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92-S-1, Appendix A-9 (1995). Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. *Id.*

There were 1,509 full-service television stations operating in the nation in 1992. FCC News Release No. 31327, Jan. 13, 1993; Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, Appendix A-9. That number has remained fairly constant as indicated by the approximately 1,616 operating full-service television broadcasting stations in the nation as of September 1999. FCC News Release, Broadcast Station Totals as of September 30, 1999 (released November 22, 1999). For 1992, the

number of television stations that produced less than \$10.0 million in revenue was 1,155 establishments. (Census for Communications' establishments are performed every five years ending with a "2" or "7". See Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, note 53, III. The amount of \$10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at \$9,999,999 and began at \$10,000,000. No category for \$10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.) Thus, the rules will affect approximately 1,616 television stations; approximately 77%, or 1,244 of those stations are considered small businesses. We use the 77 percent figure of TV stations operating at less than \$10 million for 1992 and apply it to the 1999 total of 1,616 TV stations to arrive at stations categorized as small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies.

The rule changes would also affect radio stations. The SBA defines a radio broadcasting station that has no more than \$5 million in annual receipts as a small business. 13 CFR 121.201, SIC 4832. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, Appendix A-9. Included in this industry are commercial, religious, educational, and other radio stations. *Id.* Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included. *Id.* The 1992 Census indicates that 96 percent (5,881 of 6,127) of radio station establishments produced less than \$5 million in revenue in 1992. (The Census Bureau counts multiple radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.) Official Commission records indicate that 11,334 individual radio stations were operating in 1992. FCC News Release No. 31327, Jan. 13, 1993. As of September 1999, official Commission records indicate that 12,615 radio stations were operating. FCC News Release, Broadcast Station Totals as of September 30, 1999 (released November 22, 1999).

Small cable entities, including MVPDs: The rule changes would also affect small cable entities, including MVPDs. SBA has developed a definition of a small entity for cable and other pay television services, which includes all such companies generating \$11 million or less in annual receipts. 13 CFR 121.201, SIC 4841. This definition includes cable system operators, closed circuit television services, direct broadcast satellite services (DBS), multipoint distribution systems (MDS), satellite master antenna systems (SMATV), and subscription television services. According to the Bureau of the Census, there were 1,423 such cable and other pay television services generating less than \$11 million in revenue that were in operation for at least one year at the end of 1992. 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D, SIC 4841 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration). We discuss these services to provide a more succinct estimate of small entities.

Cable Systems: The Commission has developed, with SBA's approval, its own definition of small cable system operators. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. 47 CFR 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of \$100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd 6393 (1995). Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable companies at the end of 1995. Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995). Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the rules proposed herein.

The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenue in the aggregate exceeds \$250,000,000." 47 U.S.C. 543(m)(2). The

Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$520 million in the aggregate. 47 CFR 76.1403(b) (SIC 4833). Based on available data, we find that the number of cable operators serving 617,000 subscribers or fewer totals 1,450. Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995). Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

MDS: The Commission has defined "small entity" for purposes of the auction of MDS as an entity that, together with its affiliates, has average gross annual revenues that are not more than \$40 million for the preceding three calendar years. 47 CFR 21.961(b)(1). This definition of a small entity in the context of MDS auctions has been approved by the SBA. See *Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, MM Docket No. 94-131 and PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589 (1995). The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas (BTAs). Of 67 winning bidders, 61 qualified as small entities. One of these small entities, O'ahu Wireless Cable, Inc., was subsequently acquired by GTE Media Ventures, Inc., which did not qualify as a small entity for purposes of the MDS auction.

MDS also includes licensees of stations authorized prior to the auction. As noted, the SBA has developed a definition of small entities for pay television services, which includes all such companies generating \$11 million or less in annual receipts. 13 CFR 121.201. This definition includes multipoint distribution systems, and thus applies to MDS licensees and wireless cable operators that did not participate in the MDS auction. Information available to us indicates that there are 832 of these licensees and operators that do not generate revenue

in excess of \$11 million annually. Therefore, for purposes of this FRFA, we find there are approximately 892 small MDS providers as defined by the SBA and the Commission's auction rules, and some of these providers may be subject to our EEO rules.

DBS: As of November 1999, there are four DBS licensees, one of which is not in operation. Providing DBS service requires a great investment of capital to build, launch, and operate satellite systems. Typically, small businesses do not have the financial ability to become DBS licensees because of the high implementation costs associated with launching satellites. Most recent industry statistics suggest that the revenue attributed to DBS subscribers for EchoStar was \$682.8 million for the year of 1998 and \$1.55 billion for DIRECTV. We do not have similar revenue information for the third operating licensee, Dominion Video Satellite, Inc. However, we do not believe that any DBS licensees could be categorized as small businesses.

Estimates Based on Staff Size: As described, for purposes of providing relief from our EEO rules for entities with fewer staff resources, the Report and Order classifies such entities by number of employees. We estimate that, in 1997, the total number of full-service broadcast stations with fewer than five employees was 5,186, of which 340 were television stations. We base this estimate on a compilation of 1997 Broadcast Station Annual Employment Reports (FCC Form 395-B), performed by staff of the Equal Employment Opportunity Branch, Mass Media Bureau, FCC. Similarly, we estimate that, in 1997, 2,750 cable system or SMATV employment units employed fewer than six full-time employees. Also, in 1997, 725 MVPD employment units employed fewer than six full-time employees.

We also estimate that, in 1997, the total number of full-service broadcast stations with five to ten employees was 2,145, of which 200 were television stations. We base this estimate on a compilation of 1997 Broadcast Station Annual Employment Reports (FCC Form 395-B), performed by staff of the Equal Employment Opportunity Branch, Mass Media Bureau, FCC. Similarly, we estimate that, in 1997, 322 cable system or SMATV employment units employed six to ten full-time employees. Also, in 1997, 65 MVPD employment units employed six to ten full-time employees.

#### *D. Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

The Report and Order adopts changes to existing EEO recordkeeping and reporting requirements. It also specifies which EEO materials are required to be kept in the public inspection file. All broadcasters and cable entities must adhere to the EEO rules' general anti-discrimination provisions. Broadcasters with station employment units of five to ten full-time employees are provided some relief from EEO requirements, and station employment units of fewer than five full-time employees are exempt altogether, with the exception that all broadcasters are subject to the nondiscrimination requirement and must report any employment discrimination complaints filed against them. Cable employment units, including MVPD employment units, employing six to ten full-time employees are also provided some relief from the Report and Order's specific EEO program requirements, and cable employment units with fewer than six full-time employees are not required to demonstrate compliance with the EEO program requirements. Generally, no special skills will be necessary to comply with the requirements.

Specifically, the Report and Order requires broadcasters and cable entities to widely disseminate information concerning job vacancies. Additionally, broadcasters and cable entities must undertake two supplemental recruitment measures described herein. The first supplemental recruitment measure requires broadcasters and cable entities to provide notification of full-time job vacancies to any requesting organization if the organization regularly distributes information about employment opportunities or refers job seekers to employers. Depending on the size of a station's staff, the second supplemental recruitment measure requires broadcasters to engage in at least four (for station employment units with more than ten full-time employees) or two (for station employment units with five to ten full-time employees) of the following menu options every two years: job fairs, job banks and other general outreach efforts, scholarship programs, in-house training programs, mentoring programs, community events related to employment opportunities in the industry, industry career events/programs by educational institutions, internship programs, the listing of upper-level vacancies in a job bank or newsletter of media trade groups whose membership includes substantial participation of women and minorities,

and other activities to disseminate information regarding industry employment opportunities, as designed by the broadcaster. Cable employment units with more than ten full-time employees must engage in at least two options from the supplemental recruitment measures menu every year and cable employment units with six to ten full-time employees must engage in at least one option every year. Broadcasters and cable entities that desire more flexibility in their recruitment procedures may dispense with the supplemental recruitment measures as long as they are able to demonstrate success in achieving broad outreach to all segments of the community, as based upon an analysis of the recruitment source, race, national origin, and gender of the applicants attracted by their outreach efforts.

In addition, the Report and Order requires broadcasters and cable entities to retain records to demonstrate that they have recruited for all full-time permanent positions. To alleviate recordkeeping burdens, records may be kept in an electronic format. Such recordkeeping shall include: listings of all full-time vacancies filled, listings of recruitment sources, the address/contact person/telephone number of each recruitment source, and dated copies of advertisements and other documentation announcing vacancies. Broadcasters and cable entities engaging in supplemental recruitment measures must show organizations which requested notification and must also maintain: records and proof of participation in menu options, the total number and referral source of all interviewees, and dates of hire along with the name of the recruitment source which referred the hiree. These revised recordkeeping requirements significantly reduce the cost of compliance because broadcasters and cable entities that use this approach no longer have to keep extensive records on the race and gender of all applicants and interviewees, as was the case under our former EEO rules. For those broadcasters and cable entities that opt out of the supplemental recruitment measures, we will require that they maintain records of the recruitment source, race, national origin, and gender of qualified applicants in order to demonstrate that they widely disseminated information about job openings. Some broadcasters and cable entities, especially the ones with fewer employees, may have only a few vacancies generally available so that this option may be less burdensome to them. Broadcasters' records must be

maintained until grant of the renewal application for the term during which the hiring activity occurred. Cable entities must retain their records for a minimum of seven years. To determine compliance with the EEO rules, the Commission may conduct inquiries requesting the records of a broadcaster or cable entity.

The Report and Order also requires stations and cable employment units to place annually the following EEO records in their local public inspection file: listings of full-time vacancies filled and recruitment sources used for each vacancy during the preceding year and the address/contact person/telephone number of each recruitment source. Broadcasters and cable entities engaging in supplemental recruitment measures must also include in their public file: an indication of the organizations requesting notification, the recruitment source of all full-time hires during the preceding year, the total number of persons interviewed for full-time vacancies during the preceding year as well as the total number of interviewees referred by each recruitment source for that vacancy, and a brief description of the menu option items undertaken during the preceding year. Those broadcasters and cable entities that opt out of the supplemental recruitment measures must include in their public file: the total number of applicants generated by each recruitment source utilized for any full-time vacancy during the preceding year, and the number of those applicants who were female and the number who were minority, identified by the applicable racial and/or national origin group with which each applicant is associated. Station units must retain the materials in their file until final action has been taken on the station's next license renewal application, and cable entities must retain their materials for a period of five years.

In addition, broadcasters must file a Statement of Compliance (Form 397) every second, fourth and sixth year of the license term, on the anniversary of the date the station is due to file its renewal, stating whether the station has complied with the EEO Rule. Broadcasters must place a copy of the latest Statement in the public inspection file. Broadcasters must also continue to place a copy of Form 396 (Broadcast EEO Program Report) in the public inspection file. However, broadcasters are no longer required to place a copy of their station's Form 395-B (Broadcast Station Annual Employment Report) in the public file. Cable employment units must continue to place a copy of Forms 395-A (Cable Television Annual

Employment Report) or 395-M (Multi-Channel Video Program Distributor Annual Employment Report) in their public file. Also, most broadcasters must submit the contents of their station's EEO public inspection file to the FCC at renewal time and midway through the license term for the Commission's mid-term review and cable entities with six or more full-time employees must submit copies of their EEO public inspection file to the Commission every five years. However, broadcasters may limit their submissions to cover only the last 12 months of EEO activity. These changes reduce burdens on all station and cable employment units, both by more clearly defining what must be retained and by specifying the period of retention.

The Report and Order eliminates sections concerning specific categories of recruitment sources from Form 396-A (Model EEO Program Report). The Report and Order also eliminates many sections from Form 396, including sections requesting information on local labor force statistics, and the number of minority and female hires and promotions. The Report and Order provides further relief to broadcasters by enabling them to file only one Form 395-B for all commonly owned stations in the same market sharing at least one employee. Form 396 will include a new section for broadcasters to provide a narrative statement demonstrating how the station achieved broad and inclusive outreach. With respect to cable entities, the Report and Order eliminates all sections on Forms 395-A and 395-M concerning available labor force and occupational data, employee promotions and job hires.

#### *E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

This Report and Order sets forth the Commission's new EEO rules and procedures, and considers all of the significant alternatives presented in the comments. We have determined that our finalized rules fulfill our public interest goals while maintaining minimal regulatory burdens and ease and clarity of administration. The new EEO rules and procedures are designed to keep essential filing and recordkeeping burdens at a minimum, and increase the efficiency of application processing for all broadcasters and cable entities, including small entities.

The NPRM requested comment on the Commission's proposal to exempt small staff stations or stations located in small markets from specific EEO recordkeeping and reporting requirements. The NPRM proposed to

increase the current staff exemption threshold of fewer than five full-time employees to ten or fewer full-time employees. There was no specific proposal regarding the market threshold for exempting stations. Although we received a few comments regarding small market exemptions, the majority of comments addressed our proposal to increase the staff exemption threshold. Commenters argue that an increase is warranted since stations with small staffs have limited personnel and financial resources to carry out EEO requirements. Other commenters argue against a total exemption from the broadcast EEO Rule for stations with ten or fewer employees since such stations play a pivotal role in providing essential entry-level opportunities into the broadcast industry. As discussed in the Report and Order, we believe that a total exemption is unnecessary since the new EEO Rule streamlines and clarifies recordkeeping requirements, thereby benefiting all broadcasters, including stations with fewer employees. For this same reason, we also believe that additional EEO relief is not warranted for small market stations. Such relief is already built into the new Rule, as further evidenced by the flexibility it affords broadcasters to tailor their EEO programs to their station's particular circumstances, including market size. However, because fewer staff resources are available to them, we believe that station employment units with five to ten full-time employees, which are the smallest staff stations subject to our EEO program requirements, warrant additional relief from EEO program requirements. Therefore, for those broadcasters employing supplemental recruitment measures, we will require station employment units with five to ten full-time employees to engage in only two of the menu options listed in the EEO Rule during each two-year period. Station employment units with more than ten full-time employees are required to engage in four menu options during each two-year period. While not providing a total exemption from our EEO Rule, this approach does provide additional EEO relief to station employment units with five to ten employees. Further, we will exempt radio station employment units with six to ten employees from new mid-term review procedures. Currently, mid-term reviews for all television stations with five or more full-time employees are required by statute. However, only about 200 television stations (or 13%) had between five and ten employees in 1997. We base this estimate on a compilation of 1997 Broadcast Station

Annual Employment Reports (FCC Form 395-B), performed by staff of the Equal Employment Opportunity Branch, Mass Media Bureau, FCC. Also, a station will not qualify for relief if it shares one or more employees with one or more commonly owned stations in the same market and their combined staffs total more than ten full-time employees since such stations are considered one employment unit for EEO purposes.

We also received comments arguing that cable systems with small staffs should be provided EEO relief since they, too, have limited personnel and financial resources. Upon consideration, we will require cable employment units with six to ten full-time employees that use the supplemental recruitment measures to engage in only one option from the supplemental recruitment measures menu each year, as opposed to the two options required otherwise.

We will continue to exempt broadcast station employment units with fewer than five full-time employees from our specific EEO program requirements. In addition, cable employment units with fewer than six full-time employees will still not be required to demonstrate compliance with the EEO program requirements.

*F. Federal Rules That May Duplicate, Overlap, or Conflict With the EEO Rules*

Oxley/Hall maintain that the FCC's proposed EEO program substantially replicates the work of the Equal Employment Opportunity Commission (EEOC). Oxley/Hall Comments at 3. As we stated in the Report and Order, while the EEOC and FCC share as a common goal the elimination of discriminatory employment practices, the primary functions of the two agencies differ greatly. Whereas the EEOC reviews discrimination complaints in order to provide relief to victims of discrimination, the FCC's principal concern with respect to discrimination allegations is to determine the fitness of broadcasters and cable entities to fulfill their obligations under the Communications Act. Moreover, the Memorandum of Understanding Between the Federal Communications Commission and the Equal Employment Opportunity Commission, 51 FR 21798 (1986), coordinates and minimizes overlap of the enforcement efforts of the two agencies.

*Report to Congress:* The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). In addition, the

Commission's Consumer Information Bureau, Reference Information Center, will send a copy of this Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

**List of Subjects**

*47 CFR Part 0*

Organization and functions (Government agencies).

*47 CFR Part 73*

Radio, Equal employment opportunity, Reporting and recordkeeping requirements, Television.

*47 CFR Part 76*

Cable television, Equal employment opportunity, Reporting and recordkeeping requirements.

Federal Communications Commission.

**Magalie Roman Salas,**  
*Secretary.*

**Rule Changes**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0, 73 and 76 as follows:

**PART 0—COMMISSION ORGANIZATION**

1. The authority citation for part 0 continues to read as follows:

**Authority:** Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. Section 0.283 is amended by revising paragraph (b)(1)(iii) to read as follows:

**§ 0.283 Authority delegated.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iii) Present documented allegations of failure to comply with the Commission's Equal Employment Opportunity rules and policies.

\* \* \* \* \*

**PART 73—RADIO BROADCAST SERVICES**

3. The authority citation for part 73 continues to read as follows:

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

4. Section 73.2080 is revised as follows:

**§ 73.2080 Equal employment opportunities (EEO rule).**

(a) *General EEO policy.* Equal opportunity in employment shall be

afforded by all licensees or permittees of commercially or noncommercially operated AM, FM, TV or international broadcast stations (as defined in this part) to all qualified persons, and no person shall be discriminated against in employment by such stations because of race, color, religion, national origin, or sex. Religious radio broadcasters may establish religious belief or affiliation as a job qualification for all station employees. However, they cannot discriminate on the basis of race, color, national origin or gender from among those who share their religious affiliation or belief. For purposes of this rule, a religious broadcaster is a licensee which is, or is closely affiliated with, a church, synagogue, or other religious entity, including a subsidiary of such an entity.

(b) *General EEO program requirements.* Each broadcast station shall establish, maintain, and carry out a positive continuing program of specific practices designed to ensure equal opportunity and nondiscrimination in every aspect of station employment policy and practice. Under the terms of its program, a station shall:

(1) Define the responsibility of each level of management to ensure vigorous enforcement of its policy of equal opportunity, and establish a procedure to review and control managerial and supervisory performance;

(2) Inform its employees and recognized employee organizations of the equal employment opportunity policy and program and enlist their cooperation;

(3) Communicate its equal employment opportunity policy and program and its employment needs to sources of qualified applicants without regard to race, color, religion, national origin, or sex, and solicit their recruitment assistance on a continuing basis;

(4) Conduct a continuing program to exclude all unlawful forms of prejudice or discrimination based upon race, color, religion, national origin, or sex from its personnel policies and practices and working conditions; and

(5) Conduct a continuing review of job structure and employment practices and adopt positive recruitment, job design, and other measures needed to ensure genuine equality of opportunity to participate fully in all organizational units, occupations, and levels of responsibility.

(c) *Specific EEO program requirements.* Under the terms of its program, a station employment unit must:

(1) Recruit for every job vacancy in its operation. A job filled by an internal promotion is not considered a vacancy for which recruitment is necessary. Religious radio broadcasters who establish religious affiliation as a qualification for a job position are not required to comply with these recruitment requirements with respect to that job position or positions, but will be expected to make reasonable, good faith efforts to recruit applicants who are qualified based on their religious affiliation. Nothing in this section shall be interpreted to require a broadcaster to grant preferential treatment to any individual or group based on race, color, national origin, religion, or gender.

(i) A station employment unit shall use recruitment sources for each vacancy sufficient in its reasonable, good faith judgment to widely disseminate information concerning the vacancy.

(ii) In addition to such recruitment sources, a station employment unit shall provide notification of each vacancy to any organization that distributes information about employment opportunities to job seekers or refers job seekers to employers, upon request by such organization. To be entitled to notice of vacancies, the requesting organization must provide the station employment unit with its name, mailing address, e-mail address (if applicable), telephone number, and contact person, and identify the category or categories of vacancies of which it requests notice. (An organization may request notice of all vacancies).

(2) Engage in at least four (if the station employment unit has more than ten full-time employees) or two (if it has five to ten full-time employees) of the following initiatives during each two-year period preceding the filing of a Statement of Compliance pursuant to subsection (g) hereof:

(i) Participation in at least four job fairs by station personnel who have substantial responsibility in the making of hiring decisions;

(ii) Hosting of at least one job fair;

(iii) Co-sponsoring at least one job fair with organizations in the business and professional community whose membership includes substantial participation of women and minorities;

(iv) Participation in at least four events sponsored by organizations representing groups present in the community interested in broadcast employment issues, including conventions, career days, workshops, and similar activities;

(v) Establishment of an internship program designed to assist members of

the community to acquire skills needed for broadcast employment;

(vi) Participation in job banks, internet programs, and other programs designed to promote outreach generally (*i.e.*, that are not primarily directed to providing notification of specific job vacancies);

(vii) Participation in scholarship programs designed to assist students interested in pursuing a career in broadcasting;

(viii) Establishment of training programs designed to enable station personnel to acquire skills that could qualify them for higher level positions;

(ix) Establishment of a mentoring program for station personnel;

(x) Participation in at least four events or programs sponsored by educational institutions relating to career opportunities in broadcasting;

(xi) Sponsorship of at least two events in the community designed to inform and educate members of the public as to employment opportunities in broadcasting;

(xii) Listing of each upper-level category opening in a job bank or newsletter of media trade groups whose membership includes substantial participation of women and minorities;

(xiii) Participation in other activities designed by the station employment unit reasonably calculated to further the goal of disseminating information as to employment opportunities in broadcasting to job candidates who might otherwise be unaware of such opportunities.

(3) Analyze its recruitment program on an ongoing basis to ensure that it is effective in achieving broad outreach to potential applicants, and address any problems found as a result of its analysis.

(4) Periodically analyze measures taken to:

(i) Disseminate the station's equal employment opportunity program to job applicants and employees;

(ii) Review seniority practices to ensure that such practices are nondiscriminatory;

(iii) Examine rates of pay and fringe benefits for employees having the same duties, and eliminate any inequities based upon race, national origin, color, religion, or sex discrimination;

(iv) Utilize media for recruitment purposes in a manner that will contain no indication, either explicit or implicit, of a preference for one race, national origin, color, religion or sex over another;

(v) Ensure that promotions to positions of greater responsibility are made in a nondiscriminatory manner;

(vi) Where union agreements exist, cooperate with the union or unions in

the development of programs to assure all persons equal opportunity for employment, irrespective of race, national origin, color, religion, or sex, and include an effective nondiscrimination clause in new or renegotiated union agreements; and

(vii) Avoid the use of selection techniques or tests that have the effect of discriminating against any person based on race, national origin, color, religion, or sex.

(5) Retain records to document that it has satisfied the requirements of paragraphs (c) (1) and (2) of this section. Such records, which may be maintained in an electronic format, shall be retained until after grant of the renewal application for the term during which the vacancy was filled or the initiative occurred. Such records need not be submitted to the FCC unless specifically requested. The following records shall be maintained:

(i) Listings of all full-time job vacancies filled by the station employment unit, identified by job title;

(ii) For each such vacancy, the recruitment sources utilized to fill the vacancy (including, if applicable, organizations entitled to notification pursuant to paragraph (c)(1)(ii) of this section, which should be separately identified), identified by name, address, contact person and telephone number;

(iii) Dated copies of all advertisements, bulletins, letters, faxes, e-mails, or other communications announcing vacancies;

(iv) Documentation necessary to demonstrate performance of the initiatives required by paragraph (c)(2) of this section, if applicable, including sufficient information to fully disclose the nature of the initiative and the scope of the station's participation, including the station personnel involved;

(v) The total number of interviewees for each vacancy and the referral source for each interviewee; and

(vi) The date each vacancy was filled and the recruitment source that referred the hiree.

(6) Annually, on the anniversary of the date a station is due to file its renewal application, the station shall place in its public file, maintained pursuant to § 73.3526 or § 73.3527, and on its web site, if it has one, an EEO public file report containing the following information:

(i) A list of all full-time vacancies filled by the station's employment unit during the preceding year, identified by job title;

(ii) For each such vacancy, the recruitment source(s) utilized to fill the vacancy (including, if applicable, organizations entitled to notification

pursuant to paragraph (c)(1)(ii) of this section, which should be separately identified), identified by name, address, contact person and telephone number;

(iii) The recruitment source that referred the hiree for each full-time vacancy during the preceding year;

(iv) Data reflecting the total number of persons interviewed for full-time vacancies during the preceding year and the total number of interviewees referred by each recruitment source utilized in connection with such vacancies; and

(v) A list and brief description of initiatives undertaken pursuant to paragraph (c)(2) of this section during the preceding year, if applicable.

(7) Stations shall substantially comply with paragraph (c)(1)(i) of this section in connection with hires for part-time positions. The provisions of paragraph (c) are not otherwise applicable to hires for part-time positions.

(d) *Alternative recruitment requirements.* A station employment unit may elect not to utilize the provisions of paragraph (c)(1)(ii) (notification to community groups) and (c)(2) (menu options) of this section, provided that it complies with the following requirements:

(1) The station employment unit shall maintain records as required by paragraph (c)(5)(i) through (iii) of this section and shall maintain, in lieu of the records required by paragraph (c)(5)(iv) through (vi) of this section, data reflecting the recruitment source, gender, and racial and/or ethnic status of applicants for each full-time job vacancy filled by the station employment unit;

(2) The station employment unit shall include in the annual EEO public file report required by paragraph (c)(6) of this section the information specified in paragraph (c)(6)(i) and (ii) and, in lieu of the information required by paragraph (c)(6)(iii) through (v), data reflecting, for each recruitment source utilized for any full-time vacancy during the preceding year, the total number of applicants generated by that source, the number of applicants who were female, and the number of applicants who were minority, identified by the applicable racial and/or ethnic group with which each applicant is associated.

(3) Station employment units electing to proceed under this paragraph shall otherwise comply with the requirements specified in paragraph (c) of this section.

(e) *Election procedures.* Within forty-five days of the effective date of this section, each station employment unit shall elect whether it wishes to utilize the recruitment procedures specified in

paragraph (c) of this section or the alternate recruitment procedures specified in paragraph (d) of this section and shall file with the Commission a statement indicating the election which shall also be placed in the station(s) public inspection file maintained pursuant to § 73.3526 or § 73.3527. An applicant for a new station or for the transfer or assignment of an existing license filed on FCC Form 314 or 315 shall state its election on FCC Form 396-A submitted with the application. A station employment unit may change its election every two years at the time of the filing of the Statement of Compliance referenced in paragraph (i)(1) of this section, or at the time of the filing of its renewal application. If the station employment unit wishes to change its election, it shall so state in its Statement of Compliance or FCC Form 396 accompanying the renewal application.

(f) *Mid-term review for broadcast stations.* The Commission will conduct a mid-term review of the employment practices of each broadcast television station and each radio station that is part of an employment unit of more than ten full-time employees four years following the station's most recent license expiration date as specified in § 73.1020. Each such licensee is required to file with the Commission the station's EEO public file report, as described in paragraphs (c)(6) or (d)(2) of this section, along with the relevant Statement of Compliance (Form 397), as described in paragraph (i)(1) of this section, four months before the date specified in the previous sentence. The EEO public file report should cover the station's activities during the 12-month period prior to its submission.

(g) *Small station exemption.* The provisions of paragraphs (b), (c), (d), (e), and (f) of this section shall not apply to station employment units that have fewer than five full-time employees.

(h) *Definitions.* For the purposes of this section:

(1) A full-time employee is a permanent employee whose regular work schedule is 30 hours per week or more. A part-time employee is a permanent employee whose regular work schedule is less than 30 hours per week.

(2) A station employment unit is a station or a group of commonly owned stations in the same market that share at least one employee.

(i) *Enforcement.* The following provisions apply to employment activity concerning full-time positions at each broadcast station employment unit (defined in this part) employing five or

more persons in full-time positions, except where noted.

(1) Each broadcast station shall file with the Commission a Statement of Compliance (FCC Form 397) stating whether the station has complied with the outreach provisions of this section during the two-year period prior to the date the station files the Statement. Before filing the Statement, stations shall review their recruitment activity during the two-year period along with requirements of this section and determine whether they have been in compliance with of this section during the relevant period. The Statement of Compliance shall also report any change in the station's recruitment election pursuant to paragraph (e) of this section. All broadcast stations, including those that are part of an employment unit with fewer than five full-time employees, shall file a Broadcast Equal Employment Opportunity Program Report (Form 396) with their renewal application. As with Form 397, stations shall indicate on Form 396 whether they have complied with of this section. In addition, stations shall provide a narrative statement demonstrating how their recruitment efforts achieved broad and inclusive outreach during the two years prior to filing the Form 396. Stations should also include in Form 396 any change in recruitment election pursuant to paragraph (e) of this section. If the station believes it was not or may not have been in compliance, it shall submit an appropriate explanation on Form 396 or 397, as applicable. The Statement of Compliance (Form 397) is filed every second, fourth and sixth year of the license term, on the anniversary of the date the station is due to file its application for renewal of license. Form 396 is filed on the date the station is due to file its application for renewal of license. If a broadcast licensee acquires a station pursuant to FCC Form 314 or FCC Form 315 during the period that is to form the basis for the Statement of Compliance or Form 396, its Statement should be based on the licensee's EEO recruitment activity during the period starting with the date it acquired the station. Stations are required to maintain a copy of their Statement of Compliance and Form 396 in the station's public file in accordance with the provisions of §§ 73.3526 and 73.3527.

(2) On the date a station is due to file for renewal of license, as part of Form 396, it shall file with the Commission an EEO public file report concerning recruitment activity during the 12-month period preceding the filing date. The required contents of the public file report are described in paragraphs (c)(6)

or (d)(2) of this section. On the date each television station or radio station which is part of an employment unit with more than ten full-time employees files its Statement of Compliance (Form 397) at the mid-term point of its license term, the station shall file, together with Form 397, an EEO public file report concerning recruitment activity during the 12-month period prior to filing the EEO public file report. If any broadcast licensee acquires a station pursuant to FCC Form 314 or FCC Form 315 during the twelve months covered by the EEO public file report, its EEO public file report shall cover the period starting with the date it acquired the station.

(3) If a station is subject to a time brokerage agreement, the licensee shall file Statements of Compliance, Forms 396, and EEO public file reports concerning only its own recruitment activity. If a licensee is a broker of another station or stations, the licensee-broker shall include its recruitment activity for the brokered station(s) in determining the bases of the Statements of Compliance, Forms 396 and the EEO public file reports for its own station. If a licensee-broker owns more than one station, it shall include its recruitment activity for the brokered station in the Statements of Compliance, Forms 396, and EEO public file reports filed for its own station that is most closely affiliated with, and in the same market as, the brokered station. If a licensee-broker does not own a station in the same market as the brokered station, then it shall include its recruitment activity for the brokered station in the Statements of Compliance, Forms 396, and EEO public file reports filed for its own station that is geographically closest to the brokered station.

(4) Broadcast stations subject to this section shall maintain records of their recruitment activity necessary to demonstrate that they are in compliance with this section. Stations shall ensure that they maintain records sufficient to verify the accuracy of information provided in Statements of Compliance, Forms 396, and EEO public file reports. To determine compliance with this section, the Commission may conduct inquiries of licensees at random or if it has evidence of a possible violation of this section. In addition, the Commission will conduct random audits. Specifically, each year approximately five percent of all licensees in the television and radio services will be randomly selected for audit, ensuring that, even though the number of radio licensees is significantly larger than television licensees, both services are represented in the audit process. Upon request,

stations shall make records available to the Commission for its review.

(5) The public may file complaints throughout the license term based on a station's Statement of Compliance or the contents of a station's public file. Provisions concerning filing, withdrawing, or non-filing of informal objections or petitions to deny license renewal, assignment, or transfer applications are delineated in §§ 73.3584 and 73.3587-73.3589.

(j) *Sanctions and remedies.* The Commission may issue appropriate sanctions and remedies for any violation of this section.

5. Section 73.3526 is amended by revising paragraph (e)(7) to read as follows:

**§ 73.3526 Local public inspection file of commercial stations.**

\* \* \* \* \*

(e) \* \* \*

(7) *Equal Employment Opportunity file.* Such information as is required by § 73.2080 to be kept in the public inspection file. These materials shall be retained until final action has been taken on the station's next license renewal application.

\* \* \* \* \*

6. Section 73.3527 is amended by revising paragraph (e)(6) to read as follows:

**§ 73.3527 Local public inspection file of noncommercial educational stations.**

\* \* \* \* \*

(e) \* \* \*

(6) *Equal Employment Opportunity file.* Such information as is required by § 73.2080 to be kept in the public inspection file. These materials shall be retained until final action has been taken on the station's next license renewal application.

\* \* \* \* \*

**PART 76—CABLE TELEVISION SERVICE**

7. The authority citation for part 76 continues to read as follows:

**Authority:** 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

8. Section 76.75 is amended by revising the undesignated introductory text, paragraphs (b), (c) and (f) and adding paragraphs (g), (h), (i), (j) and (k) to read as follows:

**§ 76.75 Specific EEO program requirements.**

Under the terms of its program, an employment unit must:

\* \* \* \* \*

(b) Establish, maintain and carry out a positive continuing program of outreach activities designed to ensure equal opportunity and nondiscrimination in employment. The following activities shall be undertaken by each employment unit:

(1) Recruit for every job vacancy in its operation. A job filled by an internal promotion is not considered a vacancy for which recruitment is necessary. Nothing in this section shall be interpreted to require a cable entity to grant preferential treatment to any individual or group based on race, national origin, color, religion, age, or gender.

(i) An employment unit shall use recruitment sources for each vacancy sufficient in its reasonable, good faith judgment to widely disseminate information concerning the vacancy.

(ii) In addition to using such recruitment sources, a cable employment unit shall provide notification of each vacancy to any organization that distributes information about employment opportunities to job seekers or refers job seekers to employers, upon request by such organization. To be entitled to notice of vacancies, the requesting organization must provide the cable employment unit with its name, mailing address, e-mail address (if applicable), telephone number, and contact person, and identify the category or categories of vacancies of which it requests notice. (An organization may request notice of all vacancies).

(2) Engage in at least two (if the unit has more than ten full-time employees) or one (if the unit has six to ten full-time employees) of the following initiatives during each twelve-month period preceding the filing of an annual employment report:

(i) Participation in at least two job fairs by unit personnel who have substantial responsibility in the making of hiring decisions;

(ii) Hosting of at least one job fair;

(iii) Co-sponsoring at least one job fair with organizations in the business and professional community whose membership includes substantial participation of women and minorities;

(iv) Participation in at least two events sponsored by organizations representing groups present in the community interested in cable employment issues, including conventions, career days, workshops, and similar activities;

(v) Establishment of an internship program designed to assist members of the community in acquiring skills needed for cable employment;

(vi) Participation in job banks, internet programs, and other programs designed to promote outreach generally (i.e., that are not primarily directed to providing notification of specific job vacancies);

(vii) Participation in a scholarship program designed to assist students interested in pursuing a career in cable communications;

(viii) Establishment of training programs designed to enable unit personnel to acquire skills that could qualify them for higher level positions;

(ix) Establishment of a mentoring program for unit personnel;

(x) Participation in at least two events or programs sponsored by educational institutions relating to career opportunities in cable communications;

(xi) Sponsorship of at least one event in the community designed to inform and educate members of the public as to employment opportunities in cable communications;

(xii) Listing of each upper-level category opening in a job bank or newsletter of media trade groups whose membership includes substantial participation of women and minorities; and

(xiii) Participation in other activities reasonably calculated by the unit to further the goal of disseminating information as to employment opportunities in cable communications to job candidates who might otherwise be unaware of such opportunities.

(c) Retain records sufficient to document that it has satisfied the requirements of paragraphs (b)(1) and (b)(2) of this section. Such records, which may be maintained in an electronic format, shall be retained for a period of seven years. Such records need not be submitted to the Commission unless specifically requested. The following records shall be maintained:

(1) Listings of all full-time job vacancies filled by the cable employment unit, identified by job title;

(2) For each such vacancy, the recruitment sources utilized to fill the vacancy (including, if applicable, organizations entitled to notification pursuant to paragraph (b)(1)(ii) of this section, which should be separately identified), identified by name, address, contact person, and telephone number;

(3) Dated copies of all advertisements, bulletins, letters, faxes, e-mails, or other communications announcing job vacancies;

(4) Documentation necessary to demonstrate performance of the initiatives required by paragraph (b)(2) of this section, if applicable, including information sufficient to fully disclose the nature of the initiative and the scope of the unit's participation, including the unit personnel involved;

(5) The total number of interviewees for each vacancy and the referral sources for each interviewee; and

(6) The date each vacancy was filled and the recruitment source that referred the hiree.

\* \* \* \* \*

(f) A cable entity may elect not to utilize the provisions of paragraphs (b)(1)(ii) (notification to requesting community groups) and (b)(2) (menu options) hereof, provided that it complies with the following alternative recruitment requirements:

(1) The employment unit shall maintain records as required by paragraph (c)(1) through (c)(3) of this section, and shall maintain, in lieu of the records required by paragraph (c)(4) through (c)(6) of this section, data reflecting the recruitment source, gender, and racial and/or ethnic status of applicants for each full-time job vacancy filled by the employment unit;

(2) The employment unit shall place annually in its public file maintained pursuant to § 76.1702 the information specified in § 76.1702(b)(1) and (2) and, in lieu of the information required by § 76.1702(b)(3) through (5), data reflecting, for each recruitment source utilized for any full-time vacancy during the preceding year, the total number of applicants generated by that source, the number of applicants who were female, and the number of applicants who were minority, identified by the applicable racial and/or ethnic group with which each applicant is associated.

(3) Cable employment units electing to proceed under this paragraph shall otherwise comply with the requirements specified in paragraph (b) of this section.

(g) A cable entity shall analyze its recruitment program on an ongoing basis to ensure that it is effective in achieving broad outreach, and address any problems found as a result of its analysis.

(h) Within forty-five days of the effective date of this paragraph (h) each cable employment unit with six or more fulltime employees shall elect whether it wishes to utilize the recruitment procedures specified in paragraph (b) of this section or the alternate recruitment procedures specified in paragraph (f) of this section and shall file with the Commission a statement indicating the

election which shall also be placed in the public inspection file maintained pursuant to § 76.1702. An employment unit may change its election annually at the time of the filing of the FCC Form 395-A or FCC Form 395-M. If the employment unit wishes to change its election, it shall so state in its FCC Form 395-A or FCC Form 395-M. A cable employment unit may also change its election at the time of a substantial change in its ownership by placing a statement of its new election in the public inspection file.

(i) Analyze on an ongoing basis its efforts to recruit, hire, promote and use services without discrimination on the basis of race, national origin, color, religion, age, or sex and explain any difficulties encountered in implementing its equal employment opportunity program. For example, this requirement may be met by:

(1) Where union agreements exist, cooperating with the union or unions in the development of programs to assure all persons equal opportunity for employment, and including an effective nondiscrimination clause in new or renegotiated union agreements;

(2) Reviewing seniority practices to ensure that such practices are nondiscriminatory;

(3) Examining rates of pay and fringe benefits for employees having the same duties, and eliminating any inequities based upon race, national origin, color, religion, age, or sex discrimination;

(4) Evaluating the recruitment program to ensure that it is effective in achieving a broad outreach to potential applicants.

(5) Utilizing media for recruitment purposes in a manner that will contain no indication, either explicit or implicit, of a preference for one race, national origin, color, religion, age, or sex over another; and

(6) Avoiding the use of selection techniques or tests that have the effect of discriminating against qualified minority groups or women.

(j) Cable entities shall substantially comply with paragraph (b)(1)(i) of this section in connection with hires for part-time positions. The remaining provisions of this section are not otherwise applicable to hires for part-time positions but are applicable only to full-time positions, defined as requiring a regular work schedule of 30 or more hours per week.

(k) The provisions of paragraphs (b)(1)(ii), (b)(2), (c), (f) and (g) of this section shall not apply to cable employment units that have fewer than six full-time employees.

9. Section 76.77 is amended by revising paragraphs (a), (b), and (c), and

adding paragraphs (e), (f), and (g) to read as follows:

**§ 76.77 Reporting requirements and enforcement.**

(a) *Annual employment reports.* Employment data on the annual employment report required by § 76.1802 shall reflect the figures from any one payroll period in July, August, or September of the year during which the report is filed. Unless instructed otherwise by the Commission, the same payroll period shall be used for each successive annual employment report. Employment units shall also provide EEO recruitment information covering a 12-month period, as requested and explained on the form. If a cable entity acquires a unit during the twelve months covered by the annual employment report, the recruitment activity in the report shall cover the period starting with the date the entity acquired the unit.

(b) *Certification of Compliance.* The Commission will use the recruitment information submitted on a unit's annual employment report to determine whether the unit is in compliance with the provisions of this subpart. Employment profile statistics provided about race, ethnicity, and gender of employees will not be used to determine compliance with the EEO rules. Units found to be in compliance with these rules will receive a Certificate of Compliance. Units found not to be in compliance will receive notice that they are not certified for a given year.

(c) *Investigations.* The Commission will investigate each unit at least once every five years. Employment units are required to submit supplemental investigation information with their regular annual employment reports in the years they are investigated. If an entity acquires a unit during the period covered by the supplemental investigation, the information submitted by the unit as part of the investigation shall cover the period starting with the date the operator acquired the unit. The supplemental investigation information shall include a copy of the unit's EEO public file report for the preceding year.

(e) *Records and inquiries.* Employment units subject to this subpart shall maintain records of their recruitment activity in accordance with § 76.75 to demonstrate whether they are in compliance with the EEO rules. Units shall ensure that they maintain records sufficient to verify the accuracy of information provided in their annual employment reports, supplemental investigation responses, and in the EEO program information required by

§ 76.1702 to be kept in a unit's public file. To determine compliance with the EEO rules, the Commission may conduct inquiries of employment units at random or if the Commission has evidence of a possible violation of the EEO rules. Upon request, employment units shall make records available to the Commission for its review.

(f) *Public complaints.* The public may file complaints based on annual employment reports, supplemental investigation information, or the contents of a unit's public file.

(g) *Sanctions and remedies.* The Commission may issue appropriate sanctions and remedies for any violation of the EEO rules.

10. Section 76.79 is revised to read as follows:

**§ 76.79 Records available for public inspection.**

A copy of every annual employment report, and any other employment report filed with the Commission, and complaint report that has been filed with the Commission, and copies of all exhibits, letters, and other documents filed as part thereof, all amendments thereto, all correspondence between the cable entity and the Commission pertaining to the reports after they have been filed in all documents incorporated therein by reference, unless specifically exempted from the requirement, are open for public inspection at the offices of the Commission in Washington, D.C.

**Note to § 76.59:** Cable operators must also comply with the public file requirements § 76.1702.

11. Section 76.1702 is added to read as follows:

**§ 76.1702 Equal employment opportunity.**

(a) Every employment unit with six or more full-time employees shall maintain for public inspection a file containing copies of all annual employment reports filed with the Commission pursuant to § 76.77 and the equal employment opportunity program information described in paragraph (b) or (c) of this section. These materials shall be placed in the unit's public inspection file annually by the date that the unit's annual employment report is due to be filed and shall be retained for a period of five years. The public inspection file should also contain the election information required by § 76.75 (h), insofar as it is not included in the entity's annual employment report. The file shall be maintained at the central office and at every location with six or more full-time employees. A headquarters employment unit file and

a file containing a consolidated set of all documents pertaining to the other employment units of a multiple cable operator shall be maintained at the central office of the headquarters employment unit. The cable entity shall provide reasonable accommodation at these locations for undisturbed inspection of its equal employment opportunity records by members of the public during regular business hours.

(b) The following equal employment opportunity program information shall be included annually in the unit's public file, and on the unit's web site, if it has one, at the time of the filing of its FCC Form 395-A or FCC Form 395-M, except as indicated in paragraph (c) of this section:

(1) A list of all full-time vacancies filled by the cable employment unit during the preceding year, identified by job title;

(2) For each such vacancy, the recruitment source(s) utilized to fill the vacancy (including, if applicable, organizations entitled to notification pursuant to § 76.75(b)(1)(ii), which should be separately identified), identified by name, address, contact person and telephone number;

(3) The recruitment source that referred the hiree for each full-time vacancy during the preceding year;

(4) Data reflecting the total number of persons interviewed for full-time vacancies during the preceding year and the total number of interviewees referred by each recruitment source utilized in connection with such vacancies; and

(5) A list and brief description of the initiatives undertaken pursuant to § 76.75(b)(2) during the preceding year, if applicable.

(c) An entity that elects to utilize the alternative recruitment procedure pursuant to § 76.75(f) shall annually include in the public inspection file the information required therein.

12. Section 76.1802 is added to read as follows:

**§ 76.1802 Equal employment opportunity.**

Each employment unit with six or more full-time employees shall file an annual employment report on FCC Form 395-A (if cable operator or SMATV) or Form 395-M (if MVPD) with the Commission on or before September 30 of each year, in accordance with § 76.77.

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 1

[FCC 00-6]

#### Separate Pleadings for Petitions for Forbearance

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Commission's rules to require that any petition for forbearance submitted under section 10(c) of the Communications Act, as amended (Act), 47 U.S.C. 160(c), be filed as a separate pleading and be captioned as a petition for forbearance under section 10(c). Adoption of this rule will help ensure that the Commission and all interested parties have the opportunity to consider fully the issues raised in petitions for forbearance within the statutory period for Commission consideration of such petitions.

**DATES:** Effective March 16, 2000.

**FOR FURTHER INFORMATION CONTACT:** Joanne F. Wall, Office of General Counsel, (202) 418-1720.

#### SUPPLEMENTARY INFORMATION:

1. Under section 10(a) of the Act, the Commission is required to forbear from applying any regulation or provision of the Act to a telecommunications carrier or service, or class of telecommunications carriers or services, if it determines that: (1) Enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest. 47 U.S.C. 160(a). Under section 10(c) of the Act, any telecommunications carrier, or class of telecommunications carriers, may submit a petition to the Commission requesting that it exercise its forbearance authority under section 10 with respect to that carrier or carriers, or any service offered by that carrier or carriers. Petitions for forbearance are deemed granted if the Commission does not deny the petition for failure to meet the requirements for forbearance under section 10(a) within one year after receiving the petition, unless the

Commission extends the one-year period. The Commission may extend the initial one-year period by an additional 90 days if it finds that an extension is necessary to meet the requirements of section 10(a) of the Act. 47 U.S.C. 160(c).

2. The Commission has received numerous forbearance requests under section 10(c). Many of these forbearance requests have been combined with other requests for Commission action and have not been identified as section 10(c) forbearance petitions in the captions for such pleadings. As a result, it appears that a significant number of these requests may not have been readily identifiable by the Commission staff and interested parties as section 10(c) forbearance petitions. Indeed, it has sometimes been unclear whether parties expected that a reference to section 10 forbearance would be treated as a section 10(c) petition, *e.g.*, when section 10 is raised as an alternative to the party's primary request. Given the statutory deadline for Commission action on section 10(c) forbearance petitions, the Commission is concerned that the Commission and interested parties may not have sufficient opportunity to consider these requests in a timely manner if they are not clearly identifiable as section 10(c) forbearance petitions. Section 10(c) forbearance requests raise important issues involving regulatory flexibility and competitive market conditions. Thus, the Commission adopts § 1.53 of the rules to require that section 10(c) forbearance petitions be filed as separate pleadings, clearly identified in the caption as a petition for forbearance filed under section 10(c) of the Act. Any request for forbearance that is not filed as a separate pleading and is not clearly identified as a section 10(c) petition for forbearance in the caption will not be deemed a section 10(c) petition and thus will not trigger the statutory deadline. 47 U.S.C. 160(c).

3. Accordingly, pursuant to sections 4(i), 4(j), 10, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 160 and 303(r), § 1.53 of the rules and regulations of the Federal Communications Commission, 47 CFR 1.53, is adopted as set forth, to be effective March 16, 2000. The Order was adopted on January 6, 2000 by the Commission and released on January 19, 2000.

4. Because the rule herein is a rule of agency procedure and practice, it may be adopted without affording prior notice and opportunity for public comment. *See* 5 U.S.C. 553(b)(3)(A).

### List of Subjects in 47 CFR Part 1

Practice and procedure.

Federal Communications Commission.  
**Magalie Roman Salas,**  
*Secretary.*

### Rule Change

Part 1 of Title 47 of the Code of Federal Regulations is amended as follows:

### PART 1—PRACTICE AND PROCEDURE

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

**Authority:** 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309.

2. Section 1.53 is added to read as follows:

#### § 1.53 Separate pleadings for petitions for forbearance.

In order to be considered as a petition for forbearance subject to the one-year deadline set forth in 47 U.S.C. 160(c), any petition requesting that the Commission exercise its forbearance authority under 47 U.S.C. 160 shall be filed as a separate pleading and shall be identified in the caption of such pleading as a petition for forbearance under 47 U.S.C. 160(c). Any request which is not in compliance with this rule is deemed not to constitute a petition pursuant to 47 U.S.C. 160(c), and is not subject to the deadline set forth therein.

[FR Doc. 00-3430 Filed 2-14-00; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 990713189-9335-02; I.D. 060899B]

RIN 0648-AK79

#### Fisheries of the Northeastern United States; Spiny Dogfish Fishery Management Plan

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

**ACTION:** Final rule; delay of effectiveness.

**SUMMARY:** NMFS delays the effective date of a final rule published January 11, 2000, from February 10, 2000, until March 15, 2000. The final rule will

implement approved management measures for the spiny dogfish fishery, as contained in the Spiny Dogfish Fishery Management Plan (FMP). This action is being taken in order to provide the Mid-Atlantic and New England Fishery Management Councils (Councils) with the opportunity to come to an agreement on how to proceed with implementation of the FMP. If the Councils have not reached an agreement by March 15, 2000, NMFS will assess the situation to determine the appropriate course of action to take at that time.

**DATES:** Unless as otherwise specified above, the final rule implementing the Spiny Dogfish Fishery Management Plan (published on January 11, 2000 at 65 FR 1557) is effective March 15, 2000.

**FOR FURTHER INFORMATION CONTACT:** Richard Pearson, Fishery Policy Analyst, at 978-281-0279.

**SUPPLEMENTARY INFORMATION:** The FMP was developed jointly by the Councils, with the Mid-Atlantic Council having the administrative lead. A Notice of Availability for the FMP was published in the **Federal Register** on June 29, 1999 (64 FR 34759), and solicited public comment through August 30, 1999. The proposed rule to implement the FMP was published in the **Federal Register** on August 3, 1999 (64 FR 42071), and solicited public comments through September 17, 1999. NMFS made the decision to partially approve the FMP on September 29, 1999. A final rule to implement the FMP was published in the **Federal Register** January 11, 2000 (65 FR 1557), to be effective on February 10, 2000. The final rule will now be effective March 15, 2000.

Dated: February 10, 2000.

**Penelope D. Dalton,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Services.*

[FR Doc. 00-3513 Filed 2-10-00; 3:14 pm]

**BILLING CODE 3510-22-F**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 991223349-934901-01; I.D. 021000A]

#### Fisheries of the Exclusive Economic Zone Off Alaska; Trawling in Steller Sea Lion Critical Habitat in the Central Aleutian District of the Bering Sea and Aleutian Islands

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

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting trawling within Steller sea lion critical habitat in the Central Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary because the 2000 critical habitat percentage of the interim harvest specifications of Atka mackerel allocated to the Central Aleutian District has been reached.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), February 10, 2000, until the directed fishery for Atka mackerel closes within the Central Aleutian District.

**FOR FURTHER INFORMATION CONTACT:** Andrew Smoker, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP

appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2000 interim TAC for Atka mackerel in the Central Aleutian District is 9,520 metric tons (mt), of which no more than 6,378 mt may be harvested from critical habitat (65 FR 60, January 3, 2000). See § 679.20(c)(2)(ii)(A) and 679.22(a)(8)(iii)(B).

In accordance with § 679.22(a)(8)(iii)(A), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the allowable harvest of Atka mackerel in Steller sea lion critical habitat in the Central Aleutian District as specified under the 2000 interim harvest specifications has been reached. Consequently, NMFS is prohibiting trawling in critical habitat, as defined at 50 CFR part 226, Table 1 and Table 2 in the Central Aleutian District of the BSAI.

#### Classification

This action responds to the interim TAC limitations for Atka mackerel in the BSAI. It must be implemented immediately to avoid jeopardy to the continued existence of Steller sea lions. A delay in the effective date is impracticable and contrary to the public interest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

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

Dated: February 10, 2000.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00-3482 Filed 2-10-00; 3:14 pm]

**BILLING CODE 3510-22-F**

# Proposed Rules

Federal Register

Vol. 65, No. 31

Tuesday, February 15, 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

### Agricultural Marketing Service

#### 7 CFR Parts 46 and 47

[Docket No. FV99-362]

RIN #0581-AB76

#### Perishable Agricultural Commodities Act: Increase in License and Complaint Filing Fees

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

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Agriculture (USDA) is proposing to amend the regulations under the Perishable Agricultural Commodities Act (PACA or Act) and the PACA Rules of Practice (other than formal disciplinary proceedings) to increase license and complaint filing fees. Specifically, the proposed revisions would increase the current annual license fee of \$550 to \$600 for very small businesses and would increase the license fee from \$550 to \$850 for all other licensees. Informal complaint filing fees would be increased from \$60 to \$100. This notice also announces USDA's intention to request an extension for and revision to a currently approved information collection for the Reporting and Recordkeeping Requirements under Regulations (Other Than Rules of Practice) under the PACA.

**DATES:** Comments must be received by April 17, 2000.

**ADDITIONAL INFORMATION CONTACT:** Charles W. Parrott, Acting Chief, PACA Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2095-So. Bldg., PO Box 96456, Washington, DC 20090-6456, phone (202) 720-2272. Email—charles.parrott@usda.gov. All comments should reference the docket number and the date and page number of this issue in the **Federal Register** and will be made available for public inspection in the PACA Branch during regular

business hours and posted on the internet at [www.ams.usda.gov/fv/paca.htm](http://www.ams.usda.gov/fv/paca.htm).

**SUPPLEMENTARY INFORMATION:** This proposal is issued under authority of section 15 of the PACA (7 U.S.C. 499o).

The Perishable Agricultural Commodities Act (PACA or Act) establishes a code of fair trade practices covering the marketing of fresh and frozen fruits and vegetables in interstate and foreign commerce. The PACA protects growers, shippers, distributors, and retailers dealing in those commodities by prohibiting unfair and fraudulent trade practices. In this way, the law fosters an efficient nationwide distribution system for fresh and frozen fruits and vegetables, benefiting the whole marketing chain from farmer to consumer. USDA's Agricultural Marketing Service (AMS) administers and enforces the PACA.

The PACA Amendments of 1995 (1995 Amendments)<sup>1</sup> increased the annual license fee from \$400 to \$550 (up to a maximum fee of \$4000) for all licensees except retailers and grocery wholesalers, who were phased out of paying license fees over a 3-year period that concluded on November 14, 1998. Retailers account for approximately 30 percent of all PACA licensees, and provided about 35 percent of the program's revenue prior to being phased out of the license fee requirement.

The 1995 Amendments grant USDA the authority to increase fees through rulemaking after November 14, 1998, provided that the PACA program's operating reserves fall below 25 percent of the projected annual program costs. Because of the loss of revenue from retailers and grocery wholesalers over the past four years, PACA program budget projections for fiscal years 2000 and 2001 show that the program's assets will fall below the required 25 percent of projected expenditures in fiscal year 2001. Without a fee increase, the program will exhaust its reserves by the end of Fiscal Year 2003, and would soon need to begin reducing its level of services to the industry. Therefore, USDA is proposing an increase in the PACA license fee from \$550 to \$850. Branch fees would remain at \$200 per branch, but the maximum fee would increase from \$4,000 to \$6,000. However, very small businesses would

pay a license fee of \$600. The parameters for a very small business to qualify for the \$600 license fee will be further addressed when we discuss the effects that this proposed rule would have on small businesses. In addition, AMS would also raise the informal reparation complaint filing fee from \$60 to \$100. AMS would amend § 46.46 of the PACA Regulations and § 47.3 of the PACA Rules of Practice to reflect the proposed changes to the license and reparation complaint filing fees. In addition, the language in § 46.46 of the regulations regarding the phase-out of retailers and grocery wholesalers from paying license fees would be deleted, since the 3-year phase-out mandated by the 1995 Amendments has been concluded.

Additionally, a number of definitions would be amended in the regulations. Due to the reorganization of AMS, a definition of the "Fruit and Vegetable Programs" would be substituted for the definition of "Division," a definition of "Associate Administrator" would be substituted for the definition of "Deputy Administrator," and a definition of "Deputy Administrator" would be substituted for the definition of "Director." Additionally, the words "Program" and "Deputy Administrator" would be substituted for "Division" and "Director" respectively, wherever they appear in part 46.

#### Executive Orders 12866 and 12988

This proposed rule, issued under the Perishable Agricultural Commodities Act (7 U.S.C. 499 *et seq.*), as amended, has been determined to be not significant for the purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget (OMB).

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform and is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

#### Effects on Small Businesses

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), AMS has considered the economic impact of this proposed

<sup>1</sup>P.L. 104-48, 109 Stat. 427(1995)

rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Small agricultural service firms have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those whose annual receipts are less than \$5,000,000.

The PACA is enforced through a licensing system and is user-fee financed primarily through a license fee. The PACA requires commission merchants, dealers, and brokers buying or selling fruits and/or vegetables in interstate or foreign commerce who meet certain threshold requirements to be licensed. There are approximately 16,695 PACA licensees. Separating licensees by the nature of business, there are approximately 5,800 wholesalers, 5,100 retailers, 2,000 brokers, 1,300 processors, 700 commission merchants, 420 food service businesses, 130 grocery wholesalers, and 40 truckers licensed under PACA. In addition, there are approximately 1,100 other licensees with multiple types of business. The PACA license is effective for three years for retailers and grocery wholesalers, and must be renewed on a triennial basis. The license for all other licensees is effective for up to three years. These licensees must also renew their licenses, but have the option of a 1-year, 2-year, or 3-year license term. Those who engage in practices prohibited by the PACA may

have their licenses suspended or revoked by USDA (7 CFR 46.9 (a)-(h)). Many of the licensees may be classified as small entities.

Wholesalers, processors, food service companies, grocery wholesalers, and truckers are considered to be dealers and subject to a license when they buy or sell more than 2,000 pounds of fresh and/or frozen fruits and vegetables in any given day. Dealers whose fruit and vegetable purchases or sales do not exceed the 2,000 pound threshold are exempt from the license requirement. A retailer is considered to be a dealer and subject to license when the invoice cost of its perishable agricultural commodities exceeds \$230,000 in a calendar year. Brokers, negotiating the sale of frozen fruits and vegetables on behalf of the seller, are exempt from licensing in any calendar year when the invoice value of the transactions are below \$230,000.

The 1995 Amendments grant USDA the authority to increase fees through rulemaking after November 14, 1998, provided that the PACA program's operating reserves fall below 25 percent of the projected annual program costs. The initial increase in receipts from fees collected following the enactment of the 1995 Amendments allowed the PACA fund to build up operating reserves. Those reserves peaked at \$7.48 million in July 1998. However, due to the loss of revenue from retailers and grocery wholesalers over the past four years, PACA program budget projections for

fiscal years 2000 and 2001 show that the program's assets will fall below the required 25 percent of projected expenditures in fiscal year 2001. Budget projections indicate that the program must generate approximately \$9.101 million per year over each of the next five years for the program to stay above the 25 percent threshold. This equates to a \$2.7 million per year increase in annual program revenues beginning with fiscal year 2000. Because 93 percent of the program's revenue is generated through the collection of license fees, a majority of these funds would have to be raised through an increase in license fees. Without a fee increase, the program will exhaust its reserves by the end of fiscal year 2003, and would soon need to begin reducing its level of services to the industry.

Accordingly, it will be necessary for USDA to implement a PACA fee increase in fiscal year 2001. A significant increase will be necessary to compensate for the loss of the license revenue from retailers and grocery wholesalers. When USDA proposed revisions to the PACA regulations implementing the 1995 Amendments (61 FR 47674, September 10, 1996), it noted that the next fee increase would need to be significant.

The following table outlines how the proposed fee increase would affect the PACA program's budget through fiscal 2006:

Year	Balance start of fiscal year	License & complaint fee revenue	Investment revenue	Total revenue	Projected costs	End of year	
						Reserve	Percent
2001	3,642,000	9,101,000	269,000	13,012,000	9,009,000	4,003,000	44
2002	4,003,000	9,101,000	450,000	13,554,000	9,153,000	4,401,000	46
2003	4,401,000	9,101,000	450,000	13,952,000	9,489,000	4,462,000	45
2004	4,462,000	9,101,000	415,000	13,978,000	9,816,000	4,162,000	41
2005	4,162,000	9,101,000	381,000	13,645,000	10,128,000	3,516,000	34
2006	3,516,000	9,101,000	346,000	12,963,000	10,351,000	2,612,000	25

USDA officials have discussed this issue with representatives from numerous trade associations, most of whom expressed a preference for a single, significant fee increase, rather than a series of smaller increases implemented over several years to maintain the 25 percent reserve balance. Taking that into account, USDA is proposing an increase in the PACA license fee from \$550 to \$850. Branch fees would remain at \$200 per branch, but the maximum fee would increase from \$4,000 to \$6,000. The proposed fees would result in total collections of \$9.1 million with a projected end-of-year reserve of approximately 44

percent for fiscal year 2001, or about \$1.75 million above the level needed to achieve a reserve of 25 percent. With this revenue, AMS expects that the PACA program should have adequate financing through fiscal year 2006 when the reserve is again projected to fall below 25 percent. In order to moderate the financial burden for small businesses, AMS is also proposing that very small businesses with gross sales of less than \$1 million per year pay a license fee of \$600, a modest increase of \$50 from the current \$550 license fee. In order to qualify for the \$600 license fee, AMS may require that a firm submit a copy of its last income tax return filed

with the Internal Revenue Service. Because very small businesses have limited financial resources, USDA believes that such a fee structure is more equitable for those firms and should increase the likelihood the firms would voluntarily comply with the PACA licensing requirements.

Although license fees account for the majority of PACA's funding, the program also collects about 3.5 percent of its revenue from fees charged to firms that submit disputes to the PACA branch for resolution. Under section 6(a)(2) of the Act, the Secretary may alter the complaint filing and handling fees by rulemaking. In order to help

offset the revenue loss from the lower license fee for very small businesses, USDA proposes that the informal reparation complaint filing fee be raised from \$60 to \$100. USDA believes that this will also place a larger percentage of the financial burden on those firms that directly use PACA dispute resolution services. Furthermore, USDA does not believe that a modest \$40 increase in the complaint filing fee would affect the decision of a business, regardless of its gross sales, to seek to recover damages by filing an informal reparation complaint.

Given the preceding discussion, AMS has made an initial determination that the provisions of this proposed rule would not have a significant economic impact on a substantial number of small entities.

### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces AMS' intention to request an extension for and revision to a currently approved information collection for the Reporting and Recordkeeping Requirements under Regulations (Other Than Rules of Practice) Under the Perishable Agricultural Commodities Act (PACA) (7 U.S.C. 499a-499t).

*Title:* Reporting and Recordkeeping Requirements Under Regulations (Other Than Rules of Practice) Under the Perishable Agricultural Commodities Act, 1930.

*OMB Number:* 0581-0031.

*Expiration Date of Approval:* April 30, 2001.

*Type of Request:* Extension and revision of a currently approved information collection.

*Abstract:* The PACA was enacted by Congress in 1930 to establish a code of fair trading practices covering the marketing of fresh and frozen fruits and vegetables in interstate or foreign commerce. It protects growers, shippers, and distributors dealing in those commodities by prohibiting unfair and fraudulent trade practices.

The law provides for the enforcement of contracts by providing a forum for resolving contract disputes, and a mechanism for the collection of damages from anyone who fails to meet contractual obligations and for excluding from the industry firms or individuals who violate the law's standards for fair business practices. In addition, the PACA imposes a statutory trust on licensees for perishable agricultural commodities received, products derived from them, and any receivables or proceeds due from the sale of the commodities for the benefit

of produce suppliers, sellers, or agents that have not been paid.

The PACA is enforced through a licensing system and substantially through a license fee. All commission merchant, dealers, and brokers engaged in business subject to the PACA must be licensed. Retailers and grocery wholesalers must renew their licenses every three years. All other licensees have the option of a one, two, or three-year license term. Those who engage in practices prohibited by the PACA may have their licenses suspended or revoked.

The information collected from respondents is used to administer licensing provisions under the PACA. The records maintained are used to adjudicate contract disputes and administrative complaints filed against licensees to impose sanctions on firms and responsibly connected individuals who have engaged in unfair trade practices.

We estimate the paperwork and time burden on the above to be as follows:

*Form FV-211 (or 211-1, or 211-2, or 211-3, or 211-4, or 211-5), Application for License:* Average of .25 hours per application per response.

*Form FV-231-1 (or 231-1A, or 231-2, or 231-2A), Application for Renewal or Reinstatement of License:* Average of .05 hours per application per response.

*Regulations Section 46.13—Letters to Notify USDA of Changes in Business Operations:* Average of .05 hours per notice per response.

*Regulations Section 46.4—Limited Liability Company Articles of Organization and Operating Agreement:* Average of .083 hours with approximately 160 recordkeepers.

*Regulations Section 46.18—Record of Produce Received:* Average of 5 hours with approximately 14,700 recordkeepers.

*Regulations Section 46.20—Records Reflecting Lot Numbers:* Average of 8.25 hours with approximately 1,000 recordkeepers.

*Regulations Section 46.46(d)(2)—Waiver of Rights to Trust Protection:* Average of .25 hours per notice with approximately 100 principals.

*Regulations Sections 46.46(f) and 46.2(aa)(11)—Copy of Written Agreement Reflecting Times for Payment:* Average of 20 hours with approximately 2,000 recordkeepers.

*Estimate of Burden:* The total public reporting burden for this collection of information is estimated to average 3.85334 hours per response.

*Respondents:* Commission merchants, dealers, and brokers engaged in the business of buying, selling, or negotiating the purchase or sale of

commercial quantities of fresh and/or frozen fruits and vegetables in interstate or foreign commerce are required to be licensed under the PACA (7 U.S.C. 499(c)(a)).

*Estimated Number of Respondents:* 11,209.

*Estimated Number of Responses per Respondent:* 2.7415.

*Estimated Total Annual Burden on Respondents:* 118,371 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Charles W. Parrott, Acting Chief, PACA Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2095—So. Bldg., PO Box 96456, Washington, DC 20090-6456. Email—charles.parrott@usda.gov. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice concerning reporting and recordkeeping requirements will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

### List of Subjects

#### 7 CFR Part 46

Agricultural commodities, Brokers, Penalties, Reporting and recordkeeping requirements.

#### 7 CFR Part 47

Administrative practice and procedure, Agricultural commodities, Brokers.

For the reasons set forth in the preamble, 7 CFR parts 46 and 47 are proposed to be amended as follows:

### PART 46—[AMENDED]

1. The authority citation for part 46 continues to read as follows:

**Authority:** Sec. 15, 46 Stat. 537; 7 U.S.C. 499o.

2. In § 46.2, paragraphs (e), (f), and (g) are revised to read as follows:

**§ 46.2 Definitions.**

\* \* \* \* \*

(e) *Associate Administrator* means the Associate Administrator of the Service, or any officer or employee of the Service to whom authority has heretofore lawfully been delegated, or to whom authority may hereafter lawfully be delegated, to act in his or her stead.

(f) *Fruit and Vegetable Programs* means the Fruit and Vegetable Programs of the Service.

(g) *Deputy Administrator* means the Deputy Administrator of the Fruit and Vegetable Programs or any officer or employee of the Fruit and Vegetable Programs to whom authority has heretofore lawfully been delegated, or to whom authority may hereafter lawfully be delegated by the Deputy Administrator, to act in his stead.

\* \* \* \* \*

3. Section 46.6 is revised to read as follows:

**§ 46.6 License fees.**

(a) Retailers and grocery wholesalers making an initial application for license shall pay a \$100 administrative processing fee.

(b) Commission merchants, brokers, and dealers (other than grocery wholesalers and retailers), provided that they do not meet specific criteria of a very small business as set forth in paragraph (c) of this section, shall pay an annual license fee of \$850 plus \$200 for each branch or additional business facility in excess of nine. In no case shall the aggregate annual fees paid by any such applicant exceed \$6,000.

(c) To qualify as a very small business and pay a license fee of \$600, the business must have had gross sales of \$1,000,000 in the immediate preceding calendar year. Any applicant may be required to provide a copy of its most recent income tax return filed with the Internal Revenue Service as verification that its gross sales are less than \$1,000,000. In no case shall the aggregate annual fees paid by any such applicant exceed \$6,000.

4. Part 46 is amended by removing the word "Deputy Administrator" and adding in its place the words "Associate Administrator", everywhere they appear.

5. Part 46 is amended by removing the word "Division" and adding in its place the words "Fruit and Vegetable Programs", everywhere they appear.

6. Part 46 is amended by removing the words "Director" and "Director's", and adding in their place the words "Deputy Administrator" and "Deputy Administrator's" respectively, everywhere they appear.

**PART 47—[AMENDED]**

1. The authority citation for part 47 is revised to read as follows:

**Authority:** 7 U.S.C. 499o; 7 CFR 2.22(a)(1)(viii)(L), 2.79(a)(8)(xiii).

2. In § 47.3, paragraph (a)(4) is revised to read as follows:

**§ 47.3 Institution of proceedings.**

(a) \* \* \*

(4) The informal complaint shall be accompanied by a filing fee of \$100 as authorized by the Act.

\* \* \* \* \*

Dated: February 9, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00-3424 Filed 2-14-00; 8:45 am]

**BILLING CODE 3410-02-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

**[Docket No. 99-NM-343-AD]**

**RIN 2120-AA64**

**Airworthiness Directives; Airbus Model A319, A320, and A321 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 Airbus Model A319, A320, and A321 series airplanes. This proposal would require repetitive inspections of the sliding tube subassembly on the main landing gear (MLG) to detect cracks, and replacement of a cracked subassembly with a new subassembly. This proposal also would eventually require a more extensive, one-time inspection of the same area and corrective actions, if necessary; 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 cracking of the MLG sliding tube subassembly, which could result in collapse of the MLG.

**DATES:** Comments must be received by March 16, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport

Airplane Directorate, ANM-114, Attention: Rules Docket No. 99-NM-343-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:**

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

**SUPPLEMENTARY INFORMATION:****Comments Invited**

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99-NM-343-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-343-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

## Discussion

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A319, A320, and A321 series airplanes. The DGAC advises that, during a scheduled inspection of the main landing gear (MLG) on one airplane, two cracks were found in the base of the sliding tube. The cracks originated from the bore of the jacking dome bushing. The DGAC advises that a nondestructive test inspection may have been improperly performed causing local overheating between the jacking dome bushing and the sliding tube bore. This overheating increases the possibility of crack initiation. This condition, if not corrected, could result in collapse of the MLG.

## Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320-32-1189, dated December 23, 1998, which describes procedures for visual inspections of the MLG sliding tube subassembly for cracks, and corrective action, if necessary. Two separate inspections are described. The service bulletin describes procedures for repetitive visual inspections of the sliding tube subassembly around the area between the jacking dome bushing and the high pressure inflation valve, and between the jacking dome bushing and the hole for the lower electrical harness assembly; and procedures for replacing a cracked sliding tube subassembly with a new subassembly. The service bulletin also describes procedures for removal of the jacking dome, bushing, and harness supports, and a one-time visual inspection to detect cracking of the sliding tube subassembly in the area where the jacking dome bushing was removed.

Airbus has also revised the Aircraft Maintenance Manual to include cautions during accomplishment of the MLG nondestructive test inspection.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified the Airbus service bulletin as mandatory and issued French airworthiness directive 1999-358-137(B) R1, dated October 20, 1999, in order to ensure the continued airworthiness of these airplanes in France.

## FAA's Conclusions

These airplane models are manufactured in France and are type

certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

## Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the Airbus service bulletins described previously, except as discussed below.

## Differences Between NPRM and Service Bulletin/French Airworthiness Directive

The proposed compliance times and repetitive intervals (stated in flight hours) differ from those recommended by the manufacturer's service bulletin (stated to coincide with operators' "A" and "C" checks). However, because regularly scheduled maintenance intervals such as "A" checks and "C" checks may vary from operator to operator, there would be no assurance that the inspections would be accomplished during the maximum intervals proposed by this AD designed to maintain an adequate level of safety within the fleet. The compliance times in the proposed AD and the French airworthiness directive agree.

In addition, operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by either the FAA or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair approved by either the FAA or the DGAC would be acceptable for compliance with this proposed AD.

Further, the applicability of this proposed AD differs from that of the French airworthiness directive, which excludes airplanes on which (1) the MLG sliding tubes have never been

removed, (2) the MLG sliding tubes have never received an NDT (NDT2) inspection, and (3) the MLG sliding tubes have received an NDT (NDT2) inspection with the attaching hardware and bushing removed from the sliding tube. Because these conditions may not be easily determined, the applicability of this proposed AD would be limited to airplanes on which Airbus Service Bulletin A320-32-1189 has not been accomplished.

## Cost Impact

The FAA estimates that 179 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed "Part A" (repetitive) inspection, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the Part A inspection proposed by this AD on U.S. operators is estimated to be \$10,740, or \$60 per airplane, per inspection cycle.

It would take approximately 6 work hours per airplane to accomplish the proposed "Part B" (one-time) inspection, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the Part B inspection proposed by this AD on U.S. operators is estimated to be \$64,440, or \$360 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:

**Airbus:** Docket 99–NM–343–AD.

**Applicability:** Model A319, A320, and A321 series airplanes; manufacturer serial numbers through 0875 inclusive; certificated in any category; except those on which Airbus Service Bulletin A320–32–1189, dated December 23, 1998, has not been accomplished.

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

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

To prevent cracking of the sliding tube subassembly of the main landing gear (MLG), which could result in collapse of the MLG, accomplish the following:

#### Inspections

(a) Within 500 flight hours after the effective date of this AD, perform a detailed visual inspection to detect cracking of the left-hand and right-hand MLG sliding tube subassemblies, in accordance with paragraph 2.B.(1) of the Accomplishment Instructions of Airbus Service Bulletin A320–32–1189, dated December 23, 1998.

(1) If no crack is found, repeat the inspection at intervals not to exceed 500 flight hours, until the requirements of

paragraph (b) of this AD have been accomplished.

(2) If any crack is found, prior to further flight, replace the sliding tube subassembly with a new subassembly, in accordance with the service bulletin. Thereafter, repeat the inspection at intervals not to exceed 500 flight hours, until the requirements of paragraph (b) of this AD have been accomplished.

**Note 2:** For the purposes of this AD, a detailed visual inspection is defined as: “an intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.”

(b) Within 15 months after the effective date of this AD: Remove the jacking dome, the stop washer, the jacking dome bushing, and the harness supports; and perform detailed visual inspections to detect discrepancies (including cracking of the left and right MLG sliding tube subassemblies, and overheat damage of the jacking dome bushing), in accordance with paragraph 2.B.(2) of the Accomplishment Instructions of Airbus Service Bulletin A320–32–1189, dated December 23, 1998. Accomplishment of the requirements of this paragraph constitutes terminating action for the requirements of paragraph (a) of this AD.

(1) If no discrepancy is found, prior to further flight, install a new stop washer and jacking dome bushing, in accordance with the service bulletin. No further action is required by this AD.

(2) If any discrepancy is found, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Generale de l’Aviation Civile (DGAC) (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager’s approval letter must specifically reference this AD.

#### Alternative Methods of Compliance

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

(d) Special flight permits may be issued in accordance with §§ 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 French airworthiness directive 1999–358–137(B) R1, dated October 20, 1999.

Issued in Renton, Washington, on February 9, 2000.

**Donald L. Riggan,**

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

[FR Doc. 00–3533 Filed 2–14–00; 8:45 am]

**BILLING CODE 4910–13–U**

### DEPARTMENT OF VETERANS AFFAIRS

#### 38 CFR Part 8

**RIN 2900–AJ35**

#### Cash Value for National Service Life Insurance (NSLI) Term Capped Policies

**AGENCY:** Department of Veterans Affairs.  
**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to amend the Department of Veterans’ Affairs (VA) regulations, regarding National Service Life Insurance (NSLI) and Veterans Special Life Insurance (VSLI) by providing cash values for NSLI and VSLI term capped policies and further providing the options to receive either the cash value in a lump sum or to purchase paid-up insurance upon the termination of the contract before maturity.

**DATES:** Comments must be received on or before March 16, 2000.

**ADDRESSES:** Mail or hand-deliver written comments to: Director, Office of Regulations Management (O2D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Comments should indicate that they are in response to “RIN 2900–AJ35”. All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

**FOR FURTHER INFORMATION CONTACT:** George Poole, Chief of Insurance Program Administration and Oversight, PO Box 8079, Philadelphia, Pennsylvania 19101, (215) 842–2000, ext. 4286; (215) 842–2000, ext. 5012 (voicemail); (215) 381–3502 (fax); or e-mail at “issgpool@VBA.VA.GOV”.

**SUPPLEMENTARY INFORMATION:** Currently, approximately one percent of term capped policies are canceled each year by lapse or request and these

policyholders do not receive any value reserved to their policies. Any reserves no longer necessary to be held for canceled policies are redirected to surplus and distributed to the remaining term policyholders as dividends.

Term capped policyholders who reach age 96 are afforded the full face value of their policies because the mortality table upon which their premiums are based (American Experience Mortality Table) effectively matures these policies at age 96. Yet, if a policyholder cancels coverage at age 95, he or she would not receive any value. In order to remedy this, we are proposing to add section 8.37 to provide cash values for these term capped policies, which is in accordance with the practices in the commercial insurance industry.

Sufficient reserves have been established, not only to fund that NSLI "V" and VSLI "RS" 5-year level premium term rates so that they do not exceed their respective renewal age 70 premium rates (term capped policies), but also to provide cash values to these term premium capped policies. As illustrative of the reserves previously established to provide for cash values, at age 85, a "V" term capped policyholder with a \$10,000 policy would accumulate \$4,786 in cash value. We also believe that "V" and "RS" policyholders whose policies are canceled should be afforded the option to receive the cash value in a lump sum or to use that value to purchase paid-up insurance. This will afford policyholders the opportunity to retain some of the life insurance coverage which they may have had since the beginning of WWII. At age 85, a "V" policyholder who has accumulated \$4,786 in cash value could purchase \$6,109 in paid-up insurance.

The Secretary of Veterans' Affairs hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-602. Pursuant to 5 U.S.C. 605(b), this proposed rule is, therefore, exempt from the initial and final regulatory flexibility analysis requirement of sections 603 and 604. The proposed regulation will affect only government life insurance policyholders. It will therefore have no significant direct impact on small entities in the terms of compliance costs, paperwork requirements or effects on competition.

The catalog of Federal Domestic Assistance Program number for this regulation is 64.103.

**List of Subjects in 38 CFR Part 8**

Disability benefits, Life insurance, Loan programs—veterans, Military personnel, Veterans.

Approved: February 3, 2000.

**Togo D. West, Jr.,**

Secretary of Veterans' Affairs.

For the reasons set out in the preamble, 38 CFR part 8 is proposed to be amended as set forth below:

**PART 8—NATIONAL SERVICE LIFE INSURANCE**

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

**Authority:** U.S.C. 501, 1901-1929, 1981-1988, unless otherwise noted.

2. Section 8.37 is added to read as follows:

**§ 8.37 Cash value for term capped policies.**

(a) *What is a term capped policy?* A term capped policy is a National Service Life Insurance policy prefixed with "V" or Veterans Special Life Insurance policy prefixed with "RS," issued on a 5-year level premium term plan in which premiums have been capped (frozen) at the renewal age 70 rate.

(b) *How can a term capped policy accrue cash value?* Normally, a policy issued on a 5-year level premium term plan does not accrue cash value (see § 8.14). However, notwithstanding any other provisions of this part, reserves have been established to provide for cash value for term capped policies.

(c) *On what basis have the reserve values been established?* Reserve values have been established based upon the 1980 Commissioners Standard Ordinary Basic Table and interest at five per centum per annum in accordance with accepted actuarial practices.

(d) *How much cash value does a term capped policy have?* The cash value for each policy will depend on the age of the insured, the type of policy, and the amount of coverage in force and will be calculated in accordance with accepted actuarial practices. For illustrative purposes, below are some examples of cash values based upon a \$10,000 policy at various attained ages for a NSLI "V" policy and a VSLI "RS" policy:

Age	Cash value "V"	Cash Value "RS"
75 .....	\$1,494	\$1,716
80 .....	3,212	3,358
85 .....	4,786	4,818
90 .....	6,249	6,217
95 .....	8,887	7,286

(e) *What can be done with this cash value?* Upon cancellation or lapse of the

policy, a policyholder may receive the cash value in a lump sum or may use the cash value to purchase paid-up insurance. If a term capped policy is kept in force, cash values will continue to grow.

(f) *How much paid-up insurance can be obtained for the cash value?* The amount of paid-up insurance that can be purchased will depend on the amount of cash value that the policy has accrued and will be calculated in accordance with accepted actuarial practices. For illustrative purposes, below are some examples of paid-up insurance that could be purchased by the cash value of a "V" and "RS" \$10,000 policy at various attained ages:

Age	Paid-up "V" insurance	Paid-up "RS" insurance
75 .....	\$2,284	\$2,625
80 .....	4,452	4,654
85 .....	6,109	6,149
90 .....	7,421	7,115
95 .....	9,331	7,650

(g) *If the policy lapses due to non-payment of the premium, does the policyholder nonetheless have a choice of receiving the cash value or paid-up insurance?* Yes, the policyholder will have that choice, along with the option to reinstate the policy (see § 8.10 for reinstatement of a policy). However, if a policyholder does not make a selection, VA will apply the cash value to purchase paid-up insurance. Paid-up insurance may be surrendered for cash at any time.

(h) *If a policyholder elects to receive either the cash surrender or paid-up insurance due to lapse or voluntary cancellation of a term capped policy, may the original term capped policy be reinstated?* Yes, the term capped policy may be reinstated but the policyholder, in addition to meeting the reinstatement requirements of term policies, must also pay the current reserve value of the reinstated policy.

(Authority: 38 U.S.C. 1906)

[FR Doc. 00-3454 Filed 2-14-00; 8:45 am]

BILLING CODE 8320-01-P

**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Part 20**

**RIN 2900-AJ58**

**Board of Veterans' Appeals: Rules of Practice—Subpoenas**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Board of Veterans' Appeals (Board) adjudicates appeals from denials of claims for veterans' benefits filed with the Department of Veterans Affairs (VA). This document proposes to amend the Board's Rules of Practice to clarify certain procedures relating to subpoenas.

**DATES:** Comments must be received on or before April 17, 2000.

**ADDRESSES:** Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900-AJ58." All written comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

**FOR FURTHER INFORMATION CONTACT:** Steven L. Keller, Chief Counsel, Board of Veterans' Appeals (0C1), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 (202-565-5978).

**SUPPLEMENTARY INFORMATION:** VA has the authority to issue subpoenas to compel the attendance of witnesses and/or the production of evidence. 38 U.S.C. 5711 (authority of Secretary). This authority has been delegated to Members of the Board through Rule of Practice 711 (38 CFR 20.711), which also sets forth the relevant procedures, and generally provides that subpoenas will be issued pursuant to a motion filed with the Board, which is in turn decided by a Board Member or panel of Members.

The changes in this document relate to: (1) Where such a motion must be filed; (2) ruling on the motion; (3) service of a subpoena; (4) motions to quash or modify subpoenas; and (5) enforcing compliance with a subpoena.

#### Where the Motion Is Filed

Rule 711(c) would be amended to provide that motions for subpoenas must be filed at the Board's offices in Washington, DC.

When originally issued in 1992, Rule 711 permitted the Chairman of the Board and, under certain circumstances, Directors of VA field facilities to rule on motions for subpoenas. See 38 CFR 20.711(e) (1992). The Rule was amended in 1996 to transfer authority to rule on subpoena motions to Members of the Board to comply with changes in 38 U.S.C. 7102. See 61 FR 20447 (1996). However, corresponding provisions in paragraph (c) of the Rule allowing

subpoena motions to be filed with VA facility Directors were not removed. Local filing may not allow a motion to reach the Board early enough to permit timely issuance of a subpoena. VA proposes removing the provision for local filing.

#### Ruling on the Motion

VA proposes amending Rules 711(e) and 711(h) to provide that the issue of the costs of producing documents pursuant to a subpoena will be a matter for a motion to quash or amend, rather than a potential condition of issuing the subpoena.

Rule 711(e) now permits a Member of the Board to condition issuance of a subpoena seeking the production of tangible evidence (subpoena duces tecum) upon the moving party's advancement of the reasonable cost of producing the evidence. Setting a requirement for paying costs before there is any demand for reimbursement or evidence upon which reasonable costs may be determined is often premature. Accordingly, this provision would be moved to Rule 711(h), relating to motions to quash or modify a subpoena. This will provide a mechanism for getting actual cost disputes and related evidence before the Board. This procedure is similar to the practice of VA's Board of Contract Appeals. See 38 CFR 1.783(u)(4). In addition, Rule 711(e) would specify the forms to be used for issuing the subpoena, if the motion is granted.

#### Service of the Subpoena

VA proposes amending Rules 711(f) and 711(g) to delete the reference to "the official issuing the subpoena," since, under the Board's Rules of Practice, subpoenas are issued only by Members of the Board pursuant to a motion to the Board.

#### Motions to Quash or Modify Subpoenas

VA proposes amending Rule 711(h) to provide that motions to quash or modify a subpoena may be brought by either party, and to provide notice procedures and permit the submission of evidence in such cases.

Current Rule 711(h) does not provide an effective means of getting before the Board disputes between the person subpoenaed and the person who initiated the subpoena where the person who initiated the subpoena is the aggrieved party—for example, disputes about unreasonable demands for reimbursement for costs associated with honoring a subpoena duces tecum. Current Rule 711(h) does provide for a motion to quash or modify a subpoena, but only by the person served.

Consistent with the Board of Contract Appeals' practice, see 38 CFR 1.783(u)(4), the motion may now be brought by either party. Other revisions in this part of the Rule include new provisions requiring notice of motions to quash or modify and permitting evidence to be submitted in such proceedings.

#### Compliance

Proposed new paragraph (i) describes the method used to secure enforcement of the BVA's subpoenas.

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. This rule will affect VA beneficiaries and will not affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirement of sections 603 and 604.

#### List of Subjects in 38 CFR Part 20

Administrative practice and procedure, Claims, Lawyers, Legal services, Veterans.

Approved: February 3, 2000.

**Togo D. West, Jr.,**

*Secretary of Veterans Affairs.*

For the reasons set out in the preamble, 38 CFR part 20 is proposed to be amended as set forth below:

#### PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

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

**Authority:** 38 U.S.C. 501(a).

2. Section 20.711 is amended by:

- Revising paragraphs (c) and (e);
- Revising the second sentence of paragraph (f);
- Revising the first sentence of paragraph (g);
- Revising paragraph (h); and
- Adding paragraph (i).

The revisions and addition read as follows:

#### § 20.711 Rule 711. Subpoenas.

\* \* \* \* \*

(c) *Where filed.* Motions for a subpoena must be filed with the Director of the Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.

\* \* \* \* \*

(e) *Ruling on motion for subpoena—(1) To whom assigned.* The ruling on the motion will be made by the Member or panel of Members to whom the case is

assigned. Where the case has not been assigned, the Chairman, or the Chairman's designee, will assign the case to a Member or panel who will then rule on the motion.

(2) *Procedure.* If the motion is denied, the Member(s) ruling on the motion will issue an order to that effect which sets forth the reasons for the denial and will send copies to the moving party and his or her representative, if any. Granting the motion will be signified by completion of a VA Form 0714, "Subpoena," if attendance of a witness is required, and/or VA Form 0713, "Subpoena Duces Tecum," if production of tangible evidence is required. The completed form shall be signed by the Member ruling on the motion, or, where applicable, by any panel Member on behalf of the panel ruling on the motion, and served in accordance with paragraph (g) of this section.

(f) \* \* \* A subpoena for a witness will not be issued or served unless the party on whose behalf the subpoena is issued submits a check in an amount equal to the fee for one day's attendance and the mileage allowed by law, made payable to the witness, as an attachment to the motion for the subpoena. \* \* \*

(g) \* \* \* The Board will serve the subpoena by certified mail, return receipt requested. \* \* \*

(h) *Motion to quash or modify subpoena*—(1) *Filing procedure.* Upon written motion of the party securing the subpoena, or of the person subpoenaed, the Board may quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown. Relief may include, but is not limited to, requiring the party who secured the subpoena to advance the reasonable cost of producing books, papers, or other tangible evidence. The motion must specify the relief sought and the reasons for requesting relief. Such motions must be filed at the address specified in paragraph (c) of this section within 10 days after mailing of the subpoena or the time specified in the subpoena for compliance, whichever is less. The motion may be accompanied by such supporting evidence as the moving party may choose to submit. It must be accompanied by a declaration showing:

(i) That a copy of the motion, and any attachments thereto, were mailed to the party who secured the subpoena, or the person subpoenaed, as applicable;

(ii) The date of mailing; and

(iii) The address to which the copy was mailed.

(2) *Response.* Not later than 10 days after the date that the motion was mailed to the responding party, that

party may file a response to the motion at the address specified in paragraph (c) of this section. The response may be accompanied by such supporting evidence as the responding party may choose to submit. It must be accompanied by a declaration showing:

(i) That a copy of the response, and any attachments thereto, were mailed to the moving party;

(ii) The date of mailing; and

(iii) The address to which the copy was mailed. If the subpoena involves testimony or the production of tangible evidence at a hearing before the Board and less than 30 days remain before the scheduled hearing date at the time the response is received by the Board, the Board may reschedule the hearing to permit disposition of the motion.

(3) *Ruling on the motion.* The Member or panel to whom the case is assigned will issue an order disposing of the motion. Such order shall set forth the reasons for which a motion is either granted or denied. The order will be mailed to all parties to the motion. Where applicable, an order quashing a subpoena will require refund of any sum advanced for fees and mileage.

(i) *Disobedience.* In case of disobedience to a subpoena issued by the Board, the Board will take such steps as may be necessary to invoke the aid of the appropriate district court of the United States in requiring the attendance of the witness and/or the production of the tangible evidence subpoenaed. A failure to obey the order of such a court may be punished by the court as a contempt thereof.

(Authority: 38 U.S.C. 5711, 5713, 7102(a))  
[FR Doc. 00-3455 Filed 2-14-00; 8:45 am]

BILLING CODE 8320-01-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[KY-109-1-200007b; FRL-6533-1]

#### Approval and Promulgation of State Implementation Plan State: Approval of Revisions to the Kentucky State Implementation Plan;

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

**SUMMARY:** The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Air Pollution Control District of Jefferson County through the Kentucky Natural Resources and Environmental Protection Cabinet for the purpose of establishing a

federally enforceable district origin operating permit (FEDOOP) program. In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

**DATES:** Written comments must be received on or before March 16, 2000.

**ADDRESSES:** All comments should be addressed to Gregory Crawford at the U.S. Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.

Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601.

Air Pollution Control District of Jefferson County, 850 Barret Avenue, Suite 205, Louisville, Kentucky 40204.

**FOR FURTHER INFORMATION CONTACT:** Gregory Crawford, Regulatory Planning Section, Air Planning Branch, Air, Pesticides and Toxics Management Division at 404/562-9046.

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule which is published in the Final Rules section of this **Federal Register**.

Dated: January 14, 2000.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 00-3208 Filed 2-14-00; 8:45 am]

BILLING CODE 6560-50-P

**FEDERAL EMERGENCY MANAGEMENT AGENCY**

**44 CFR Part 67**

[Docket No. FEMA-7303]

**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 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, Federal Emergency Management Agency, 500 C Street SW., Washington,

DC 20472, (202) 646-3461, or (email) matt.miller@fema.gov.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA or 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, Mitigation Directorate, 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 National Flood Insurance Program. As a result, a regulatory flexibility analysis has not 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 [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
Connecticut .....	Shelton (City), Fairfield County.	Farmill River .....	Approximately 250 feet upstream from confluence of Means Brook.	*237	*236
			Approximately 140 feet upstream of Farmill Road.	*356	*355
Maps available for inspection at the Shelton City Hall, 54 Hill Street, Shelton, Connecticut. Send comments to The Honorable Mark A. Lauretti, Mayor of the City of Shelton, 54 Hill Street, Shelton, Connecticut 06484.					
Connecticut .....	Wallingford (Town), New Haven County.	Quinnipiac River .....	Approximately 1,560 feet downstream of Toelles Road.	*22	*23
			Approximately 1.25 miles upstream of Oak Street.	*69	*70
Maps available for inspection at the Town of Wallingford Department of Planning & Zoning, 45 South Main Street, Wallingford, Connecticut.					
Delaware .....	New Castle County (Unincorporated Areas).	Unnamed Tributary to Mill Creek.	Approximately 600 feet upstream of confluence with Mill Creek.	None	*242
			Approximately 870 feet upstream of Loblolly Court.	None	*281

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified

Maps available for inspection at the New Castle Government Center, 87 Reads Way, New Castle, Delaware.

Send comments to Mr. Thomas Gordon, New Castle County Executive, New Castle County Government Center, 87 Reads Way, New Castle, Delaware 19720.

Georgia .....	Albany (City), Dougherty County.	Flint River .....	Approximately 800 feet downstream of East Oakridge Drive.	*182	*183
			Approximately 5.9 miles upstream of Lake Worth Dam.	*200	*197

Maps available for inspection at the Dougherty County Planning & Development Services Department, 222 Pine Avenue, Albany, Georgia.

Send comments to Mr. Phillip West, Dougherty County Planner I, Planning & Development Services, P.O. Box 447, Albany, Georgia 31702-0447.

Georgia .....	Dougherty County (Unincorporated Areas).	Spring Flats Branch .....	Approximately 120 feet downstream of Georgia Highway 300 off-ramp.	None	*182
			Approximately 50 feet upstream of Gaisser Road.	None	*223
		Piney Woods Creek .....	Approximately 6,100 feet downstream of Cordele Road (U.S. 300).	*200	*197
			Approximately 4,100 feet upstream of South County Line Road.	None	*238
		Flint River .....	Approximately 9.625 miles downstream of Oak Ridge Drive (at corporate limits).	*177	*173
			Approximately 10.55 miles upstream of Lakeworth Dam (at corporate limits).	*207	*204
		Dry Creek .....	Approximately 0.52 mile downstream of State Route 3.	*177	*174
			Approximately 1,000 feet downstream of U.S. Route 19.	*180	*179
		Tributary 1 to Dry Creek ...	Approximately 0.53 mile downstream of Unnamed Farm Road.	None	*229
			Approximately 1,600 feet downstream of Unnamed Farm Road.	None	*231
Tributary 4 to Flint River ...	Approximately 1.34 mile downstream of State Highway 257 (Cordele Road).	*200	*197		
	Approximately 650 feet downstream of State Highway 257 (Cordele Road).	*200	*199		

Maps available for inspection at the Dougherty County Planning & Development Services Department, 222 Pine Avenue, Albany, Georgia.

Send comments to Mr. Phillip West, Dougherty County Planner I, Planning & Development Services, P.O. Box 447, Albany, Georgia 31702-0447.

Illinois .....	Evanston (City), Cook County.	Lake Michigan .....	Entire shoreline affecting community .....	None	*585
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Maps available for inspection at the City of Evanston's Engineer's Office, 2100 Ridge Avenue, Evanston, Illinois.

Send comments to The Honorable Lorraine Morton, Mayor of the City of Evanston, 2100 Ridge Avenue, Evanston, Illinois 60201.

Illinois .....	Franklin Park (Village), Cook County.	Crystal Creek Tributary ....	Approximately 85 feet downstream of Panoramic Drive.	None	*643
			Approximately 480 feet upstream of Mannheim Road.	None	*645
		Sexton Ditch .....	Approximately 1,450 feet upstream of confluence with Crystal Creek Tributary.	None	*643
			Approximately 1,830 feet upstream of confluence with Crystal Creek Tributary.	None	*643
		Des Plaines River .....	Just upstream of Belmont Avenue .....	*623	*627
Approximately 500 feet downstream of Irving Park Road.	None		*628		

Maps available for inspection at the Franklin Park Village President's Office, 9500 Belmont Avenue, Franklin Park, Illinois.

Send comments to Mr. Daniel B. Pritchett, Village of Franklin Park President, 9500 Belmont Avenue, Franklin Park, Illinois 60131.

Illinois .....	Riverdale (Village), Cook County.	Little Calumet River .....	Approximately 600 feet upstream of the confluence with Calumet Sag Channel.	None	*588
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State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified

Maps available for inspection at the Riverdale Village Hall, Office of Community and Economic Development, 157 West 144th Street, Riverdale,  
 Send comments to The Honorable Joseph Szabo, Mayor of the Village of Riverdale, 157 West 144th Street, Riverdale, Illinois 60827.

Indiana .....	Indianapolis (City), Marion County.	Derbyshire Creek .....	Approximately 275 feet upstream of Perrault Drive.	None	*770
			Upstream Limit of Detailed Study at McFarland Road (approximately 325 feet north of intersection of East Banta Road and McFarland Road).	None	*773
		O'Brian Ditch .....	Upstream side of 42nd Street .....	None	*835
			Approximately 1,150 feet upstream of Black Locust Drive.	None	*853

Maps available for inspection at the City-County Building, 200 East Washington Street, Room 2142, Indianapolis, Indiana.  
 Send comments to Ms. Donna L. Price, City of Indianapolis Floodplain Manager, Department of Capital Asset Management, 200 East Washington Street, City-County Building, Room 2501, Indianapolis, Indiana 46204-3354.

Indiana .....	New Albany (City), Floyd County.	Fall Run .....	At confluence with Falling Run .....	*438	*443
			At downstream side of Grant Line Road ..	*442	*443
		Falling Run .....	At Ohio River levee .....	*433	*438
			At Janie Drive .....	*479	*474
		Middle Creek .....	Approximately 150 feet downstream of State Route 111.	None	*448
			Approximately 75 feet upstream of upstream crossing of Southern Railway.	None	*472
	Vincennes Run .....	At confluence with Middle Creek .....	None	*448	
		Approximately 70 feet upstream of Eagle Lane.	None	*471	

Maps available for inspection at the City of New Albany City-County Building, Board of Public Works, Room 317, 311 Hauss Square, New Albany, Indiana.  
 Send comments to The Honorable Douglas B. England, Mayor of the City of New Albany, Room 316, City-County Building, 311 Hauss Square, New Albany, Indiana 47150-3586.

Massachusetts .....	Easton (Town), Bristol County.	Gowards Brook .....	Approximately 1,300 feet downstream of Norton Avenue.	*95	*94
			Approximately 100 feet upstream of State Route 106.	*147	*141

Maps available for inspection at the Town of Easton Planning & Zoning Department, 136 Elm Street, Easton, Massachusetts.  
 Send comments to Mr. Kevin Paicos, Easton Town Administrator, 136 Elm Street, Easton, Massachusetts 02356.

Michigan .....	Blaine (Township), Benzie County.	Lake Michigan .....	Entire shoreline within the community .....	None	*585
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Maps available for inspection at the Blaine Township Hall, Meeting Room, 4760 Herring Grove Road (White Owl Road), Arcadia, Michigan.  
 Send comments to Mr. Donald Smeltzer, Blaine Township Supervisor, 3063 Herring, Arcadia, Michigan 49613-9606.

Michigan .....	DeTour (Township), Chippewa County.	Lake Huron .....	Entire shoreline within the community .....	None	*584
		Saint Marys River .....	Entire shoreline within the community .....	None	*584

Maps available for inspection at the DeTour Township Office, 260 Superior Street, DeTour Village, Michigan.  
 Send comments to Mr. Thomas E. Lehman, DeTour Township Supervisor, 18659 E-M134 #75, DeTour Village, Michigan 49725.

Michigan .....	Drummond Island (Township), Chippewa County.	Saint Marys River .....	Entire shoreline within the community .....	None	*584
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Maps available for inspection at the Drummond Island Township Hall, 110 Center Street, Drummond Island, Michigan.  
 Send comments to Mr. Frank Sasso, Drummond Island Township Supervisor, 110 Center Street, Drummond Island, Michigan 4972.

Michigan .....	Garfield (Township), Mackinac County.	Lake Michigan .....	Entire shoreline within the community .....	None	*585
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Maps available for inspection at the Garfield Township Hall, Route 1, Krause Road, Engadine, Michigan.  
 Send comments to Mr. Thomas King, Garfield Township Supervisor, P.O. Box 148, Engadine, Michigan 49827.

Michigan .....	Moran (Township), Mackinac County.	Lake Michigan .....	Entire shoreline within community .....	None	*585
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State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)		
				Existing	Modified	
<p>Maps available for inspection at the Moran Township Hall, 1358 West U.S. Highway 2, St. Ignace, Michigan. Send comments to Mr. Robert Holle, Moran Township Supervisor, 1358 West U.S. Highway 2, St. Ignace, Michigan 49781-9643.</p>						
Michigan .....	Onota (Township), Alger County.	Lake Superior .....	Entire shoreline within the community .....	None	*604	
<p>Maps available for inspection at the Onota Township Hall, 1461 Deerton Sandlake Road, Deerton, Michigan. Send comments to Mr. Andrew Mika, Onota Township Supervisor, P.O. Box 32, Deerton, Michigan 49822.</p>						
Michigan .....	Powell (Township), Marquette County.	Lake Superior .....	Entire shoreline within the community .....	None	*604	
<p>Maps available for inspection at the Powell Township Hall, 101 Bensinger Avenue, Big Bay, Michigan. Send comments to Ms. Sarah Peltó, Powell Township Supervisor, P.O. Box 39, Big Bay, Michigan 49808.</p>						
Michigan .....	St. Ignace (Township), Mackinac County.	Lake Huron .....	Entire shoreline within the community .....	None	*585	
<p>Maps available for inspection at the Mackinac County Courthouse Annex, 100 North Marley, Room 115, St. Ignace, Michigan. Send comments to Mr. Dale Nelson, St. Ignace Township Supervisor, P.O. Box 373, St. Ignace, Michigan 49781.</p>						
Minnesota .....	Houston (City), Houston County.	Root River .....	Approximately 0.5 mile downstream of Grant Street (State Route 76).	*683	*682	
			Approximately 0.6 mile upstream of Grant Street (State Route 76).	*690	*686	
		Outlet A-1 .....	Approximately 100 feet south of intersection of Washington and Elm Streets.	*689	*682	
		Outlet A-2 .....	Approximately 400 feet north of intersection of Plum and Grant Streets.	*685	*681	
		Outlet B .....	Approximately 150 feet northeast of intersection of Henderson and Elm Streets.	*683	*679	
<p>Maps available for inspection at the Houston City Hall, 105 West Maple Street, Houston, Minnesota. Send comments to The Honorable Terry Chiglo, Mayor of the City of Houston, 105 West Maple Street, Houston, Minnesota 55943-0667.</p>						
New Hampshire .....	New Boston (Town), Hillsborough County.	South Branch Piscataquog River.	Approximately 10 feet upstream of Merrimack Farmers Exchange Dam.	*424	*418	
		.....	Approximately 0.51 mile upstream of Butterfield Mill Road.	None	*532	
<p>Maps available for inspection at the New Boston Town Hall, 7 Meetinghouse Hill Road, New Boston, New Hampshire. Send comments to Mr. Burton H. Reynolds, New Boston Town Administrator, P.O. Box 250, New Boston, New Hampshire 03070.</p>						
New Hampshire .....	Rindge (Town), Cheshire County.	Lake Monomonac/North Branch.	At the New Hampshire/Massachusetts State boundary.	None	*1,049	
		Millers River .....	At Mill Pond Road .....	None	*1,184	
<p>Maps available for inspection at the Rindge Town Office, 49 Payson Hill Road, Rindge, New Hampshire. Send comments to Mr. Carl E. Weber, Rindge Town Administrator, P.O. Box 163, Rindge, New Hampshire 03461.</p>						
New Jersey .....	East Hanover (Township), Morris County.	Passaic River .....	Approximately 1,125 feet downstream of Eagle Rock Avenue.	*175	*174	
			Approximately 275 feet upstream of Mount Pleasant Avenue.	*175	*176	
<p>Maps available for inspection at the East Hanover Township Hall, Engineering Department, 411 Ridgedale Avenue, East Hanover, New Jersey. Send comments to The Honorable Lawrence J. Colasurdo, Mayor of the Township of East Hanover, 411 Ridgedale Avenue, East Hanover, New Jersey 07936.</p>						
New Jersey .....	Florham Park (Borough), Morris County.	Passaic River .....	At Columbia Turnpike .....	*177	*176	
			Fish's Brook .....	Approximately 0.39 mile downstream of Passaic Avenue.	*177	*176
				At the confluence with Passaic River .....	*177	*176
			Approximately 50 feet upstream of Brooklake Road.	*177	*176	

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified

Maps available for inspection at the Borough of Florham Park Engineering Office, 111 Ridgedale Avenue, Florham Park, New Jersey.  
Send comments to Mr. Dwight F. Longley, Florham Borough Administrator, 111 Ridgedale Avenue, Florham Park, New Jersey 07932.

New Jersey .....	Livingston (Township), Essex County.	Passaic River .....	Approximately 2.1 miles downstream of State Route 10.	*174	*175
			Approximately 1.7 miles upstream of the confluence of Passaic River Tributary.	None	*176
		Passaic River Tributary .....	At the confluence with Passaic River .....	*177	*176
			Approximately 0.25 mile downstream of South Orange Avenue.	*177	*176

Maps available for inspection at the Livingston Town Hall, Engineering Department, 357 South Livingston Avenue, Livingston, New Jersey.  
Send comments to Mr. Charles J. Tahaney, Livingston Township Manager, 357 South Livingston Avenue, Livingston, New Jersey 07039.

New York .....	Brunswick (Town), Rensselaer County.	Piscawen Kill .....	At the Brunswick/Troy corporate limits .....	None	*363
			Approximately 50 feet upstream of North Lake Avenue Crossing #4.	None	*477

Maps available for inspection at the Brunswick Town Hall, Assessor's Office, 308 Town Office Road, Troy, New York.  
Send comments to Mr. Philip Herrington, Brunswick Town Supervisor, 308 Town Office Road, Troy, New York 12180.

New York .....	Lowville (Town), Lewis County.	Mill Creek .....	At confluence with Black River .....	None	*744
			At upstream corporate limits .....	None	*760

Maps available for inspection at the Lowville Town Hall, 5533 Bostwick, Lowville, New York.  
Send comments to Mr. Arleigh D. Rice, Lowville Town Supervisor, Route 3, Box 8T, Lowville, New York 13367.

North Carolina .....	Clayton (Town), Johnston County.	Little Creek .....	Approximately 1,000 feet downstream of Ranch Road.	*196	*197
			Just downstream of Robertson Street .....	*251	*250

Maps available for inspection at the Clayton Town Hall, Planning Department, 231 East 2nd Street, Clayton, North Carolina.  
Send comments to Mr. Steve Biggs, Clayton Town Manager, P.O. Box 879, Clayton, North Carolina 27250.

North Carolina .....	Davidson County (Unincorporated Areas).	Hasty Creek .....	Approximately 800 feet upstream of confluence with Hunts Fork.	*719	*720
			Approximately 250 feet downstream of NCSR 1781.	*746	*747
		Payne Creek .....	Approximately 225 feet downstream of NCSR 1757.	*735	*736
			Approximately 0.96 mile upstream of confluence of Payne Creek Tributary.	*753	*766
		Payne Creek Tributary .....	At confluence with Payne Creek .....	None	*744
			Approximately 1.1 miles upstream from Canterbury Road.	None	*782
		Rich Fork .....	Approximately 0.5 mile downstream of NCSR 1755.	*708	*709
			Approximately 0.4 mile upstream of NCSR 1741.	*764	*765
		Rich Fork Tributary .....	At confluence with Rich Fork .....	*764	*765
			Approximately 780 feet upstream of NCSR 1739.	*779	*780
		Stream No. 97 .....	At confluence with Stream No. 99 .....	None	*747
			Approximately 0.74 mile upstream from confluence with Stream No. 99.	None	*764
Stream No. 99 .....	At confluence with Payne Creek .....	None	*731		
	Approximately 0.71 mile upstream from confluence with Stream No. 97.	None	*778		

Maps available for inspection at the Davidson County Governmental Center, 913 Greensboro Street, Lexington, North Carolina.  
Send comments to Mr. Robert C. Hyatt, Davidson County Manager, P.O. Box 1067, Lexington, North Carolina 27293.

North Carolina .....	Franklin County (Unincorporated Areas).	Lake Royale .....	Approximately 3,000 feet east of intersection of Baptist Church Road and Sledge Road.	None	*191
		Tar River .....	A point approximately 1.20 miles upstream of North Main Street.	None	*207

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			A point approximately 1.66 miles upstream of North Main Street.	None	*211

Maps available for inspection at the Franklin County Planning and Development Office, 215 East Nash Street, Louisburg, North Carolina.  
 Send comments to Mr. James Moss, Chairman of the Franklin County Board of Commissioners, 113 Market Street, Louisburg, North Carolina 27549.

North Carolina .....	Johnston County (Unincorporated Areas).	Little Creek .....	At confluence with Swift Creek .....	None	*156
			Approximately 1,000 feet downstream of Ranch Road.	*196	*197
		Swift Creek .....	Approximately 0.4 mile downstream of confluence of Little Creek.	*153	*154
			At Wake County line .....	*201	*203
		Poplar Creek .....	Approximately 700 feet downstream of Wilson Mills Road.	None	*129
			At corporate limits of Town of Wilson Mills.	None	*171
		Unnamed Tributary .....	At the confluence of Swift Creek .....	None	*193
		#1 to Swift Creek .....	At the Wake County line .....	None	*218
		Unnamed Tributary .....	At the confluence with Swift Creek .....	None	*178
		# 2 to Swift Creek .....	Just upstream of Cornwallis Road .....	None	*262
White Oak Creek .....	At the confluence with Swift Creek .....	None	*187		
	At the Wake County line .....	None	*223		
	Little Poplar Creek .....	At the confluence with Poplar Creek .....	None	*140	
		250 feet upstream from U.S. Highway 70	None	*247	

Maps available for inspection at the Johnson County GIS Department, 207 East Johnston Street, Smithfield, North Carolina.  
 Send comments to Mr. Rick Haster, Johnston County Manager, P.O. Box 1049, Smithfield, North Carolina 27577.

North Carolina .....	Lexington (City), Davidson County.	Darr Branch .....	Approximately 1,880 feet upstream of confluence with Abbotts Creek.	*641	*640
			Approximately 20 feet downstream of Tanvard Street.	*721	*724
		Darr Drain .....	At confluence with Darr Branch .....	*656	*652
			Approximately 1,025 feet upstream of Young Drive.	*681	*676
		Nokomis Branch .....	At confluence with Darr Branch .....	*662	*659
			Approximately 80 feet upstream of North Pine Street.	*742	*743
		Twin Creek .....	At a point approximately 250 feet upstream of confluence with Abbotts Creek.	*636	*635
			Approximately 0.43 mile upstream of confluence with Abbotts Creek.	None	*661
		Twin Creek Tributary .....	Approximately 475 feet upstream of confluence with Abbotts Creek.	*648	*636
			At a point approximately 1,600 feet upstream of confluence with Abbotts Creek.	*661	*654

Maps available for inspection at the City of Lexington Community Development Department, 28 West Center Street, Lexington, North Carolina.  
 Send comments to The Honorable Richard Thomas, Mayor of the City of Lexington, 28 West Center Street, Lexington, North Carolina 27293.

North Carolina .....	Thomasville (City), Davidson County.	Hasty Creek .....	At upstream side of NCSR 1779 .....	None	*768
			Approximately 210 feet upstream of State Route 68.	None	*850

Maps available for inspection at the Thomasville City Hall, 10 Salem Street, Thomasville, North Carolina.  
 Send comments to The Honorable Don Truell, Mayor of the City of Thomasville, 10 Salem Street, Thomasville, North Carolina 27360.

North Carolina .....	Wilson's Mills (Town), Johnston County.	Poplar Creek .....	From the Town of Wilson's Mills corporate limits to Swift Creek Road.	None	*171
				None	*196

Maps available for inspection at the Wilson's Mills Town Hall, 22 Fire Department Road, Wilson's Mills, North Carolina.  
 Send comments to The Honorable Kenneth R. Jones, Mayor of the Town of Wilson's Mills, P.O. Box 448, Wilson's Mills, North Carolina 27593.

Ohio .....	Newark (City), Licking County.	North Fork Licking River ...	Approximately 360 feet upstream of confluence with Licking River.	*814	*831
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State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 4,752 feet upstream of Manning Street.	*813	*830
Maps available for inspection at the Newark City Hall, Engineering Department, 40 West Main Street, Newark, Ohio. Send comments to The Honorable Frank Stare, Mayor of the City of Newark, 40 West Main Street, Newark, Ohio 43055.					
Pennsylvania	Alburtis (Borough), Lehigh County.	Swabia Creek	Approximately 180 feet downstream from the downstream corporate limits.	None	*412
		Swabia Creek Tributary	Upstream corporate limits	None	*439
			At confluence with Swabia Creek	None	*433
			Approximately 275 feet upstream of confluence with Swabia Creek.	None	*435
Maps available for inspection at the Borough Hall, 260 Franklin Street, Alburtis, Pennsylvania. Send comments to The Honorable Ronald De'laco, Mayor of the Borough of Alburtis, 260 Franklin Street, Alburtis, Pennsylvania 18011.					
Pennsylvania	Allentown (City), Lehigh County.	Jordan Creek	At confluence with Little Lehigh Creek	*257	*256
		Lehigh River	At upstream corporate limits	*274	*276
			At downstream corporate limits	*243	*241
			At upstream corporate limits	*267	*265
		Little Lehigh Creek	820 feet downstream Third Street	*250	*249
			Approximately 950 feet upstream of Keystone Road.	*308	*311
		Tributary to Lehigh River	At confluence with Lehigh river	*266	*264
			Approximately 1,270 feet upstream side of Dauphin Street.	*267	*266
		Cedar Creek	Confluence with Little Lehigh Creek	*262	*266
			Just downstream of Mosser Street	*265	*266
Maps available for inspection at the Engineering Bureau, Room 431, City Hall, 435 Hamilton Street, Allentown, Pennsylvania. Send comments to The Honorable William Heydt, Mayor of the City of Allentown, 435 Hamilton Street, Room 528, Allentown, Pennsylvania 18101.					
Pennsylvania	Bethlehem (City), Lehigh County.	Lehigh River	Approximately 1,637 feet downstream of New Street.	*233	*230
		Monocacy Creek	At upstream corporate limits	*243	*241
			At confluence with Lehigh River	*233	*230
			Approximately 10 feet upstream of West Lehigh Street.	*237	*236
Maps available for inspection at the City Hall, 10 East Church Street, Bethlehem, Pennsylvania. Send comments to The Honorable Donald J. Cunningham, Jr., 10 East Church Street, Bethlehem, Pennsylvania 18018.					
Pennsylvania	Blawnox (Borough), Allegheny County.	Allegheny River	Approximately 2,200 feet downstream of confluence with Sandy Creek.	*740	*741
			Approximately 3,000 feet upstream of confluence of Sandy Creek.	*741	*742
Maps available for inspection at the Blawnox Borough Hall, 376 Freeport Road, Pittsburgh, Pennsylvania. Send comments to Mr. Westley M. Rohrer, Jr., President of the Borough of Blawnox Council, Blawnox Borough Hall, 376 Freeport Road, Pittsburgh, Pennsylvania 15238.					
Pennsylvania	Catasauqua (Borough), Lehigh County.	Lehigh River	Approximately 0.38 mile downstream of Race Street.	*270	*271
			Approximately 0.28 mile upstream of Pine Street.	*280	*281
		Catasauqua Creek	At confluence with Lehigh River	*271	*273
			Just upstream of CONRAIL bridge	*272	*273
Maps available for inspection at the Borough Hall, 118 Bridge Street, Catasauqua, Pennsylvania. Send comments to Mr. Eugene Goldfeder, Borough Manager, 118 Bridge Street, Catasauqua, Pennsylvania 18032.					
Pennsylvania	Coplay (Borough), Lehigh County.	Lehigh River	At downstream corporate limits	None	*288
			At upstream corporate limits	None	*294
Maps available for inspection at the Borough Hall, 98 South Fourth Street, Coplay, Pennsylvania. Send comments to The Honorable Bill Leiner, Jr., Mayor of the Borough of Coplay, 98 South Fourth Street, Coplay, Pennsylvania 18037.					
Pennsylvania	Delaware Water Gap (Borough), Monroe County.	Delaware River	Approximately 1.5 miles downstream of Interstate 80.	*315	*313

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 500 feet downstream of confluence with Cherry Creek.	*322	*321
<p>Maps available for inspection at the Delaware Water Gap Borough Office, 49 Main Street, Delaware Water Gap, Pennsylvania. Send comments to Mr. Wayne Mac Williams, President of the Delaware Water Gap Borough Council, P.O. Box 218, Delaware Water Gap, Pennsylvania 18327.</p>					
Pennsylvania .....	Fountain Hill (Borough), Lehigh County.	Lehigh River .....	Downstream corporate limits .....	*239	*236
			Upstream corporate limits .....	*239	*236
<p>Maps available for inspection at the Borough Hall, 941 Long Street, Bethlehem, Pennsylvania. Send comments to The Honorable Steve Repasch, Mayor of the Borough of Fountain Hill, 941 Long Street, Bethlehem, Pennsylvania 18015.</p>					
Pennsylvania .....	Hanover (Township), Lehigh County.	Lehigh River .....	Approximately 0.29 mile downstream of U.S. Route 22.	None	*265
			Approximately 0.66 mile upstream of U.S. Route 22.	None	*270
		Tributary to Lehigh River ..	Approximately 0.70 mile upstream of confluence with Lehigh River.	None	*292
			Approximately 0.71 mile upstream of confluence with Lehigh River.	None	*293
<p>Maps available for inspection at the Township Hall, 2202 Grove Road, Allentown, Pennsylvania. Send comments to Ms. Sandra Pudliner, Township Manager, 2202 Grove Road, Allentown, Pennsylvania 18103.</p>					
Pennsylvania .....	Lower Macungie (Township), Lehigh County.	Little Lehigh Creek .....	Approximately 1,400 feet downstream of Riverbend Road.	*309	*312
			At upstream corporate limits (county boundary).	*402	*406
		Swabra Creek .....	At confluence with Little Lehigh Creek .....	*346	*351
			Approximately 450 feet downstream of Warmkessel Drive.	*350	*351
		Toad Creek .....	At confluence with Little Lehigh Creek .....	*392	*394
			Approximately 160 feet upstream of Ash Lane.	*398	*399
		Tributary to Little Lehigh Creek.	Approximately 200 feet downstream of upstream corporate limits.	None	*382
		Spring Creek No. 1 .....	At upstream corporate limits .....	None	*385
			At confluence with Little Lehigh Creek .....	*373	*378
			Approximately 528 feet downstream Private Drive.	*377	*378
<p>Maps available for inspection at the Township Hall, 3400 Brookside Road, Macungie, Pennsylvania. Send comments to Mr. Robert E. Lee, Chairman of the Board of Supervisors, 3400 Brookside Road, Macungie, Pennsylvania 18062.</p>					
Pennsylvania .....	Lower Milford (Township), Lehigh County.	Tributary to Hosensack Creek.	Approximately 0.38 mile downstream of Kings Highway.	None	*487
			Approximately 750 feet upstream of Kings Highway.	None	*509
<p>Maps available for inspection at the Township Hall, 7607 Chestnut Hill Church Road, Coopersburg, Pennsylvania. Send comments to Mr. Ted Benson, Chairman of the Lower Milford Township Board of Supervisors, 7607 Chestnut Hill Church Road, Coopersburg, Pennsylvania 18036.</p>					
Pennsylvania .....	North Whitehall (Township), Lehigh County.	Lehigh River .....	At downstream corporate limits .....	*303	*304
			Approximately 255 feet downstream of upstream corporate limits.	*351	*350
		Jordan Creek .....	At downstream corporate limits .....	*357	*356
			Approximately 500 feet downstream of Kernsville Road.	*360	*359
<p>Maps available for inspection at the Township Hall, Zoning Office, 3256 Levans Road, Coplay, Pennsylvania. Send comments to Ms. Janet Talotta, Chairman of the Board of Supervisors, 3256 Levans Road, Coplay, Pennsylvania 18037.</p>					
Pennsylvania .....	Salisbury (Township), Lehigh County.	Lehigh River .....	Downstream corporate limits .....	*239	*236
			Upstream corporate limits .....	*246	*247
		Little Lehigh Creek .....	Approximately 400 feet upstream of Fish Hatchery Road.	None	*295

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		At upstream corporate limits.	309 .....	*312	
<p>Maps available for inspection at the Township Hall, 2900 South Pike Avenue, Allentown, Pennsylvania.                      Send comments to Mr. Gabriel Khalife, Township Manager, 2900 South Pike Avenue, Allentown, Pennsylvania 18103.</p>					
Pennsylvania .....	Slatington (Borough), Lehigh County. Trout Creek No. 2	Lehigh River .....	At downstream corporate limits .....	*358	*360
			At upstream corporate limits .....	*373	*374
		At confluence of Lehigh River.	Approximately 730 feet upstream of confluence with. Lehigh River .....	*362 *362	*363 *363
<p>Maps available for inspection at the Slatington Borough Office, 125 South Walnut Street, Slatington, Pennsylvania.                      Send comments to Mr. Clayton E. Snyder, President of Council, 125 South Walnut Street, Slatington, Pennsylvania 18080.</p>					
Pennsylvania .....	South Whitehall (Township), Lehigh County.	Jordan Creek .....	At downstream corporate limits .....	*302	*303
			Approximately 1,700 feet upstream of confluence of Hassen Creek.	*357	*356
<p>Maps available for inspection at the Township Hall, 4444 Walbert Avenue, Allentown, Pennsylvania.                      Send comments to Mr. Gerald Gazda, Township Manager, 4444 Walbert Avenue, Allentown, Pennsylvania 18104.</p>					
Pennsylvania .....	Upper Milford (Township), Lehigh County.	Leibert Creek .....	Approximately 750 feet downstream side of Chestnut Street.	None	*371
			Approximately 650 feet downstream side of Chestnut Street.	None	*372
		Tributary to Little Lehigh Creek.	At corporate limits .....	None	*385
			Upstream side of Indian Creek Road .....	None	*392
<p>Maps available for inspection at the Township Hall, 5831 Kings Highway South, Old Zionsville, Pennsylvania.                      Send comments to Mr. Linden Miller, Township Manager, P.O. Box 210, Old Zionsville, Pennsylvania 18068.</p>					
Pennsylvania .....	Upper Saucon (Township), Lehigh County.	Saucon Creek .....	At downstream corporate limits (county boundary).	None	*337
			Approximately 400 feet downstream of Emmaus Road.	None	*501
<p>Maps available for inspection at the Township Municipal Building, 5500 Camp Meeting Road, Center Valley, Pennsylvania.                      Send comments to Mr. Bernald Rodgers, Upper Saucon Township Manager, Upper Saucon Township Municipal Building, 5500 Camp Meeting Road, Center Valley, Pennsylvania 18034.</p>					
Pennsylvania .....	Washington (Township), Lehigh County.	Lehigh River .....	Approximately 300 feet upstream of downstream corporate limits.	*352	*351
			Approximately 0.33 mile upstream of State Route 873.	*387	*388
<p>Maps available for inspection at the Township Hall, 7951 Center Street, Emerald, Pennsylvania.                      Send comments to Mr. George Beam, Chairman of the Board of Supervisors, P.O. Box 27, Slatedale, Pennsylvania 18079-0027.</p>					
Pennsylvania .....	Whitehall (Township), Lehigh County.	Lehigh River .....	Approximately 0.47 mile downstream of Lehigh Valley Thruway (U.S. Route 22 & I-78).	*264	*265
			Approximately 300 feet upstream of confluence with Spring Creek.	*302	*304
		Jordan Creek .....	Approximately 0.5 mile downstream of North 4th Street.	*264	*265
			Approximately 0.9 mile upstream of Mauch Chunk Road.	*310	*311
<p>Maps available for inspection at the Township Hall, 3219 MacArthur Road, Whitehall, Pennsylvania.                      Send comments to Mr. Glenn Solt, Township Executive, 3219 MacArthur Road, Whitehall, Pennsylvania 18052.</p>					
Tennessee .....	Dyer County (Unincorporated Areas).	Obion River .....	Approximately 75 feet downstream of the Tennessee Kentucky Railroad.	None	*270
			Approximately 2.81 miles upstream of State Route 78.	None	*279

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Jones Creek .....	Approximately 1,400 feet upstream of the confluence of Light Creek. Approximately 1.4 miles upstream of the confluence of Light Creek.	*286 *291	*287 *289

Maps available for inspection at the Dyer County Courthouse, Building Inspector's Office, #1 Veteran's Square, Dyersburg, Tennessee.  
Send comments to Mr. James O. McCord, Dyer County Chief Executive Officer, P.O. Box 1360, Dyersburg, Tennessee 38025-1360.

Tennessee .....	Greeneville (Town), Greene County.	Frank Creek .....	Approximately 375 feet downstream of Tusculum Boulevard.	None	*1,424
			Approximately 750 feet upstream of Viking View Estates Road.	None	*1,458
		Tributary to Richland Creek.	Approximately 1,550 feet downstream of East McKee Street.	None	*1,431
			Approximately 2,150 feet upstream of East Church Street.	None	*1,486

Maps available for inspection at the Greeneville Town Hall, 200 North College Street, Greeneville, Tennessee.  
Send comments to The Honorable G. Thomas Love, Mayor of the Town of Greeneville, 200 North College Street, Greeneville, Tennessee 37745.

Tennessee .....	Sweetwater (City), Monroe County.	Sweetwater Creek .....	Approximately 0.33 mile downstream of Southern Railway.	None	*903
			Approximately 200 feet downstream of State Route 68.	None	*917

Maps available for inspection at the Sweetwater City Hall, 203 Monroe Street, Sweetwater, Tennessee.  
Send comments to The Honorable Billy R. Ridenour, Mayor of the City of Sweetwater, P.O. Box 267, Sweetwater, Tennessee 37874.

Vermont .....	Bellows Falls (Village), Windham County.	Connecticut River .....	A point approximately 600 feet upstream of Bellows Falls Dam.	*295	*296
			A point approximately 0.78 mile upstream of Bellows Falls Dam.	*296	*300

Maps available for inspection at the Rockingham Town Hall, Clerk's Office, Village Square, Rockingham, Vermont.  
Send comments to Ms. Roberta Smith, Manager of the Village of Bellows Falls and Town of Rockingham, P.O. Box 370, Bellows Falls, Vermont 05101.

Vermont .....	Rockingham (Town), Windham County.	Connecticut River .....	A point approximately 0.78 mile upstream of Bellows Falls Dam.	*296	*300
			A point approximately 1.34 miles upstream of the confluence of Commissary Brook.	*301	*306
		Williams River .....	At the confluence with the Connecticut River.	*297	*302
			A point approximately 80 feet upstream of U.S. Route 5.	*301	*302

Maps available for inspection at the Rockingham Town Hall, Clerk's Office, Village Square, Rockingham, Vermont.  
Send comments to Ms. Roberta Smith, Manager of the Village of Bellows Falls and Town of Rockingham, P.O. Box 370, Bellows Falls, Vermont 05101.

West Virginia .....	Jackson County (Unincorporated Areas).	Mill Creek .....	Just downstream of State Highway 87 .....	None	*589
			Just downstream of County Highway 21 ..	None	*599

Maps available for inspection at the Jackson County Courthouse, Main Street, Ripley, West Virginia.  
Send comments to Mr. Dick Casto, President of the Jackson County Commission, Jackson County Courthouse, P.O. Box 800, Ripley, West Virginia 25271.

West Virginia .....	Ripley (City), Jackson County.	Mill Creek .....	Approximately 450 feet downstream of U.S. Route 33.	*594	*593
			At confluence of Sycamore Creek .....	*597	*596
			At downstream corporate limits .....	*601	*599

Maps available for inspection at the Ripley Municipal Building, 113 South Church Street, Ripley, West Virginia.  
Send comments to The Honorable Ollie M. Harvey, Mayor of the City of Ripley, Municipal Building, 113 South Church Street, Ripley, West Virginia 25271.

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

Dated: January 31, 2000.

**Michael J. Armstrong,**

*Associate Director for Mitigation.*

[FR Doc. 00-3523 Filed 2-14-00; 8:45 am]

BILLING CODE 6718-04-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 76

[CS Docket 00-1; DA 00-12]

### Amendment of List of Major Television Markets and Their Designated Communities

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document requests comment on a proposal to amend the Commission's rules which list the major television markets and their designated communities by adding the communities of Merced and Porterville, California to the hyphenated market of Fresno-Visalia-Hanford-Clovis, California (the "Fresno-Visalia market"). A joint petition was filed on March 16, 1988 and at least one of the petitioners has expressed continued interest in the Commission acting on this petition. The joint petitioners seek to add Merced and Porterville to the Fresno-Visalia market apparently to be able to assert network non-duplication rights and syndicated programming exclusivity on a hyphenated market basis. The requested action would also permit the acquisition of broadcast territorial exclusivity rights against television stations operating in Merced and in Porterville. In a related proceeding, Capital Cities/ABC, Inc. ("CC/ABC"), licensee of television station KFSN, Fresno, California, filed a request for amendment or waiver of § 76.51 of the Commission's rules to add the community of Merced to the Fresno-Visalia market. We address both petitions in this proceeding.

**DATES:** Comments are due on or before February 7, 2000 and reply comments are due on or before February 22, 2000.

**ADDRESSES:** Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Room TW-A325, Washington, DC 20554. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of documents in Rulemaking Proceedings*, 63 FR 24, 121 (Friday, January 2, 1998). Comments filed through the ECFS can be sent as an

electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>.

Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your e-mail addresses.>" A sample form and directions will be sent in reply.

**FOR FURTHER INFORMATION CONTACT:**

Carolyn Fleming at (202) 418-7200 or via Internet at [cfleming@fcc.gov](mailto:cfleming@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, DA 00-12, CS Docket No. 00-1, adopted January 4, 2000 and released January 7, 2000 ("Notice"). The full text of this Notice is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW, Washington, DC 20554, or may be purchased from the Commission's copy contractor, International Transcription Service ("ITS"), (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036, or may be reviewed via Internet at [http://www.fcc.gov/Bureaus/Cable/News\\_Releases/2000/nrcb8022.html](http://www.fcc.gov/Bureaus/Cable/News_Releases/2000/nrcb8022.html). For copies in alternative formats, such as Braille, audio cassette or large print, please contact Sheila Ray at ITS. This proceeding will be treated as a "permit-but-disclose" proceeding subject to the "permit-but-disclose" requirements under § 1.1206(b) of the Commission's rules. (47 CFR 1.1206(b), as revised). Ex parte presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, ex parte or otherwise, are generally prohibited. Persons making oral ex parte presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. (See 47 CFR 1.206(b)(2), as revised.) Additional rules pertaining to oral and written presentations are set forth in 47 CFR 1.1206(b).

### Synopsis of Notice of Proposed Rule Making

#### Introductory Background

1. In this proceeding, we respond to a petition for rulemaking filed by Pappas Telecasting Incorporated ("Pappas"), licensee of television station KMPH(TV), Visalia, California, Retlaw Enterprises, Inc. ("Retlaw"), licensee of television station KJEO(TV), Fresno, California, and San Joaquin Communications Corp. ("San Joaquin"), licensee of television station KSEE(TV), Fresno, California, (collectively, the "Joint Petitioners") to amend § 76.51 of the Commission's rules to add the communities of Merced and Porterville to the "Fresno-Visalia" market. (See 47 CFR 76.51). In a related proceeding, Capital Cities/ABC, Inc. ("CC/ABC"), licensee of television station KFSN, Fresno, California, filed a request for amendment or waiver of § 76.51 of the Commission's rules to add the community of Merced to the Fresno-Visalia market. In this proceeding, we also address CC/ABC's petition and consider it a request for amendment of the applicable rules as it raises the same issue raised by the Joint Petitioners with regard to the community of Merced. At the time the petition was filed, there were applications on file with the Commission to commence television service in the communities of Merced and Porterville. Subsequent to the filing of the joint petition, television station KNSO, Channel 51, was licensed to Merced and television station KPXF, Channel 61, was licensed to Porterville.

2. Section 76.51 of the Commission's Rules enumerates the top 100 television markets and the designated communities within those markets. Among other things, this market list is used to determine territorial exclusivity rights under § 73.658(m) and helps define the scope of compulsory copyright license liability for cable operators. (See 47 CFR 73.658) Certain cable television syndicated exclusivity and network non-duplication rights are also determined by the presence of broadcast station communities of license on this list. Some markets consist of more than one named community (a "hyphenated market"). Such "hyphenation" of a market is based on the premise that stations licensed to any of the named communities in the hyphenated market do, in fact, compete with all stations licensed to such communities. (See *CATV-Non-Network Agreements*, 46 FCC 2d 892, 898 (1974). Market hyphenation "helps equalize competition" where portions of the market are located beyond the Grade B

contours of some stations in the area yet the stations compete for economic support. (See *Cable Television Report & Order*, 36 FCC 2d 143, 176 (1972).

3. In their petition, Joint Petitioners argue that the communities of Merced and Porterville are geographically and economically part of the Fresno-Visalia market. The communities are part of the Fresno-Visalia "area of dominant influence" or ADI and the Fresno-Visalia "designated market area" or DMA. Joint Petitioners maintain the communities in the Fresno-Visalia ADI consist of farming communities and the local agri-business results in a common social, cultural, and commercial market among them.

4. Joint Petitioners further argue that Porterville is served by television stations KMPH and KSEE, both of which place a Grade A signal over the community. Joint Petitioners maintain that the proposed television station would place a predicted Grade B signal over the communities of Clovis and Sanger and a significant portion of Fresno, a Grade A signal over Hanford, and a City Grade signal over Visalia. Joint Petitioners further state that each of the Fresno-Visalia commercial television stations, except KMSG-TV, Sanger, is carried on the Porterville cable system and all are received off-air by the system. Thus, the Joint Petitioners argue that the proposed television station belongs in the Fresno-Visalia market and would necessarily compete with other Fresno-Visalia stations for programming, advertising revenues, and audience share.

5. Similarly, with regard to Merced, Joint Petitioners state that the proposed television station would compete with television stations in the Fresno-Visalia market. The Joint Petitioners state that the proposed television station would place a predicted Grade A signal over a significant portion of the communities of Fresno and Clovis and would place a predicted Grade B signal over the community of Sanger and the remaining portion of Fresno. The Joint Petitioners concede that the Grade B signal would not cover the communities of Hanford and Visalia but maintain that the propagation characteristics of the terrain permits a strong signal in those communities. The Joint Petitioners further state that each of the television stations in the Fresno-Visalia market places a predicted Grade B signal over Merced, with the exception of KMPH. With regard to KMPH, the Joint Petitioners assert that the station evidences significant viewership in Merced because it has a net weekly circulation of over 50 percent in Merced County. The Joint Petitioners further

assert that the three network affiliates, KFSN-TV, KJEO, and KSEE, and independent station KMPH, are carried on the Merced cable systems and are received off-air. Thus, the Joint Petitioners conclude that the proposed television station would be part of the Fresno-Visalia market and would compete with other Fresno-Visalia market stations for programming, advertising revenues, and audience share.

#### CC/ABC'S Petition

6. In this proceeding, we also address the petition filed by CC/ABC. CC/ABC, licensee of television station KFSN, Fresno, California, requests that the Commission add the community of Merced to the Fresno-Visalia market for, among other reasons, purposes of the network non-duplication and syndicated exclusivity rules. CC/ABC maintains that Merced is geographically part of the greater Fresno area and shares common social, cultural, trade, and economic interests with other Fresno-Visalia market communities. UA Cable Systems of California ("UA") filed an opposition to CC/ABC's petition arguing that Merced is 55 miles southeast of Fresno and thus geographically distant, and that Merced is not in the same market as Fresno-Visalia. To support its assertion that Merced and Fresno are in different markets, UA states that the two communities are in different areas according to data from the Metropolitan Statistical Areas ("MSAs") and the Rand McNally Map of Trading Areas ("Trading Areas"). UA further states the television stations in the two communities do not compete for advertising revenues as evidenced by the fact that the *Merced Sun-Star* television update, which covers the community of Merced, did not include any advertisements for Fresno for the week of January 2 through January 8, 1993. Conversely, UA states that, KFSN's quarterly reports, which summarizes the Fresno station's newscasts, did not identify any newscast which specifically mentions issues or programs related to the community of Merced for the two year period 1990 through 1992 and does not serve the area.

7. In the Notice, the Commission states its belief that a sufficient case for redesignation of the subject market has been set forth so that the proposal should be tested through the rulemaking process, including the comments of interested parties. In addition, the Commission states that the proposal and CC/ABC's request appears to be consistent with the Commission's

policies regarding redesignation of a hyphenated television market.

#### Paperwork Reduction Act

The requirements proposed in this Notice have been analyzed with respect to the Paperwork Reduction Act of 1995 (the "1995 Act") and do not impose new or modified information collection requirements on the public.

*OMB Approval:* None.

*Title:* In the Matter of Amendment of § 76.51 of the Commission's Rules to include Merced and Porterville, California in the Fresno-Visalia-Hanford-Clovis Television Market.

*Type of Review:* None.

*Initial Regulatory Flexibility Analysis:* We certify that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendment is promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by § 603 of the Regulatory Flexibility Act. A few cable television system operators will be affected by the proposed rule amendment. The Secretary shall send a copy of this Notice, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

A. *Reasons Why Agency Action Is Being Considered.* We undertake this proceeding to address the proposal by the Joint Petitioners to add the communities of Merced and Porterville, California to the Fresno-Visalia-Hanford-Clovis television market. The proposal, if granted, could help equalize competition in that hyphenated market where portions of the market are located beyond the Grade B contours of some stations in the area yet the stations compete for economic support.

B. *Legal Basis.* The authority for the action proposed for this rulemaking is contained in §§ 4(i)-(j), (f), (g), and (r), and 309(j) of the Communications Act of 1934, as amended.

C. *Description and Estimate of the Number of Small Entities Impacted.* None.

D. *Reporting, Recordkeeping, and Other Compliance Requirements.* The Commission is not proposing to impose additional reporting or recordkeeping requirements.

E. *Significant Alternatives Which Minimize the Impact on Small Entities and Are Consistent With Stated Objectives.* The Notice certifies that there is no significant impact on small entities.

F. *Federal Rules Which Overlap, Duplicate, or Conflict With the Commission's Proposal.* None.

G. *Report to Congress.* The Commission shall send a copy of this IRFA along with this Notice in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1998, codified at 5 USC 801(a)(1)(A). A copy of this IRFA will also be published in the **Federal Register**.

#### Ordering Clauses

Pursuant to §§ 4(i)–(j) of the Communications Act of 1934, as amended, 47 USC 154(i)–(j), 303(c), (f), and (r), and 309(j), notice is hereby given of the proposed amendment to Part 76 of the Commission's rules, in accordance with the proposals, discussions, and statements of issues contained in this Notice of Proposed Rulemaking, and that comment is sought regarding such proposals, discussions, and statements of issues. It is further ordered that the Commission's Office of Public Affairs, Reference Operations division, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1164, 5 USC 601 *et seq.* (1981).

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–2618 Filed 2–14–00; 8:45 am]

BILLING CODE 6712–01–U

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### 49 CFR Parts 222 and 229

[Docket Nos. FRA–1999–6439, Notice No. 2 and FRA–1999–6440]

RIN 2130–AA71

#### Use of Locomotive Horns at Highway-Rail Grade Crossings

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of public hearings.

**SUMMARY:** On January 13, 2000, FRA published a Notice of Proposed Rulemaking (NPRM) on the Use of Locomotive Horns at Highway-Rail Grade Crossings (Docket No. FRA–1999–6439). On the same date FRA released a Draft Environmental

Assessment (DEIS) (Docket No. FRA–1999–6440) pertaining to the proposals contained in the NPRM. In both documents, FRA stated that public hearings would be held in a number of locations throughout the country. This notice provides information regarding combined hearings on the NPRM and DEIS to be held in: Washington, DC; Los Angeles, California; Pendleton, Oregon; Ft. Lauderdale, Florida; and Salem, Massachusetts. Further notices will be published and posted on FRA's web site (<http://fra.dot.gov>) regarding hearings to be held in the remaining locations listed in the NPRM: Berea, Ohio; South Bend, Indiana; and Chicago, Illinois.

**DATES: Public Hearings:** Public hearings will be held in:

1. Washington, DC on March 6, 2000;
2. Los Angeles area, California on March 15, 2000;
3. Pendleton, Oregon on March 17, 2000;
4. Ft. Lauderdale, Florida on March 28, 2000; and
5. Salem, Massachusetts on April 3, 2000.

All hearings will begin at 9:00 am. Please see Supplementary Information for further information concerning participation in the public hearings.

**ADDRESSES: Public Hearings:** Public hearings will be held at the following locations:

1. *Washington DC:* Federal Aviation Administration Auditorium, Third Floor, Federal Office Building 10A, 800 Independence Avenue, SW, Washington, DC 20591.
2. *Los Angeles area:* Doubletree Hotel, Catalina II Room, 3050 Bristol Street, Costa Mesa, CA 92626.
3. *Pendleton, Oregon:* City Council Chambers, Pendleton City Hall, 500 Southwest Dorian Avenue, Pendleton, OR 97801.
4. *Ft. Lauderdale, Florida:* Doubletree Oceanfront Hotel, 440 Seabreeze Blvd, Fort Lauderdale, FL 33316.
5. *Salem, Massachusetts:* National Park Service Visitor Center—Auditorium, 2 New Liberty Street, Salem, MA 01970.

*FRA Docket Clerk:* Docket Clerk, Office of Chief Counsel, Mail Stop 10, FRA, 1120 Vermont Avenue, NW, Washington, DC 20590. E-mail address for the FRA Docket Clerk is [renee.bridgers@fra.dot.gov](mailto:renee.bridgers@fra.dot.gov).

**FOR FURTHER INFORMATION CONTACT:** Ron Ries, Office of Safety, FRA, 1120 Vermont Avenue, SW., Washington, DC 20590 (telephone: 202–493–6299); or Mark Tessler, Office of Chief Counsel, FRA, 1120 Vermont Avenue, SW., Washington, DC 20590 (telephone: 202–493–6038).

**SUPPLEMENTARY INFORMATION:** Any person wishing to provide testimony at one of the public hearings should notify FRA's Docket Clerk at the address above at least three working days prior to the date of the hearing. The notification should also provide either a telephone number or e-mail address at which the person may be contacted. If a participant will be representing an organization, please indicate that name of the organization.

FRA will attempt to accommodate all persons wishing to provide testimony, however depending on the number of people wishing to participate, FRA may find it necessary to limit the length of oral comments to accommodate as many people as possible. Participants may wish to submit a complete written statement for inclusion in the record, while orally summarizing the points made in that statement.

Issued in Washington, DC, on February 11, 2000.

**S. Mark Lindsey,**

*Acting Deputy Administrator, Federal Railroad Administration.*

[FR Doc. 00–3653 Filed 2–14–00; 8:45 am]

BILLING CODE 4910–06–M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018–AF67

#### Endangered and Threatened Wildlife and Plants; Reopening of the Comment Period on the Proposed Rule To Remove the Northern Populations of the Tidewater Goby From the List of Endangered and Threatened Wildlife

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; Notice of reopening of comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), provide notice of the reopening of the comment period for the proposed delisting of the northern populations of the tidewater goby (*Eucyclogobius newberryi*) from the list of endangered and threatened wildlife. The comment period has been reopened in response to new information regarding tidewater goby marine dispersal. This proposal would remove the northern populations of the Tidewater goby from protection under the Act.

**DATES:** Comments from all interested parties must be received by March 31, 2000.

**ADDRESSES:** Send written comments and other materials concerning this proposal to Ms. Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003. You may inspect comments and materials received, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Carl Benz at the above address; telephone 805/644-1766; facsimile 805/644-3958.

**SUPPLEMENTARY INFORMATION:**

**Background**

The tidewater goby was first described in 1857 by Girard as *Gobius newberryi*. Gill (1862) erected the genus *Eucyclogobius* for this distinctive species. The majority of scientists have accepted this classification (Bailey *et al.* 1970; Miller and Lea 1972; Hubbs *et al.* 1979; Robins *et al.* 1991; Eschmeyer *et al.* 1983). No other species have been described in this genus. A few older works and Ginsburg (1945) placed the tidewater goby and the eight related eastern Pacific species into the genus *Lepidogobius*. This classification includes the currently recognized genera *Lepidogobius*, *Clevelandia*, *Ilypnus*, *Quietula*, and *Eucyclogobius*. Birdsong *et al.* (1988) coined the informal *Chasmichthys* species group, recognizing the phyletic relationship of the eastern Pacific group with species in the northwestern Pacific.

Crabtree's (1985) allozyme work on tidewater gobies from 12 localities throughout the range showed fixed allelic differences at the extreme northern (Lake Earl, Humboldt Bay) and southern (Canada de Agua Caliente, Winchester Canyon, and San Onofre Lagoon) ends of the range. The northern and southern populations are genetically distinct from each other and from the central populations sampled. The more centrally distributed populations are relatively similar to each other (Brush Creek, Estero Americano, Corcoran Lagoon, Arroyo de Corral, Morro Bay, Santa Ynez River, and Jalama Creek). Crabtree's results indicated that there is a low level of gene flow (movement of individuals) between the populations sampled in the northern, central, and southern parts of the range. However, Lafferty *et al.* (in prep.) point out that Crabtree's sites were widely distributed geographically, and may not be indicative of gene flow on more local levels.

Recently, David Jacobs (University of California, Los Angeles, Department of

Organismic Biology, Ecology and Evolution, *in litt.* 1998) initiated an analysis of mitochondrial genetic material from tidewater goby populations ranging from Humboldt to San Diego counties. Preliminary results indicate the southern goby population separated from other goby populations along the coast long ago. This southernmost population probably began diverging from the remainder of the gobies in excess of 100,000 years ago. Furthermore, gobies from the Point Conception area are more closely related to gobies from Humboldt County than they are to the gobies analyzed in San Diego and Orange counties.

The tidewater goby (*Eucyclogobius newberryi*) is a small, elongate, grey-brown fish with dusky fins not exceeding 50 millimeters (mm) (2 inches (in.)) standard length (SL). The tidewater goby is a short-lived species, apparently having an annual life cycle (Irwin and Soltz 1984; Swift *et al.* 1997). At the time of the listing, the species was believed to have more stringent habitat requirements and to be less likely to disperse successfully than recent research indicates (see below). These factors, coupled with the short life span of the tidewater goby, were believed to make most tidewater goby populations vulnerable to extirpation by human activities. At the time of the listing, we believed that approximately 50 percent of the documented populations had been extirpated. However, in spite of the many factors affecting coastal wetlands, recent survey data have demonstrated a less than 25 percent permanent loss of the known tidewater goby populations (Ambrose *et al.* 1993; Swift *et al.* 1994; Lafferty *et al.* 1996; C. Chamberlain, U.S. Fish and Wildlife Service, Arcata, California, *in litt.* 1997; Lafferty 1997; Swift *et al.* 1997).

The tidewater goby inhabits coastal brackish water habitats entirely within California. Within the range of the tidewater goby, these conditions occur in two relatively distinct situations: (1) The upper edge of tidal bays, such as Humboldt, Tomales, and San Francisco bays near the entrance of freshwater tributaries, and (2) the coastal lagoons formed at the mouths of small to large coastal rivers, streams, or seasonally wet canyons, along most of the length of California. Few well-authenticated records of this species are known from marine environments outside of enclosed coastal lagoons and estuaries (Swift *et al.* 1989). This may be due to the lack of collection efforts at appropriate times (*i.e.*, following storm events or breachings when gobies are flushed from the estuaries and lagoons).

Historically, the species ranged from Tillas Slough (mouth of the Smith River, Del Norte County) near the Oregon border south to Agua Hedionda Lagoon (northern San Diego County). The tidewater goby is often found in waters of relatively low salinities (around 10 parts per thousand (ppt)) in the uppermost brackish zone of larger estuaries and coastal lagoons. However, the fish can tolerate a wide range of salinities (Swift *et al.* 1989, 1997; Worcester 1992; K. R. Worcester, California Department of Fish and Game (CDFG), *in litt.* 1996; Worcester and Lea 1996), and is frequently found throughout lagoons. Tidewater gobies regularly range upstream into fresh water, and downstream into water of up to 28 ppt salinity (Worcester 1992; Swenson 1995), although specimens have been collected at salinities as high as 42 ppt (Swift *et al.* 1989). The species' tolerance of high salinities (up to 60 ppt for varying time periods) likely enables it to withstand the marine environment, allowing it to colonize or reestablish in lagoons and estuaries following flood events (Swift *et al.* 1989; K. R. Worcester, *in litt.* 1996; Worcester and Lea 1996; Lafferty *et al.* in prep.)

The life history of tidewater gobies is linked to the annual cycles of the coastal lagoons and estuaries (Swift *et al.* 1989, 1994; Swenson 1994, 1995). Water in estuaries, lagoons and bays is at its lowest salinity during the winter and spring as a result of precipitation and runoff. During this time, high runoffs cause the sandbars at the mouths of the lagoons to breach, allowing mixing of the relatively fresh estuarine and lagoon waters with seawater. This annual building and breaching of the sandbars is part of the normal dynamics of the systems in which the tidewater goby has evolved (Zedler 1982; Lafferty and Alstatt 1995; Heasley *et al.* 1997). The time of sandbar closure varies greatly between systems and years, and typically occurs from spring to late summer. Later in the year, occasional waves washing over the sandbars can introduce some sea water, but good mixing often keeps the lagoon water at a few parts per thousand salinity or less. Summer salinity in the lagoon depends upon the amount of freshwater inflow at the time of sandbar formation (Zedler 1982, Heasley *et al.* 1997).

Males begin digging breeding burrows 75 to 100 mm (3 to 4 in.) deep, usually in relatively unconsolidated, clean, coarse sand averaging 0.5 mm (0.02 in.) in diameter, in April or May (Swift *et al.* 1989; Swenson 1994, 1995). Swenson (1995) has shown that tidewater gobies prefer this substrate in the laboratory,

but also found tidewater gobies digging breeding burrows in mud in the wild (Swenson 1994). Inter-burrow distances range from about 5 to 275 centimeters (cm) (2 to 110 in.) (Swenson 1995). Females lay 100 to 1000 eggs per clutch, averaging 400 eggs/clutch, with clutch size depending on the size of both the female and the male. Females can lay more than one clutch of eggs over their lifespan, with captive females spawning 6 to 12 times (Swenson 1995). Wild females may spawn less frequently due to fluctuations in food supply and other environmental conditions, but the species clearly has a high reproductive potential, enabling populations to recover quickly under suitable conditions. Male gobies remain in the burrow to guard the eggs that are attached to sand grains in the walls of the burrow. Males also spawn more than once per season (Swenson 1995), and although they can have more than one clutch in their burrow, presumably from different females (Swift *et al.* 1989), Swenson (1995) found that males accepted only one female per brood period. Males frequently go for at least a few weeks without feeding, and this probably contributes to a mid-summer mortality often noted in populations (Swift *et al.* 1989; Swenson 1994, 1995). Reproduction peaks during spring to mid-summer, late April or May to July, and can continue into November or December depending on the seasonal temperature and rainfall. Reproduction sometimes increases slightly in the fall (Swift *et al.* 1989; Camm Swift, Department of Biology, Loyola Marymount University, pers. comm. 1995). Reproduction takes place when temperatures are between 15 to 20 degrees Celsius (60 to 65 degrees Fahrenheit) and at salinities of 0 to 25 ppt (Swift *et al.* 1989; Swenson 1994, 1995). Typically, winter rains and cold weather interrupt spawning, but in some warm years reproduction may occur all year (Goldberg 1977; Wang 1984). Goldberg (1977) showed by histological analysis that females have the potential to lay eggs all year in southern California, but this rarely has been documented. Length-frequency data from southern and central California (Swift *et al.* 1989; Swenson 1994, 1995) and analysis of otoliths from central California populations

(Swift *et al.* 1997) indicate that tidewater gobies are an annual species and typically live 1 year or less.

We published a proposed rule, with additional background information, to remove the northern populations of the tidewater goby from the list of endangered and threatened wildlife on June 24, 1999 (64 FR 33816). The original comment period closed on August 23, 1999. Significant new information regarding marine dispersal of tidewater gobies was brought to our attention late in the comment period, with additional information provided since the closing of that comment period. We require time to fully evaluate the information and to solicit further peer review of this proposal. We will solicit the opinions of appropriate and independent specialists regarding the data, assumptions, and supportive information presented for the proposed delisting of the tidewater goby per our Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities (59 FR 34270).

#### Public Comments Solicited

It is our intent 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. 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. There also may be circumstances in which 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 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.

All comments, including written and e-mail, must be received in our Ventura Fish and Wildlife Office by March 31, 2000. We particularly seek comments concerning:

- (1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;
- (2) Additional information concerning the range, distribution, and population size of this species; and
- (3) Current or planned activities in the range of this species and their possible impacts on this species.

The final decision on this proposal to delist the northern population of the tidewater goby will take into consideration the comments and any additional information we receive, and such communications may lead to a final regulation that differs from this proposal.

This rule does not include any collections of information that require approval by OMB under the Paperwork Reduction Act.

#### National Environmental Policy Act

We have determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared 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** on October 25, 1983 (48 FR 49244).

#### References Cited

A complete list of all references cited herein is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

**Authors:** The primary authors of this proposed rule are Grace McLaughlin and Carl Benz, Ventura Fish and Wildlife Office (805/644-1766).

**Authority:** The authority of this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

#### Elizabeth H. Stevens,

Manager, California/Nevada Operations Office, Fish and Wildlife Service.

[FR Doc. 00-3524 Filed 2-14-00; 8:45 am]

**BILLING CODE 4310-55-U**

# Notices

Federal Register

Vol. 65, No. 31

Tuesday, February 15, 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.

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

[FV-99-330]

#### United States Standards for Grades of Frozen Field Peas and Frozen Black-Eye Peas

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

**ACTION:** Notice.

**SUMMARY:** The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is soliciting comments on its proposal to revise the United States Standards for Grades of Frozen Field Peas and Frozen Black-Eye Peas. Specifically, USDA is proposing to provide for the "individual attributes" procedure for product grading with sample sizes, acceptable quality levels (AQL's), tolerances and acceptance numbers (number of allowable defects) to be included in the standards; and provide a uniform format consistent with other recently revised U.S. grade standards by adopting definitions for terms and replacing textual descriptions with easy-to-read tables. These changes have been requested by the industry in order to improve use of the standards.

**DATES:** Written comments may be submitted on or before April 17, 2000.

**ADDRESSES:** Written comments may be submitted to Randle A. Macon, Processed Products Branch, Fruit and Vegetable Programs, STOP 0247, P.O. Box 96456, Washington, DC 20090-6456; faxed to (202) 690-1527; or e-mailed to Randle.Macon@usda.gov. Comments should reference the date and page number of this issue of the **Federal Register**. All comments received will be made available for public inspection at the above address during regular business hours (8:00 a.m. to 4:30 p.m.). And on the Internet.

The current United States Standards for Grades of Frozen Field Peas and

Frozen Black-Eye Peas, along with the proposed changes, are available either through the above address or by accessing AMS's website on the Internet at [www.ams.usda.gov/standards/](http://www.ams.usda.gov/standards/). The United States Standards for Grades of Frozen Field Peas and Frozen Black-Eye Peas do not appear in the Code of Federal Regulations.

**FOR FURTHER INFORMATION CONTACT:** Randle A. Macon at (202) 720-5021 or e-mailed to Randle.Macon@usda.gov.

**SUPPLEMENTARY INFORMATION:** Section 203(c) of the Agricultural Marketing Act of 1946, as amended, directs and authorizes the Secretary of Agriculture "to develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards to encourage uniformity and consistency in commercial practices. . . ." AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request.

AMS is proposing to change the United States Standards for Grades of Frozen Field Peas & Frozen Black-Eye Peas using the procedures that appear in Part 36 of Title 7 of the Code of Federal Regulations (7 CFR part 36). The grade standards were last revised in September 1996.

The Western Technical Advisory Committee of the American Frozen Food Institute petitioned the USDA to revise the U.S. grade standards for frozen field peas and frozen black-eye peas in 1997. It was requested that the "individual attributes" system of grading, be incorporated into the revision. "Individual attributes" provide statistically derived acceptable quality levels (AQL's) based on the tolerances in the grade standards.

The current standards are based on an older "attributes" model. It is proposed that the standards be modified to convert them to the improved "individual attributes" grading system, similar to the U.S. grade standards for canned green and wax beans (58 FR4295; January 14, 1993). This change would bring the standards in line with current marketing practices and innovations in processing techniques. In addition to these changes, the revision would modify the standards to present them in a simplified easy-to-use format. Consistent with recent revisions of other

U.S. grade standards, definitions of terms and easy-to-read tables would replace the textual descriptions. These changes are intended to facilitate better understanding and more uniform application of the grade standards.

AMS is publishing this notice with a 60 day comment period which will provide a sufficient amount of time for interested persons to comment on the revision of the standard.

**Authority:** 7 U.S.C. 1621-1627

Dated: February 9, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00-3423 Filed 2-14-00; 8:45 am]

BILLING CODE 3410-02-P

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## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 USC Chapter 35).

**Agency:** Patent and Trademark Office (PTO).

**Title:** Statutory Invention Registration. **Agency Form Number(s):** PTO/SB/94.

**OMB Approval Number:** 0651-0036.

**Type of Request:** Extension of a currently approved collection.

**Burden Hours:** 33.2 hours.

**Number of Respondents:** 83.

**Average Hours Per Response:** Based on PTO time and motion studies, the agency estimates that the burden hours required by the public to gather, prepare and submit a Request for a Statutory Invention Registration (PTO/SB/94), a petition to review final refusal to publish, or a petition to withdraw a publication request to be 24 minutes for each item.

**Needs and Uses:** The information is necessary to ensure that the requirements of 35 USC 157 and 37 CFR 1.293-1.297 are met. The public uses form PTO/SB/94, Request for Statutory Invention Registration, to request and authorize publication of a regularly-filed patent application as a statutory invention registration, to waive the right to receive a United States patent on the same invention claimed in the

identified patent application, and to agree that the waiver will be effective upon publication of the statutory invention registration. The PTO uses form PTO/SB/94, Request for a Statutory Invention Registration, to review, grant, or deny a request for a statutory invention registration.

No forms are associated with the petition to review final refusal to publish a statutory invention registration or the petition to withdraw a publication request. The petition to review final refusal to publish a statutory invention registration is used by the public to petition the PTO's rejection of a request for a statutory invention registration. The PTO uses the petition to withdraw a publication request to review requests to stop publication of a statutory invention registration.

**Affected Public:** Individuals or households, businesses or other for-profit organizations; not-for-profit institutions; farms; the Federal Government; or State, Local or Tribal Governments.

**Frequency:** On occasion.

**Respondent's Obligation:** Required to obtain or retain a benefit.

**OMB Desk Officer:** Peter Weiss, (202) 395-3630.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Departmental Forms Clearance Officer, Office of the Chief Information Officer, (202) 482-3272, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC, 20230 or via the Internet at (LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication to Peter Weiss, OMB Desk Officer, Room 10236, New Executive Office Building, 725 17th Street, NW, Washington, DC, 20503.

Dated: February 9, 2000.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 00-3563 Filed 2-14-00; 8:45 am]

BILLING CODE 3510-16-P

**DEPARTMENT OF COMMERCE**

**Census Bureau**

**National Employers Survey—(NES 2000)**

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before April 17, 2000.

**ADDRESSES:** Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Michael Hartz, U.S. Bureau of the Census, Room 2535-3—EPCD, Washington, DC 20233-6100; (301-457-2633).

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

The Census Bureau conducted three earlier National Employers Surveys (1994, 1995 and 1997) for the National Center on the Educational Quality of the Workforce (EQW), a nonprofit research group. This survey will be sponsored by the U.S. Department of Education and the National School-to-Work Office. These groups focus on discovering relationships among employment, hiring, training, education, and business success. This information collection seeks to build upon the results of the previous surveys.

This information collection goes beyond the previous National Employers Surveys in that it seeks to explore employees' histories and to identify employees' perceptions regarding employer-provided training and job-related educational requirements. The collection will relate these employees' responses to similar information collected from employers. The purpose is to identify those areas where employee and employer views are similar and where they are different. This information then will be used to suggest areas where additional emphasis regarding employer job requirements are needed to enable potential employees to qualify for employment.

This new survey will incorporate a telephone survey of employers that responded to the 1997 National Employers survey (NES-3) and a mail questionnaire to be sent to

approximately 15,000 employees of a sample of the surveyed companies. During the telephone survey, employers will be asked to volunteer to participate in the employee survey. Companies which volunteer will be sent a package of 30 questionnaires along with instructions on how to distribute these questionnaires to a sample of their employees. The employees will fill out the questionnaires and send them back to the Census Bureau in postage paid envelopes provided. The questionnaire will include about 74 questions that solicit employees' views regarding employment qualifications and training opportunities available to them that relate to their employment. These survey questions are constructed to eliminate the need for respondents to review any records relating to the subject of this collection. We expect that each respondent will spend about 20 minutes completing the questionnaire.

**II. Method of Collection**

The Census Bureau will conduct the NES 2000 using both a telephone survey and a mail questionnaire. The telephone survey will cover about 3,000 employers that provided information for the NES-3 in 1997. The telephone interview will last less than 30 minutes. During the telephone interview, the employer will be asked to participate in the employee survey. Although we expect more than 500 employers to volunteer for the employee survey, we will limit participation to 500. We will select employers so that we get a representative sample. Employers which volunteer to participate and are selected, will be sent a package of 30 questionnaires along with instructions on how to distribute these questionnaires to a sample of their employees. The employees will fill out the questionnaires and send them back to the Census Bureau in postage paid envelopes provided. The employee questionnaire will be distributed to approximately 15,000 employees. The questionnaire will consist of approximately 74 questions. Most questions will be constructed using a "check-box" format. The check boxes primarily will be questions requiring a "yes/no" or "on a range of 1 to 5" response.

Employees completing the questionnaires will send them directly to the Census Bureau, using pre-addressed, postage-paid return envelopes. Employers will not be allowed access to the questionnaires completed by the employees or the information reported on the questionnaires. Confidentiality is guaranteed by Title 13, United States

Code. After the Census Bureau performs data keying and consistency editing, the data set will be provided to sworn Census agents representing the survey sponsors.

High participation rates for both the telephone survey of employers and the employee survey are crucial for statistically reliable data in the NES 2000. We have limited participation to 500 employers in order to keep the respondent burden and the costs of the survey, as low as possible. However, we expect that the responses from the employees of the 500 participating companies will be sufficient to provide useful and representative information. The Census Bureau has discussed survey participation with selected respondents from the NES-3. Nearly all of the business establishments we contacted stated that they would strongly consider participating in the survey. The businesses indicated that their decision to participate in a survey was primarily based on their perception of the usefulness of the requested information. The businesses are very interested in the issues of the survey. One business respondent said, "After all, these are our concerns, too." Also, more 1997 respondents (employers) than in the previous two NES surveys told the interviewers that they wanted the results of the survey. Based on these factors (and especially the employer concerns about these workplace issues), we expect a sufficiently high rate of the employers from the NES-3 to participate in the NES 2000.

We plan to rely on the employers to select the sample of their employees and distribute the questionnaires to them. We will be talking to a few more respondents to help design an effective and comfortable operational design for selecting employees and distributing the materials. The Census Bureau is confident in the ability of the volunteering businesses to draw a reliable, random sample of employees, based on payroll records containing the Social Security number (which we may instruct them to use as the selection criterion).

The survey sponsors considered two designs for this survey. One was to measure only newly hired employees and address a set of issues that relate to that segment of the work force. Another was to survey employees across the board. When we asked about limiting the selection to "new hires," several of the businesses thought that would pose a problem and recommended that we survey all their employees. We will work with a few of the potential respondents to determine how to impart

our statistical requirements in written instructions.

Another concern we discussed was anonymity. Those businesses we consulted feel that employees are more likely to return the questionnaires with accurate responses if we can assure them that the employer would not see any of the responses and would not know if the employee had responded or not. Employees are very sensitive to access of their personal information, and we feel that good response will require that we provide assurance of confidentiality.

Anonymity, sampling of employees, and operational considerations will be considered during the 60-day comment period and we would particularly welcome any ideas or concerns on these issues.

### III. Data

*OMB Number:* Not available.

*Form Number:* NES 2000.

*Type of Review:* Regular.

*Affected Public:* Employers in business establishments with 20 or more employees and employees of these establishments.

*Estimated Number of Respondents:* 3,000 employers and 15,000 employees.

*Estimated Time Per Response:* Employers 30 minutes, Employees 20 minutes.

*Estimated Total Annual Burden Hours:* 6,500 hours.

*Estimated Total Annual Cost:* There is no cost to the respondent other than the time required to complete the telephone interview. Employers that volunteer for the employee survey will incur a small cost in selecting the sample of employees and distributing the questionnaires to these employees.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 13 United States Code, Sections 8 and 9.

### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or

included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 8, 2000.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 00-3561 Filed 2-14-00; 8:45 am]

BILLING CODE 3510-07-P

## DEPARTMENT OF COMMERCE

### Census Bureau

#### Survey of Housing Starts, Sales, and Completions

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

**DATE:** Written comments must be submitted on or before April 17, 2000.

**ADDRESSES:** Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to G. Daniel Sansbury, Census Bureau, Room 2105, FOB 4, Washington, DC 20233-6900, (301) 457-1321.

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

The Census Bureau conducts the Survey of Housing Starts, Sales, and Completions, also known as the Survey of Construction (SOC), to collect monthly data on new residential construction from a sample of owners or builders. The Census Bureau uses the Computer Assisted Personal Interviewing (CAPI) electronic questionnaires SOC-QI/SF.1 and SOC-QI/MF.1 to collect data on starts and completions dates of construction, physical characteristics of the structure (floor area, number of bathrooms, type of heating system, etc.), and if

applicable, date of sale, sales price, and type of financing. The SOC program provides widely used measures of construction activity, including the economic indicators Housing Starts, Housing Completions, and New Home Sales. We plan to request a three year extension of the expiration date with no changes to forms SOC-QI/SF.1 and SOC-QI/MF.1.

## II. Method of Collection

The Census Bureau uses its field representatives to collect the data. The field representatives conduct interviews to obtain data.

## III. Data

*OMB Number:* 0607-0110.

*Form Number:* SOC-QI/SF.1 and SOC-QI/MF.1.

*Type of Review:* Regular Review.

*Affected Public:* Individuals or households, business or other for-profit institutions.

*Estimated Number of Respondents:* 8,667.

*Estimated Time Per Response:* 1.08.

*Estimated Total Annual Burden Hours:* 9,395.

*Estimated Total Annual Cost:* The estimated cost to the respondent is \$222,560 based on the average hourly pay for respondent to be \$23.69.\*

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 13, United States Code, Section 182.

## IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 8, 2000.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 00-3562 Filed 2-14-00; 8:45 am]

BILLING CODE 3510-07-P

## DEPARTMENT OF COMMERCE

### Economics and Statistics Administration

#### Customer Satisfaction Survey

**ACTION:** Proposed collection; comments request.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13, 4 U.S.C. 3506(c)(2)(A).

**DATES:** Written comments must be submitted on or before April 17, 2000.

**ADDRESSES:** Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Office of the Chief Information Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230. (or via e-mail at LEngelme@doc.gov).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Bob Wendling, STAT-USA, Department of Commerce, 14th & Constitution Avenue, NW, Room 4886, Washington, DC 20230.

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

This information collection is necessary to help STAT-USA fulfill its mission of disseminating economic and statistical information to the business community and individual users. STAT-USA plans to survey its current customer base annually with a 25-question Customer Satisfaction Survey. STAT-USA plans to use a number of survey formats including mail, fax, on-line, and paper in order to ensure a high response rate. STAT-USA believes that regular communication with its customers, specifically feedback from the survey, will enable it to deliver its goods and services in the most user-friendly, economical and efficient manner. Only by knowing its customer base and its needs can STAT-USA continue to deliver the highest quality

of collected economic and statistical information.

## II. Method of Collection

Primarily through the mail. Other vehicles may include fax and on-line through the Internet. Respondents would mail or fax surveys back to STAT-USA. An on-line survey could be in place on the World Wide Web allowing respondents to complete the survey and "submit" it to the STAT-USA server.

## III. Data

*OMB Number:* None.

*Form Number:* None.

*Type of Review:* Initial collection.

*Affected Public:* Businesses and individual data users.

*Estimated Number of Respondents:* 4,000.

*Estimated Time Per Response:* 12 minutes.

*Estimated Total Annual Burden Hours:* 800.

*Estimated Total Annual Cost:* \$10,000.

## IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden including hours and cost of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents including through the use of automated collection techniques or other forms of information technology. The Department particularly welcomes comments on the burden estimates to comply with the requirements, as well as the costs associated with it. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: February 8, 2000.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 00-3560 Filed 2-14-00; 8:45 am]

BILLING CODE 3510-07-P

\* Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics Survey for 1997.

**DEPARTMENT OF COMMERCE****International Trade Administration**

[A-412-810, C-412-811]

**Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom: Initiation and Preliminary Results of Changed-Circumstances Antidumping and Countervailing Duty Administrative Reviews, Intent To Revoke Orders and Rescind Administrative Reviews**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of initiation and preliminary results of changed-circumstances antidumping and countervailing duty administrative reviews, intent to revoke orders, and rescind administrative reviews.

**SUMMARY:** In response to a request from the petitioners, Ispat Inland Inc. and Republic Technologies International LLC, that the Department of Commerce revoke the antidumping and countervailing duty orders on hot-rolled lead and bismuth carbon steel products from the United Kingdom, we are initiating changed-circumstances administrative reviews and issuing this notice of preliminary results and intent to revoke the antidumping and countervailing duty orders retroactive to January 1, 1995. We also intend to rescind the ongoing antidumping and countervailing duty reviews covering the periods March 1, 1998, through February 28, 1999, and January 1, 1998, through December 31, 1998, respectively. Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** January 1, 1995.

**FOR FURTHER INFORMATION CONTACT:** Rebecca Trainor or Kate Johnson (Antidumping); Dana Mermelstein or Jon Lyons (Countervailing), 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) 482-4007, (202) 482-4929, (202) 482-3208, and (202) 482-0374, respectively.

**SUPPLEMENTARY INFORMATION:****The 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 (the Department's) regulations are to the regulations at 19 CFR part 351 (April 1999).

**Background**

On December 28, 1999, Ispat Inland Inc. and Republic Technologies International LLC (the petitioners) requested that the Department revoke the antidumping and countervailing duty orders on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom, retroactive to January 1, 1994, stating that they no longer have an interest in maintaining these orders. The petitioners represent domestic interested parties, and are successor companies to the petitioners in the less-than-fair-value and countervailing duty investigations. On January 5, 2000, the petitioners submitted a letter substantiating their claim that they represent more than 85 percent of domestic production and shipments of the subject merchandise. On February 2, 2000, petitioners amended their initial revocation request, and asked that revocation of the orders be retroactive to January 1, 1995, rather than to January 1, 1994.

**Scope of the Reviews**

The products covered by these reviews are hot-rolled bars and rods of nonalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this review are other alloy steels (as defined by the *Harmonized Tariff Schedule of the United States* (HTSUS) Chapter 72, note 1 (f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead, or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in these reviews are provided for under subheadings 7213.20.00.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00; 7213.31.60.00; 7213.39.00.30; 7213.39.00.60; 7213.39.00.90; 7213.91.30.00; 7213.91.45.00; 7213.91.60.00; 7213.99.00; 7214.40.00.10, 7214.40.00.30, 7214.40.00.50; 7214.50.00.10; 7214.50.00.30, 7214.50.00.50; 7214.60.00.10; 7214.60.00.30; 7214.60.00.50; 7214.91.00; 7214.99.00;

7228.30.80.00; and 7228.30.80.50. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of these proceedings is dispositive.

**Initiation and Preliminary Results of Changed-Circumstances Reviews and Intent To Revoke Orders**

Pursuant to section 751(d)(1) of the Act, the Department may revoke, in whole or in part, a countervailing or antidumping duty order based on a review under section 751(b) of the Act (i.e., a changed circumstances review). The Department's regulations at 19 CFR 351.216(d) require the Department to conduct a changed-circumstances review in accordance with 19 CFR 351.221 if it decides that changed circumstances sufficient to warrant a review exist. Section 782(h)(2) of the Act and § 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 that the Department concludes that expedited action is warranted, 19 CFR 351.221(c)(3) permits the Department to combine the notices of initiation and preliminary results.

The petitioners are domestic interested parties as defined by section 771(9)(C) of the Act and 19 CFR 351.102(b). These parties indicated that they represent at least 85 percent of the domestic production of the domestic like product to which these orders pertain, and thus account for "substantially all" of the production of the domestic like product. Therefore, based on the lack of interest by the domestic industry in the continued application of the antidumping and countervailing duty orders on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom, we are initiating these changed-circumstances reviews. Because of the pending antidumping and countervailing duty administrative reviews, we have determined that expedited action is warranted, and we are combining the notices of initiation and preliminary results. We have preliminarily determined that the petitioners' statement of no interest in the continuation of the orders constitutes changed circumstances sufficient to warrant revocation of the orders in whole. We are hereby notifying the public of our intent to revoke in whole the antidumping and countervailing duty orders on certain

hot-rolled lead and bismuth carbon steel products from the United Kingdom retroactive to January 1, 1995.

If these preliminary results become final, we intend to rescind the current antidumping and countervailing duty administrative reviews of the orders, covering the periods March 1, 1998, through February 28, 1999, and January 1, 1998, through December 31, 1998, respectively (initiated on April 30, 1999 (64 FR 23269)).

If final revocation of the orders occurs, we intend to instruct the Customs Service to discontinue the suspension of liquidation and to refund any estimated antidumping and countervailing duties collected for all unliquidated entries of certain hot-rolled lead and bismuth carbon steel products from the United Kingdom entered, or withdrawn from warehouse, for consumption on or after January 1, 1995. We will also instruct the Customs Service to pay interest on any refunds with respect to the subject merchandise entered, or withdrawn from warehouse, for consumption on or after January 1, 1995, in accordance with section 778 of the Act. The current requirement for a cash deposit of estimated antidumping and countervailing duties will continue until publication of the final results of these changed-circumstances reviews.

#### Public Comment

Interested parties are invited to comment on these preliminary results. Parties who submit argument in these proceedings are requested to submit with the argument (1) A statement of the issue, and (2) A brief summary of the argument. Any interested party may request a hearing within 10 days of the date of publication of this notice. Any hearing, if requested, will be held no later than 21 days after the date of publication of this notice, or the first workday thereafter. Case briefs may be submitted by interested parties not later than 7 days after the date of publication of this notice. Rebuttal briefs, limited to the issues raised in the case briefs, may be filed not later than 12 days after the date of publication of this notice. All written comments shall be submitted in accordance with 19 CFR 351.303 and shall be served on all interested parties on the Department's service list in accordance with 19 CFR 351.303. Persons interested in attending the hearing should contact the Department for the date and time of the hearing. The Department will publish the final results of these changed-circumstances reviews, including the results of its analysis of issues raised in any written comments.

We are issuing and publishing these determinations and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and section 351.222 of the Department's regulations.

Dated: February 9, 2000.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 00-3555 Filed 2-14-00; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-583-810]

#### Chrome-Plated Lug Nuts From Taiwan; 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 of Chrome-Plated Lug Nuts From Taiwan.

**SUMMARY:** On October 12, 1999, the Department of Commerce ("the Department") published the preliminary results of administrative review of the antidumping duty order on chrome-plated lug nuts from Taiwan. See *Chrome-Plated Lug Nuts From Taiwan; Preliminary Results of Antidumping Duty Administrative Review*, 64 FR 55234 (October 12, 1999) ("Preliminary Results"). The review covered the following manufacturers/exporters of the subject merchandise to the United States for the period of review ("POR") September 1, 1997, through August 31, 1998: Anmax Industrial Co., Ltd. ("Anmax"), Buxton International Corporation ("Buxton"), Chu Fong Metallic Electric Co. ("Chu Fong"), Everspring Plastic Corp. ("Everspring"), Gingen Metal Corp. ("Gingen"), Gourmet Equipment (Taiwan) Corporation ("Gourmet"), Hwen Hsin Enterprises Co., Ltd. ("Hwen"), Kwan How Enterprises Co., Ltd. (Kwan Ta Enterprises Co. Ltd ("Kwan Ta"), Kuang Hong Industries, Ltd. ("Kuang"), Multigrand Industries Inc. ("Multigrand"), San Chien Electric Industrial Works, Ltd. ("San Chien"), San Shing Hardware Works Co., Ltd. ("San Shing"), Transcend International Co. ("Transcend"), Trade Union International Inc./Top Line ("Trade Union"), Uniauto, Inc. ("Uniauto") and Wing Tang Electrical Manufacturing Company, Inc. ("Wing"). We gave interested parties an opportunity to comment on the preliminary results of

review but received no comments. The dumping margins have not changed from those determined for the preliminary results.

**EFFECTIVE DATE:** (Insert date of publication in the **Federal Register**.)

**FOR FURTHER INFORMATION CONTACT:** Nova Daly or Thomas Futtner, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-0989 or (202) 482-3814, 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, as amended, ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations refer to the regulations codified at 19 CFR part 351 (1999).

#### Scope of the Review

On December 12, 1996, the Department issued its "Final Scope Clarifications on Chrome-Plated Lug Nuts from Taiwan and the PRC." The scope, as clarified, is described in the subsequent paragraph. All lug nuts covered by this review conform to the December 12, 1996 scope clarification.

The products covered by the order and this review are one-piece and two-piece chrome-plated and nickel-plated lug nuts from Taiwan. The subject merchandise includes chrome-plated and nickel-plated lug nuts, finished or unfinished, which are more than  $1\frac{1}{16}$  inches (17.45 millimeters) in height and which have a hexagonal (hex) size of at least  $\frac{3}{4}$  inches (19.05 millimeters), but not over one inch (25.4 millimeters), plus or minus  $1\frac{1}{16}$  of an inch (1.59 millimeters). The term "unfinished" refers to unplated and/or unassembled chrome-plated lug nuts. The subject merchandise is used for securing wheels to cars, vans, trucks, utility vehicles, and trailers. Excluded from the order are zinc-plated lug nuts, finished or unfinished, stainless-steel capped lug nuts and chrome-plated lock nuts.

The merchandise under review currently is classifiable under item 7318.16.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheading is provided for convenience and Customs purposes, the written description of this merchandise is dispositive.

## Background

Since the publication of the *Preliminary Results*, the Department gave interested parties an opportunity to comment on our findings. We received no comments. In the preliminary results, we determined that, because questionnaires sent to Transcend, Kwan How, Kwan Ta, Kuang, Everspring, and Gingen were returned as undeliverable, these companies were considered "unlocated companies", and, in accordance with our practice with respect to companies to which we cannot send a questionnaire, we assigned them the "all others" rate established in the less-than-fair-value ("LTFV") investigation, which was 6.93 percent. See *Preliminary Results*, 64 FR at 550234. For the remaining companies, in accordance with section 776(a) of the Act, we determine that the use of facts available was appropriate as the basis for dumping margins for Anmax, Buxton, Chu Fong, Multigrand, Uniauto, Hwen, San Chien, San Shing, Wing, Trade Union, and Gourmet. *Preliminary Results*, 64 FR at 55235, 55236.

## Final Results of Review

We have determined that no changes to the preliminary results are warranted for purposes of these final results. The weighted-average dumping margins for the period September 1, 1997, through August 31, 1998 are as follows:

Manufacturer/exporter	Weighted-average margin percentage
Gourmet Equipment (Taiwan) Corporation .....	10.67
Buxton International/Uniauto ..	10.67
Chu Fong Metallic Electric Co. ....	10.67
Transcend International .....	6.93
San Chien Industrial Works, Ltd .....	10.67
Anmax Industrial Co., Ltd .....	10.67
Everspring Plastic Corp. ....	6.93
Gingen Metal Corp. ....	6.93
Hwen Hsin Enterprises Co., Ltd. ....	10.67
Kwan How Enterprises Co., Ltd. ....	6.93
Kwan Ta Enterprises Co., Ltd. ....	6.93
Kuang Hong Industries Ltd. ....	6.93
Multigrand Industries Inc. ....	10.67
San Shing Hardware Works Co., Ltd .....	10.67
Trade Union International Inc./Top Line .....	10.67
Uniauto, Inc. ....	10.67
Wing Tang Electrical Manufacturing Company .....	10.67

The Department will issue appraisal instructions directly to the Customs Service. Furthermore, the following deposit requirements will be

effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date as provided by section 751(a)(1) of the Act: (1) The cash-deposit rate for the reviewed companies will be the rates 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 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 reviews or the original investigation, the cash deposit rate will be 6.93 percent, the "all others" rate established in the LTFV investigation. The 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) 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 Department'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.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 9, 2000.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 00-3556 Filed 2-14-00; 8:45 am]

BILLING CODE 3510-DS-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-588-837]

### Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Reviews

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of antidumping duty administrative review.

**SUMMARY:** On October 12, 1999, the Department of Commerce published the preliminary results of the administrative reviews of the antidumping duty order on large newspaper printing presses and components thereof, whether assembled or unassembled, from Japan (64 FR 55243). These reviews cover Mitsubishi Heavy Industries, Ltd. and Tokyo Kikai Seisakusho, Ltd., manufacturers/exporters of the subject merchandise to the United States. The periods of review for Mitsubishi Heavy Industries, Ltd. are September 5, 1996, through August 31, 1997, and September 1, 1997, through August 31, 1998. The period of review for Tokyo Kikai Seisakusho is September 1, 1997, through August 31, 1998. We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received and the correction of certain data, the final results differ from the preliminary results. The final results for Tokyo Kikai Seisakusho, Ltd. are listed below in the "Final Results of the Review" section of this notice. For the reasons stated in the "Partial Rescission of Reviews" section of this notice, we have rescinded these reviews with respect to Mitsubishi Heavy Industries, Ltd.

**EFFECTIVE DATE:** February 15, 2000.

**FOR FURTHER INFORMATION CONTACT:** Kate Johnson or Rebecca Trainor, Office 2, AD/CVD Enforcement Group I, Import Administration, Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482-4929, or (202) 482-4007, respectively.

### SUPPLEMENTARY INFORMATION:

#### 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 (1998).

### Background

On October 12, 1999, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the first administrative reviews of the antidumping duty order on large newspaper printing presses and components thereof, whether assembled or unassembled, from Japan (LNPPs) (64 FR 55243) (*Preliminary Results*).

On December 27, 1999, we published in the **Federal Register** the final results of a changed-circumstances antidumping duty administrative review of this order, which resulted in the partial revocation of the order with respect to certain merchandise specified in the "Scope of Reviews" section of this notice. This merchandise was under review for Mitsubishi Heavy Industries (MHI) at the time of the *Preliminary Results*. See *Large Newspaper Printing Presses Components Thereof, Whether Assembled or Unassembled, from Japan: Final Results of Changed Circumstances Antidumping Duty Administrative Review and Intent to Revoke Antidumping Duty Order, In part*, 64 FR 72315, (*Changed Circumstances Review*).

On December 10, 1999, the respondent Tokyo Kikai Seisakusho, Ltd. (TKS) submitted comments on the *Preliminary Results*. The Department has now completed its administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

### Scope of the Reviews

The products covered by these reviews are large newspaper printing presses, including press systems, press additions and press components, whether assembled or unassembled, whether complete or incomplete, that are capable of printing or otherwise manipulating a roll of paper more than two pages across. A page is defined as a newspaper broadsheet page in which the lines of type are printed perpendicular to the running of the direction of the paper or a newspaper tabloid page with lines of type parallel to the running of the direction of the paper.

In addition to press systems, the scope of these reviews includes the five press system components. They are: (1) A printing unit, which is any component that prints in monochrome,

spot color and/or process (full) color; (2) a reel tension paster, which is any component that feeds a roll of paper more than two newspaper broadsheet pages in width into a subject printing unit; (3) a folder, which is a module or combination of modules capable of cutting, folding, and/or delivering the paper from a roll or rolls of newspaper broadsheet paper more than two pages in width into a newspaper format; (4) conveyance and access apparatus capable of manipulating a roll of paper more than two newspaper broadsheet pages across through the production process and which provides structural support and access; and (5) a computerized control system, which is any computer equipment and/or software designed specifically to control, monitor, adjust, and coordinate the functions and operations of large newspaper printing presses or press components.

A press addition is comprised of a union of one or more of the press components defined above and the equipment necessary to integrate such components into an existing press system.

Because of their size, large newspaper printing press systems, press additions, and press components are typically shipped either partially assembled or unassembled, complete or incomplete, and are assembled and/or completed prior to and/or during the installation process in the United States. Any of the five components, or collection of components, the use of which is to fulfill a contract for large newspaper printing press systems, press additions, or press components, regardless of degree of assembly and/or degree of combination with non-subject elements before or after importation, is included in the scope of these reviews. Also included in the scope are elements of a LNPP system, addition or component, which taken altogether, constitute at least 50 percent of the cost of manufacture of any of the five major LNPP components of which they are a part.

For purposes of these reviews, the following definitions apply irrespective of any different definition that may be found in Customs rulings, U.S. Customs law or the *Harmonized Tariff Schedule of the United States* (HTSUS): the term "unassembled" means fully or partially unassembled or disassembled; and (2) the term "incomplete" means lacking one or more elements with which the LNPP is intended to be equipped in order to fulfill a contract for a LNPP system, addition or component.

This scope does not cover spare or replacement parts. Spare or replacement

parts imported pursuant to a LNPP contract, which are not integral to the original start-up and operation of the LNPP, and are separately identified and valued in a LNPP contract, whether or not shipped in combination with covered merchandise, are excluded from the scope of these reviews. Used presses are also not subject to this scope. Used presses are those that have been previously sold in an arm's-length transaction to a purchaser that used them to produce newspapers in the ordinary course of business.

Also excluded from the scope, in accordance with the Department's determination in the *Changed Circumstances Review*, are elements and components of LNPP systems, and additions thereto, which feature a 22 inch cut-off, 50 inch web width and a rated speed no greater than 75,000 copies per hour. In addition to the specifications set out in this paragraph, all of which must be met in order for the product to be excluded from the scope of the order, the product must also meet all of the specifications detailed in the five numbered sections following this paragraph. If one or more of these criteria is not fulfilled, the product is not excluded from the scope of the order.

1. *Printing Unit*: A printing unit which is a color keyless blanket-to-blanket tower unit with a fixed gain infeed and fixed gain outfeed, with a rated speed no greater than 75,000 copies per hour, which includes the following features:

- Each tower consisting of four levels, one or more of which must be populated.
- Plate cylinders which contain slot lock-ups and blanket cylinders which contain reel rod lock-ups both of which are of solid carbon steel with nickel plating and with bearers at both ends which are configured in-line with bearers of other cylinders.
- Keyless inking system which consists of a passive feed ink delivery system, an eight roller ink train, and a non-anilox and non-porous metering roller.
- The dampener system which consists of a two nozzle per page spraybar and two roller dampener with one chrome drum and one form roller.
- The equipment contained in the color keyless ink delivery system is designed to achieve a constant, uniform feed of ink film across the cylinder without ink keys. This system requires use of keyless ink which accepts greater water content.

2. *Folder*: A module which is a double 3:2 rotary folder with 160 pages collect capability and double (over and under)

delivery, with a cut-off length of 22 inches. The upper section consists of three-high double formers (total of 6) with six sets of nipping rollers.

3. *RTP*: A component which is of the two-arm design with core drives and core brakes, designed for 50 inch diameter rolls; and arranged in the press line in the back-to-back configuration (left and right hand load pairs).

4. *Conveyance and Access Apparatus*: Conveyance and access apparatus capable of manipulating a roll of paper more than two newspaper broadsheets across through the production process, and a drive system which is of conventional shafted design.

5. *Computerized Control System*: A computerized control system, which is any computer equipment and/or software designed specifically to control, monitor, adjust, and coordinate the functions and operations of large newspaper printing presses or press components.

These reviews cover all current and future printing technologies capable of printing newspapers, including, but not limited to, lithographic (offset or direct), flexographic, and letterpress systems. The products covered by these reviews are imported into the United States under subheadings 8443.11.10, 8443.11.50, 8443.30.00, 8443.59.50, 8443.60.00, and 8443.90.50 of the HTSUS. Large newspaper printing presses may also enter under HTSUS subheadings 8443.21.00 and 8443.40.00. Large newspaper printing press computerized control systems may enter under HTSUS subheadings 8471.49.10, 8471.49.21, 8471.49.26, 8471.50.40, 8471.50.80, and 8537.10.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these reviews is dispositive.

#### **Partial Rescission of Administrative Reviews**

On December 27, 1999, we published in the **Federal Register** the final results of a changed circumstances antidumping duty administrative review of this order, in which we determined to revoke from the order elements and components of LNPP systems, and additions thereto, imported to fulfill a contract for one or more complete LNPP systems that meet a specific set of criteria, as described in the petitioner's May 28, 1999, request for a changed circumstances review. See *Changed Circumstances Review* and the "Scope of the Reviews" section of this notice. As a result of this partial revocation, which applies to all entries of LNPP systems and additions thereto from Japan as described above, entered, or

withdrawn from warehouse, for consumption on or after September 4, 1996, and which covers all of the LNPP merchandise that MHI exported to the United States during the above-specified administrative review periods, we have determined that MHI had no shipments of subject merchandise during these administrative review periods. Therefore, we are rescinding these reviews with respect to MHI.

#### **Duty Absorption**

On November 17, 1998, and on January 21, 1999, the petitioner requested that the Department determine whether antidumping duties had been absorbed during the periods of review (POR). Section 751(a)(4) of the Act provides for the Department, if requested, to determine during an administrative review initiated two or four years after the publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. In this case, TKS sold to the United States through an importer that is affiliated within the meaning of section 751(a)(4) of the Act.

Section 351.213(j)(1) of the Department's regulations provides that during any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping order, the Department will conduct a duty absorption review, if requested. Because these reviews were initiated two years after the publication of the order, we are making a duty absorption determination in this segment of the proceeding.

The Department's February 5, 1999, antidumping questionnaire requested proof that unaffiliated purchasers will ultimately pay the antidumping duties to be assessed on entries during the review periods. Although TKS did not respond to this request, we find that there is no duty absorption, because we have determined that there is no dumping margin with respect to TKS's U.S. sales.

#### **Interested Party Comments**

##### **Comment 1: CEP Profit Calculation**

TKS argues that the Department overstated the amount of constructed export price (CEP) profit in its preliminary margin calculations by failing to account for an amount for installation expenses incurred on the home market sales in the CEP profit calculation. TKS argues that, according to section 772(f)(2) of the Act, the Department is required to consider the

"total expenses" incurred when calculating CEP profit. TKS points out that the Department has included installation expenses in the calculation of home market profit for purposes of determining constructed value (CV), and argues that the Department should revise its preliminary calculations to include installation costs in the CEP profit calculation as well.

##### *The Department's Position*

We agree with TKS that installation expenses should have been accounted for in the calculation of CEP profit. When calculating CEP profit, we use the respondent's "total actual profit" for all sales of the subject merchandise and the foreign like product. Thus, the calculation includes all revenues and expenses resulting from the respondent's export price and home market sales. See section 772(f)(2)(D) of the Act. Accordingly, we have included home market installation expenses in the CEP profit calculation for the final results.

##### **Comment 2: Home Market Profit Calculation**

TKS argues that the Department has overstated home market profit in its preliminary margin calculation by failing to properly account for direct and indirect selling expenses.

##### *The Department's Position*

To determine a respondent's CV profit, we typically calculate a profit rate using the respondent's actual profit on home market sales made in the ordinary course of trade (see Comment 3 for more details). In determining the actual profit, we take into account direct and indirect selling expenses. See section 773(e) of the Act. Accordingly, we have included direct and indirect selling expenses in the CV profit calculation for the final results. For further discussion of the calculation and application of this rate see the Calculation Memorandum dated February 9, 2000.

##### **Comment 3: Foreign Like Product**

TKS contends that the Department has not sufficiently demonstrated that the LNPP additions sold in the home market during the POR constitute "the foreign like product," as defined in section 771(16) of the Act. Therefore, TKS objects to the Department's preliminary calculation of CV profit based on above-cost home market sales in accordance with section 773(e)(2)(A) of the Act.

TKS states that the Department apparently has based its foreign like product determination on section

771(16)(C), which defines the foreign like product as merchandise (1) produced in the same country and by the same person and of the same general class or kind as the merchandise which is the subject of the investigation; (2) like the subject merchandise in the purpose for which used; and (3) which the administering authority determines may reasonably be compared with the subject merchandise. TKS asserts that, since there is no record evidence to support this finding, the Department should determine that no foreign like product exists in the home market and base its CV profit calculation on section 773(e)(2)(B) of the Act.

TKS argues that the Department's analysis of this issue, expressed in its September 30, 1999, Normal Value (NV) Memorandum does not support the Department's conclusion that LNPPs sold in the home market were "foreign like product" within the meaning of section 771(16). First, TKS states, the Department did not find that home market LNPPs were identical to those sold to the United States. Rather, TKS asserts, the Department found "great" physical differences in sub-component specifications. Thus, TKS concludes, the Department's foreign like product determination must have relied on section 771(16)(C). Although the Department concludes in its NV Memorandum that "the general product characteristics of LNPP systems are comparable enough for them to be considered foreign like product," TKS complains that the Department does not reveal what "general product characteristics" it considered in making its determination. Furthermore, TKS argues, this conclusion conflicts with the Department's statement in the NV Memorandum that there are "great" physical differences between home market and U.S. LNPPs. TKS points out that the Department's methodology with respect to this issue is similar to that used in the less-than-fair-value (LTFV) investigation. Furthermore, the United States Court of International Trade (CIT) has twice remanded to the Department this issue over the course of on-going litigation involving this case. TKS complains that, as in the court case, the Department has failed to point to any specific record evidence in support of its determination that home market LNPPs are "reasonably comparable" to LNPPs sold to the United States during the POR. Rather, the only analysis in the Department's memorandum supports the opposite conclusion—that the two are not reasonably comparable.

TKS further argues that the Department incorrectly relied on its home market viability determination as

the basis for its foreign like product determination. TKS asserts that, in discussing home market viability in its NV Memorandum, the Department appears to consider the terms "foreign like product" and "general category of merchandise" to be interchangeable. TKS asserts that it is the Department's longstanding practice to make home market viability determinations based on the "class or kind of merchandise" rather than on the more narrow category of "foreign like product," and cites to the Statement of Administrative Action (SAA) at 821–822 ("the viability of a market will be assessed based on sales of all merchandise subject to an antidumping proceeding"). Therefore, the Department's reference to "foreign like product" in the memorandum is not credible, and does not alter the fact that there is no foreign like product. TKS claims that the Department's home market viability analysis was in fact based on "the same general class or kind of merchandise," as it took into consideration all reported home market sales.

Finally, TKS argues that, since there is no basis for finding that the reported home market sales of LNPPs constitute foreign like product under section 771(16) of the Act, the Department should utilize an alternative methodology for calculating CV profit, as provided in section 773(e)(2)(B)(i). In so doing, it would not be necessary to exclude any below-cost home market sales as being outside the ordinary course of trade, in accordance with the SAA at 841, which states that cost tests are not applicable to a "general category of merchandise."

#### *The Department's Position*

We disagree with TKS's assertion that its home market sales of LNPPs are not "foreign like product" within the meaning of section 771(16)(C) of the Act. First, it is uncontested that TKS's home market LNPPs are produced in the same country (Japan) and by the same person (TKS) and are of the same general class or kind as the merchandise which is subject to investigation. Second, it is uncontested that TKS's home market LNPPs are like the subject merchandise in the purpose for which used (to produce newspapers). Third, the Department has determined that TKS's home market sales of LNPPs "may reasonably be compared" with the subject merchandise for purposes of calculating CV profit. As the Department explained in its September 30, 1999 Analysis Memorandum, "the general product characteristics of LNPP systems are comparable enough for them to be considered foreign like

product." Memorandum at 7. Contrary to TKS's claim, that same memorandum details the degree to which both respondents' home market and U.S. sales of LNPPs share the same general product characteristics. *Id.* at 5, 7. Reflecting TKS's own submissions, press configurations are described in comparable terms (e.g., roll width, cut-off length) and each unit is described using the same product characteristics (i.e., printing units, reel tension pasters, folders, conveyance and access apparatus and computerized control equipment). This finding is consistent with the Department's determination in the original investigation that these common press characteristics provided substantial evidence that TKS's home market LNPPs could reasonably be compared for purposes of calculating CV profit. As the Department explained on remand,

[w]hile the sheer number of characteristics—and the fact that each completed custom-made LNPP model reflected a different mix of these common characteristics—led to ITA's determination that price-to-price comparisons were not practicable, the fact that both respondents' LNPP (whether sold in Japan or the United States) shared these detailed characteristics constitutes substantial evidence that home market LNPP could reasonably serve as the basis for CV profit.

Second Remand Determination: *Mitsubishi Heavy Industries, Ltd. v. United States*, Court No. 96–10–02292 at 12 (August 23, 1999) ("Second Remand Determination").<sup>1</sup> Similarly, in the instant review, substantial evidence—in the form of TKS's own submissions describing the merchandise sold in the home market—caused the Department to conclude that TKS's home market LNPP sales satisfied the "reasonably comparable" prong of the foreign like product definition in section 771(16)(C). *See, e.g.*, TKS's January 7, 1999, Section A response to the Department's questionnaire.

Regarding TKS's claim that the Department incorrectly relied on its home market viability determination as the basis for its foreign like product determination, TKS's point is unclear. TKS is incorrect that the Department used the terms "foreign like product" and "general category of merchandise"

<sup>1</sup> The Department also noted that product brochures examined during the initial investigation demonstrated that TKS offered the "Spectrum" model for sale in both the United States and Japan and that the brochures were identical in their description of product characteristics. Second Remand Determination at Attachment 3.

interchangeably in the NV memorandum. TKS apparently misread the Department's reference to the "general product characteristics" shared by TKS's home market and U.S. LNPPs which supported the finding that home market LNPPs satisfied the foreign like product definition. TKS has also read the SAA at 821-822 out of context. The full sentence that TKS quotes reads: "The viability of a market will be assessed based on sales of all merchandise subject to an antidumping proceeding, not on a product-by-product or model-by-model basis." The point of this statement is not to trump the statutory directive that viability be assessed on the basis of the foreign like product, but rather to emphasize that viability will be determined based on aggregate sales of the foreign like product, not on a segmented basis. See, also, *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27358 (May 19, 1997).

Nor do we believe there is any basis for TKS's claim that CV profit should be calculated pursuant to the alternative profit calculation methodology provided in section 773(e)(2)(B) of the Act. The methodology employed by the Department—pursuant to section 773(e)(2)(A)—is the preferred method for calculating CV profit. The language of the Act supports the Department's conclusion that the alternative provisions for determining CV profit are available only "if actual data are not available with respect to the amounts described in" section 773(e)(2)(A). See, also, *Floral Trade Council v. United*

*States*, 41 F. Supp. 2d 319, 326 (CIT 1999). Here, the actual profit data for TKS's home market LNPP sales were available. Thus, the Department properly followed the statutory directive that the actual data for TKS's home market LNPP sales be used to calculate CV profit rather than TKS's alternative suggestion. The Department has previously explained that TKS's proposed application of an alternative profit methodology to its home market LNPP sales "which TKS describes as the "general category of merchandise"—is flawed. See *Second Remand Determination* at 13-15. The statutory term "general category of products" has consistently been interpreted to encompass a group of products that is broader than the subject merchandise. See, e.g., *Antifriction Bearings (AFBs)(Other Than Tapered Roller Bearings) and Parts Thereof from France et al.: Final Results of Antidumping Administrative Reviews*, 64 FR 35590, 35611 (1999) ("general category of products" for AFBs would include non-subject merchandise such as tapered roller bearings). TKS fails to adequately justify why the Department should deviate from the preferred methodology, and its proposed implementation of an alternative methodology (including TKS's below cost sales) is inconsistent with Department practice. As a result, the Department has continued to calculate CV profit in the manner used in the preliminary results.

*Comment 4: Check-Out Testing*

TKS argues that check-out testing should be treated as movement

expenses rather than as further manufacturing expenses, as the Department treated it in the preliminary results. TKS refers to its August 16, 1999 comments, in which it argued that the testing conducted for purposes of the Dallas Morning News (DMN) contract involved no manufacturing activities such as machining, forging, cutting, welding, or electronic assembly. TKS considers check-out testing to be the final stage of transporting the equipment to the ultimate customer, and must necessarily be done at the customer's installation site because the equipment must be dismantled for transportation due to its size. TKS points out that it did not provide the equipment installation services, a further indication that check-out testing should be treated as moving expenses for the DMN sale.

*The Department's Position*

We disagree with TKS. We have continued to classify testing and technical service expenses as part of further manufacturing because the U.S. installation process (including check-out testing) involves extensive technical activities on the part of engineers and installation supervisors. See *Mitsubishi Heavy Industries v. United States*, 15 F. Supp. 2d 807, 815-16 (CIT 1998).

**Final Results of the Review**

As a result of this review, we have determined that the following margin exists for TKS for the period September 1, 1997, through August 31, 1998:

Manufacturer/exporter	Period	Margin (percent)
TKS .....	9/1/97-8/31/98 .....	0.00

**Assessment Rates**

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisal instructions directly to the Customs Service. For entries of subject merchandise from TKS during the POR, we have calculated an importer-specific assessment rate by aggregating the dumping margins calculated for all examined sales and dividing by the entered value of those sales. This rate will be assessed uniformly on all entries of that particular importer made during the POR. In accordance with 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without

regard to antidumping duties all entries of the subject merchandise during the POR for which the importer-specific assessment rate is zero or *de minimis* (i.e., less than 0.50 percent).

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.

**Cash Deposit Requirements**

The following deposit requirements shall be effective for all shipments of the subject merchandise from Japan that are 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 rate for TKS will be the rate established above in the "Final Results of the Review" section; (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 original 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 of this merchandise will continue to be 58.69 percent, the all others rate made effective by the LTFV investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

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 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulation and the terms of an APO is a sanctionable violation.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: February 9, 2000.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 00-3558 Filed 2-14-00; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-351-806]

#### Final Results of Antidumping Duty Administrative Review: Silicon Metal From Brazil

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Final Results of Antidumping Duty Administrative Review.

**SUMMARY:** On August 9, 1999, the Department of Commerce ("the Department") published the preliminary results of administrative review of the antidumping duty order on silicon metal from Brazil. This review covers four manufacturers/exporters of silicon metal from Brazil during the period July 1, 1997 through June 30, 1998.

Based on our analysis of the comments received and the correction of certain ministerial errors, we have changed our results from those presented in our preliminary results as described below in the "Changes From the Preliminary Results" section of this

notice. The final results are listed below in the section "Final Results of Review."

**EFFECTIVE DATE:** February 15, 2000.

**FOR FURTHER INFORMATION CONTACT:** Zev Primor or Tom Futtner, AD/CVD Enforcement, Office Four, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4114 and (202) 482-3814, respectively.

**SUPPLEMENTARY INFORMATION:**

#### The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions as of 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).

#### Background

On August 9, 1999, the Department published its preliminary results of review of the antidumping duty order on silicon metal from Brazil. See, *Silicon Metal from Brazil: Preliminary Results of Antidumping Duty Administrative Review*, 64 FR 43161 ("Preliminary Results"), 56 FR 36135, (July 31, 1991).

In October 1999, the Department conducted a sales and cost verification of Companhia Brasileira Carbureto De Calcio ("CBCC"), a respondent in the instant review. At verification, CBCC submitted minor corrections to the data used in the preliminary results of this review. A list of the corrections can be found in the public version of the Department's verification report, which is on file in the Central Records Unit ("CRU"), Room B-099 of the Main Commerce Building, under the appropriate case number. See, *Memorandum* from Thomas Futtner and Maisha Cryor to The File dated November, 24, 1999 regarding the sales and cost verification of CBCC.

We gave interested parties an opportunity to comment on the verification report for CBCC and the preliminary review results. We received comments from CBCC and Eletrosilex Belo Horizonte ("Eletrosilex"). We also received comments from American Silicon Technologies, Elkem Metals Company, Globe Metallurgical, Inc. and SKW Metals & Alloys, Inc., (collectively, "the petitioners") on December 10, 1999.

On December 22, 1999, CBCC, Eletrosilex, Ligas de Alumínio, S.A.

("LIASA"), and petitioners submitted rebuttal comments. Rima Industrial S/A did not submit a case or rebuttal brief. We held a public hearing on January 13, 2000, to give interested parties the opportunity to express their views directly to the Department. Based on our analysis of the comments received and the correction of certain ministerial and computer programming errors, we have made changes from the preliminary results, as described below in the "Changes From the Preliminary Results" section of this notice. The final results are listed below in the section "Final Results of Review." The Department has now completed this administrative review in accordance with section 751(a) of the Act.

#### Scope of the Review

The merchandise covered by this administrative review is silicon metal from Brazil containing at least 96.00 percent but less than 99.99 percent silicon by weight. Also covered by this administrative review is silicon metal from Brazil containing between 89.00 and 96.00 percent silicon by weight but which contains more aluminum than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) as a chemical product, but is commonly referred to as metal. Semiconductor grade silicon (silicon metal containing by weight not less than 99.99 percent silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to the order. Although the HTS item numbers are provided for convenience and for U.S. Customs purposes, the written description remains dispositive.

#### Changes From the Preliminary Results

##### *Determination Not To Revoke the Order With Regard To CBCC*

On August 9, 1999, the Department stated its intent to partially revoke the antidumping duty order on silicon metal from Brazil with respect to CBCC. See, *Preliminary Results*. The Department "may revoke, in whole or in part" an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, *inter alia*, that a company requesting revocation must submit the following: (1) A certification

that the company has sold the subject merchandise at not less than normal value ("NV") in the current review period and that the company will not sell at less than NV in the future; and (2) a certification that the company sold the subject merchandise in commercial quantities in each of the three years forming the basis of the revocation request. See, 19 CFR 351.222(e)(1). Upon receipt of such a request, the Department may revoke an order, in part, if it concludes, *inter alia*, that the exporter and producer covered at the time of revocation: (1) Sold subject merchandise at not less than NV for a period of at least three consecutive years; and (2) is not likely in the future to sell the subject merchandise at less than NV. See, 19 CFR 351.222(b)(2); *Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke Order in Part: Pure Magnesium from Canada* ("Pure Magnesium from Canada"), 64 FR 12977, 12982 (March 16, 1999).

In accordance with the regulation described above, we must determine whether the company requesting revocation sold the subject merchandise in commercial quantities in each of the three years forming the basis of the revocation request. See, 19 CFR 351.222(d)(1). In other words, the Department must determine whether the quantities sold during these time periods are reflective of the company's normal commercial activity. See, *Final Results of Antidumping Duty Administrative Reviews and Determination To Revoke in Part Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada*, 64 FR 2175 (January 13, 1999) ("Certain Corrosion-Resistant Carbon Steel Flat Products from Canada"). Sales during a period of review ("POR") which, in the aggregate, are of an abnormally small quantity, either in absolute terms or in comparison to an appropriate benchmark period, do not generally provide a reasonable basis for determining that the discipline of the order is no longer necessary to offset dumping. *Id.* See also, *Pure Magnesium From Canada*, 64 FR 12977 (March 16, 1999). However, the determination as to whether or not sales volumes are made in commercial quantities is made on a *case-by-case basis*, based on the unique facts of each proceeding. See, section 751(d) of the Act; 19 CFR 351.222. See also *Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Duty Order: Brass Sheet and Strip from the*

*Netherlands*, 65 FR 750, (January 6, 2000) ("*Brass from Netherlands*").

In the *Preliminary Results*, we determined that CBCC sold subject merchandise at or above NV during four consecutive review periods, stating with respect to sales volumes that "[a]lthough in one of the four years the sales were not as extensive as in the other three years, we note that sales in the remaining three years were made in commercial quantities." See, *Preliminary Results* at 43163. Since the publication of our preliminary results, the Court of International Trade ("CIT") remanded to the Department the results of the 1994-1995 review, the first of four periods considered by the Department in evaluating the commercial quantity requirement of CBCC's revocation request. As a result of that remand, CBCC's dumping margin for the 1994-1995 review segment increased from zero to 67.93 percent. See, *Silicon Metal from Brazil, Final Results of Redetermination Pursuant to Court Remand, American Silicon Technologies v. United States*, Court No. 97-02-00267, Slip. Op. 99-34 ("1994-1995 Remand Results"). Consequently, for the these final review results, the Department has relied upon CBCC's sales activity during the 1995-1996, 1996-1997 and 1997-1998 review periods in making its decision regarding CBCC's revocation request.

CBCC claims that its 1995-1996 transaction quantities were not "abnormally small" because the quantity in individual U.S. transactions was greater than the quantity CBCC typically sells to home market customers. Although some of the individual U.S. transactions may have been larger in quantity than the average home market transaction, CBCC has not demonstrated that the transactions at issue represent the normal commercial quantity for its individual transactions to the United States. Moreover, we note that the number of sales transactions to the United States during the 1995-1996 review segment were significantly smaller than the number of sales transactions during the POR. In addition, the overall aggregate quantity of silicon metal sold in the United States during the 1995-1996 review period is very small when compared to the period of investigation ("POI") in this case or other review segments. During the twelve months of the 1995-1996 review period, CBCC's sales to the United States amounted to approximately four percent of the shipments made during the six-month POI. When the POI sales are annualized, the 1995-1996 sales amount to about to two percent of the POI sales volume.

See, Memorandum to File, *Silicon Metal from Brazil: Commercial Quantities for CBCC in the 1995-1996 Period of Review*, February 7, 2000. While the issue of normal commercial quantities is decided on a case-by-case basis, in *Brass from Netherlands*, the Department denied revocation by stating that the volume of merchandise sold to the United States was approximately two percent of the volume of merchandise sold in the benchmark investigative period. See, 65 FR at 752. CBCC argues that its decline in sales volume during the 1995-1996 review period was due to a depressed market and the fact that it was selling only a metallurgical grade of silicon metal. However, CBCC does not explain why its sales were limited to the metallurgical grade of silicon metal. Moreover, while CBCC's sales declined from the 1994-1995 review period to the 1995-1996 review segment by over 80 percent, publicly available import statistics indicate that overall U.S. imports of silicon metal from Brazil increased over 50 percent during that same time period. Thus, the record does not support CBCC's contention that a depressed U.S. market was the reason for its low volume of imports during the 1995-1996 review period. In light of the above, we find that CBCC's sales to the United States were not made in commercial quantities during the 1995-1996 review period.

After review of the criteria outlined at §§ 351.222(b) and 351.222(d) of the Department's regulations, the comments of the parties, and the evidence on the record, we have determined that the requirements for revocation have not been met. Based on the final results of this review and the final results of the two preceding reviews, CBCC has demonstrated three consecutive years of sales at not less than NV. However, CBCC did not sell in commercial quantities in one of the periods that formed the basis of CBCC's revocation request. The abnormally low level of sales activity during that review period does not provide a reasonable basis for determining that the discipline of the antidumping duty order is no longer necessary to offset dumping. Therefore, because CBCC has not sold subject merchandise in commercial quantities during each of the three years of the revocation period, we find that CBCC does not qualify for revocation from the order on silicon metal from Brazil under 19 CFR 351.222.

#### CBCC

As a result of the verification, we have corrected the following: (1) Inland freight for home and U.S. market sales; (2) U.S. brokerage and handling

expenses; (3) U.S. warehousing expenses; (4) U.S. direct selling expenses; and (5) U.S. international freight expenses.

#### Eletrosilex

We have revised Eletrosilex's cost of production ("COP") and recalculated its constructed value ("CV") profit rate and CV profit amount. See, Comments 3, 4 and 5 below. We also corrected Eletrosilex's general and administrative ("G&A") expense ratio for these final results. See, Comment 6 below.

#### ICMS Taxes (Valued-Added Taxes)

On December 21, 1999, the Court of Appeals for the Federal Circuit ("CAFC") upheld the Department's position during the investigative phase of silicon metal from Brazil that Brazil's ICMS taxes are properly included in the calculation of CV. See, *Camargo Correa Metais, S.A. v. United States*, Nos. 99-1191, 99-1192 (Fed. Cir. Dec. 21, 1999) ("Camargo").

In this review, the Department used CV only in the case of Eletrosilex. We included ICMS taxes in the CV for Eletrosilex using the methodology outlined in *Silicon Metal from Brazil: Preliminary Results of Antidumping Duty Administrative Review*, 63 FR 42001, 42004 (August 6, 1998) ("1996-1997 Preliminary Results"); *Silicon Metal from Brazil: Notice of Final Results of Antidumping Duty Administrative Review*, 64 FR 6305, 6308, (Feb. 9, 1999) ("1996-1997 Final Review Results"). That methodology is based upon the fact that Brazilian companies pay ICMS taxes on the inputs they purchase, and collect ICMS taxes on their domestic sales. If a company pays more tax on its inputs in a fiscal year than it collects from domestic customers, then the balance is reported as a credit to be carried over to the next fiscal year. If a company pays less in ICMS taxes on its inputs than it collects from its domestic customers, then it pays the balance to the Government. With respect to CV, the Department includes only that amount of ICMS tax paid by the company on inputs that exceed the amount of ICMS tax collected by the company (on its domestic sales) during the POR. For additional details of this calculation with respect to Eletrosilex, refer to the Memorandum to File Regarding Eletrosilex: Calculations for the Final Results of the 1997-1998 Administrative Review of Silicon Metal from Brazil, February 7, 2000 ("Final Calculation Memorandum for Eletrosilex") on file in the CRU.

#### Interested Party Comments

##### Eletrosilex

##### Comment 1: Audited Financial Statements

The petitioners, citing *Stainless Steel Bar from India; Final Results of Antidumping Duty Administrative Review and New Shipper Review*, 64 FR 13771, 13776 (March 22, 1999), argue that, for the final results, the Department should follow its standard practice and calculate Eletrosilex's financial expenses based solely on audited financial statements. The petitioners argue that, in the preliminary results, the Department erroneously calculated Eletrosilex's financial expenses based on data obtained from Eletrosilex's audited financial statements and the unaudited balance sheets and income statements of its parent, Silex Trading, and affiliate, Silex International. Petitioners argue that the information contained in unaudited statements is unreliable. Therefore, for these final results, the petitioners contend that the Department should calculate Eletrosilex's financial expenses using only audited financial statements.

Eletrosilex argues that petitioners are mistaken in their assertion that the Department's standard practice is to rely only upon audited financial statements when calculating financial expenses. Eletrosilex, citing *Chrome-Plated Lug Nuts From Taiwan; Final Results of Antidumping Duty Administrative Review*, 64 FR 17314, 17316 (April 9, 1999) ("Chrome-Plated Lug Nuts"), contends that where, as with Eletrosilex's affiliates, audited statements are not available, the Department accepts unaudited statements. Additionally, Eletrosilex, citing the *Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit from Thailand*, 60 FR 29553 (June 5, 1995) ("Canned Pineapple Fruit"), and *Certain Cut-To-Length Carbon Steel Plate from Finland: Final Results of Antidumping Duty Administrative Review and New Shipper Review*, 61 FR 2792 (January 29, 1996), argues that the Department typically only rejects unaudited statements when there is a choice between an audited statement and an unaudited statement. Accordingly, for these final results, Eletrosilex argues that the Department should use its affiliates' unaudited financial statements in calculating financial expenses, as its affiliates do not prepare audited financial statements.

**DOC Position:** We agree with Eletrosilex. Under certain circumstances

we accept unaudited financial statements when respondents do not prepare audited statements in the normal course of business. See, *Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review*, 60 FR 49569, 49570 (September 26, 1995).

Eletrosilex reported that Silex Trading and Silex International do not have audited financial statements, nor does the parent corporation prepare consolidated financial statements. At the Department's direction, Eletrosilex prepared a consolidated statement of income for Silex Trading and its subsidiaries, including Eletrosilex. The data for Eletrosilex was taken directly from Eletrosilex's audited financial statements as reported in its questionnaire response. Further, the data for Silex Trading and its other subsidiaries were reconciled to Silex Trading's balance sheet and statement of income as provided in Eletrosilex's July 6, 1999, Response to the Department's Supplemental Questionnaire. Therefore, we are satisfied as to the veracity of the financial information submitted by the respondent and have used this information in the calculation of Eletrosilex's financial expenses for purposes of these final results of review.

##### Comment 2: Consolidated Financial Expenses

The petitioners argue that when calculating financial expenses, the Department should not consolidate Eletrosilex's audited financial information with the unaudited financial information of its affiliates. Citing *AIMCOR v. United States*, 69 F. Supp. 2d 1345 (CIT 1999) ("AIMCOR"), and 19 U.S.C. sections 1677b(b)(3)(B), 1677b(e)(2)(A) and 1677b(f)(1)(A), the petitioners contend that the Department should calculate Eletrosilex's 1997 audited financial expenses based solely on Eletrosilex's financial statements, as they most accurately reflect the costs associated with the production and sale of silicon metal. The petitioners assert that AIMCOR involved similar facts, yet the court rejected the Department's calculation of financial expenses based on the consolidated financial statements of the parent company. Additionally, the petitioners argue that, as in AIMCOR, Eletrosilex's financial statements show a higher financial expense ratio than that obtained from the consolidated financial information. See, Eletrosilex Calculation Memorandum, August 2, 1999, at Attachment 2. Further, the petitioners argue that, as in AIMCOR, Eletrosilex's parent, Silex Trading, does not determine Eletrosilex's borrowing costs,

and is not involved in the production or sale of silicon metal. Therefore, for the final results, the petitioners argue that the Department should use the information that most accurately reflects the true cost to the producer of producing silicon metal and calculate Eletrosilex's financial expenses based solely upon Eletrosilex's 1997 audited financial statement.

In addition, the petitioners note that in response to the Department's request that Eletrosilex recalculate its financial expenses exclusive of inter-company transactions, Eletrosilex provided the Department with a worksheet containing both the financial information for Eletrosilex and the combined financial information of Eletrosilex and Silex Trading. The petitioners argue that there is no evidence demonstrating that Eletrosilex excluded inter-company transfers from the financial information provided in the worksheet.

Eletrosilex argues that the Department's standard practice has been to consolidate the financial expenses of affiliated parties. Eletrosilex notes that the Department's questionnaire instructs affiliated companies to report consolidated financial expenses. Eletrosilex argues that it provided consolidated financial information in the manner requested, pursuant to the Department's instructions that Eletrosilex "recalculate your financial expenses based on {the cost of} goods sold ("COGS") of Silex Trading and its subsidiaries, after eliminating inter-company transactions." See, Department's June 24, 1999, Supplemental Questionnaire, at question 4. Further, Eletrosilex argues that Silex Trading's role in arranging financing and letters of credit for all of Eletrosilex's third-country and U.S. sales merits the consolidation of the financial expense information.

Eletrosilex argues that *AIMCOR* is distinguishable on its facts from the present case. Eletrosilex contends that in *AIMCOR*, the CIT stated that the Department is "justified in utilizing consolidated financial statements when corporate control, whether direct or indirect, exists," but that Commerce must use the financial expense ratio "which will more accurately reflect actual costs incurred—especially in this case, where there is no evidence of inter-company borrowing or other indicia that {the parent company} determined {the respondent's} cost of money." Accordingly, Eletrosilex argues that during the POR, Silex Trading was the majority owner of Eletrosilex and influenced Eletrosilex's cost of money through its financing role. Additionally,

Eletrosilex argues that the decision in *AIMCOR* is not a binding precedent because the original antidumping duty order was revoked during the pendency of the *AIMCOR* litigation. Therefore, for these final results, Eletrosilex argues that the Department should consolidate the financial expenses of Eletrosilex and its affiliates.

*DOC Position:* We agree with Eletrosilex. Our established policy is to calculate financial expenses for COP and CV purposes based on the borrowing costs incurred at the consolidated group level, regardless of whether the respondent's financial expense is greater than the consolidated financial expense. This practice recognizes two facts: (1) The fungible nature of money within a consolidated group of companies; and (2) that the controlling entity within a consolidated group has the power to determine the capital structure (*i.e.*, the debt and equity) of each member company within its group. See, *e.g.*, *Final Results of Antidumping Duty Administrative Review; Silicon Metal From Brazil*, 63 FR 6899 (February 11, 1998); *Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Canada*, 63 FR 182 (February 24, 1998). The record indicates that although Silex Trading is a consolidated entity, it does not in the normal course of business prepare a consolidated statement of income.

Contrary to the petitioner's arguments, the situation in this case differs from that in *AIMCOR*. In *AIMCOR*, the CIT stated that "Commerce is justified in utilizing consolidated financial statements when corporate control, whether direct or indirect, exists. . . ." See, *AIMCOR*, 69 F. Supp. 2d at 1354. However, in that case the CIT found that on the facts of *AIMCOR* "there was no evidence of inter-company borrowing or other indicia" that the respondent's parent company determined the respondent's cost of money. *Id.* Based on that fact, the CIT instructed the Department to recalculate the respondent's financial expenses using the financial statements of the respondent. *Id.*

In the instant proceeding, Silex Trading was the majority owner of Eletrosilex during the POR. Silex Trading handled the financing arrangements for all of Eletrosilex's sales in third-country markets and arranged for letters of credit on all sales to the United States during the POR. See, Eletrosilex's June 8, 1999 Supplemental Questionnaire Response at 7–9. Silex Trading collected funds on these sales for Eletrosilex, and remitted these funds to Eletrosilex with interest

for the time the funds were held by Silex Trading. *Id.* at 48–49. Thus, in the instant review, contrary to the circumstances in the *AIMCOR* case, there is record evidence of corporate control by Silex Trading and parent company influence on Eletrosilex's cost of money.

#### Comment 3: COP

The petitioners argue that the Department erred in calculating Eletrosilex's COP, by using Eletrosilex's reported cost of manufacturing ("COM"). The petitioners state that Eletrosilex incorrectly offset its COM by subtracting an amount for total revenue (inclusive of ICMS taxes received) from the sale of by-products. The petitioners, citing *Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part*, 62 FR 1970 (January 14, 1997) ("*1994–1995 Review Final Results*"), state that the inclusion of ICMS taxes as an offset to COM contradicts the Department's policy of only allowing offsets for net revenue. Therefore, the petitioners assert that the Department should revise Eletrosilex's by-product offset amount to exclude ICMS taxes.

Eletrosilex argues that because it pays more ICMS taxes than it collects, its collection of ICMS taxes is real revenue which it retains. Therefore, Eletrosilex argues that the full amount of revenue received should offset its COM.

*DOC Position:* We agree with the petitioners. Our practice is to allow an offset only for actual revenue earned. See, *1994–1995 Review Final Results*, 62 FR at 1987. To offset costs with taxes collected on home market sales of by-products would result in an inaccurate calculation of cost because those taxes are collected on behalf of the Brazilian government and do not constitute revenue for Eletrosilex. See, *Silicon Metal From Brazil; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part*, 62 FR 1954, 1964 (January 14, 1997) ("*1993–1994 Final Review Results*"). In these final results, we have offset COM with all revenue that Eletrosilex reported from its sales of by-products exclusive of ICMS taxes collected on the sales of those by-products.

#### Comment 4: CV Profit Rate

The petitioners, citing *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 the Antidumping Duty Administrative*

*Reviews*, 63 FR 33,320 (June 18, 1998), state that in calculating the CV profit rate for Eletrosilex, the Department's standard practice is to divide the total profit from home market sales by the total COP for home market sales. The petitioners argue that the Department erred when calculating a weighted-average CV profit rate (based on the other three respondents' data) by dividing the total home market profit of these three entities by the total home market sales revenue generated by these three companies. The petitioners assert that the Department should have used the three respondents' total COP as the denominator in this calculation.

In addition, the petitioners state that the Department used an understated amount for total home market sales revenue for CBCC when calculating a weighted-average profit rate to apply to Eletrosilex. Therefore, for the final results, the petitioners assert that the Department should correct the understatement of CBCC's profit.

Eletrosilex did not comment on this issue.

*DOC Position:* For these final review results, we are unable to derive actual profit based on home market sales for Eletrosilex because all of its home market sales were below cost. Therefore, as in the *Preliminary Review Results*, 64 FR 43165, in accordance with section 773(e)(2)(B)(ii) of the Act, we calculated profit for Eletrosilex by using the weighted-average profit rate realized by the other respondents in this review. However, we agree with the petitioners that we erred in our preliminary calculations. Therefore, we have recalculated the CV profit rate for Eletrosilex by dividing total profit from home market sales of the three remaining respondents by total COP of home market sales for those respondents and applying that rate to Eletrosilex's total COP. In addition, we have corrected our preliminary error with respect to CBCC's sales revenue in the calculation of the three respondents total home market revenues. See, Final Calculation Memorandum for Eletrosilex.

#### Comment 5: Proper Profit Amount

The petitioners, citing *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea Final Results of Antidumping Duty Administrative Reviews*, 62 FR 18404 (April 15, 1997), argue that the Department erred in its calculation of CV profit by multiplying the weighted-average CV profit rate times a COP that fails to include the same cost components used to calculate the CV profit rate.

Eletrosilex did not comment on this issue.

*DOC Position:* We agree with the petitioners. We have recalculated CV profit for these final results by multiplying the CV profit rate by a COP which includes the same cost components used to calculate the CV profit rate. See, Final Calculation Memorandum for Eletrosilex.

#### Comment 6: General and Administrative Expenses

Eletrosilex argues that the Department erred in rounding Eletrosilex's G&A ratio when calculating COP and CV. For the final results, Eletrosilex argues that the Department should use the G&A ratio, as rounded to two digits past the decimal points.

The petitioners did not comment on this issue.

*DOC Position:* We agree with the Eletrosilex and for the final results calculations have used a G&A ratio rounded to two decimal places. See, Final Calculation Memorandum for Eletrosilex.

#### Comment 7: Offsets to Financial Expense

Eletrosilex argues that the Department should not have denied "loans to shareholders" as a financial revenue offset to financial expenses. Eletrosilex states that its "loans to shareholders" account contains short-term interest payments from Silex Trading. Eletrosilex states that because Silex Trading arranges letters of credit for Eletrosilex's third-country sales, the payment goes directly to Silex Trading. Eletrosilex explains that Silex Trading then sends the payment to Eletrosilex and the delay in payment is viewed as a short-term loan on which Silex Trading pays Eletrosilex interest. Eletrosilex argues that the short-term nature of this loan is evidenced in a Mutual Loan Agreement ("Agreement") entered into by Eletrosilex and Silex Trading. The Agreement provides that the interest charges be calculated monthly, the current account balance be adjusted and reviewed quarterly and that the debt balance be fully paid at the expiration of the one year agreement. Therefore, for these final results, Eletrosilex argues that the "loans to shareholders" item should have been granted as an offset to its financial expenses.

The petitioners argue that the Department correctly denied the offset to Eletrosilex's financial expenses because the investment income derived from "loans to shareholders" was not short-term. The petitioners, citing the *Notice of Final Results of the 1992/93*

*Antidumping Duty Administrative Review: Silicon Metal from Argentina*, 62 FR 5613 (February 6, 1997) ("*Silicon Metal from Argentina*"), argue that the Department's established practice is to consider loans of one year or less to be short-term. The petitioners argue that the loan agreement between Eletrosilex and Silex Trading was for more than one year; therefore the investment was not short-term. Further, citing the *1994-1995 Final Review Results*, the petitioners argue that the income derived from "loans to shareholders" is similar to charges applied to late payments by customers and should be viewed as sales revenue, not as an offset to financial expenses. Additionally, the petitioners argue that the Department's established practice is to offset financial expense with income derived from short-term investments of working capital. See, *1996-1997 Final Review Results*, 64 FR 6305. The petitioners argue that the loan agreement between Eletrosilex and Silex Trading is not a short-term investment of working capital because Eletrosilex allows Silex Trading to retain funds collected on Eletrosilex's receivables. The petitioners argue that because the collected funds were not received by Eletrosilex, they never became a part of Eletrosilex's working capital.

*DOC Position:* The Department's practice is to compute net interest expense on a consolidated basis. Respondent has explained that it does not prepare audited consolidated financial statements in the ordinary course of business. However, in response to a request by the Department, it prepared a worksheet consolidating Eletrosilex's financial data with that of its parent, Silex Trading. See, Comment 2 above. In preparing these consolidated results, the Department instructed Eletrosilex to eliminate transactions between consolidating entities. Eletrosilex prepared its consolidated worksheet in accordance with the Department's instructions. Because the interest income item at issue results from transactions between Eletrosilex and its parent and these transactions were eliminated in Eletrosilex's consolidation worksheets, the issue of whether to include this interest income as an offset to the interest expense calculation is moot.

#### Comment 8: Offsets to COM

Eletrosilex states that its "interest on trade bills" account contains interest on late payments by customers who purchased by-products from Eletrosilex. Eletrosilex argues that because the Department denied the offset to financial expenses for "interest on trade

bills' in the preliminary results, the COM should be adjusted by this amount because the payments reflect late fees collected on the sale of by-products.

The petitioners argue that the first time Eletrosilex made a claim for this adjustment was in its case brief. The petitioners argue that, according to the Department, it does not make adjustments when the request for the adjustment is not made until the case brief. Additionally, the petitioners argue that Eletrosilex reported an amount for "interest on trade bills" for periods outside of the POR, while it reported cost information for the POR. Therefore, the petitioners claim that Eletrosilex did not provide the Department with the information needed to adjust COM. Additionally, the petitioners contend that Eletrosilex has the burden of establishing its right to reduce financial expenses by such interest income. However, the petitioners claim that Eletrosilex did not explain or provide documentation demonstrating how income from "interest on trade bills" was generated. Moreover, petitioners maintain that in the 1994-1995 administrative review, the Department denied CBCC's request for an adjustment to COP for revenue received from the sale of by-products, because CBCC first made the request in its case brief and because CBCC did not substantiate its claimed offsets. Therefore, for these final results, petitioners argue that the Department should not reduce Eletrosilex's COM for any "interest on trade bills" accounts.

*DOC Position:* We disagree with respondent's assertion that if we deny this short-term interest category as an offset to financial expenses, we should recognize this amount as an adjustment to COM. The respondent made this claim for an adjustment to COM for the first time in this review in its case brief. It is the respondent's responsibility to make a timely claim for any requested adjustment. In accordance with 19 CFR 351.301(b)(2), and consistent with *1994-1995 Final Review Results*, 62 FR at 1988, we did not make an adjustment for it in these final results because the respondent submitted this claim after the applicable time limit, and has not adequately demonstrated its claim. Finally we note that, the Department has determined that late payment charges paid by customers, by definition, do not constitute interest income and are more appropriately considered sales revenue. See, *1994-1995 Final Review Results* 62 FR at 1974.

Comment 9: Offset for "Obtained Discounts"

Eletrosilex states that its "obtained discounts" "contains discounts paid to Eletrosilex by its suppliers of materials and equipment. Eletrosilex, citing the *1994-1995 Remand Results*, argues that, because the Department denied this item as an offset to financial expenses, it should adjust COM for this amount because the payment reflects a reduction in material costs.

The petitioners claim that in the *1994-1995 Remand Results*, the Department disallowed discounts obtained from suppliers as a short-term interest-income offset for CBCC. Further, the petitioners claim that in the *1994-1995 Final Review Results*, the Department did not make an adjustment to CBCC's COM for discounts obtained from suppliers because CBCC had not made a request for this adjustment prior to submission of its case brief and because the information on the record was insufficient to substantiate an adjustment to COM. In light of that precedent, the petitioners argue that Eletrosilex's claim for an adjustment to COM should be denied because in the instant review the adjustment was not requested by Eletrosilex until it filed its case brief. Therefore, the petitioners argue that, for the final results, the Department should not adjust Eletrosilex's COM for obtained discounts.

*DOC Position:* We agree with the petitioners that, in our preliminary determination, we properly disallowed Eletrosilex's "obtained discounts" because the Department has determined that discounts from suppliers do not represent income from short-term investments. See, *1994-1995 Final Review Results*, 62 FR 1974.

In addition, we disagree with the respondent's assertion that if we deny this item as an offset to financial expenses, we should recognize this amount as an adjustment to COM. The respondent made this claim for adjustment to COM for the first time in its case brief in this review even though the Department expressly instructed Eletrosilex in a supplemental questionnaire that "purchase discounts should be classified as a reduction to the reported direct material costs if they relate to materials used to manufacture silicon metal." See, Department's May 13, 1999, Supplemental Questionnaire at 15. In addition we note that the respondent reported an amount for "obtained discounts" for the period January 1997 through December 1997. By comparison, the respondent reported cost information for the POR (July 1997

through June 1998). Therefore, the Department does not have the information necessary to make the COM adjustment requested by the respondent. As a consequence, because the respondent did not claim this offset until it submitted its case brief, and because it is a respondent's responsibility to substantiate its claims for offsets, which the respondent has not done in this case, we have not treated this item as a cost offset in our calculation of Eletrosilex's COM. See, *1994-1995 Final Review Results*, 62 FR 1988.

LIASA

Comment 1: Bona fide Sales

The petitioners argue that the Department should exclude all or certain sales made by LIASA to its U.S. customer, alleging that the circumstances of the sales were not in the normal course of business.

The petitioners reason that the Department has the authority to exclude from its margin calculations U.S. sales that are distortive, atypical or unrepresentative of the seller's normal market behavior, (*i.e.*, sales which do not reflect actual market transactions). Moreover, the petitioners contend that in an administrative review, the Department may disregard a sale which is the result of an orchestrated scheme involving artificially high prices.

The petitioners cite *Chang Tieh Industry Co. v. United States*, 17 CIT 1314, 1318, 840 F. Supp. 141, 145 (1993) ("*Chang Tieh*"), in which the CIT determined that the Department may exclude a sale where "its inclusion would lead to an unrepresentative price comparison, thus frustrating the "apples to apples" comparison goal of the antidumping laws." In the underlying review at issue there, the Department had looked to whether the transaction had been artificially structured so as to be commercially unreasonable. See, *Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Rescission of Antidumping Duty Administrative Review*, 63 FR 47234 (September 4, 1998).

According to the petitioners, LIASA reported a minimal amount of transactions during the POR, which were all sold to the same customer at prices that were substantially higher than prices reported by other respondents in the review. Citing *Metals Week*, the petitioner argues that the price charged by LIASA to its customer was far higher than the average U.S. dealer price charged during the week LIASA made its sales. Additionally, petitioners claim the prices that LIASA

charged its home market customers were much lower than the prices that it charged to its U.S. customer.

The petitioners contend that not only did LIASA's U.S. customer buy its product at prices well above the market price, it could have purchased the same product from other U.S. producers at substantially lower prices. Additionally, the quantity of each individual sale was far below the shipment size reported by other respondents in the review.

LIASA claims that there is no legal basis for the Department to exclude LIASA's sales from the administrative review. According to LIASA, the CIT has never held that the Department has authority to exclude U.S. sales from an administrative review, and contends that the petitioners ignore the distinction in necessary criteria for such an action in an administrative review versus the less-than-fair-value ("LTFV") stage of the proceeding.

LIASA notes that the cases that the petitioners cited, *Chang Tieh* and *Ipsco, Inc. v. United States*, 13 CIT 402,408, 714 F. Supp. 1211, 1217 (1989), do not provide any basis for the actions that the petitioners seek. The CIT has stated that different rules apply to investigations than to reviews. LIASA argues that in *FAG U.K. Ltd. v. United States*, 945 F. Supp. 260 (1996), the CIT explicitly stated that the Department is without authority to exclude sales from administrative reviews, unless there are exceptional circumstances of unrepresentative and extremely distortive sales. See, e.g., *FAG*, 945 F. Supp. at 264-265.

As for the facts of this case, LIASA points out that the petitioners have failed to provide any evidence that the sales made by LIASA were not *bona fide* arm's-length transactions. If the Department has the authority to exclude U.S. sales from its analysis, it can do so only when there is evidence that the sales are not *bona fide* arm's-length transactions. There is no evidence that any of the transactions between LIASA and its customer during the POR were not *bona fide* sales.

Finally, in response to allegations by petitioners that it had arranged for artificial sales during the POR, LIASA argues that any correspondence between LIASA and its U.S. customer indicates only that the client and the company were aware of the antidumping order at the time of sale, not that LIASA and its client were circumventing the antidumping order.

**DOC Position:** We agree with LIASA that, in *Chang Tieh*, the CIT noted that the antidumping laws do not contain specific provisions that allow the Department to disregard U.S. sales in

administrative reviews. However, while there is no specific statutory or regulatory provision for the exclusion of U.S. sales as "outside the ordinary course of trade," the Department's authority to prevent fraud upon its proceedings has been recognized by the courts. See, *Chang Tieh*, 840 F. Supp. at 146. The Department may disregard a U.S. sale if it is determined that the sale is not the result of a *bona fide* arm's-length transaction. See, *PQ Corporation v. United States*, 652 F. Supp. 729 (CIT 1987). We are very mindful of this issue, especially in the context of a review where a respondent may receive a zero or *de minimis* margin, and thus, subsequently be eligible for revocation. However, as with the prior review (see, *1996-1997 Final Review Results*), we conclude that there is no evidence on the record of this segment of the proceeding to indicate that the U.S. sales in question were not *bona fide* transactions or that the transactions were in any way fraudulent.

We note that a small number of sales transactions in a review segment does not compel the conclusion that the transactions are not *bona fide*. As reflected in the Department's practice, a dumping analysis may be based upon a few sales even where the sales are designed for the express purpose of reducing the cash deposit rate. In the case of *Fresh Chilled Atlantic Salmon from Norway; Final Results of New Shipper Antidumping Duty Administrative Review*, 62 FR 1430 (January 10, 1997), for example, the Department accepted and analyzed a single U.S. sale where there was no evidence of fraud or proof that the sale was not *bona fide*.

The principal arguments put forth by the petitioners for excluding LIASA's sales to its U.S. customer rest on the premise that the price of the merchandise sold and the subsequent small quantities of merchandise delivered were not consistent with LIASA's ordinary course of business. Although the petitioners attempt to call into question the commercial validity of LIASA's sales by raising such factors as the price of identical merchandise in the United States during the same time period, they do not provide or cite to any evidence on the record of the instant review that supports the conclusion that these transactions are not *bona fide* sales between two unaffiliated parties or that permits the Department to conclude that the sales were fraudulent. In the absence of evidence that would contradict LIASA's assertions or validate the petitioner's allegations, we are including the sales

within the respondent's U.S. sales database.

**CBCC**

**Comment 1: Revocation Periods**

The petitioners claim that the Department's finding in the preliminary determination that CBCC has had zero or *de minimis* margins for the past four consecutive reviews is incorrect. The petitioners state that after the issuance of the preliminary results in the instant review, the Department determined pursuant to a remand that CBCC's dumping margin in the 1994-1995 review segment was 67.93 percent. Accordingly, CBCC has not had zero or *de minimis* dumping margins for four consecutive years.

CBCC claims that at the time the Department issued its preliminary determination, the final remand results for the 1994-1995 administrative review were not issued. Additionally, the CIT has not yet approved the Department's Remand Results. In fact, CBCC has asked the CIT to remand these results once again to the Department in order to re-calculate financial expenses. According to CBCC, these remand results will not be final until the CIT approves them.

**DOC Position:** We agree with the petitioners that, pursuant to a remand from the CIT, the recalculated margin for CBCC in the 1994-1995 review segment is above *de minimis*. For an explanation of the effect of this remand on CBCC's revocation request, refer to the section entitled "Determination Not To Revoke the Order With Regard To CBCC."

**Comment 2: Market Conditions**

The petitioners challenge the accuracy of the Department's statement that "CBCC maintained zero or *de minimis* margins despite the fact that the last three years were marked with depressed prices and global oversupply of silicon metal" See, Petitioners' Case Brief, December 10, 1999. According to the petitioners, this statement is completely erroneous and directly contradicted by evidence on the record. The petitioners claim that the record shows that the 1995-1996, 1996-1997 and 1997-1998 review periods, the three consecutive years on which CBCC based its revocation request, were marked by silicon metal prices that reached historic record highs. As support for this claim, the petitioners cite to a number of publications where they claim the data unequivocally show that during the 1995-1996, 1996-1997 and 1997-1998 review periods, prices were higher than at any point during the

last decade. The petitioners further claim that the evidence demonstrates that during the three-year revocation period, silicon metal demand outpaced supply.

CBCC states that the petitioners' current claim (that CBCC received zero or *de minimis* dumping margins during a period marked with abnormally high prices and global under supply of silicon metal) is at odds with the arguments made in the petitioners' submission of June 1, 1999, and is not supported by petitioners' own evidence. In that submission, CBCC asserts the petitioners provided evidence that silicon metal prices had declined sharply since the third quarter of 1996, until the first quarter of 1999. CBCC argues that there is no support for the petitioners' new argument. Pointing to information included in Exhibit 1 of the petitioner's June submission, CBCC concludes that silicon metal prices dropped precipitously during two out of the three review segments in question while at the same time CBCC maintained a zero or *de minimis* margin. CBCC claims that the information provided by the petitioners fully supports the Department's preliminary conclusion that the 1996 through 1998 period was marked with depressed prices and global oversupply of silicon metal. Thus, CBCC urges the Department to revoke the order with respect to CBCC.

*DOC Position:* These arguments by petitioners and CBCC relate to the likelihood that CBCC would dump in the future if the order were revoked with respect to CBCC. After review of the criteria outlined in §§ 351.222 (b) and (d) of the Department's regulations, we have determined that CBCC has not met one of the threshold requirements for revocation (*i.e.*, sales in commercial quantities during three consecutive periods). For a more detailed explanation, please refer to "Determination Not To Revoke the Order With Regard To CBCC" above. Because CBCC has not met the commercial quantities requirements, we do not need to examine the issue of likelihood of resumption of dumping and the parties' arguments with respect to market conditions are moot.

#### Comment 3: Annualization of POI Imports

The petitioners assert that the Department's finding that CBCC's sales in three of the four years in which CBCC maintained zero or *de minimis* margins represent, respectively, approximately 30, 45 and 70 percent of the quantity shipped during the POI is erroneous. The petitioners claim that when the

Department compared CBCC's aggregate U.S. sales volume during each of the three review periods with CBCC's aggregate U.S. sales volumes during the POI, the Department failed to adjust for the fact that the POI consisted only of six months while each review period consisted of twelve months. Adjusting for this difference, CBCC's aggregate sales volumes represent approximately 15 percent, 22.5 percent, and 35 percent, respectively, of CBCC's total annualized sales volume during the POI. Accordingly, during the above-mentioned review periods, CBCC's total annualized sales volumes were far below the annualized silicon metal volume CBCC shipped to the United States during the POI.

CBCC rejects the petitioners' argument and claims that to its knowledge, the Department has never annualized POI sales for revocation purposes. In fact, CBCC argues that the petitioners cite no Department precedent to support their argument. The one case cited, *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-To-Length Carbon Steel Plate from Canada*, 64 FR 45, 228, 45,230 (Aug. 19, 1999) ("*Carbon Steel Flat Products from Canada*"), CBCC believes is inapposite to the petitioners' claim. In that case, CBCC continues, the Department did not annualize POI sales, but continued to use the POI sales reported by the respondent as the benchmark for its revocation analysis. According to CBCC, the Department's practice is not to annualize POI sales since there is no evidence on the record that would allow the Department to correctly annualize sales for the POI. Multiplying POI sales by a factor of two, as the petitioners seem to suggest, is not an accurate surrogate for the actual POI sales volume. Thus, any attempt to estimate sales over a POI of twelve months would not be supported by evidence on the record.

*DOC Position:* We do not agree with CBCC. CBCC has not provided any information to support its contention that annualizing its POI sales (*i.e.*, increasing the six-month sales by a factor of two) results in an inappropriate benchmark for comparison to sales in the three years forming the basis of its revocation request. CBCC has not demonstrated that sales of silicon metal in the United States are cyclical, nor has it suggested factors the Department should consider in its approach to annualizing the POI data. Thus, it is reasonable to assume that CBCC's sales volumes during the 1995–1996 period were approximately two percent of CBCC's sales during an annualized benchmark period. Because we have

found that CBCC's sales during the 1995–1996 period do not reflect CBCC's normal commercial activity with respect to sales of subject merchandise in the United States, and have denied revocation on this basis, we need not address the remaining factors relevant to a revocation determination.

#### Comment 4: Commercial Quantities

The petitioners claim that under § 351.222(d)(1) of the Department's regulations, before revoking an order, the Department must determine that the company requesting revocation sold the subject merchandise to the United States in commercial quantities during each of the three consecutive years forming the basis for the request for revocation. Consistent with § 351.222(d)(1), the petitioners' claim that the Department has determined that a respondent does not satisfy this prerequisite for revocation when the respondent did not sell the subject merchandise in commercial quantities in the U.S. market during any one of the three consecutive years forming the basis for the respondent's request for revocation.

According to the petitioners, a company requesting revocation must demonstrate that it participated meaningfully in the U.S. market during each of the three consecutive years at issue. In other words, the Department must be satisfied that the zero or *de minimis* dumping margins for the three consecutive years are reflective of the company's normal commercial activity. Past zero or *de minimis* dumping margins that were based on U.S. sales of less than commercial quantities do not provide a reasonable basis for determining that the order is unnecessary to offset dumping. For purposes of a revocation request, petitioners claim, U.S. sales during a review period that are in abnormally small quantities do not qualify as commercial sales.

The petitioners further state that since the Department erroneously examined CBCC's sales volumes in four consecutive years, the first of which (the 1994–1995 review segment) did not form the basis for CBCC's request for revocation, the preliminary decision to revoke the order with respect to CBCC is contrary to both the Department's regulations and Department practice. In other words, in finding that CBCC had sales in commercial quantities during three of the past four consecutive reviews, the Department sidestepped finding whether CBCC had sales in commercial quantities during each of the three years forming the basis for revocation, as required by its regulations

and practice. Accordingly, in the final results, to determine whether CBCC has met the threshold requirement for revocation, the Department should only look to CBCC's sales volumes during the 1995–1996, 1996–1997 and 1997–1998 review periods.

The petitioners also add that once the Department bases its analysis of commercial quantities on the three most recent consecutive review periods, it will find that during the 1995–1996 review period, the quantities sold in the U.S. market were abnormally small both when compared to other review periods as well as when compared to the POI and to home market sales. Specifically, according to the petitioners, since the sales during the 1995–1996 review period represent only four percent of the volume of sale made during the POI (or two percent when annualized), they do not represent commercial quantities. Therefore, the petitioners argue that CBCC's request for revocation should be denied.

In contrast, CBCC states that the Department did not find the 1995–1996 sales quantity to be "an abnormally small quantity," as portrayed by the petitioners, but merely not as extensive as in the other years. Further, CBCC claims that the petitioners' allegation that the zero margin the Department calculated for the 1995–96 review was not based on sales in commercial quantities is without merit for two reasons. First, even though the quantity exported in 1995–1996 was smaller than that exported in each of the other reviews on which the revocation request is based, it is greater than the quantity reported in each of the four prior reviews for which the Department calculated dumping margins, with the exception of the 1994–1995 review period. Thus, the quantity reported for 1995–1996 is a reliable indicator of CBCC's commercial behavior in the U.S. market and of its ability to compete without sales at less than NV.

Second, the situation in the 1995–1996 review is distinguishable from those recent instances in which the Department denied revocation on the basis of a lack of sales in commercial quantities. In *Carbon Steel Flat Products from Canada*, cited above, the Department found that sales that represented only 0.12 percent of the sales volume during the six months of the POI were not made in commercial quantities. In this case, CBCC's sales during the 1995–1996 review represented about four percent of the sales volume in the POI.

Additionally, citing *Pure Magnesium from Canada; Final Results of Antidumping Duty Administrative*

*Review and Determination Not to Revoke Order in Part*, 64 FR 12977 (March 16, 1999), CBCC claims that the Department found that sales from the concerned respondent virtually stopped in the two years following the imposition of the antidumping order and sales thereafter represented less than 0.5 percent of the sales volume made in the last completed fiscal year prior to the order. In contrast, CBCC never stopped exporting to the United States and the sales volume in the 1995–1996 review far exceeded this 0.5 percent threshold, as mentioned above.

In a second decision regarding pure magnesium from Canada, *see, Pure Magnesium from Canada: Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part*, 64 FR 50489 (Sept. 17, 1999), CBCC argues the Department determined that one or two low-volume sales to the United States during a one-year period was not sufficient for the respondent to meet the Department's threshold for meaningful participation, in light of this respondent's selling activity in the home market. In contrast, the U.S. sales during the 1995–1996 review do not represent an abnormally small quantity, but are reflective of CBCC's normal commercial activity inasmuch as the quantity sold in each U.S. transaction is greater than the quantity CBCC usually sells to home market customers, on a transaction-by-transaction basis.

In addition, CBCC states that the Department based its preliminary determination on the fact that "CBCC shipped progressively more in each of those three years . . ." The evidence on the record shows that this statement is true whether the Department considers four years or three years. CBCC's sales to the United States increased significantly in each successive review, from four percent in 1995–1996 to 45 percent in 1996–1997, and 70 percent in 1997–1998, of the quantity shipped in the POI. Additionally, CBCC emphasizes that while its sales volume increased progressively in the last two reviews, it maintained zero or *de minimis* margins in spite of the precipitous decline of silicon metal prices in the United States during these periods.

Also, CBCC notes that the review period during which it had its lowest sales volume to the United States is 1995–1996, which, according to the petitioners, corresponded to the largest increase in silicon metal prices since the order was issued. In contrast, CBCC shipped increasing volumes in the two periods during which silicon metal prices declined significantly, at prices

that were found by the Department to be not less than NV. CBCC believes that this information is more meaningful to the Department's revocation analysis than if CBCC had shipped large volumes of silicon metal at not less than NV during the period of increasing prices and small volumes during the two periods of declining prices.

Therefore, for the above reasons, CBCC believes it satisfied the requirement of selling subject merchandise in commercial quantities to the United States during each of the consecutive years for which the Department calculated zero or dumping margins.

*DOC Position:* As discussed in the section of this notice above, "Determination Not To Revoke With Regard to CBCC," a company requesting revocation must demonstrate that it participated meaningfully in the U.S. market during each of the three consecutive years at issue. In these final review results, we have determined that CBCC's sales during the 1995–1996 review period do not reflect the company's normal commercial activity with respect to sales of subject merchandise in the United States. Because CBCC did not ship in commercial quantities during the revocation period, we do not have to address other aspects of petitioners' argument.

#### Comment 5: Likelihood of Dumping

Both parties submitted comments regarding future likelihood of dumping.

*DOC Position:* Since we did not revoke the order with respect to CBCC based on a determination that it had not made sales in the United States in commercial quantities for three consecutive years, we do not have to reach the issue of likelihood of resumed dumping.

#### Comment 6: ICMS Tax and COP

CBCC claims that the Department should reduce CBCC's COP by the amount of ICMS tax credits used to pay for electricity utilized in the production of silicon metal. CBCC claims that in the immediately preceding administrative review of this order covering the period of 1996–1997 (sixth administrative review), the Department stated that the Brazilian government allows companies to recover the amount of ICMS tax paid on purchases by retaining ICMS taxes collected on home market sales of finished products or by reducing payments on electricity costs. Further, CBCC states that even though a company does not record the ICMS tax credits as a cost in its records, the credits reflect actual expenditures (to

the extent they are not recovered or used to offset electricity costs). Thus, ICMS tax credits that are generated during the POR but that are not used during the POR to either offset tax collection or to pay electricity costs, represent un-reimbursed expenditures or costs for the POR.

According to CBCC, if a respondent recovers in a subsequent POR some or all of the ICMS tax credits that were generated during the POR, this should be taken into account in calculating costs for that subsequent period, not the current POR. CBCC states that this is consistent with the Department's practice, citing *Canned Pineapple Fruit From Thailand*, 63 FR at 7392, 7399, wherein the Department stated that it has "consistently required and used the per-unit weighted-average costs incurred during the POR." CBCC goes on to claim that in the prior segment of the proceeding, the Department did not apply CBCC's ICMS tax credits used to pay electricity cost as an offset to CV because those credits were used to offset electricity costs during the subsequent POR (*i.e.*, they were used to offset costs in the 1997-1998 POR). CBCC claims that, therefore, in this review, the offset should be granted. CBCC notes that the Department verified that CBCC used the ICMS tax credits to pay electricity costs related to the production of silicon metal during the 1997-1998 POR and concluded that its "findings were consistent with the information contained in CBCC's submissions."

CBCC concludes that the Department incorrectly failed to account for the field ICMSOFFSET (which represents tax credits used to pay electricity costs) in calculating the revised COP ("RCOP") variable in its preliminary determination. According to CBCC, since the Department verified that CBCC paid electricity with ICMS tax credits during the POR, the amount reported by CBCC under ICMSOFFSET should be deducted from CBCC's COP for the final determination.

The petitioners argue that the Department has never expressed any intention to reduce COP for ICMS tax credits used to pay for electricity. The only support CBCC cites for its argument is language from the final results of the immediately preceding (1996-1997) administrative review regarding the treatment of ICMS taxes in calculating CV. However, in those final results, the Department did not address the treatment of ICMS taxes in calculating COP. Instead, the Department determined that:

where a respondent demonstrates recovery of the taxes paid on raw materials during the period of review, . . . such taxes are not

incurred, and therefore do not constitute cost of materials for purposes of calculating CV. 62 FR at 1960.

By comparison, with respect to calculating COP, the petitioners believe that the Department's practice is to exclude ICMS taxes from both the COP and home market prices used in the sales-below-cost analysis. Consistent with this practice, CBCC reported its direct materials costs, including electricity costs, exclusive of ICMS taxes, and the Department used these tax-exclusive direct materials costs in calculating CBCC's COP for the sales-below-cost analysis. Thus, according to the petitioners, because ICMS taxes paid by CBCC on direct materials, including electricity, are not included in the COP used in the sales-below-cost analysis, it would be erroneous to reduce COP by any ICMS tax credits used to pay for electricity.

Moreover, with respect to the calculation of COP, petitioners argue that the plain language of section 773(b)(3) of the Act provides that COP includes, *inter alia*, "the cost of materials and of fabrication or other processing of any kind employed in producing the foreign like product," and thus the statute unambiguously requires that the COP inputs be included in the calculation of COP. *See*, Petitioners' Brief, at 3-4.

Further, the petitioners claim that electricity is an important input in the production of silicon metal. Consistent with the statutory mandate, the Department's established practice is to include the cost of electricity in COP. Thus, under section 773(b)(3) of the Act, and Department practice, CBCC's full cost of electricity must be included in COP. The price CBCC paid to acquire electricity is reflected on the monthly invoices from CBCC's electricity supplier. The ICMS tax credits CBCC used to pay for electricity do not reduce CBCC's electricity cost, *i.e.*, "the price paid to acquire" electricity. The use of ICMS tax credits only changes the manner in which CBCC pays for its electricity cost.

Additionally, according to the petitioners, under the Brazilian tax law, ICMS tax credits may be used to pay for electricity, or equipment, or be used to reduce monthly ICMS tax liability to the Brazilian government for ICMS tax collected on home market sales or be carried forward for future use. Moreover, CBCC's financial statements list "Taxes Recoverable," which as Explanatory Note 5 demonstrates, include ICMS tax credits under the category "Current Assets." Thus, ICMS tax credits were assets of CBCC and were expended for electricity, just as if

they were another type of asset, such as cash.

When CBCC used ICMS credits for electricity, it reduced the amount of credits available for it to spend on equipment or to carry forward for future use, as provided for in the ICMS statute. Hence, CBCC's use of the ICMS credits, which were assets of CBCC, was a "diminution in . . . assets," constituting a "sacrifice made to secure" the "benefit" of electricity. In sum, the petitioners argue that it is clear that the portion of CBCC's electricity cost that was paid for by ICMS tax credits is part of CBCC's total cost of electricity, as reflected in the monthly invoices of its electricity supplier. For these reasons, pursuant to section 773(b)(3) of the Act, the petitioners assert that the full amount of CBCC's electricity cost, as reflected on the invoices of its electricity supplier (without any reduction for ICMS tax credits used to pay for the cost) must be included in CBCC's COP.

Furthermore, the petitioners claim, that in this review, CBCC's NV is based on home market prices, not CV. Thus, the treatment of ICMS tax credits CBCC used to pay for electricity in calculating CBCC's CV is irrelevant to the Department's calculation of CBCC's dumping margin in this review. For this reason, the Department does not need to and should not address the issue of the treatment of ICMS tax credits CBCC used to pay for electricity in calculating CBCC's dumping margin for the final results.

*DOC Position:* We agree with petitioners. The language in section 773(b)(3) of the Act states, *inter alia*, that the COP shall include the cost of materials and of fabrication or other processing of any kind employed in producing the foreign like product during a period which would ordinarily permit the production of that foreign like product in the ordinary course of business.

CBCC focuses solely on the Department's language in the prior administrative review, where we stated, *inter alia*:

Thus, ICMS tax credits that are generated during the POR but that are not used during the POR to either offset tax collection or to pay electricity costs, represent un-reimbursed expenditures or costs for the POR. If a respondent recovers in a subsequent POR some or all of the ICMS tax credits that were generated during the POR, this should be taken into account in calculating costs for the subsequent period, not the current POR. *See*, 1996-1997 Final Review Results, 64 FR at 6312.

Since CBCC used tax credits to pay for electricity in the current review, it

submits that the Department should reduce COP by the amount of said taxes. CBCC ignores the second part of the same paragraph where the Department clearly stated that “. . . we did not use CBCC's ICMS tax credit used to pay electricity cost to reduce CV because those credits were not used during the POR.” *Id.* (emphasis added). In other words, the Department did not address in the 1996–1997 Final Review Results the treatment of ICMS taxes in calculating COP. Rather, the Department there referred to the treatment of ICMS tax credits in calculating CV. In the current review, no normal values for CBCC were based on CV. Consequently, the issue of ICMS taxes with regard to CV is moot.

With respect to the calculation of COP, consistent with the past practice, when conducting the sales-below-cost analysis, the Department compared both COP and the home market price on an ICMS tax-exclusive basis. Accordingly, the Department did not reduce COP by the amount of the ICMS tax credits.

#### Comment 7: Interest Revenue and Net U.S. Price

CBCC claims that the Department should add interest revenue to U.S. price when calculating net price (NETPRIU). CBCC claims that the Department verified that CBCC received interest revenue on U.S. sales, as reported in its submissions. The petitioners did not comment on this issue.

*DOC Position:* We agree with CBCC. In this review, CBCC received interest revenue on both home market and U.S. transactions. For the preliminary results, we included interest revenue derived from the home market transactions in NV. However, we failed to include similar revenue pertaining to the U.S. transactions in the net U.S. price. For these final results, we have corrected that error.

#### Comment 8: Double-Counting of U.S. Direct Selling Expenses

CBCC claims that when the Department compared the net U.S. price to the foreign unit price in dollars (FUPDOL), we double-counted U.S. direct selling expenses in the SAS computer program. The petitioners did not comment on this issue.

*DOC Position:* We agree with CBCC and have corrected that error for these final results.

#### Final Results of Review

As a result of this review, we have determined that the following margins exist for the period April 1, 1997 through March 31, 1998:

Manufacturer/exporter	Weighted-average margin percentage
Eletrosilex .....	18.87
CBCC .....	.05
LIASA .....	0
RIMA .....	0

#### Cash Deposit Requirements

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries.

For duty assessment purposes, we have calculated importer-specific assessment rates for silicon metal from Brazil. For CEP sales, we calculated importer-specific assessment rates by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the estimated entered value of the same sales to that importer. We calculated the estimated entered value by subtracting international movement expenses and expenses incurred in the United States from the gross sales value. For assessment of EP sales, for each importer, we calculated a per unit importer-specific assessment amount by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of the sales examined.

The following deposit requirements shall be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise from Brazil that are entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates listed above, except if the rate is less than 0.5 percent and, therefore, de minimis, the cash deposit rate will be zero; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review or in the most recent final results of review in which that manufacturer participated; and (4) if neither the exporter or the manufacturer is a firm covered in this review or in any previous segment of

this proceeding, the cash deposit rate will be 91.06 percent, the “all others” rate established in the LTFV investigation. These 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)(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 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 351.105(a). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulation 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 7, 2000.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 00–3557 Filed 2–14–00; 8:45 am]

BILLING CODE 3510-DS-P

#### DEPARTMENT OF COMMERCE

#### National Institute of Standards and Technology

[Docket No. 981028268–9247–02]

RIN No. 0693–ZA–23

#### Announcing Approval of Federal Information Processing Standard (FIPS) 186–2, Digital Signature Standard (DSS)

**AGENCY:** National Institute of Standards and Technology (NIST), Commerce.

**ACTION:** Notice.

**SUMMARY:** The Secretary of Commerce approved Federal Information Processing Standard 186–2, Digital Signature Standard (DSS), which supersedes Federal Information Processing Standard (FIPS) 186–1, Digital Signature Standard (DSS), FIPSS 186–2 expands FIPS 186–1 by

specifying an additional voluntary industry standard for generating and verifying digital signatures. This action will enable Federal agencies to use the Digital Signature Algorithm (DSA), which was originally the single approved technique for digital signatures, as well as two new ANSI standards that were developed for the financial community. These new standards are ANSI X9.31, Digital Signature Using Reversible Public Key Cryptography, and ANSI X9.62, Elliptic Curve Digital Signature Algorithm (ECDSA).

**EFFECTIVE DATE:** This standard is effective June 27, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ms. Elaine Barker (301) 975-2911, National Institute of Standards and Technology, 100 Bureau Drive, STOP 8930, Gaithersburg, MD 20899-8930.

Specifications for FIPS 186-2 are available on NIST Web page: <<http://csrc.nist.gov/encryption>>.

Copies of ANSI X9.31, Digital Signatures Using Reversible Public Key Cryptography, and ANSI X9.62, Elliptic Curve Digital Signature Algorithm (ECDSA) are available from the American Bankers Assoc./DC, X9 Customer Service Dept. P.O. Box 79064, Baltimore, MD 21279-0064; telephone 1-800-338-0626.

**SUPPLEMENTARY INFORMATION:** Under Section 5131 of the Information Technology Management Reform Act of 1996 and the Computer Security Act of 1987, the Secretary of Commerce is authorized to approve standards and guidelines for the cost effective security and privacy of sensitive information processed by federal computer systems. In May 1994, the Secretary of Commerce approved FIPS 186, Digital Signature Standard (DSS), which specified the Digital Signature Algorithm (DSA) as the single technique for the generation and verification of digital signatures. In 1997 NIST solicited comments on augmenting FIPS 186 with other digital signature techniques including the Rivest-Shamir-Adleman (RSA) and the elliptic curve technique. The comments received by NIST supported adding both techniques to FIPS 186. Both techniques were being considered by the financial services industry as voluntary industry standards.

On December 15, 1998, (FR Vol. 63, No. 240, pp 69049-51) NIST announced that the Secretary of Commerce had approved FIPS 186-1, Digital Signature Standard (DSS) as an interim final standard. FIPS 186-1 added the RSA digital signature technique, which had been approved as an industry standard (X9.31-1998, Digital Signatures Using

Reversible Public Key Cryptography for the Financial Services Industry). The elliptic curve technique was not included in the interim final standard since it had not yet been approved by the American National Standards Institute (ANSI) as a voluntary industry standard.

The December 1998 Notice from NIST invited comments from public, academic and research communities, manufacturers, voluntary standards organizations, and Federal, state, and local government organizations concerning the specification of two techniques (DSA and ANSI X9.31-1998) for the generation and verification of digital signatures. That Notice also referred to the elliptic curve technique, which NIST had expected to be approved by ANSI as a voluntary industry standard. In addition to being published in the **Federal Register**, the Notice was posted on the NIST Web pages; information was provided for submission of electronic comments. NIST received comments from 15 private sector organizations and individuals, and from two federal government organizations. The comments supported the addition of the ANSI X9.31 standard, as well as the addition of the elliptic curve technique to the Digital Signature Standard (DSS). NIST recommended that the Secretary of Commerce approve FIPS 186-2, which includes the DSA, ANSI X9.31, and the elliptic curve technique, which has now been approved as ECDSA, under ANSI X9.62, Elliptic Curve Digital Signature Algorithm. Other comments supported the continued use of another RSA signature algorithm that is specified by PKCS#1. The algorithm specified in PKCS#1 does not interoperate with the algorithm specified in ANSI X9.31. FIPS 186-2 allows for the continued acquisition of implementations of PKCS#1 for a transition period of eighteen months from the date of approval of this standard, which will enable federal agencies to plan for the acquisition of implementations of the algorithms promulgated by FIPS 186-2.

Dated: February 8, 2000.

**Karen H. Brown,**

*Deputy Director, NIST.*

[FR Doc. 00-3450 Filed 2-14-00; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[Docket No. 000204026-0026-01; I.D. 121799A]

RIN 0648-AN48

### Tautog; Interstate Fishery Management Plans

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

**ACTION:** Notice of determination of noncompliance; notice of declaration of a moratorium.

**SUMMARY:** In accordance with the Atlantic Coastal Fisheries Cooperative Management Act of 1993 (Act), 16 U.S.C. 5101 *et seq.*, the Secretary of Commerce (Secretary) has determined that the State of Rhode Island is not in compliance with the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan (ISFMP) for tautog and has failed to implement measures necessary for the conservation of the fishery in question. Pursuant to the Act, a Federal moratorium on fishing for tautog within Rhode Island state waters to be effective on June 15, 2000, if Rhode Island does not come into compliance with the ISFMP for tautog by June 1, 2000, is hereby declared. The purpose of this action is to support and encourage the development, implementation, and enforcement of the Commission's ISFMPs to conserve and manage Atlantic coastal fishery resources.

**DATES:** The moratorium will become effective on June 15, 2000, through a separate rule unless, by June 1, 2000, the State of Rhode Island adopts and implements measures to return to compliance with the Commission's ISFMP for tautog. If the State of Rhode Island adopts and implements the measures required by the ISFMP for tautog, the Secretary will publish an appropriate announcement in the **Federal Register** rescinding the moratorium with respect to the State.

**FOR FURTHER INFORMATION CONTACT:** Richard H. Schaefer, Chief, Staff Office for Intergovernmental and Recreational Fisheries, NMFS, 301-427-2014.

**SUPPLEMENTARY INFORMATION:**

#### Background

The Act was enacted to support and encourage the development, implementation, and enforcement of the Commission's ISFMPs to conserve and

manage Atlantic coastal fishery resources. Section 807 of the Act specifies that, after notification by the Commission that an Atlantic coastal state is not in compliance with an ISFMP of the Commission, the Secretary shall make a finding, no later than 30 days after receipt of the Commission's notification, on: (1) Whether the state has failed to carry out its responsibilities to implement and enforce the Commission's ISFMP; and (2) whether the measures that the state has failed to implement and enforce are necessary for the conservation of the fishery in question. In making such a finding, the Act requires the Secretary to give careful consideration to the comments of the Commission, the Atlantic coastal state found out of compliance by the Commission, and the appropriate Regional Fishery Management Councils. If the Secretary finds that the state is not in compliance with the Commission's ISFMP, and if the measures the state has failed to implement are necessary for the conservation of the fishery, the Act requires the Secretary to declare a moratorium on fishing in that fishery within the waters of the noncomplying state. The Secretary shall specify the moratorium's effective date, which must be any date within 6 months after the declaration of the moratorium.

#### Activities Pursuant to the Act

On November 19, 1999, the Secretary received a letter from the Commission prepared pursuant to section 806(b) of the Act. The Commission's letter stated that the State of Rhode Island's tautog regulations did not meet the provisions of the Commission's ISFMP, and, therefore, the Commission found the State of Rhode Island out of compliance with the ISFMP as described here:

#### *Commission Findings on Tautog*

The Commission found that the State of Rhode Island has not implemented and is not enforcing the Commission's ISFMP for tautog because it has failed to adopt recreational bag limits for tautog that can be effectively evaluated by the Commission as meeting the mortality reduction requirements of the ISFMP.

Under the ISFMP, states are required to implement and enforce management measures that will achieve an interim fishing mortality target of  $F=0.24$ , with an ultimate target of  $F=0.15$ .

To meet these targets, the ISFMP recommends that possession and seasonal limits be imposed which are consistent for all recreational fishing modes. Rhode Island's recreational bag limits for tautog differ between fishing modes. Upon review of Rhode Island's

analysis of its management plan, the Commission's Tautog Technical Committee determined that there was insufficient quantitative data available to effectively determine whether the State's management plan met the overall mortality targets of the Commission's ISFMP. Since the mortality targets of the ISFMP are essential to the conservation of the tautog resource, and it could not be determined whether these targets would be achieved under Rhode Island's current management scheme, the Commission found that the State is not in compliance with the ISFMP.

The Commission's letter also suggested that the Secretary use his discretionary authority under the Act to delay the date of the moratorium for up to 6 months, because the State of Rhode Island is making an effort to come into compliance. The letter stated that Rhode Island is taking action to be in compliance with the Commission ISFMP for tautog by the start of the 2000 tautog season (May 2000).

#### Determination Regarding Compliance by the State of Rhode Island

Based on a careful analysis of all relevant information, and taking into account comments presented by the State of Rhode Island and the New England Fishery Management Council, the Secretary has determined that the State of Rhode Island is not in compliance with the Commission's ISFMP for tautog. This determination is based on Rhode Island's failure to adopt recreational bag limits for tautog that can be effectively evaluated by the Commission as meeting the mortality reduction requirements of the ISFMP. Therefore, Rhode Island must implement and enforce a recreational bag limit consistent with the ISFMP in order to come back into compliance. Further, the Secretary has determined that implementation and enforcement of a recreational bag limit that can be shown to meet the fishing mortality targets is necessary for the conservation of the resource. Although the State of Rhode Island is not in compliance with the Commission's ISFMP for tautog, because Rhode Island is making expeditious efforts to promulgate regulations that would bring the state into compliance by the start of the 2000 tautog season (May 2000), the Secretary is delaying implementation of the moratorium until June 15, 2000. If the State of Rhode Island adopts and implements measures bringing the state into compliance, the Secretary will publish an appropriate announcement in the **Federal Register** rescinding the moratorium with respect to the State of Rhode Island. If the State of Rhode

Island has not promulgated appropriate regulations by June 1, 2000, NMFS will issue a rule implementing the moratorium effective June 15, 2000. Delaying the effective date of the moratorium until June 15, 2000, will not significantly diminish tautog conservation efforts because the recreational bag limit at issue in this action would not go into effect until October 2000, and the State currently has in place bag limits that meet the conservation goals of the ISFMP.

NMFS will notify the Governor of Rhode Island of this action. *If the moratorium goes into effect, the Secretary will terminate it immediately upon receipt of notification from the Commission that the State has taken appropriate remedial actions to bring it into compliance with the ISFMP, and if the Secretary concurs with the Commission.*

Dated: February 9, 2000.

**Andrew A. Rosenberg,**

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

[FR Doc. 00-3552 Filed 2-14-00; 8:45 am]

BILLING CODE 3510-22-F

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## DEPARTMENT OF DEFENSE

### Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans

**AGENCY:** Department of Defense (DoD).

**ACTION:** Notice of test program.

**SUMMARY:** The Department of Defense is amending its Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans to update the regulatory cite reflected in the test program under "III. Program Requirements" for Defense Federal Acquisition Regulation Supplement (DFARS) coverage of source selection. DFARS coverage of source selection is found at Subpart 215.3.

**EFFECTIVE DATE:** February 15, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ivory Fisher, Office of Small and Disadvantaged Business Utilization (OSADBU), Office of the Under Secretary of Defense (Acquisition, Technology & Logistics), 1777 North Kent Street, Suite 9100, Arlington, VA 22209, telephone (703) 588-8616, telefax (703) 588-7561.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

In accordance with Section 834 of Public Law 101-189, as amended, the Department of Defense (DoD) established a Test Program for

Negotiation of Comprehensive Small Business Subcontracting Plans (the Program) to determine whether the use of comprehensive subcontracting plans on a corporate, division, or plant-wide basis would increase subcontracting opportunities for small business concerns. DoD amended the Program to implement the requirements of Section 822 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85). The amendments (1) provide for subcontracts that are awarded by participating contractors performing as subcontractors, under DoD contracts, to be included in comprehensive small business subcontracting plans, and (2) to cover the HUBZone Act of 1997 implementation in the Federal Acquisition Regulation (FAR), which results in the addition of HUBZone small businesses to the categories of small business concerns that must be addressed by comprehensive small business subcontracting plans.

The revised test plan is as follows:

### **Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans**

#### *I. Purpose*

This document implements Section 834 of Public Law 101-189, the National Defense Authorization Act for Fiscal Years 1990 and 1991, as amended. The primary purpose of the Comprehensive Small Business Subcontracting Plan Test Program (the Program) is to determine whether the negotiation and administration of comprehensive small business subcontracting plans will reduce administrative burdens on contractors while enhancing subcontracting opportunities for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals under Department of Defense (DoD) contracts.

#### *II. Authority*

The Program is established pursuant to Section 834 of the National Defense Authorization Act for Fiscal Years 1990 and 1991, as amended.

#### *III. Program Requirements*

A. The Program shall be conducted from October 1, 1990, through September 30, 2005.

B. The selection of contractors for participation in the Program shall be in accordance with Section 811(b)(3) of the National Defense Authorization Act For Fiscal Year 1996, Public Law 104-106. Eligible contractors are large business concerns at the major (total) corporate

level that, during the preceding fiscal year:

1. Were performing under at least three DoD prime contracts; furnished supplies or services (including professional services) to DoD, engaged in research and development for DoD, or performed construction for DoD; and were paid \$5,000,000 or more for such contract activities; and

2. Achieved a small disadvantaged business (SDB) subcontracting participation rate of 5 percent or more during the preceding fiscal year. However, this requirement does not apply to the eight original contractors accepted into the Program. Additionally, a large business with an SDB subcontracting participation rate of less than 5 percent during the preceding fiscal year may request, through the designated contracting activity, to participate in the Program if the firm submits a detailed plan with milestones leading to attainment of at least a 5 percent SDB subcontracting participation rate by September 30, 2005.

C. Contractors selected for participation shall:

1. Be eligible in accordance with paragraph III(B);

2. Establish their comprehensive subcontracting plans on the same corporate, division or plant-wide basis under which they submitted the Standard Form (SF) 295 during the preceding fiscal year, except that a division or plant that historically reported through a higher-level division, but would meet the criteria of paragraph III(B)(2), shall be permitted to participate in the Program if the lower-level division, plant or profit center can demonstrate a 5 percent or greater subcontract performance level with SDB concerns;

3. Have reported to DoD on the SF 295 for the previous fiscal year, except as provided in paragraph III(C)(2);

4. Accept an SDB goal for each fiscal year of not less than 5 percent, or an SDB goal that is in accordance with the milestone established under paragraph III(B)(2);

5. Comply with the requirements of Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 215.3 for source selection purposes;

6. Offer a broad range of subcontracting opportunities;

7. Voluntarily agree to participate; and

8. Have at least one active contract that requires a subcontracting plan at the designated DoD buying activity responsible for negotiating the Comprehensive Subcontracting Plan.

#### *IV. Elements of the Comprehensive Small Business Subcontracting Plan*

A. The comprehensive small business subcontracting plan shall address each of the 11 elements set forth in paragraph (d) of the clause at FAR 52.219-9, "Small Business Subcontracting Plan."

1. The subcontracting plan, percentage and corresponding dollar goals for awards to small business, HUBZone small business, small disadvantaged business and women-owned small business concerns shall be developed by the contractor for its entire business operation in support of all DoD contracts and subcontracts under DoD contracts regardless of dollar value.

2. Participating contractors shall include separate specific goals and timetables for the awarding of subcontracts in two industry categories which have not historically been made available to small business and small disadvantaged business concerns. These industry categories will be recommended by the contractor and approved by the contracting officer. Subcontract awards made in support of the specific industry categories shall also count towards attainment of the overall small business and small disadvantaged business goals.

3. The subcontracting plan shall set forth the prime contractor's actions to publicize prospective subcontract opportunities for small business, HUBZone small business, small disadvantaged business and women-owned small business concerns.

B. Subcontracting plans to be established under the Program shall be submitted each year by participating contractors to the designated contracting officer 45 days prior to the end of the Government's fiscal year (September 30). However, new contractors requesting participation under the Program shall submit subcontracting plans to the contracting officer as far in advance as possible to the beginning of the fiscal year in which the contractor proposes to participate.

#### *V. Procedures*

A. The Service Acquisition Executive within each military department and defense agency having contractors that meet the requirements of paragraphs III(B) and (C) shall designate at least three but not more than five contracting activities to participate in the Program. In selecting the contracting activities to participate in the Program, the Service Acquisition Executive shall ensure that the designated activities cover a broad range of supplies and services.

B. The designated contracting activity will accomplish the following:

1. With the coordination of the Director, Office of Small and Disadvantaged Business Utilization, for their military department or defense agency, select as many eligible prime contractors (at least five) for participation under the Program as deemed appropriate.

2. Establish a "Comprehensive Small Business Subcontracting Plan" negotiating team(s) composed as follows:

a. A contracting officer(s) who will be responsible for negotiation and approval of the comprehensive subcontracting plan(s) as well as the responsibilities at FAR 19.705.

b. The contracting activity's Small and Disadvantaged Business Utilization Specialist.

c. The Small and Disadvantaged Business Utilization Specialist of the cognizant contract administration activity that administers the preponderance of the selected prime contractor's contracts and/or the appropriate individual who will administer contractor performance under the test in accordance with FAR 19.706 and the provisions herein.

d. Production specialist, price analyst and other functional specialists as appropriate.

C. The designated contracting officer shall:

1. Encourage prime contractors interested in participating in the program to enter the program on a plant or facility basis.

2. Solicit proposed comprehensive subcontracting plans from selected contractor(s) as soon as possible and by July 1, annually thereafter.

3. By October 1, and annually thereafter, review, negotiate and approve on behalf of DoD a comprehensive subcontracting plan for each selected contractor.

4. Distribute copies of the approved subcontracting plan in accordance with paragraph VI(A).

5. Upon negotiation and acceptance of the comprehensive subcontracting plan, obtain from the contractor:

a. A listing of all active DoD contracts that contain individual subcontracting plans required by Section 211 of Public Law 95-507.

b. The listing shall include the following:

i. Contract number.

ii. Name and address of the contracting activity.

iii. Contracting officer's name and phone number.

6. Upon receipt of the information provided by the participating contractor under paragraph V(C)(4), direct the designated administrative contracting

officer to issue a comprehensive change order, which modifies all of the contractor's active DoD contracts that include subcontracting plans. The modification will substitute the contractor's approved comprehensive subcontracting plan for the individual plans, will substitute the clause at DFARS 252.219-7004 for the clause at FAR 52.219-9, and will delete the clauses at FAR 52.219-10 and 52.219-16 and DFARS 252.219-7003 and 252.219-7005, as appropriate.

7. Review annually, with the contract administration activity, the contractor's performance under the plan. Document the review findings and distribute, in accordance with paragraph VI(A), within 45 days of the end of the fiscal year.

8. By November 15 of the year after acceptance, and annually thereafter, determine whether the contractor has met its comprehensive subcontracting goals. If the goals have not been met, determine whether there is any indication that the contractor failed to make a good faith effort and take appropriate action.

9. By December 15, 2005, prepare and submit a report on each participating contractor's performance which details the results of the Program. The report must compare the contractor's performance under the Program with its performance for the three fiscal years prior to acceptance into the Program. The report distribution will be in accordance with paragraph VI(A).

D. Participating contractors:

1. Shall establish their comprehensive subcontracting plans on the same corporate, division or plant-wide basis under which they submitted the SF 295 during the preceding fiscal year, except that those contractors that historically reported through a higher headquarters can elect to participate as a separate (lower-level) reporting profit center, plant or division if the contractor achieved an SDB subcontracting performance rate of 5 percent or greater in the preceding fiscal year.

2. Upon negotiation of an acceptable comprehensive subcontracting plan, shall be exempt from individual contract-by-contract reporting requirements for DoD contracts and subcontracts under DoD contracts unless otherwise required in accordance with paragraph III(C)(5).

3. Shall continue individual contract reporting on non-DoD contracts.

4. Shall comply with the flow-down provisions of Section 211 of Public Law 95-507 for large business subcontractors which are not participating in the Program. Consequently, large business concerns which are not participating in

the Program receiving a DoD subcontract in excess of \$500,000 (\$1,000,000 for construction) are required to adopt a plan similar to that mandated by the clause at FAR 52.219-

9. Participating contractors are prohibited from flowing down the "Comprehensive" subcontracting deviation provisions of DFARS 252.219-7004. Accordingly, large business subcontractors to the participating contractors who themselves are not participating in the Program shall be required to establish individual subcontracting plans with specific goals for awards to small business, small disadvantaged business and women-owned small business concerns.

5. Upon expulsion from the Program or Program termination on September 30, 2005, shall negotiate and establish individual subcontracting plans on all future DoD contracts that otherwise meet the requirements of Section 211 of Public Law 95-507.

#### *VI. Monitoring and Reporting of Comprehensive Subcontracting Plans and Goals*

A. Upon negotiation and acceptance of comprehensive subcontracting plans and goals, the designated activity shall immediately forward one copy of the plan to each of the following:

1. Director, Office of Small and Disadvantaged Business Utilization, Office of the Deputy Under Secretary of Defense (Acquisition, Technology and Logistics), 1777 North Kent Street, Suite 9100, Arlington, VA 22209.

2. Director, Small and Disadvantaged Business Utilization, for the military department or defense agency of the activity that negotiated and accepted the comprehensive subcontracting plan.

3. The cognizant contract administration office.

B. Each participating contractor shall complete the SF 295 "Summary Subcontract Report" in accordance with the instructions on the back of the form on a semi-annual basis, except as noted below:

1. One copy of the SF 295 and attachments shall be submitted to Director, Office of Small and Disadvantaged Business Utilization, Office of the Deputy Under Secretary of Defense (Acquisition, Technology and Logistics), 1777 North Kent Street, Suite 9100, Arlington, VA 22209.

2. Participating contractors shall enter in Item 14 Remarks block the annual corporate, division or plant-wide small business, small disadvantaged business and women-owned small business percentage and corresponding dollar goals.

3. Participating contractors shall also enter separately in Item 14 the percentage and corresponding dollar goals for each of the two selected industry categories (see paragraph IV(A)(2)).

4. Participating contractors shall also enter separately in Item 14 on a semi-annual cumulative basis the percentage and corresponding dollar amount of subcontract awards made in each of the two selected industry categories.

5. Participating contractors shall be exempt from the completion of SF 294 "Subcontract Report For Individual Contracts" for DoD contracts during their participation in the Program.

Dated: February 9, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, DoD.*

[FR Doc. 00-3422 Filed 2-14-00; 8:45 am]

BILLING CODE 5001-10-U

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Proposed Collection; Comment Request

**AGENCY:** Defense Finance and Accounting Service.

**ACTION:** Notice.

**SUMMARY:** In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Finance and Accounting Service announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by April 17, 2000.

**ADDRESSES:** Written comments and recommendations on the proposed information collection should be sent to the Denver Center, Defense Finance and Accounting Service, DFAS-DE/FRS, ATTN: Jo Westberg, 6760 E. Irvington Place, Denver, CO 80279.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this

proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Jo Westberg, 303-676-8754.

*Title, Associated Form, and OMB Number:* Physician Certificate for Child Annuitant.

*Needs and Uses:* This form is required and must be on file to support an incapacitation occurring prior to age 18. The form provides the authority for the Directorate of Annuity Pay, Defense Finance and Accounting Service—Denver Center (DFAS-DE/FRB) to establish and pay a Retired Serviceman's Family Protection Plan (RSFPP) or Survivor Benefit Plan (SBP) annuity to the incapacitated individual.

*Affected Public:* Incapacitated child annuitants, and/or their legal guardians, custodians and legal representatives.

*Annual Burden Hours:* 240 hours.

*Number of Respondents:* 120.

*Responses per Respondent:* 1.

*Average Burden per Response:* 2 hours.

*Frequency:* On occasion.

#### SUPPLEMENTARY INFORMATION:

##### Summary of Information Collection

The form will be used by the Directorate of Annuity Pay, Defense Finance and Accounting Service—Denver Center (DFAS-DE/FRB), in order to establish and start the annuity for a potential child annuitant. When the form is completed, it will serve as a medical report to substantiate a child's incapacity. The law requires that an unmarried child who is incapacitated must provide a current certified medical report. When the incapacity is not permanent a medical certification must be received by DFAS-DE/FRB every two years in order for the child to continue receiving annuity payments.

Dated: February 9, 2000.

**Patricia L. Toppings,**

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

[FR Doc. 00-3413 Filed 2-14-00; 8:45 am]

BILLING CODE 5001-10-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Proposed Collection; Comment Request

**AGENCY:** Defense Finance and Accounting Service.

**ACTION:** Notice.

**SUMMARY:** In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense

Finance and Accounting Service announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by April 17, 2000.

**ADDRESSES:** Written comments and recommendations on the proposed information collection should be sent to the Cleveland Center, Defense Finance and Accounting Service, DFAS-CL/G, ATTN: Ms. Sharon Winn, 1240 East Ninth Street, Cleveland, OH 44199-2055.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Ms. Sharon Winn, 216-522-5396.

*Title, Associated Form, and OMB Number:* Application for Trusteeship.

*Needs and Uses:* This form is used to apply for appointment of trusteeship for a mentally incompetent member of the uniformed services. Pursuant to 37 U.S.C. 602-604.

*Affected Public:* Individuals.

*Annual Burden Hours:* 12.5 hours.

*Number of Respondents:* 50.

*Responses per Respondent:* 1.

*Average Burden per Response:* 15 minutes.

*Frequency:* On occasion.

#### SUPPLEMENTARY INFORMATION:

##### Summary of Information Collection

When members of the uniformed services are declared mentally incompetent, the need arises to have a trustee appointed to act on their behalf with regard to military pay matters. Individuals will complete this form to apply for appointment as a trustee on behalf of the member. The requirement to complete this form helps alleviate the opportunity for fraud, waste and abuse of Government funds and member's benefits.

Dated: February 9, 2000.

**Patricia L. Toppings,**

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

[FR Doc. 00-3414 Filed 2-14-00; 8:45 am]

BILLING CODE 5001-10-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Proposed Collection; Comment Request

**AGENCY:** Defense Finance and Accounting Service.

**ACTION:** Notice.

**SUMMARY:** In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Finance and Accounting Service announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATE:** Consideration will be given to all comments received by April 17, 2000.

**ADDRESSES:** Written comments and recommendations on the proposed information collection should be sent to the Cleveland Center, Defense Finance and Accounting Service, DFAS-CL/G, ATTN: Ms. Sharon Winn, 1240 East Ninth Street, Cleveland, OH 44199-2055.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Ms. Sharon Winn, 216-522-5396.

*Title, Associated Form, and OMB Number:* Trustee Report.

*Needs and Uses:* This form is used to report on the administration of the funds received on behalf of a mentally incompetent member of the uniformed services. Pursuant to 37 U.S.C. 602-604.

*Affected Public:* Individuals.

*Annual Burden Hours:* 150 hours.

*Number of Respondents:* 300.

*Responses per Respondent:* 1.

*Average Burden per Response:* 30 minutes.

*Frequency:* On occasion.

#### SUPPLEMENTARY INFORMATION:

#### Summary of Information Collection

When members of the uniformed services are declared mentally incompetent, the need arises to have a trustee appointed to act on their behalf with regard to military pay matters. Trustees will complete this form to report the administration of the funds received on behalf of the member. The requirement to complete this form helps alleviate the opportunity for fraud, waste and abuse of Government funds and member's benefits.

Dated: February 9, 2000.

**Patricia L. Toppings,**

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

[FR Doc. 00-3415 Filed 2-14-00; 8:45 am]

BILLING CODE 5001-10-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense will submit to OMB for emergency processing, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Title and OMB Number:* Army Recruiting Market Segmentation Survey; OMB Number 0702-[To Be Determined].

*Type of Request:* New Collection; Emergency processing requested with a shortened public comment period ending February 22, 2000. An approval date of February 29, 2000, has been requested.

*Number of Respondents:* 15,000.

*Responses per Respondent:* 1.

*Annual Responses:* 15,000.

*Average Burden per Response:* 27 minutes (approximately).

*Annual Burden Hours:* 6,667.

*Needs and Uses:* This collection of information is needed to comply with Sections 115 and 503 of Title 10, United States Code. To inform and guide its redesigned marketing and recruiting campaigns, the Army will collect new information on the broad set of factors that affect youth attitudes and willingness to enter the Army. These factors include youth's aspirations for their education, jobs, and careers; their perceptions of the opportunities and

benefits offered by joining the Army versus pursuing continued education or taking a job in the civilian sector; the aspirations for these youth held by their key influencers; and these influencers' perceptions of the opportunities to realize those aspirations in the Army versus other settings. The information will be used to design the right enlistment/career options, media campaign, and recruiting strategy. The survey will be administered to a national probability sample of youth, 16 to 24 years of age. A shorter interview with one of the respondent's parents will be completed.

*Affected Public:* Individuals or Households.

*Frequency:* One-time.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, or by fax at (703) 604-6270. Requests for the collection proposal should include an e-mail address, if possible. Due to the length of the survey instruments, we will provide the surveys as attachments to an e-mail, although a paper copy will be provided as necessary.

Dated: February 9, 2000.

**Patricia L. Toppings,**

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

[FR Doc. 00-3416 Filed 2-14-00; 8:45 am]

BILLING CODE 5001-10-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Transmittal No. 00-24]

#### 36(b)(1) Arms Sales Notification

**AGENCY:** Department of Defense, Defense Security Cooperation Agency.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104-164 dated 21 July 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. J. Hurd, DSCA/COMPT/RM, (703) 604-6575.

The following is a copy of a letter to the Speaker of the House of

Representatives, Transmittal 00-24 with attached transmittal and policy justification.

Dated: February 8, 2000.

**L.M. Bynum,**

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

**BILLING CODE 5001-10-M**



DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

**2 FEB 2000**  
**In reply refer to:**  
**I-99/015488**

**Honorable J. Dennis Hastert**  
**Speaker of the House of**  
**Representatives**  
**Washington, D.C. 20515-6501**

**Dear Mr. Speaker:**

**Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-24, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Saudi Arabia for defense articles and services estimated to cost \$65 million. Soon after this letter is delivered to your office, we plan to notify the news media.**

**Sincerely,**

A handwritten signature in black ink, appearing to read "Edward W. Ross". The signature is fluid and cursive.

**Edward W. Ross**  
**Acting Director**

**Attachments**

**Same ltr to: House Committee on International Relations**  
**Senate Committee on Appropriations**  
**Senate Committee on Foreign Relations**  
**House Committee on National Security**  
**Senate Committee on Armed Services**  
**House Committee on Appropriations**

**Transmittal No. 00-24****Notice of Proposed Issuance of Letter of Offer  
Pursuant to Section 36(b)(1)  
of the Arms Export Control Act**

- (i) **Prospective Purchaser:** Saudi Arabia
- (ii) **Total Estimated Value:**
- |                                 |                             |
|---------------------------------|-----------------------------|
| <b>Major Defense Equipment*</b> | <b>\$ 23 million</b>        |
| <b>Other</b>                    | <b>\$ <u>42 million</u></b> |
| <b>TOTAL</b>                    | <b>\$ 65 million</b>        |
- (iii) **Description of Articles or Services Offered:** Communication equipment for the continuation of the U.S. supported effort to modernize Saudi Arabian National Guard (SANG) to include 520 AN/VRC-90, 300 AN/VRC-92 and 300 AN/PRC-199 advanced tactical communication systems, 50 very high frequency RT-1702E receiver transmitter modules, radio, installation kits, spare and repair parts, publications and technical documentation, personnel training, contractor engineering and technical assistance, and other related elements of logistics support.
- (iv) **Military Department:** Army (ZAC, amendment 29)
- (v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none
- (vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** none
- (vii) **Date Report Delivered to Congress:** 2 FEB 2000

\* as defined in Section 47(6) of the Arms Export Control Act.

**POLICY JUSTIFICATION****Saudi Arabia - Continued Modernization of the Saudi Arabian National Guard**

The Government of Saudi Arabia has requested a possible sale of communication equipment for the continuation of the U.S. supported effort to modernize Saudi Arabian National Guard (SANG) to include 520 AN/VRC-90, 300 AN/VRC-92 and 300 AN/PRC-199 advanced tactical communication systems, 50 very high frequency RT-1702E receiver transmitter modules, radio, installation kits, spare and repair parts, publications and technical documentation, personnel training, contractor engineering and technical assistance, and other related elements of logistics support. The estimated cost is \$65 million.

The proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

The proposed sale will provide the SANG with the modern command control communications needed to provide security throughout the region. It is consistent with the National Command Authority's intent for stability in the CENTCOM Area of Operation. The radios will modernize equipment and provide the critical VHF and HF links necessary for a large fast moving force and integration with the SINCGAR radios SANG already has fielded in their Light Armored Vehicle and Light Infantry Brigades. The RT-170E receiver transmitter modules will be utilized as direct exchange components to maintain fleet operational readiness.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be of ITT, Fort Wayne, Indiana and Harris Corporation, Rochester, New York. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any U.S. Government representative, however; four contractor representatives will be required for two years.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

**DEPARTMENT OF DEFENSE****Office of the Secretary**

[Transmittal No. 00-25]

**36(b)(1) Arms Sales Notification****AGENCY:** Department of Defense, Defense Security Cooperation Agency.**ACTION:** Notice.

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**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104-164 dated 21 July 1996.**FOR FURTHER INFORMATION CONTACT:** Ms. J. Hurd, DSCA/COMPT/RM, (703) 604-6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00-25 with attached transmittal and policy justification.

Dated: February 8, 2000.

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

**BILLING CODE 5001-10-M**



## DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

2 FEB 2000

In reply refer to:  
I-00/016335

Honorable J. Dennis Hastert  
Speaker of the House of  
Representatives  
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-25, and under separate cover, the classified documents thereto. This Transmittal concerns the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Finland for defense articles and services estimated to cost \$245 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended by Section 1245 of H.R. 3427 enacted by P.L. 106-113 dated November 29, 1999, requires a description of any offset agreement with respect to this proposed sale. Section 36(b)(1)(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale are described in the enclosed confidential attachment.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward W. Ross", with a long horizontal flourish extending to the right.

Edward W. Ross  
Acting Director

Attachments

Separate Cover:  
Classified Annex  
Offset certificate

Same ltr to: House Committee on International Relations  
Senate Committee on Appropriations  
Senate Committee on Foreign Relations  
House Committee on National Security  
Senate Committee on Armed Services  
House Committee on Appropriations

**Transmittal No. 00-25****Notice of Proposed Issuance of Letter of Offer  
Pursuant to Section 36(b)(1)  
of the Arms Export Control Act**

- (i) **Prospective Purchaser:** Finland
- (ii) **Total Estimated Value:**
- |                          |                       |
|--------------------------|-----------------------|
| Major Defense Equipment* | \$ 221 million        |
| Other                    | \$ <u>24 million</u>  |
| <b>TOTAL</b>             | <b>\$ 245 million</b> |
- (iii) **Description of Articles or Services Offered:** Two hundred forty-two JAVELIN anti-tank missile systems (consisting of 242 JAVELIN command launch units, 3,190 JAVELIN missile rounds, and 60 lot acceptance missiles), simulators, support equipment, spare and repair parts, publications and technical data, personnel training and equipment, U.S. Government and contractor engineering and logistics personnel services, a Quality Assurance Team, and other related elements of logistics support
- (iv) **Military Department:** Army (UBM, UBN, and UBO)
- (v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none
- (vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex under separate cover
- (vii) **Date Report Delivered to Congress:** 2 FEB 2000

\* as defined in Section 47(6) of the Arms Export Control Act.

**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 any 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 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.

Authorized for Local Reproduction  
Standard Form-LLL (1/96)

[FR Doc. 00-3419 Filed 2-14-00; 8:45 am]

BILLING CODE 5001-10-C

**DEPARTMENT OF DEFENSE**

Office of the Secretary

[Transmittal No. 00-26]

**36(b)(1) Arms Sales Notification**

AGENCY: Department of Defense, Defense Security Cooperation Agency.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104-164 dated 21 July 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. J. Hurd, DSCA/COMPT/RM, (703) 604-6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00-26 with attached transmittal, policy justification and Sensitivity of Technology.

Dated: February 8, 2000.

**L.M. Bynum,**

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

BILLING CODE 5001-10-M



## DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

2 FEB 2000  
In reply refer to:  
I-00/000645

Honorable J. Dennis Hastert  
Speaker of the House of  
Representatives  
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-26 and under separate cover the classified offset certificate thereto. This Transmittal concerns the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to the Netherlands for defense articles and services estimated to cost \$200 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended by Section 1245 of H.R. 3427 enacted by P.L. 106-113 dated November 29, 1999, requires a description of any offset agreement with respect to this proposed sale. Section 36(b)(1)(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale are described in the enclosed confidential attachment.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward W. Ross", written in a cursive style.

Edward W. Ross  
Acting Director

**Attachments**

Separate Cover:  
Offset certificate

Same ltr to: House Committee on International Relations  
Senate Committee on Appropriations  
Senate Committee on Foreign Relations  
House Committee on National Security  
Senate Committee on Armed Services  
House Committee on Appropriations

**Transmittal No. 00-26****Notice of Proposed Issuance of Letter of Offer  
Pursuant to Section 36(b)(1)  
of the Arms Export Control Act**

- (i) **Prospective Purchaser:** The Netherlands
- (ii) **Total Estimated Value:**
- |                          |                      |
|--------------------------|----------------------|
| Major Defense Equipment* | \$ 0 million         |
| Other                    | <u>\$200 million</u> |
| TOTAL                    | \$200 million        |
- (iii) **Description of Articles or Services Offered:** Modification and upgrade of ten P-3C aircraft to include installation of satellite communication systems, secure communications systems, missile warning systems, countermeasures dispensing systems, aircraft cockpit enhancements, acoustic receiver and processor system, missile warning and missile countermeasures dispensing systems, data management system, spare and repairs parts, support equipment, personnel training and training equipment, publications and technical data, system software development and installation, ground/flight testing of new systems and system modifications, U.S. Government and contractor engineering and logistics services and other related elements of program support.
- (iv) **Military Department:** Navy (LEV)
- (v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none
- (vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached
- (vii) **Date Report Delivered to Congress:** 2 FEB 1999

\* as defined in Section 47(6) of the Arms Export Control Act.

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**POLICY JUSTIFICATION****The Netherlands - P-3C Aircraft Upgrade**

The Government of the Netherlands has requested a possible sale for the modification and upgrade of ten P-3C aircraft to include installation of satellite communication systems, secure communications systems, missile warning systems, countermeasures dispensing systems, aircraft cockpit enhancements, acoustic receiver and processor system, missile warning and missile countermeasures dispensing systems, data management system, spare and repairs parts, support equipment, personnel training and training equipment, publications and technical data, system software development and installation, ground/flight testing of new systems and system modifications, U.S. Government and contractor engineering and logistics services and other related elements of program support. The estimated cost is \$200 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of the Netherlands and further weapon system standardization and interoperability with U.S. forces.

After modification and upgrade, the Netherlands will use these aircraft to enhance the surveillance, anti-submarine and anti-surface warfare capabilities of its maritime forces. The Netherlands intends to operate the upgraded P-3 aircraft in a similar manner to its current P-3C Update II.5 aircraft. The Netherlands will have no difficulty absorbing these upgraded aircraft into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Lockheed Martin Tactical Defense Systems of St. Paul, Minnesota. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this proposed sale may require the temporary assignment of U.S. Government representatives for one week intervals twice annually to participate in program management and technical reviews. There will be up to five contractor representatives for one year to the Netherlands.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

## Transmittal No. 00-26

**Notice of Proposed Issuance of Letter of Offer  
Pursuant to Section 36(b)(1)  
of the Arms Export Control Act**

**Annex  
Item No. vi**

(vi) Sensitivity of Technology:

1. Royal Netherlands Navy P-3C Warfare (ASW) aircraft Upgrade Program will include installation/modification of the following systems. These systems are classified Secret when special software is installed:

a. AN/AAR-47 Missile Warning System (MWS) is composed of six weapon replaceable assemblies, including one control indicator, one processor, and four optical sensor converters (OSCs). The MWS is designed to detect infrared guided missiles; provide a countermeasure dispenser command to the ALE-47; and provide aural/visual warning to the aircrew. The MWS OSC contains critical manufacturing technology which involves sensitive production methods. The MWS software, when installed, is Secret. The documentation is unclassified.

b. AN/ALE-47 Counter Measures Dispensing System automatically dispenses chaff, flares, and radio frequency decoys in response to threats detected by the AAR-47 MWS. Since the threat processing algorithm resident in the programmer involves sensitive threat vulnerabilities and tactics software, the AN/ALE-47 is considered Secret. System operating manuals and maintenance documentation are unclassified.

c. OASIS III is a tactical data processing system used as a controller and interface for satellite communications systems, such as USC-42(V)2 Mini-DAMA and OZ-72(V) Multi-mission Advanced Tactical Terminal (MATT). OASIS III is a standard INTEL computer chip based commercial-off-the-shelf (COTS)/non-development item (NDI) processor with a removable hard drive. OASIS III software is Joint Tactical Information Command (JTIC) certified. OASIS III software is sensitive due to the architecture and protocols. Technical data relating to software object and source codes is classified Secret.

d. Mini-DAMA USC-42(V)2 is a demand assigned multiple access SATCOM radio. The hardware is unclassified. Software control through the OASIS III is unclassified. The USC-42(V)2 includes Have Quick II capability which increases the radio classification to Secret.

e. APS-137B(V)5 radar is a multi-mode capable of periscope detection, weather avoidance, coastal mapping, surface search and radar imaging in both Inverse Synthetic Aperture Radar (ISAR) and Synthetic Aperture Radar (SAR) modes. ISAR and SAR modes permit long range classification of moving and stationary ship and land based objects. The maximum classification level is Secret.

**f. AIC-41 Intercommunications System provides digital communications capability among the aircraft crew members and enables both secure and non-secure external radios communications. This system is unclassified.**

**g. AN/ALR-66C(V)3 Electronic Sensor Measures (ESM) system enables the interception and identification of radio frequency emitters. The system is unclassified, however, inclusion of a threat parameter library increases the classification of the ALR-66C(V)3 to Secret. Associated documentation is unclassified.**

**h. ASQ-227 Data Processing and Digital Computer Systems (DP/DCS) enables the integration of the aircraft navigation, communication, acoustic, non-acoustic ordnance and armament systems. This system is classified as Secret.**

**i. USQ-78B Acoustic Display and Control System facilitates the display, processing and classification of sonobuoy detected acoustic signals. This system is classified as Secret.**

**j. ARR-78 Advance Sonobuoy Communication Link (ASCL) is a 99 channel receiver integrated to route sonobuoy signals to the USQ-78B Acoustic Display and Control System. This equipment is classified as Confidential.**

**2. Compromise of this technology to a technologically advanced or competent adversary could reveal performance specification and/or capabilities that could assist hostile forces in countering these systems.**

**3. A determination has been made that the recipient country can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.**

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

[Transmittal No. 00-27]

**36(b)(1) Arms Sales Notification**

**AGENCY:** Department of Defense, Defense Security Cooperation Agency.

**ACTION:** Notice.

---

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104-164 dated 21 July 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. J. Hurd, DSCA/COMPT/RM, (703) 604-6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00-27 with attached transmittal and policy justification.

Dated: February 8, 2000.

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

**BILLING CODE 5001-10-M**



## DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

**2 FEB 2000**  
**In reply refer to:**  
**I-00/000137**

**Honorable J. Dennis Hastert**  
**Speaker of the House of**  
**Representatives**  
**Washington, D.C. 20515-6501**

**Dear Mr. Speaker:**

**Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-27, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Israel for design and construction services estimated to cost \$200 million. Soon after this letter is delivered to your office, we plan to notify the news media.**

**Sincerely,**

A handwritten signature in black ink, appearing to read "Edward W. Ross", with a long horizontal flourish extending to the right.

**Edward W. Ross**  
**Acting Director**

**Attachments**

**Same ltr to: House Committee on International Relations**  
**Senate Committee on Appropriations**  
**Senate Committee on Foreign Relations**  
**House Committee on National Security**  
**Senate Committee on Armed Services**  
**House Committee on Appropriations**

**Transmittal No. 00-27****Notice of Proposed Issuance of Letter of Offer  
Pursuant to Section 36(b)(1)  
of the Arms Export Control Act**

- (i) **Prospective Purchaser: Israel**
- (ii) **Total Estimated Value:**  
**Major Defense Equipment\* \$ 0 million**  
**Other \$ 200 million**  
**TOTAL \$ 200 million**
- (iii) **Description of Articles or Services Offered: This case provides for the construction of two infantry training bases and a storage and logistics base for a reserve armored division. The planning, design, acquisition, construction administration, and management for these construction projects will be provided by the U.S. Army Corps of Engineers.**
- (iv) **Military Department: Army (HAC)**
- (v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**
- (vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none**
- (vii) **Date Report Delivered to Congress: 2 FEB 2000**

\* as defined in Section 47(6) of the Arms Export Control Act.

## **POLICY JUSTIFICATION**

### **Israel - Planning, Design, and Construction Services**

**The Government of Israel (GOI) has requested a possible sale for defense services for the construction of two infantry training bases and a storage and logistics base for a reserve armored division. The U.S. Army Corps of Engineers will provide planning, design, acquisition, construction administration, and management services for this program. The estimated cost is \$200 million.**

**The construction of the proposed bases is part of United States assistance to Israel in support of the Wye River Memorandum, a Middle East Peace agreement signed on October 23, 1998 (hereafter referred to as the "Wye River Accords").**

**This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.**

**The implementation of the Wye River Accords necessitates that certain Israeli Defense Forces military facilities, along with their respective units, be relocated from occupied territory in the West Bank. By providing military facilities in Israel, the proposed sale of defense construction services will assist the GOI in relocating military units from occupied territory. As the proposed sale will provide only facilities for relocating military units, it should have no adverse impact on the regional military balance.**

**The military facilities to be constructed under the terms of the proposed sale are needed to provide facilities for military units being relocated under the terms of the Wye River Accords. The proposed sale partially implements United States commitments made to Israel in connection with the Wye River Accords.**

**The identity and location of the prime or principal contractor(s) has not been determined. There are no offset agreements proposed in connection with this potential sale.**

**Implementation of this proposed sale will require the assignment of 20 U.S. Government representatives to Israel for three years. The number of contractor representative required in-country to support the program will be determined after prime or principal contractor(s) has been determined.**

**There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.**

**DEPARTMENT OF DEFENSE****Office of the Secretary****Meeting of the Advisory Panel To Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction**

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the schedule and summary agenda for the next meeting of the Panel to Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction. While a small portion of the meeting will be open to the public, the bulk of the meeting will be closed due to the need to discuss classified information, consistent with 5 U.S.C. Appendix II, Section 10(d) and 5 U.S.C. 552b(c)(1). Notice of this meeting is required under the Federal Advisory Committee Act. (Pub. L. 92-463).

**DATE:** March 29, 2000.

**ADDRESS:** The Pentagon, Room 2E 527, Washington, DC.

**PROPOSED SCHEDULE AND AGENDA:** Panel to Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction will meet in closed session from 9:00 a.m. until 4:45 p.m. on March 29, 2000. The meeting will be open for public from 4:45 p.m. until 5:00 p.m. The closed portion of the meeting will include classified briefings on the threat of domestic WMD terrorist attacks and on response capabilities. Time will be allocated as noted for public comments by individuals or organizations.

**FOR FURTHER INFORMATION:** RAND provides information about this Panel on its web site at <http://www.rand.org/organization/nsrd/terrpanel>; it can also be reached at (202) 296-5000 extension 5282. Public comment presentations will be limited to two minutes each and must be provided in writing prior to the meeting. Mail written presentations and requests to register to attend the open public session to: Priscilla Schlegel, RAND, 1333 H Street, NW, Washington, DC 20005. Public seating for this meeting is limited, and is available on a first-come, first-served basis.

Dated: February 8, 2000.

**L.M. Bynum,**

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

[FR Doc. 00-3417 Filed 2-14-00; 8:45 am]

BILLING CODE 5001-10-M

**DEPARTMENT OF DEFENSE****Department of the Air Force****Proposed Collection; Comment Request**

**AGENCY:** United States Air Force (USAF) Museum System; DoD.

**ACTION:** Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the United States Air Force Museum System announces the proposed revision of a currently approved public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by April 17, 2000.

**ADDRESSES:** Written comments and recommendations on the proposed information collection should be sent to the United States Air Force Museum, 1100 Spatz Street, Wright-Patterson AFB, OH 45433-7192, ATTN: Ms. Bonnie Holtmann, Volunteer Services Administrator.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call the Volunteer Services Office at (937) 255-8099, extension 313.

*Title, Associated Form, and OMB Number:* USAF Museum System Volunteer Application/Registration, Air Force Form (AF) 3569, September 1997, OMB Number 0701-0127.

*Needs and Uses:* The information collection requirement is necessary to provide: (a) the general public an instrument to interface with the USAF Museum System Volunteer Program; (b) the USAF Museum System the means with which to select respondents pursuant to the USAF Museum System Volunteer Program. The primary uses of the information collection includes the evaluation and placement of

respondents within the USAF Museum System Volunteer Program.

*Affected Public:* General population civilian, active and retired military individuals.

*Annual Burden Hours:* 68 hours.

*Number of Respondents:* 271 per annum.

*Responses per Respondent:* 1.

*Average Burden per Response:* 15 minutes.

*Frequency:* One time only.

**SUPPLEMENTARY INFORMATION:****Summary of Information Collection**

Respondents are individuals expressing an interest in participating in the USAF Museum System Volunteer Program authorized by 10 U.S.C. 81, Section 1588 and regulated by Air Force Instruction (AFI) 84-103. AFI 84-103, paragraph 3.5.3 requires the use of AF Form 3569. AF Form 3569 provides the most expedient means to secure basic personal information (i.e., name, telephone number, address and experience pursuant to USAF Museum System Volunteer Program requirements) to be employed solely by the USAF Museum System Volunteer Program to recruit, evaluate and make work assignment decisions. AF Form 3569 is the only instrument that exists which facilitates this purpose. The USAF Museum Volunteer Program is an integral function in the operation of the USAF Museum System. Volunteers provide valuable time, incalculable talent, skill and knowledge of USAF aviation history so that all visitors to the many USAF Museum System facilities throughout the United States may enjoy the important contribution of USAF historical heritage.

**Janet A. Long,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 00-3427 Filed 2-14-00; 8:45 am]

BILLING CODE 5001-05-U

**DEPARTMENT OF DEFENSE****Department of the Air Force****Air University Board of Visitors Meeting**

The Air University Board of Visitors will hold an open meeting on April 16-19, 2000, with the first business session beginning at 8:00 a.m. in the Air University Conference Room at Headquarters Air University, Maxwell Air Force Base (AFB), Alabama (5 seats available).

The purpose of the meeting is to give the board an opportunity to review Air University educational programs and to present to the Commander, a report of

their findings and recommendations concerning these programs.

For further information on this meeting, contact Dr. Dorothy Reed, Chief of Academic Affairs, Air University Headquarters, Maxwell AFB, Alabama 36112-6335, (334) 953-5159.

**Janet A. Long,**

*Air Force Federal Register Liaison Officer.*  
[FR Doc. 00-3426 Filed 2-14-00; 8:45 am]  
BILLING CODE 5001-05-U

## DEPARTMENT OF DEFENSE

### Department of the Air Force

#### Air Force Institute of Technology (AFIT) Subcommittee of the Air University Board of Visitors Meeting

The AFIT Subcommittee of the Air University Board of Visitors will hold an open meeting on March 26-28, 2000, with the first business session beginning at 8:30 a.m. in the Commandant's Conference Room, Building 125, Wright-Patterson Air Force Base (AFB), Ohio (5 seats available).

The purpose of the meeting is to give the board an opportunity to review AFIT's educational programs and to present to the Commandant a report of their findings and recommendations concerning these programs.

For further information on this meeting, contact Ms. Beverly Houtz, Directorate of Resources, Air Force Institute of Technology, Wright-Patterson AFB, Ohio 45433, (937) 255-5760.

**Janet A. Long,**

*Air Force Federal Register Liaison Officer.*  
[FR Doc. 00-3428 Filed 2-14-00; 8:45 am]  
BILLING CODE 5001-05-U

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before April 17, 2000.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early

opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 9, 2000.

**William Burrow,**

*Leader, Information Management Group,  
Office of the Chief Information Officer.*

#### Office of Postsecondary Education

*Type of Review:* New.

*Title:* Learning Anytime Anywhere Partnerships (LAAP) Annual Progress Report Guidelines.

*Frequency:* Annually.

*Affected Public:* Not-for-profit institutions; Individuals or households; State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

Responses: 29.

Burden Hours: 580.

*Abstract:* These guidelines instruct LAAP grantees on how to organize and describe the progress of their projects over the past year so that Federal administrators can evaluate progress and approve or disapprove continuation of the projects for the coming year.

Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202-4651. Requests may also be electronically mailed to the internet address OCIO\_IMG\_Issues@ed.gov or faxed to 202-708-9346.

Written comments or questions regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708-9266 or via his internet address Joe\_Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 00-3441 Filed 2-14-00; 8:45 am]  
BILLING CODE 4000-01-P

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before March 16, 2000.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office

of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: February 9, 2000.

**William Burrow,**

*Leader, Information Management Group,  
Office of the Chief Information Officer.*

### Office of Educational Research and Improvement

*Type of Review:* Revision.

*Title:* Integrated Postsecondary Education Data System (IPEDS), Introduction to the Web-Based Collection on Institutional Price and Student Financial Aid and Modifications to the 2000–2002 Data Collection Items.

*Frequency:* Annually, Biennially.

*Affected Public:* Businesses or other for-profit; Not-for-profit institutions.  
*Reporting and Recordkeeping Hour Burden:*

Responses: 9,850.

Burden Hours: 202,636.

*Abstract:* IPEDS is a system of surveys designed to collect basic data from approximately 10,000 postsecondary institutions in the United States. The IPEDS provides information on numbers of students enrolled, degrees completed, other awards earned, dollars expended, staff employed at postsecondary institutions, and cost and pricing information. The amendments to the Higher Education Act of 1998, Part C, Sec. 131, specify the need for the “redesign of relevant data systems to improve the usefulness and timeliness of the data collected by such systems.” As a consequence, in 2000 the IPEDS is proposing a web-based data collection for all items previously collected via paper forms from Title IV eligible institutions.

Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO—IMG—Issues@ed.gov or faxed to 202–708–9346.

Questions regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (703) 426–9692 or via her internet address [Kathy\\_Axt@ed.gov](mailto:Kathy_Axt@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–3440 Filed 2–14–00; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Rocky Flats

**AGENCY:** Department of Energy.

**ACTION:** Notice of Open Meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATE:** Thursday, March 2, 2000; 6:00 p.m.–9:30 p.m.

**ADDRESS:** College Hill Library (Front Range Community College), 3705 West 112th Avenue, Westminster, CO.

**FOR FURTHER INFORMATION CONTACT:** Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855; fax (303) 420–7579.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

*Tentative Agenda:*

1. Update from the Environmental Protection Agency
2. Board comments on Rocky Flats closure plan assumptions
3. Discussion of DOE and Kaiser-Hill revised contract
4. Presentation on controlled burns at Rocky Flats

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above.

Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is

empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

*Minutes:* The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board’s office at 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operation for the Public Reading Room are 9:00 a.m. to 4:00 p.m. Monday through Friday. Minutes will also be made available by writing or calling Deb Thompson at the address or telephone number listed above.

Issued at Washington, DC on February 10, 2000.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 00–3551 Filed 2–14–00; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Office of Science; High Energy Physics Advisory Panel

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the High Energy Physics Advisory Panel (HEPAP). 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:** Thursday, March 9, 2000; 9:00 a.m. to 6:00 p.m. and Friday, March 10, 2000; 9:00 a.m. to 4:00 p.m.

**ADDRESSES:** Fermi National Accelerator Laboratory, Wilson Hall, First Floor 1 North and 1 West, Batavia, Illinois 60510.

**FOR FURTHER INFORMATION CONTACT:** John E. Metzler, Executive Secretary; High Energy Physics Advisory Panel; U.S. Department of Energy; 19901 Germantown Road; Germantown, Maryland 20874–1290; Telephone: 301–903–2979.

**SUPPLEMENTARY INFORMATION:**

*Purpose of Meeting:* To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

*Tentative Agenda:* Agenda will include discussions of the following:  
Thursday, March 9, 2000, and Friday, March 10, 2000.

- Discussion of Department of Energy High Energy Physics Programs
- Discussion of National Science Foundation Elementary Particle Physics Program
- Report on Fermi National Accelerator Laboratory Programs
- Discussion of High Energy Physics University Programs
- Reports on and Discussion of U.S. Large Hadron Collider Activities
- Reports on and Discussions of Topics of General Interest in High Energy Physics
- Public Comment (10-minute rule)

*Public Participation:* The meeting is open to the public. If you would like to file a written statement with the Panel, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact John E. Metzler at 301-903-5079 (fax) or john.e.metzler@science.doe.gov (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Panel will conduct

the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

*Minutes:* The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; Room 1E-190; Forrestal Building; 1000 Independence Avenue, S.W.; Washington, D.C., between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on February 10, 2000.

**Rachel M. Samuel,**  
*Deputy Advisory Committee Management Officer.*

[FR Doc. 00-3550 Filed 2-14-00; 8:45 am]  
BILLING CODE 6450-01-P

**DEPARTMENT OF ENERGY**

[FE Docket Nos. 86-53-NG, 00-03-NG; 99-58-NG; 99-59-NG; 99-93-LNG; 98-81-NG; 00-01-NG; and 00-04-NG]

**Office of Fossil Energy; Wessely Marketing Corporation, et al.; Orders Granting, Amending and Vacating Authorizations To Import and Export Natural Gas, Including Liquefied Natural Gas**

AGENCY: Office of Fossil Energy, DOE.

**ACTION:** Notice of Orders.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued Orders granting, amending and vacating natural gas, including liquefied natural gas, import and export authorizations.

These Orders are summarized in the attached appendix and may be found on the FE web site at <http://www.fe.doe.gov>, or on the electronic bulletin board at (202) 586-7853. They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E-033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on February 9, 2000.

**John W. Glynn,**  
*Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.*

**Appendix—Orders Granting, Amending and Vacating Import/Export Authorizations**

DOE/FE AUTHORITY

Order No.	Date Issued	Importer/Exporter FE Docket No.	Import Volume	Export Volume	Comments
156-A	01-07-00	Wessely Marketing Corporation 86-53-NG.			Vacate blanket authorization.
156	01-18-00	Poco Petroleum, Inc. 00-03-NG.	250	250	Import from Canada over a two year term beginning on the date of first delivery after January 21, 2000
1510-A	01-18-00	El Paso Merchant Energy-Gas, L.P. (Formerly El Paso Energy Marketing Company) 99-58-NG.			Name change.
1509-A	01-18-00	El Paso Merchant Energy-Gas, L.P. (Formerly El Paso Energy Marketing Company) 99-59-NG.			Name change.
1549-A	01-21-00	El Paso Merchant Energy-Gas, L.P. (Successor to Sonat Energy Services Company) 99-93-LNG.			Transfer of long-term LNG import authority.
1427-A	01-21-00	Interenergy Resources Corporation 98-81-NG.			Vacate blanket authority.

Order No.	Date Issued	Importer/Exporter FE Docket No.	Import Volume	Export Volume	Comments
1564	01-21-00	Texaco Energy Marketing L.P. 00-01-NG.	75 Bcf		Import from Canada over a two-year term beginning on the date of first delivery
1565	01-21-00	USGen New England, Inc. 00-04-NG.	47.5 Bcf		Import from Canada over a two-year term beginning on February 1, 2000, and extending through January 31, 2002.

[FR Doc. 00-3549 Filed 2-14-00; 8:45 am]  
BILLING CODE 6450-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP00-34-000]

#### Algonquin Gas Transmission Company; Notice of Site Visit

February 9, 2000.

On February 16, 2000 the Office of Pipeline Regulation (OPR) staff will inspect Algonquin Gas Transmission Company's (Algonquin) proposed route and potential alternative routes for the Fore River Project in Norfolk County, Massachusetts. The areas will be inspected by automobile. Representatives of Algonquin will accompany the OPR staff. Anyone interested in participating in the site visits must provide their own transportation.

For additional information, contact Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208-1088.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00-3463 Filed 2-14-00; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER00-605-000]

#### Central Maine Power Company, Notice of Filing

February 9, 2000.

Take notice that on January 19, 2000, Central Maine Power Company (CMP or Central Maine) provided unredacted copies of a Hydro Quebec Entitlement Agreement (Entitlement Agreement)

between CMP and Select Energy, Inc. (Select), in compliance with the Commission's January 11, 2000 Order Denying A Request for Confidential Treatment.

CMP reiterates its request for a final non-appealable order on or before February 22, 2000.

CMP states that copies of the filing have been sent to Select and the Maine Department of Public Utilities Commission.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before February 18, 2000. Protests will be considered by the Commission to determine 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. This filing may also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00-3462 Filed 2-14-00; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP00-135-001]

#### CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 9, 2000.

Take notice that on February 4, 2000, CNG Transmission Corporation (CNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of January 10, 2000.

Substitute Original Sheet No. 397A  
Substitute Original Sheet No. 397B  
Substitute Original Sheet No. 397C

CNG states that the purpose of this filing is to comply with the Commission's January 7, 2000 letter order in this proceeding. Pursuant to the order, the Commission accepted CNG's tariff filing, effective January 10, 2000, subject to refiling the tariff sheets in conformity with the Commission's letter order.

CNG states that copies of its letter of transmittal and enclosures are being served upon its customers and to interested state commissions.

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).

**Linwood A. Watson, Jr.,**  
*Acting Secretary.*

[FR Doc. 00-3467 Filed 2-14-00; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP00-171-001]

#### Columbia Gulf Transmission Company; Notice of Change in Gas Tariff

February 9, 2000.

Take notice that on February 4, 2000, Columbia Gulf Transmission Company (Columbia Gulf) submitted its administrative tariff filing in Docket No. RP00-171-000. As explained in the transmittal letter, the purpose of this tariff filing was to reflect various administrative revisions to its currently effective FERC Gas Tariff, Second Revised Volume No. 1.

Subsequent to the January 28, 2000 tariff filing, Columbia Gulf Gas learned that one of the tariff sheets that was submitted as part of the filing was included in error. Columbia Gulf respectfully requests permission from the Commission to withdraw Tariff Sheet No. 216 from Columbia Gulf's January 28, 2000 administrative tariff filing. Columbia Gulf further requests that the Commission accept the remaining tariff sheets as filed and place these tariff sheets into effect as of March 1, 2000, as requested in the January 28, 2000 filing.

Columbia Gulf states further that copies of this filing have been mailed to all of its customers and affected state regulatory commissions.

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).

**Linwood A. Watson, Jr.,**  
*Acting Secretary.*

[FR Doc. 00-3468 Filed 2-14-00; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. MG99-27-001, MG99-28-001, MG99-29-001 and MG99-30-001]

#### Panhandle Eastern Pipeline Company, Southwest Gas Storage Company, Trunkline Gas Company and Trunkline LNG Company; Notice of Filing

February 9, 2000.

Take notice that on January 21, 2000, Panhandle Eastern Pipeline Company, Trunkline Gas Company, Trunkline LNG Company and Southwest Gas Storage Company each filed revised standards of conduct in response to the Commission's December 22, 1999 order.<sup>1</sup>

Each company states that it has served copies of its filing to each of its affected customers and state commissions.

Any person desiring to be heard or to protest said filings should file a motion to intervene or a protest in each proceeding with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before February 24, 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 these filings are on file with the Commission and are available for 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).

**Linwood A. Watson, Jr.,**  
*Acting Secretary.*

[FR Doc. 00-3464 Filed 2-14-00; 8:45 am]

BILLING CODE 6717-01-M

<sup>1</sup>89 FERC ¶ 61,315 (1999).

## DEPARTMENT OF ENERGY

### FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. EC00-49-000, et al.]

#### Consolidated Edison, Inc. and Northeast Utilities, et al. Electric Rate and Corporate Regulation Filings

February 8, 2000.

Take notice that the following filings have been made with the Commission:

##### 1. Consolidated Edison, Inc. and Northeast Utilities

[Docket No. EC00-49-000]

Take notice that on February 2, 2000, Consolidated Edison, Inc. and Northeast Utilities filed an amendment to their Joint Application of the Jurisdictional Subsidiaries for Approval of Mergers filed on January 14, 2000.

*Comment date:* March 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

##### 2. Black River Limited Partnership

[Docket No. EC00-53-000]

Take notice that on January 31, 2000, pursuant to section 203 of the Federal Power Act (FPA), 16 U.S.C. 824b (1998) and Part 33 of the Regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR 33 et seq., Black River Limited Partnership (Applicant) filed an application for Commission approval of the sale and lease transactions with respect to the transmission facilities and books, records, and accounts associated with the sale and leasing of the Ft. Drum Project, located at the Ft. Drum Army Base near Watertown, New York. Applicant requests that the Commission grant any other authorizations necessary to effectuate the proposed transactions.

Applicant also has requested that the Commission find that it will no longer be deemed to be a "public utility" as such term is defined under section 201 of the FPA upon consummation of the sale and lease transactions. Applicant has requested a shortened notice period and expedited consideration of the application.

*Comment date:* March 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

##### 3. Duquesne Light Company, and Orion Power MidWest, LLC

[Docket Nos. EC00-54-000 and ER00-1490-000]

Take notice that on February 2, 2000, Duquesne Light Company and Orion Power MidWest, LLC (Orion Power MidWest) (collectively, Applicants)

submitted for filing a joint application (Application) requesting authorization under section 203 of the Federal Power Act to transfer certain jurisdictional transmission facilities from Duquesne to Orion Power MidWest. The Applicants also submitted for filing a under section 205 of the Federal Power Act a Provider of Last Resort Agreement, Must-Run Agreements, and Connection and Site Agreements. The transfer of jurisdictional transmission facilities and the Agreements are related to Duquesne's divestiture of all of its electric generating plants to Orion Power MidWest. The Applicants request expeditious action on the Application in order that there be no delay in the transaction.

A copy of the Application was served upon the Pennsylvania Public Utility Commission and the Public Utilities Commission of Ohio.

*Comment date:* March 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

#### **4. CP&L Holdings, Inc., on Behalf of its Public Utility Subsidiaries and Florida Progress Corporation on Behalf of its Public Utility Subsidiaries**

[Docket Nos. EC00-55-000 and ER00-1520-000]

Take notice that on February 3, 2000, CP&L Holdings, Inc. and Florida Progress Corporation on behalf of themselves and their FERC-jurisdictional subsidiaries (collectively, the "Applicants") tendered for filing pursuant to Sections 203 and 205 of the Federal Power Act and the Federal Energy Regulatory Commission's regulations thereunder a Joint Application For Authorization to Merge Facilities and Related Transactions. The Applicants have requested that a Commission order authorizing the merger as proposed by the Applicants be issued no later than June 30, 2000.

The Applicants also tendered for filing the following agreements, each of which is proposed to become effective upon consummation of the merger:

A Joint Open Access Transmission Tariff of Carolina Power & Light Company (CP&L) and Florida Power Corporation (FPC), pursuant to which transmission services will be supplied over their combined transmission facilities at non-pancaked rates.

A System Integration Agreement between CP&L and FPC, pursuant to which the electric utility operations of the combined system will be coordinated for the purposes of attaining efficiencies and economies.

The merger is structured so that Florida Progress Corporation will

become a wholly-owned subsidiary of CP&L Holdings, Inc. CP&L and FPC will each retain their own identities as public utilities and their current service territories.

The Applicants state that they have submitted the information required by Part 33 of the Commission's Regulations, 18 CFR Part 35, and the Commission's Merger Policy Statement, Order No. 592, III FERC Stats. & Regs. ¶ 31,044 (1996), *reconsid. denied*, 79 FERC ¶ 61,321 (1997) (codified at 18 CFR 2.26) and in 18 CFR Part 35 in support of the Application. Applicants represent that copies of the Application and related testimony and exhibits have been served by overnight delivery on each of CP&L's and FPC's wholesale requirements customers and on the North Carolina Utilities Commission, the South Carolina Public Service Commission, and the Florida Public Service Commission. Letters notifying other parties likely to be interested in the Application have also been sent by overnight mail.

*Comment date:* April 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

#### **5. Louisiana Generating LLC**

[Docket No. EG00-89-000]

On February 3, 2000, Louisiana Generating LLC filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). The applicant is a limited liability company organized under the laws of the State of Delaware that will be engaged directly and exclusively in owning and operating eligible facilities and selling electric energy at wholesale. Applicant will be acquiring from Cajun Electric Power Cooperative gas and coal-fired generating units with a total generating capacity of 1,711 MW, located in New Roads, Louisiana.

*Comment date:* February 29, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

#### **6. Bonnie Mine Energy, LLC**

[Docket No. EG00-90-000]

Take notice that on February 3, 2000, Bonnie Mine Energy, LLC filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of

1935. The applicant is a limited liability company organized under the laws of the State of Delaware that is engaged directly and exclusively in developing, owning, and operating an approximately 800 MW gas-fired combined-cycle power plant in Polk County, Florida, which will be an eligible facility.

*Comment date:* February 29, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

#### **7. PJM Interconnection, L.L.C.**

[Docket No. EL00-42-000]

Take notice that on February 1, 2000, PJM Interconnection, L.L.C. (PJM) filed, with respect to PECO Energy Company and PP&L Inc., a Petition for Order Directing Production of Information or Extending Reporting Date, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, and Section VI.B.2 of the Commission-approved PJM Market Monitoring Plan.

*Comment date:* February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

#### **8. UtiliCorp United Inc. v. City of Harrisonville, Missouri**

[Docket No. EL00-43-000]

Take notice that on February 7, 2000, UtiliCorp United Inc. d/b/a Missouri Public Service (MPS), tendered for filing a complaint against the City of Harrisonville, Missouri. The complaint requests that the Commission (1) order Harrisonville to pay in full promptly the \$95,324.86 billed by MPS for the fuel adjustment charge for July 1999, and (2) confirm that MPS is within its rights to suspend service to Harrisonville if the city fails to make timely payment to MPS of the amounts owed.

*Comment date:* February 17, 2000, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint shall be due on or before February 17, 2000.

#### **9. Boston Edison Company**

[Docket No. ER93-150-016]

Take notice that on January 31, 2000, Boston Edison Company filed a compliance refund report and rate schedule revision pursuant to the Commission's January 14, 2000 order in the above-captioned proceeding.

*Comment date:* February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**10. Russell Energy Services Company, Tri-Valley Corporation, Community Electric Power Corporation, Amerada Hess Corporation, Coast Energy Group, Novarco Ltd., Northeast Electricity Inc., Trident Energy Marketing, Inc., The Legacy Energy Group, LLC, Energy Resource Marketing Inc., Enerserve, L.C., Fina Energy Services Company, Elwood Marketing LLC, Genstar Energy, L.L.C., Shamrock Trading, LLC**

[Docket Nos. ER96-2882-013, ER97-3428-007, ER97-2792-009, ER97-2153-010, ER99-3005-002, ER98-4139-005, ER98-3048-004, ER99-2069-001, ER99-1719-000, and ER99-3571-002, ER94-1580-021, ER96-182-017, ER97-2413-011, ER99-1465-004, ER99-2364-003, ER98-3526-006]

Take notice that on January 24, 2000, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

**11. Tampa Electric Company**

[Docket No. ER00-801-000]

Take notice that on February 2, 2000, Tampa Electric Company (Tampa Electric), tendered for filing amendments to several of the tariff sheets that were tendered with its initial filing in this docket for inclusion in its open access transmission tariff.

Tampa Electric continues to request that the tariff sheets be made effective on February 14, 2000.

*Comment date:* February 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**12. 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 February 2, 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 substitute sheets reflecting changes previously accepted by the Commission in Orders dated April 6, 1999, Docket Nos. ER96-58-002 and ER99-237-001 and July 14, 1999, Docket Nos. ER96-58-004 and ER99-237-003.

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 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**13. Middletown Power LLC**

[Docket No. ER00-1373-000]

Take notice that on January 31, 2000, Middletown Power LLC, tendered for filing under its market-based rate tariff a long-term service agreement with NRG Power Marketing, Inc.

*Comment date:* February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**14. Montville Power LLC**

[Docket No. ER00-1374-000]

Take notice that on January 31, 2000, Montville Power LLC tendered for filing under its market-based rate tariff a long-term service agreement with NRG Power Marketing, Inc.

*Comment date:* February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**15. Norwalk Power LLC**

[Docket No. ER00-1375-000]

Take notice that on January 31, 2000, Norwalk Power LLC, tendered for filing under its market-based rate tariff a long-term service agreement with NRG Power Marketing, Inc.

*Comment date:* February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**16. Devon Power LLC**

[Docket No. ER00-1376-000]

Take notice that on January 31, 2000, Devon Power LLC, tendered for filing under its market-based rate tariff a long-term service agreement with NRG Power Marketing, Inc.

*Comment date:* February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**17. Connecticut Jet Power LLC**

[Docket No. ER00-1377-000]

Take notice that on January 31, 2000, Connecticut Jet Power LLC, tendered for filing under its market-based rate tariff a long-term service agreement with NRG Power Marketing, Inc.

*Comment date:* February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**18. Ameren Services Company**

[Docket No. ER00-1381-000]

Take notice that on January 31, 2000, Ameren Services Company (ASC), tendered for filing an unexecuted Network Integration Transmission Service Agreement and associated Network Operating Agreement, between ASC and Citizens Electric Corporation.

ASC asserts that the purpose of the agreements are to permit ASC to provide service over its transmission and distribution facilities to Citizens Electric Corporation pursuant to the Ameren Open Access Tariff.

*Comment date:* February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**19. Virginia Electric and Power Company**

[Docket No. ER00-1382-000]

Take notice that on January 31, 2000, Virginia Electric and Power Company (Virginia Power), tendered for filing the Service Agreement between Virginia Electric and Power Company and MidAmerican Energy Company. Under the Service Agreement, Virginia Power will provide services to MidAmerican Energy Company under the terms of the Company's Revised Market-Based Rate Tariff designated as FERC Electric Tariff (Second Revised Volume No. 4), which was accepted by order of the Commission dated August 13, 1998 in Docket No. ER98-3771-000.

Virginia Power requests an effective date of January 31, 2000.

Copies of the filing were served upon MidAmerican Energy Company, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

*Comment date:* February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**20. The United Illuminating Company**

[Docket No. ER00-1390-000]

Take notice that on January 31, 2000, The United Illuminating Company (UI) tendered for filing a Service Agreement dated January 1, 2000, between UI and Wisvest-Connecticut L.L.C. (Wisvest), for firm point-to-point transmission service under UI's Open Access Transmission Tariff, FERC Electric Tariff, Original Volume No. 4, as amended. UI also filed Amendment No. 1 to the April 16, 1999 Interconnection Agreement between UI and Wisvest, also dated January 1, 2000.

UI requests an effective date of January 1, 2000 and has therefore requested that the Commission waive its 60-day prior notice requirement.

Copies of the filing were served upon the Contract Administrator, Wisvest-Connecticut L.L.C. and Robert J. Murphy, Executive Secretary, Connecticut Department of Public Utility Control.

*Comment date:* February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**21. New England Power Pool**

[Docket No. ER00-1391-000]

Take notice that on January 31, 2000, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance a signature page to the New England Power Pool Agreement dated September 1, 1971, as amended, signed by Enron Energy Services, Inc. (EESI). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that the Commission's acceptance of EESI's signature page would permit NEPOOL to expand its membership to include EESI. The Participants Committee further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make EESI a member in NEPOOL.

The Participants Committee requests an effective date of April 1, 2000, for commencement of participation in NEPOOL by EESI.

*Comment date:* February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**22. New England Power Pool**

[Docket No. ER00-1394-000]

Take notice that on January 31, 2000, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance a signature page to the New England Power Pool Agreement dated September 1, 1971, as amended, signed by the Town of Wiscasset (Wiscasset). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that the Commission's acceptance of Wiscasset's signature page would permit NEPOOL to expand its membership to include Wiscasset. The Participants Committee further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Wiscasset a member in NEPOOL.

The Participants Committee requests an effective date of February 1, 2000, for commencement of participation in NEPOOL by Wiscasset.

*Comment date:* February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**23. Indianapolis Power & Light Company**

[Docket No. ER00-1397-000]

Take notice that on January 31, 2000, pursuant to Section 35.15(a), 18 CFR 35.15(a) of the Commission's Regulations, Indianapolis Power & Light Company (IPL) filed with the Federal Energy Regulatory Commission a Notice of Termination of the Interchange

Agreement between IPL and LG& Power Marketing, Inc., effective March 1, 1996, designated as IPL Rate Schedule FERC No. 29.

Additionally, pursuant to Section 35.15 (a) of the Commission's Regulations, IPL requests an effective date for this termination of May 1, 2000.

*Comment date:* February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**24. Indianapolis Power & Light Co.**

[Docket No. ER00-1398-000]

Take notice that on January 31, 2000, pursuant to Section 35.15(a), 18 CFR 35.15(a) of the Commission's Regulations, Indianapolis Power & Light Company (IPL) tendered for filing with the Federal Energy Regulatory Commission Notice of Termination of the Interchange Agreement between IPL and Catex Vitol Electric LLC, effective March 1, 1996, designated as IPL Rate Schedule FERC No. 31.

Additionally, pursuant to Section 35.15 (a) of the Commission's Regulations, IPL requests an effective date for this termination of May 1, 2000.

*Comment date:* February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**25. Minnesota Power, Inc.**

[Docket No. ER00-1399-000]

Take notice that on January 31, 2000, Minnesota Power, Inc. (Minnesota Power), tendered for filing an addendum to certain Agreements with Alliant Energy that would permit the incremental cost of sulfur dioxide (SO<sub>2</sub>) emissions allowances to be included in the calculation of Minnesota Power's rates under the coordination rate schedules.

The change is designed to conform the rate schedule to the Commission's rule regarding the ratemaking treatment of SO<sub>2</sub> emissions allowances for Phase II units issued under the Clean Air Act Amendments of 1990.

A copy of the filing was served upon Alliant Energy.

*Comment date:* February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**26. Entergy Services, Inc.**

[Docket No. ER00-1400-000]

Take notice that on January 31, 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 Firm Point-to-Point Transmission Service Agreement

between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Reliant Energy Services, Inc.

*Comment date:* February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**27. American Electric Power Service Corporation**

[Docket No. ER00-1403-000]

Take notice that on January 31, 2000, the American Electric Power Service Corporation (AEPSC), tendered for filing executed Firm and Non-Firm Point-to-Point Transmission Service Agreements for ACN Power, Inc. and Jay County Electric Cooperative, Inc. These agreements are pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT). The OATT has been designated as FERC Electric Tariff Original Volume No. 4, effective July 9, 1996.

AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after January 1, 2000.

AEPSC also tendered for filing an executed supplement to Network Transmission Service (NTS) Agreement No. 116. The supplement modifies the service agreement to include new delivery points requested by WVPA and a load power factor billing provision.

AEPSC requested that West Penn Power firm and non-firm point-to-point Service Agreement Nos. 170 and 168, under AEP Companies' FERC Electric Tariff Original Volume No. 4, accepted for filing in Docket No. ER98-4390-000, effective August 1, 1998, be assigned to Allegheny Energy Supply.

AEPSC also requested termination of AEP Operating Companies Rate Schedule FERC No. 5, filed in Docket No. ER95-219-000, and AEP Companies' FERC Electric Tariff Original Volume No. 1, Service Agreement No. 47, accepted for filing in Docket No. ER96-1313-000. Those agreements are superceded by firm and non-firm Point-to-Point Service Agreements Nos. 231 and 234, under AEP Companies' FERC Electric Tariff Original Volume No. 4. The customer holding those agreements, Dynegy Power Marketing, Inc., has previously executed new agreements.

A copy of the filing was served upon the Parties and the state utility regulatory commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

*Comment date:* February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**28. UAE Lowell Power LLC**

[Docket No. ER00-1405-000]

Take notice that on UAE Lowell LLC (UAE Lowell), tendered for filing a service agreement establishing Southern Company Energy Marketing L.P. (Southern) as a customer under UAE Lowell's Rate Schedule No. 1.

UAE Lowell requests an effective date of January 1, 2000.

UAE Lowell states that a copy of the filing was served on Southern.

*Comment date:* February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**29. Florida Power & Light Company**

[Docket No. ER00-1406-000]

Take notice that on January 31, 2000, Florida Power & Light Company (FPL), tendered for filing proposed service agreements with Cargill-Alliant, 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 Section 35 of the Commission's regulations.

*Comment date:* February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**30. The Detroit Edison Company**

[Docket No. ER00-1407-000]

Take notice that on January 31, 2000, The Detroit Edison Company (Detroit Edison), tendered for filing Service Agreements for wholesale power sales transactions (the Service Agreements) under Detroit Edison's Wholesale Power Sales Tariff (WPS-2), FERC Electric Tariff No. 3 (the WPS-2 Tariff).

*Comment date:* February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**31. Utilimax.com, Inc.**

[Docket No. ER00-1408-000]

Take notice that on January 31, 2000, Utilimax.com, Inc. (Utilimax), petitioned the Commission for acceptance of Utilimax Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Utilimax intends to engage in wholesale electric power and energy purchases and sales as a marketer. Utilimax is not in the business of generating or transmitting electric power.

*Comment date:* February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**32. Wayne-White Counties Electric Cooperative**

[Docket No. ER00-1409-000]

Take notice that Wayne-White Counties Electric Cooperative (WWCEC or Cooperative) on January 31, 2000, tendered for filing an unexecuted Service Agreement for Firm Point-to-Point Transmission Service with Illinois Power Company. Under the Service Agreement, WWCEC will provide firm point-to-point transmission service to Illinois Power Company under the Cooperative's Open Access Transmission Tariff.

WWCEC requests an effective date of January 1, 2000, the date service was first provided.

A copy of the filing was served upon Illinois Power Company.

*Comment date:* February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**33. FirstEnergy Corp.**

[Docket No. ER00-1410-000]

Take notice that on January 31, 2000, FirstEnergy Corp., as agent for its wholly owned subsidiaries, The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company and The Toledo Edison Company, filed an Amendment to the Network Service Agreement between FirstEnergy and American Municipal Power-Ohio, Inc. under the FirstEnergy Open Access Tariff to recover an increase in the Pennsylvania Gross Receipts Tax applicable to certain Pennsylvania Boroughs who obtain transmission service through American Municipal Power-Ohio, Inc. FirstEnergy requests approval under Section 205 of the Federal Power Act for the increase in tax rate to the Boroughs.

*Comment date:* February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**34. Illinois Power Company**

[Docket No. ER00-1411-000]

Take notice that, on January 31, 2000, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62521, tendered for filing an unexecuted Service Agreement for Network Integration Transmission Service and an unexecuted Network Operating Agreement under which Soyland Power Cooperative, Inc., will take transmission service pursuant to Illinois Power's open access transmission tariff (OATT). The

agreements are based on the forms of agreements in Illinois Power's OATT.

Illinois Power has requested an effective date of January 1, 2000.

*Comment date:* February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**35. Illinois Power Company**

[Docket No. ER00-1412-000]

Take notice that, on January 31, 2000, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62521, tendered for filing a firm transmission service agreement under which Dynegy Power Marketing, Inc. will take transmission service pursuant to Illinois Power's open access transmission tariff (OATT). The agreement is based on the form of agreement in Illinois Power's OATT.

Illinois Power has requested an effective date of January 1, 2000.

*Comment date:* February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**36. Pacific Gas and Electric Company**

[Docket No. ER00-1462-000]

Take notice that on February 1, 2000, Pacific Gas and Electric Company (PG&E), tendered for filing an "Generator Special Facilities Agreement" (GSFA) and a "Generator Interconnection Agreement" between PG&E and San Joaquin Cogen Limited" (San Joaquin).

The GSFA permits PG&E to recover the ongoing costs associated with owning, operating and maintaining the Special Facilities. As detailed in the Special Facilities Agreement, PG&E proposes to charge San Joaquin a monthly Cost of Ownership Charge equal to the rate for distribution-level, customer-financed facilities in PG&E's currently effective Electric Rule 2, as filed with the California Public Utilities Commission (CPUC). PG&E's currently effective rate of 0.46% for distribution-level, customer-financed Special Facilities is contained in the CPUC's Advice Letter 1960-G/1587-E, effective August 5, 1996, a copy of which is included as Attachment 3 of this filing. PG&E has requested permission to use automatic rate adjustments whenever the CPUC authorizes a new Electric Rule 2 Cost of Ownership Rate for distribution-level, customer-financed special facilities but caps the rate at 0.65% per month.

Copies of this filing have been served upon San Joaquin and the CPUC.

*Comment date:* February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**37. Orion Power MidWest, LLC**

[Docket No. ER00-1463-000]

Take notice that on February 1, 2000, Orion Power MidWest, LLC, with an office located at c/o Orion Power Holdings, Inc., 7 E. Redwood Street, 10th Floor, Baltimore, Maryland 21202, tendered for filing with the Federal Energy Regulatory Commission (Commission) an application seeking waivers and granting blanket approvals under various Commission regulations and for an order accepting Orion Power MidWest's initial rate schedule, FERC Electric Rate Schedule No. 1.

Orion Power MidWest's acquisition of the Duquesne Light Company's Generating Assets will close on or about May 1, 2000. Orion Power MidWest intends to sell energy and capacity, and certain ancillary services from the Generating Assets at market-based rates. In transactions where Orion Power MidWest sells electric energy, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party.

*Comment date:* February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**38. PJM Interconnection, L.L.C.**

[Docket No. ER00-1465-000]

Take notice that on February 1, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing three executed service agreements for long-term firm point-to-point transmission service under the PJM Open Access Transmission Tariff with Cinergy Power Marketing and Trading for 200 MW (between PJM West Hub and First Energy (CEI)), PECO Energy Power Team for 214 MW (between PECO Energy and Allegheny), and PECO Energy Power Team for 750 MW (between PECO Energy and Virginia Power).

Copies of this filing were served upon the parties to the service agreements.

*Comment date:* February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**39. New York Independent System Operator, Inc.**

[Docket No. ER00-1461-000]

Take notice that on February 1, 2000, the New York Independent System Operator, Inc. (NYISO), tendered for filing (i) an executed copy of the Agreement between the New York Independent System Operator and Transmission Owners, (ii) an executed copy of the Independent System Operator Agreement together with 62 additional signed signature pages to the ISO Agreement, and (iii) an executed

copy of the Agreement between the New York Independent System Operator and the New York State Reliability Council.

The NYISO is not proposing any changes in any of the agreements. Except as otherwise noted, the NYISO requests an effective date of December 1, 1999 and waiver of the Commission's notice requirements.

Copies of this filing were served on the Commission's Service List in Docket Nos. ER97-1523-000 et al., on the parties to the ISO Agreement and on the respective electric utility regulatory agencies in New York, New Jersey and Pennsylvania.

*Comment date:* February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**40. Orion Power MidWest, LLC and FirstEnergy Corp.**

[Docket No. ER00-1460-000]

Take notice that on February 1, 2000, Orion Power MidWest, LLC (Orion Power MidWest) and FirstEnergy Corp. (FirstEnergy), tendered for filing with the Federal Energy Regulatory Commission (Commission) under Section 205 of the Federal Power Act certain jurisdictional agreements providing for services related to Orion Power MidWest's acquisition of generation assets from Duquesne Light Company.

*Comment date:* February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**41. New York Independent System Operator, Inc., Central Hudson Gas & Electric Corp., Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange & Rockland Utilities, Inc., Rochester Gas & Electric Corp.**

[Docket No. ER00-1483-000]

Take notice that on February 1, 2000 the New York Independent System Operator, Inc. (NYISO), tendered for filing a Transitional Installed Capacity market design in the above-referenced proceeding consisting of a series of revisions to the Installed Capacity provisions of the NYISO's Market Administration and Control Area Services Tariff and an accompanying Installed Capacity auction description document.

The NYISO requests an effective date of March 15, 2000.

A copy of this filing was served upon all persons on the Commission's official service lists in Docket Nos. ER97-1523-000, OA97-470-000 and ER97-4234-000 (not consolidated), and the respective electric utility regulatory

agencies in New York, New Jersey and Pennsylvania.

*Comment date:* February 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**42. Central Illinois Public Service Corporation**

[Docket No. ER00-1503-000]

Take notice that on February 2, 2000, Central Illinois Public Service Corporation (AmerenCIPS), tendered for filing an Agreement Among Citizens Electric Corporation, Central Illinois Public Service Corporation, and Union Electric Company dated December 29, 1999 (the Agreement). AmerenCIPS states that under the Agreement, responsibility for providing wholesale electric service to Citizens Electric Corporation (Citizens) is being transferred to it from Union Electric Company (AmerenUE), an affiliated electric utility. AmerenCIPS further states that the rates, terms and conditions under which service is being supplied to Citizens will not be affected by the transfer, but that the term of an existing Wholesale Electric Service Agreement with Citizens is being extended to December 31, 2001.

AmerenCIPS is proposing to make the Agreement effective as of January 1, 2000.

*Comment date:* February 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**43. Central Illinois Public Service Corporation**

[Docket No. ER00-1504-000]

Take notice that on February 2, 2000, Central Illinois Public Service Corporation (AmerenCIPS), tendered for filing an Agreement Among the City of Fredericktown, MO, Central Illinois Public Service Corporation, and Union Electric Company. AmerenCIPS states that under the Agreement, responsibility for providing wholesale electric service to the City of Fredericktown, MO (Fredericktown) is being transferred to it from Union Electric Company (AmerenUE), an affiliated electric utility. AmerenCIPS further states that the rates, terms and conditions under which service is being supplied to Fredericktown will not be affected by the transfer, but that the term of an existing Wholesale Electric Service Agreement with Fredericktown is being extended to December 31, 2001.

AmerenCIPS is proposing to make the Agreement effective as of February 1, 2000.

*Comment date:* February 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**44. Central Illinois Public Service Corporation**

[Docket No. ER00-1506-000]

Take notice that on February 2, 2000, Central Illinois Public Service Corporation (AmerenCIPS), tendered for filing an Agreement Among the City of Owensville, MO, Central Illinois Public Service Corporation, and Union Electric Company dated January 25, 2000 (the Agreement). AmerenCIPS states that under the Agreement, responsibility for providing wholesale electric service to the City of Owensville, MO (Owensville) is being transferred to it from Union Electric Company (AmerenUE), an affiliated electric utility. AmerenCIPS further states that the rates, terms and conditions under which service is being supplied to Owensville will not be affected by the transfer, but that the term of an existing Wholesale Electric Service Agreement with Owensville is being extended to December 31, 2001.

AmerenCIPS is proposing to make the Agreement effective as of February 1, 2000.

*Comment date:* February 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**45. Louisville Gas and Electric Company/Kentucky Utilities Company**

[Docket No. ER00-1507-000]

Take notice that on February 1, 2000 Louisville Gas and Electric Company/Kentucky Utilities (LG&E/KU), tendered for filing a revision to their Transmission Coordination Agreement, Rate Schedule FERC No. 2.

*Comment date:* February 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**46. Commonwealth Edison Company**

[Docket No. ER00-1508-000]

Take notice that on February 2, 2000, Commonwealth Edison Company (ComEd) tendered for filing a revised Firm Point-to-Point Transmission Service Agreement with Alliant Bulk Power under the terms of ComEd's Open Access Transmission Tariff (OATT).

Copies of this filing were served on Alliant.

*Comment date:* February 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**47. Consumers Energy Company**

[Docket No. ER00-1509-000]

Take notice that on February 2, 2000, Consumers Energy Company (Consumers), tendered for filing an executed service agreement for Firm Point-to-Point Transmission Service

with Tenaska Power Services Company. The agreement was pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and

The Detroit Edison Company (Detroit Edison) and has an effective date of January 25, 2000.

Copies of the filed agreement were served upon the Michigan Public Service Commission, Detroit Edison, and Tenaska Power Services Company.

*Comment date:* February 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**48. Dayton Power and Light Company**

[Docket No. ER00-1510-000]

Take notice that on February 2, 2000, The Dayton Power and Light Company (Dayton), tendered for filing Long Term Firm transmission service agreements pursuant to its open access transmission tariff.

*Comment date:* February 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**49. Columbia Energy Power Marketing Corporation**

[Docket No. ER00-1511-000]

Take notice that on February 2, 2000, Columbia Energy Power Marketing Corporation (CEPM), tendered for filing a notice of cancellation of its Rate Schedule FERC No. 1, to be effective on the date CEPM transfers all of its wholesale sales contracts to Enron Power Marketing, Inc., pursuant to Commission approval of the application filed by CEPM in Docket No. EC00-51-000.

*Comment date:* February 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**50. California Independent System Operator Corporation**

[Docket No. ER00-1514-000]

Take notice that on February 2, 2000, the California Independent System Operator Corporation (ISO), tendered for filing notice of termination of the Meter Service Agreement for Scheduling Coordinators (MSA SC) between the ISO and the Montana Power Trading & Marketing Company.

The ISO requests that the MSA SC be terminated effective April 19, 2000.

The ISO states that copies of this filing have been served on all parties in the above-referenced docket.

*Comment date:* February 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**51. Old Dominion Electric Cooperative**

[Docket No. ER00-1512-000]

Take notice that on February 2, 2000, Old Dominion Electric Cooperative (Applicant), tendered for filing an Application Submitting Service Agreement Pursuant to Market-Based Rate Authority And Request For Waivers, submitting a Service Agreement between the Applicant and Northern Virginia Electric Cooperative for service to a single, new delivery point pursuant to the Applicant's previously granted authority to make sales at market-based rates.

*Comment date:* February 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**52. Atlantic City Electric Company**

[Docket No. ER00-1515-000]

Take notice that on February 2, 2000, Atlantic City Electric Company (Atlantic), tendered for filing an executed umbrella service agreement with Tenaska Power Services Co. (Tenaska), under Atlantic's market rate sales tariff.

Atlantic requests an effective date of February 2, 2000.

*Comment date:* February 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**53. PJM Interconnection, L.L.C.**

[Docket No. ER00-1516-000]

Take notice that on February 2, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing an amendment to Schedule 11 (PJM Capacity Credit Markets) of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., extending the expiration date of the mandatory Sell Offers and Buy Bids provision until May 31, 2001.

Copies of this filing were served upon all PJM Members and the electric regulatory commissions in the PJM Control Area.

*Comment date:* February 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**54. San Joaquin Cogen Limited**

[Docket No. ER00-1517-000]

Take notice that on February 2, 2000, San Joaquin Cogen Limited (San Joaquin), tendered for filing an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1. San Joaquin proposed that its Rate Schedule No. 1 become effective immediately. San Joaquin intends to sell energy, capacity and ancillary services from its 49 MW

natural gas-fired cogeneration plant in Lathrop, California at market-based rates, and on such terms and conditions to be mutually agreed to with the purchasing party.

*Comment date:* February 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 55. Robert N. Danziger

[Docket No. ID-3454-000]

Take notice that on February 1, 2000, Robert N. Danziger filed an abbreviated application for authorization to hold interlocking positions as President, Chief Executive Officer, and Director of Sunlaw Energy Corporation; President and Director of Sunlaw Operating Corporation; President and Director of Sunlaw Environmental Technologies, Inc.; and President and Manager of Goal Line Management LLC.

*Comment date:* March 2, 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. 00-3460 Filed 2-14-00; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 2197-035; North Carolina]

#### Yadkin, Inc.; Notice of Public Meeting

February 9, 2000.

Staff from the Federal Energy Regulatory Commission (Commission) will hold a public meeting on March 27,

2000 to take oral comments on a draft environmental assessment (DEA) issued for the Yadkin Hydroelectric Project. The DEA analyzes the environmental impacts of a Shoreline Management Plan (SMP) filed for Commission approval. The Yadkin Project is located on the Yadkin-Pee Dee River in Montgomery, Stanly, Davidson and Rowan Counties, North Carolina. The Yadkin Project contains the following reservoirs: High Rock, Tuckertown, Narrows (Badin) and Falls.

The DEA was written by staff in the Commission's Office of Hydropower Licensing. Commission staff believe the SMP would not constitute a major federal action significantly affecting the quality of the human environment. Copies of the DEA can be viewed on the web at [www.ferc.fed.us/online/rims.htm](http://www.ferc.fed.us/online/rims.htm). Call (202) 208-2222 for assistance. Copies are also 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 public meeting on March 27, 2000 (Monday), will be 7 p.m. to 10 p.m. at the Agri-Civic Center in Albemarle, North Carolina—26032 East Newt Road, Albemarle NC 28001- (704) 986-3666. All those who intend to provide oral comments at the public meeting should register (provide name only) prior to the meeting at the reception area in the Agri-Civic Center. If you have any questions regarding this notice, please call Steve Hocking at (202) 219-2656.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00-3465 Filed 2-14-00; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Request for Extension of Time To Commence and Complete Project Construction and Soliciting Comments, Motions To Intervene, and Protests

February 10, 2000.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Request for Extension of Time to Commence and Complete Project Construction.

b. *Project No.:* 4244-017.

c. *Date Filed:* August 19, 1999.

d. *Applicant:* Northumberland Hydro Partners, L.P.

e. *Pursuant to:* Public Law 104-242.

f. *Applicant Contact:* Keith Corneau, Director, Environmental/Regulatory Affairs, Adirondack Hydro Development Corporation, 39 Hudson Falls Road, South Glens Falls, NY 12803, (518) 747-0930.

g. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, at (202) 219-2671, or e-mail address: [lynn.miles@ferc.fed.us](mailto:lynn.miles@ferc.fed.us).

h. *Deadline for filing comments and or motions:* March 14, 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 numbers (4244-017) on any comments or motions filed.

i. *Description of the Request:* The licensee for the subject project has requested that the deadline for commencement of construction be extended for two additional years. The deadline to commence project construction for FERC Project No. 4244 would be extended to January 16, 2002. The deadline for completion of construction would be extended to January 16, 2004.

j. *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. 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.

k. 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, 385.211, 385.214. 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.

**Linwood A. Watson, Jr.,**  
Acting Secretary.

[FR Doc. 00-3461 Filed 2-14-00; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

February 9, 2000.

Take notice that the following application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Amendment of license for the modification of license article 33(f).

b. *Project No.* 1121-052.

c. *Date Filed:* January 19, 2000.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Battle Creek Hydroelectric Project.

f. *Location:* North Fork Battle Creek in Shasta County, California. Part of the Battle Creek Project affects lands of the United States within Lassen National Forest and lands under the supervision of the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Ms. Angela Ridsen, Pacific Gas and Electric

Company, 245 Market Street, San Francisco, CA 94105, (415) 973-6915.

i. *FERC Contact:* Any questions on this notice should be addressed to Jim Haimes at (202) 219-2780, or e-mail address: james.haimes@ferc.fed.us.

j. *Deadline for filing comments and or motions:* 30 days from the issuance date of this notice. All documents should be filed by providing an original and eight copies, as required by the Commission's regulations to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the project name and number (Battle Creek Project, No. 1121-052) on any comments or motions filed.

k. *Description of Amendment:* Flashboards are needed to raise North Battle Creek Reservoir to its full capacity, 1,039-acre-feet, for the recreation season, June 1 through September 10. Existing license article 33 (f) requires the licensee to install flashboards by June 1, yearly. The proposed amendment to article 33 (f) would allow the licensee to delay up to one month (from June 1 to July 1) the placement of flashboards at North Battle Creek dam when late runoff or heavy snowpack precludes road access to the dam by truck. During such years, the licensee: would install flashboards as soon as roads are passable by truck; and would notify the Forest supervisor of Lassen National Forest five business days prior to June 1 and, subsequently, once the reservoir is at or above 1,039-acre-feet.

l. *Locations of the application:* Copies of the application are 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 also may be viewed on the Web at [www.ferc.fed.us/online/rims.htm](http://www.ferc.fed.us/online/rims.htm). Call (202) 208-2222 for assistance. Copies of the application also are available for inspection and reproduction at the addresses in item h above.

m. Individuals desiring to be included on the Commission's mailing list for the proposed amendment of license 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.

**Linwood A. Watson, Jr.,**  
Acting Secretary.

[FR Doc. 00-3466 Filed 2-14-00; 8:45 am]

BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-6536-4]

### Agency Information Collection Activities: Proposed Collection; Comment Request; Community Water System Survey

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Information Collection Request for the Community Water System Survey, EPA ICR 1946.01. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific

aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before April 17, 2000.

**ADDRESSES:** Public comments shall be submitted to: Brian Rourke (Mail Code 4607), Office of Ground Water and Drinking Water, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Public comments may also be sent electronically to:

*rourke.brian@epamail.epa.gov.*

Interested persons may obtain a copy of the draft ICR without charge by contacting the individual named below.

**FOR FURTHER INFORMATION CONTACT:** Brian Rourke, Telephone (202) 260-7785, Facsimile Number (202) 260-3762, E-mail:

*rourke.brian@epamail.epa.gov.*

**SUPPLEMENTARY INFORMATION:**

*Affected entities:* Entities potentially affected by this action are Community Water Systems. A Community Water System is one which supplies drinking water to 25 or more year-round residents or has at least 15 service connections.

*Title:* Community Water System Survey (EPA ICR No. 1946.01).

*Abstract:* Last conducted in 1995, the Community Water System Survey is usually conducted every five years to gather information on the operating and financial characteristics of a nationally representative sample of community water systems. The Agency conducts the survey to get a clear picture of current conditions in these water systems in order to calculate the impact of any proposed regulations with which these systems would be expected to comply. Specifically, the Agency uses the data provided by this survey to meet its Regulatory Impact Analysis (RIA) obligations under Executive Order 12866 and its obligation to assess and mitigate regulatory impacts on small entities under the Regulatory Flexibility Act and the Small Business Regulatory Enforcement Fairness Act. As effective analyses must begin with an assessment of the baseline situation, it is essential that the Agency have access to the current financial and operating conditions at water systems. Cost impacts of proposed regulations can only be estimated when something is known about the baseline costs of those bearing the burden.

But financial data is only part of the picture. The Agency must also gather information on the operating characteristics of the treatment systems, storage facilities and distribution systems. This data is critical in estimating the need for new facilities as

a consequence of any new Agency regulations. For example, water systems that have already installed treatment processes to treat one sort of contaminant might well not have to install any additional treatment to comply with regulations effecting a similar type of contaminant or one susceptible to the same type of treatment. Thus, all of the Agency's estimates of regulatory impacts can be no more accurate than the baseline information gathered through this survey. Because of the magnitude of potential cost impacts of the regulations, even small changes in water system characteristics can produce significant differences in impacts. Hence, it is critical that the Agency use the most up-to-date information available.

Also, under section 1412(b) of the 1996 Safe Drinking Water Act, the Agency must consider the affordability of the treatment technologies that will meet the proposed regulatory requirements. To determine affordability, the Agency must consider both the new, incremental costs that would result from any proposed regulation together with the costs already borne by the water system. Clearly, this means that the Agency must have an accurate picture of current costs.

This is a one-time collection effort, and responses to this ICR are voluntary. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

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

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

*Burden Statement:* It is estimated that the burden on small water systems (those serving under 3,300 people) will be one half-hour per water system, or 279 hours for the 557 small system representatives expected to respond to the survey questionnaire. At an hourly rate of \$14.50, the total cost to small systems is expected to be \$4,038.25. It is also estimated that the survey will sample 609 medium to large size systems serving between 3,301 and 500,000 people, requiring one hour per water system, or 609 hours for all systems in this size category. At an hourly rate of \$28.00, the total cost to these systems is expected to be \$17,052. The total costs to questionnaire respondents is expected to be \$21,090.25. The total cost to the government, including the cost of government contractors administering the questionnaire, is estimated to be \$2,170,246.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: February 9, 2000.

**Cynthia Dougherty,**

*Director, Office of Ground Water and Drinking Water.*

[FR Doc. 00-3604 Filed 2-14-00; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-6536-7]

**Agency Information Collection Activities: Submission for OMB Review; Comment Request; Trade Secret Claims for Community Right-to-Know and Emergency Planning (EPCRA Section 322)**

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Trade Secret Claims for Community Right-to-Know and Emergency Planning (EPCRA section 322), OMB Control Number 2050-0078, expiring May 31, 2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before March 16, 2000.

**FOR FURTHER INFORMATION CONTACT:** For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260-2740, by email at farmer.sandy@epamail.epa.gov, or download off the Internet at <http://www.epa.gov/icr> and refer to EPA ICR No. 1428.05. For technical questions about the ICR contact Sicy Jacob at (202) 260-7249.

**SUPPLEMENTARY INFORMATION:**

*Title:* Trade Secret Claims for Community Right-to-Know and Emergency Planning (EPCRA Section 322), EPA ICR Number 1428.05, expiring May 31, 2000. This is a request for extension of a currently approved collection.

*Abstract:* This information collection request pertains to trade secrecy claims submitted under Section 322 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). EPCRA contains provisions requiring facilities to report to State and local authorities, and EPA, the presence and release of extremely hazardous substances (described in sections 302 and 304), inventory of hazardous chemicals (described in sections 311 and 312) and manufacture, process and use of toxic chemicals (described in section 313). Section 322 of EPCRA allows a facility to withhold the specific chemical identity from these EPCRA reports if the facility asserts a claim of trade secrecy for that chemical identity. The provision establishes the requirements and procedures that facilities must follow to request trade secrecy treatment of chemical identities, as well as the procedures for submitting public petitions to the Agency for review of the "sufficiency" of trade secret claims.

Trade secrecy protection is provided for specific chemical identities contained in reports submitted under each of the following EPCRA sections: (1) 303(d)(2)—Facility notification of changes that have or are about to occur,

(2) 303(d)(3)—Local Emergency Planning Committee (LEPC) requests for facility information, develop or implement emergency plans, (3) 311—Material Safety Data Sheets (MSDSs) submitted by facilities, or lists of those chemicals submitted in place of the MSDSs, (4) 312—Tier II emergency and hazardous chemical inventory forms, and (5) 313—Toxic chemical release inventory forms.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on September 16, 1999 (64 FR 50280); no comments were received.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 9.9 hours per claim. The total annual burden for the respondents is 3,121 hours at a cost of \$190,280. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Chemical Manufacturers.

*Estimated Number of Respondents:* 320 annually.

*Frequency of Response:* Annually.

*Estimated Total Annual Hour Burden:* 3,121 hours.

*Estimated Total Annualized Capital, Operating/Maintenance Cost Burden:* \$0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1428.05 and

OMB Control No. 2050-0078 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue NW, Washington, DC 20460; and Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: February 8, 2000.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 00-3485 Filed 2-14-00; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-6537-8]

### Regulatory Reinvention (XL) Pilot Projects

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

**ACTION:** Notice of availability of the Project XL Proposed Final Project Agreement: International Paper Predictive Emissions Monitoring Project.

**SUMMARY:** EPA is requesting comments on a proposed Project XL Final Project Agreement (FPA) for International Paper, U.S.A. (hereafter "International Paper"). The FPA is a voluntary agreement developed collaboratively by International Paper, the State of Maine Division of Environmental Protection, the Town of Jay Maine and EPA. Project XL, announced in the **Federal Register** on May 23, 1995 (60 FR 27282), gives regulated entities the flexibility to develop alternative strategies that will replace or modify specific regulatory or procedural requirements on the condition that they produce greater environmental benefits. EPA has set a goal of implementing fifty XL projects undertaken in full partnership with the states.

In the draft FPA, International Paper proposes to develop, test, and implement a computer model that can estimate pollutant emissions on a continuous basis. Currently, International Paper is required to measure some of these pollutants only once every year. If successfully developed and implemented, this computer model would provide the surrounding community with information on emissions that is continuous, non-biased, credible, and

reliable. IP is seeking regulatory flexibility in two areas. The first is to allow minor exceedances above existing permit limits to develop the computer model. The second area of flexibility requested is from the frequency of stack testing and the replacement of continuous emission monitoring with the computer model. These requirements are primarily embodied in state regulations that have been approved by EPA and are considered to be federally enforceable.

**DATES:** The period for submission of comments ends on March 16, 2000.

**ADDRESSEES:** All comments on the proposed Final Project Agreement should be sent to: Chris Rascher, EPA New England, 1 Congress Street (SPP), Boston, MA 02114, or Ted Cochin, U.S. EPA, Room 1025 (1802), 401 M Street, SW, Washington, DC 20460. Comments may also be faxed to Mr. Rascher (617) 918-1810, or Mr. Cochin (202) 401-6637. Comments may also be received via electronic mail sent to: rascher.chris@epa.gov or cochin.ted@epa.gov.

**FOR FURTHER INFORMATION CONTACT:** To obtain a copy of the proposed Final Project Agreement, Test Plan or Fact Sheet, contact: Chris Rascher, EPA New England, 1 Congress Street (SPP), Boston Massachusetts, or Ted Cochin, U.S. EPA, 401 M Street SW Room 1025WT (1802), Washington DC 20460. The FPA and related documents are also available via the Internet at the following location: <http://www.epa.gov/ProjectXL>. Public files on the project, including the FPA, are also available for review at the Town Hall, Town of Jay, Maine. Questions to EPA regarding the documents can be directed to Christopher Rascher at (617) 918-1834 or Ted Cochin at (202) 260-0880. To be included on the International Paper Project XL mailing list about future public meetings, XL progress reports and other mailings from International Paper on the XL project, contact Kimberly Thompson, International Paper, Androscoggin Mill, 207-897-1554. For information on all other aspects of the XL Program contact Christopher Knopes at the following address: Office of Policy and Reinvention, United States Environmental Protection Agency, 401 M Street, SW Room 1029WT (Mail Code 1802), Washington, DC 20460. Additional information on Project XL, including documents referenced in this notice, other EPA policy documents related to Project XL, regional XL contacts, application information, and descriptions of existing XL projects and proposals, is available via the Internet at

<http://www.epa.gov/projectxl/inter/page1.htm>.

Dated: February 10, 2000.

**Richard T. Farrell,**

*Associate Administrator, Office of Policy and Reinvention.*

[FR Doc. 00-3490 Filed 2-14-00; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-6537-7]

### Regulatory Reinvention (XL) Pilot Projects

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

**ACTION:** Notice of availability of United States Postal Service Project XL Draft Final Project Agreement.

**SUMMARY:** EPA is today requesting comments on a draft Project XL Final Project Agreement (FPA) for United States Postal Service (USPS).

**DATES:** The period for submission of comments ends on March 16, 2000.

**ADDRESSES:** All comments on the draft Final Project Agreement should be sent to: Mary Byrne, 999 18th Street, Suite 500, Denver, CO 80202-2466, or L. Nancy Birnbaum, U.S. EPA, 401 M Street, SW, Room 1025WT (1802), Washington, DC 20460. Comments may also be faxed to Ms. Byrne at (303) 312-6741 or Ms. Birnbaum at (202) 401-2474. Comments will also be received via electronic mail sent to: byrne.mary@epa.gov or birnbaum.nancy@epa.gov.

**FOR FURTHER INFORMATION CONTACT:** To obtain a copy of the draft Final Project Agreement, contact: Mary Byrne, 999 18th Street, Suite 500, Denver, CO 80202-2466, or L. Nancy Birnbaum, U.S. EPA, 401 M Street, SW, Room 1025WT (1802), Washington, DC 20460. The documents are also available via the Internet at the following location: "<http://www.epa.gov/ProjectXL>". In addition, public files on the Project are located at EPA Region 8 in Denver. Questions to EPA regarding the documents can be directed to Mary Byrne at (303) 312-6491 or L. Nancy Birnbaum at (202) 260-2601. Additional information on Project XL, including documents referenced in this notice, other EPA policy documents related to Project XL, application information, and descriptions of existing XL projects and proposals, is available via the Internet at "<http://www.epa.gov/ProjectXL>".

**SUPPLEMENTARY INFORMATION:** The FPA is a voluntary agreement developed by

USPS, stakeholders, the State of Colorado, and EPA. Project XL, announced in the **Federal Register** on May 23, 1995 (60 FR 27282), gives regulated sources the flexibility to develop alternative strategies that will replace or modify specific regulatory requirements on the condition that they produce greater environmental benefits. If implemented, the draft FPA anticipates that USPS would receive up to 794 emission credits under Colorado's clean fuel fleet requirements. In exchange for these credits, the USPS would scrap 512 late-1970s/early-1980s vintage postal vehicles operating in the Denver/Boulder non-attainment area, taking these vehicles off the road permanently. The USPS would also relocate at least 282 Long-Life Vehicles (1987-1991 vintage USPS delivery vehicles). The USPS would commit to using at least 794 alternative fuel vehicles in the Denver area and helping to stimulate the development of a public infrastructure to support these vehicles.

Dated: February 9, 2000.

**Richard T. Farrell,**

*Associate Administrator, Office of Reinvention.*

[FR Doc. 00-3491 Filed 2-14-00; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-6537-1]

### Notice of Open Meeting of the Environmental Financial Advisory Board Cost-Effective Environmental Management Workgroup, March 6, 2000

The Environmental Protection Agency's (EPA) Environmental Financial Advisory Board, Cost Effective Environmental Management Workgroup (CEM) will hold an open meeting in Washington, DC on March 6, 2000. The meeting will be held at the National Press Club, 13th Floor in the First Amendment Lounge, 14th and F Streets, NW, Washington, DC. The meeting will begin at 9:00 am and end at approximately 4:00 pm.

The meeting will consist of a group of respected panelists who will share their perspectives on what the Environmental Protection Agency's role should be with respect to cost-effective environmental management (CEM) for drinking water and wastewater and what the Environmental Financial Advisory Board should do to assist the Agency in this regard. Several issues to be discussed include: federal and state tax policies that help or hinder CEM,

financial innovations and new approaches in the field; examples of successes and failures; and changes in CEM and factors driving change.

The meeting is open to the public, but seating is limited. To confirm your participation or get additional information, please contact Vanessa Bowie, U.S. EPA on 202-564-5186.

Dated: February 7, 2000.

**Joseph L. Dillon,**

*Acting Comptroller.*

[FR Doc. 00-3483 Filed 2-14-00; 8:45 am]

BILLING CODE 6500-50-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-6536-9]

### Notice of Open Meeting of The Environmental Financial Advisory Board on March 7-8, 2000

The Environmental Protection Agency's (EPA) Environmental Financial Advisory Board (EFAB) will hold an open meeting of the full Board in Washington, DC on March 7-8, 2000. The meeting will be held at the National Press Club, 13th Floor in the Holeman Lounge, 14th and F Streets, NW, Washington, DC. The Tuesday, March 7 session will run from 8:30 a.m. to 5:00 p.m. and the Wednesday, March 8 session will begin at 8:15 a.m. and end at approximately 11:30 a.m.

EFAB is chartered with providing analysis and advice to the EPA Administrator on environmental finance. The purpose of this meeting is to hear presentations on key issues, discuss work products under EFAB's current strategic action agenda and to make changes to the agenda as necessary. Environmental financing topics expected to be discussed include: the Office of Water's Gap Analysis, cost effective environmental management, community-based environmental protection, international environmental finance, smart growth, and brownfields redevelopment.

The meeting will be open to the public, but seating is limited. For more information, please contact Alecia Crichlow, U.S. EPA on 202-564-5188.

Dated: February 7, 2000.

**Joseph L. Dillon,**

*Acting Comptroller.*

[FR Doc. 00-3484 Filed 2-14-00; 8:45 am]

BILLING CODE 6560-50-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-6536-8]

### Meeting of the Small Community Advisory Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

**SUMMARY:** The Small Community Advisory Subcommittee will meet on March 2 and 3, 2000, in Dallas, TX.

The Small Community Advisory Subcommittee was established by the U.S. Environmental Protection Agency as a standing subcommittee of the Local Government Advisory Committee. The March meeting will focus on Small Town Sustainable Community Development; the Agency's implementation of Executive Order 13132 on Federalism; and implementation of section 109(d) of the small town Environmental Planning Act of 1992.

The Committee will hear comments from the public between 9:00 a.m. and 9:15 a.m. on March 2, 2000. Each individual or organization wishing to address the Committee will be allowed a minimum of three minutes. Please contact the Designated Federal Officer (DFO) at the number listed below to schedule agenda time. Time will be allotted on a first come, first serve basis.

This is an open meeting and all interested persons are invited to attend. Meeting minutes will be available after the meeting and can be obtained by written request from the DFO. Members of the public are requested to call the DFO at the number listed below if planning to attend so that arrangements can be made to comfortably accommodate attendees as much as possible. However, seating will be on a first come, first serve basis.

**DATES:** The meeting will begin at 8:30 a.m. on Thursday, March 2 and conclude at 5:00 p.m. on the March 3.

**ADDRESSES:** The meetings will be held at the Magnolia Hotel located at 1401 Commerce Street, Dallas, TX 75201.

Requests for Minutes and other information can be obtained by writing the DFO at 1200 Pennsylvania Ave., NW (1306), Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** The DFO for this Subcommittee is Steven Wilson. He is the point of contact for information concerning any Subcommittee matters and can be reached by calling (202) 564-3646.

Dated: February 8, 2000.

**Steven Wilson,**

*Designated Federal Officer, Small Community Advisory Subcommittee.*

[FR Doc. 00-3488 Filed 2-14-00; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-6538-6]

### Microbial and Disinfectants/Disinfection Byproducts Advisory Committee; Meeting Cancellation Notice

Meeting Cancellation—Microbial and Disinfectants/Disinfection Byproducts Federal Advisory Committee—February 16-17, 2000.

The meeting of the Microbial and Disinfectants/Disinfection Byproducts Federal Advisory Committee that was scheduled for February 16-17, 2000 between the hours of 9 a.m. and 5 p.m. eastern time, has been  **canceled**. The meeting was advertised in the 65 FR 133, dated January 3, 2000. The next meeting is scheduled for March 29-30, from 9 a.m. to 5 p.m. eastern time and will be held at RESOLVE, Inc., 1255 23rd Street, NW, Suite 275, Washington, DC 20037. All remaining meetings will continue as scheduled. For more information, please contact Martha M. Kucera, Designated Federal Officer, Microbial Disinfectants/Disinfection Byproducts Advisory Committee, U.S. EPA, Office of Ground Water and Drinking Water, Mailcode 4607, 401 M Street, SW, Washington, DC 20460. The telephone number is 202-260-7773 or E-mail [kucera.martha@epamail.epa.gov](mailto:kucera.martha@epamail.epa.gov).

Dated: February 11, 2000.

**Cynthia C. Dougherty,**

*Director, Office of Ground Water and Drinking Water.*

[FR Doc. 00-3670 Filed 2-14-00; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-6537-9]

### National Drinking Water Advisory Council Contaminant Candidate List and 6-Year Review of Existing Regulations Working Group; Notice of Open Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice.

Under Section 10(a)(2) of Public Law 92-423, "The Federal Advisory

Committee Act," notice is hereby given that a meeting of the Contaminant Candidate List (CCL) Regulatory Determination and 6-Year Review of Existing Regulations Working Group of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f *et seq.*), will be held on March 1-2, 2000 from 8:30 AM until 5:00 PM (approximate), in the offices of RESOLVE, Suite 275, 1255 23rd Street, NW, Washington, DC 20037. The meeting is open to the public, but due to past experience, seating will be limited.

The purpose of this meeting is for the Working Group to develop and use robust and transparent protocols that can be used for making regulatory determinations from the CCL and for the periodic review of existing NPDWRs. The Working Group will provide specific recommendations for analyzing and presenting the available scientific data, and also recommend methods to identify and document the judgments made to arrive at a conclusion and the supporting rationale.

The CCL and 6-Year Review Working Group will develop specific protocols for making regulatory determinations and selecting existing NPDWRs for possible revision. The Working Group will provide specific recommendations for analyzing and presenting the available scientific data, and also recommend methods to identify and document the judgments made to arrive at a conclusion and the supporting rationale. Due to the statutory deadlines mandated by the SDWA's 1996 amendments, the Working Group will develop a protocol to support CCL regulatory determinations before beginning work on the protocol(s) for the 6-year review of existing NPDWRs.

For CCL regulatory determinations, the Working Group will develop protocols for both chemical and microbial contaminants that will be robust enough to apply to contaminants on the current and future CCLs. As a starting point in developing a protocol, the Working Group will evaluate the draft framework developed by the EPA, which will be presented to the group at the first meeting.

The working group members will be asked draft proposed position papers for deliberation by the advisory council, and provide advice and recommendations to the full National Drinking Water Advisory Council. The meeting is open to the public to observe and statements will be taken from the public as time allows.

For more information, contact Corry Westbrook, Designated Federal Officer,

Contaminant Candidate List and Regulatory Determination and 6-Year Review of Existing Regulations Working Group, U.S. EPA, Office of Ground Water and Drinking Water (4607), 401 M Street SW, Washington, DC 20460. The telephone number is 202-260-3228, fax 202-260-3762, and e-mail address westbrook.corry@epa.gov.

Dated: February 8, 2000.

**Charlene E. Shaw,**

*Designated Federal Officer, National Drinking Water Advisory Council.*

[FR Doc. 00-3489 Filed 2-14-00; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-6536-6]

### Science Advisory Board; Meeting Cancellation Notice; Open Meeting Notice; Notice of Meeting Changes

#### 1. Meeting Cancellation Notice—Executive Committee—February 16, 2000

The meeting of the Executive Committee of the SAB that was scheduled for February 16, 2000 between the hours of 2:00 and 4:00 EST has been  *canceled*. The meeting was advertised in 65 FR 4966, dated February 2, 2000. The reports subject to review at that meeting have been rescheduled for review at the March 7-8 Executive Committee meeting announced below. For further information, please contact Dr. Donald G. Barnes, Designated Federal Officer for the Executive Committee (see below for contact information).

#### 2. Open Meeting Notice—Executive Committee—March 7-8, 2000

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Science Advisory Board's (SAB's) Executive Committee will conduct a public meeting on Tuesday and Wednesday, March 7-8, 2000. The meeting will convene each day at 8:30 in Conference Room 6013 of the Ariel Rios Building, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC 20460 and adjourn no later than 5:30. The meeting is open to the public; however, seating is limited and available on a first-come basis.

At this meeting, the Executive Committee will receive updates from its committees and subcommittees concerning their recent and planned activities. As part of these updates, some committees will present draft reports for Executive Committee review

and approval. Tentatively anticipated drafts include, but are not limited to, the following:

(a) *Executive Committee Subcommittee*: "Review of the Agency's Position on the Data from the Testing of Human Subjects."

(b) *Executive Committee Subcommittee*: "Review of the Agency's Application of the Cancer Risk Assessment Guidelines to Children."

(c) *Executive Committee Subcommittee*: "Review of the Application of the Draft Cancer Risk Assessment Guidelines to the Case of Chloroform."

(d) *Radiation Advisory Committee*: "Assessing the Risks from Indoor Radon."

(e) *Research Strategies Advisory Committee joint report view with the Board of Scientific Counselors of ORD*: "Review of the Agency's Science to Achieve Results (STAR) Program."

Drafts of the reports that will be reviewed at the meeting should be available to the public at the SAB website (<http://www.epa.gov/sab>) by close-of-business on February 28, 2000.

As part of this two day meeting, the Executive Committee will also: (a) Meet with various Agency officials to discuss matters of mutual interest such as the framework for a Strategic Plan for Science at EPA; (b) receive briefings from Agency staff on various topics, including an update of the Integrated Risk Information System (IRIS) project; and (c) conduct the second in a series of Workshops on the role of science in some of the Agency's innovative approaches to environmental decision making.

The timing of these events will be included in an agenda for the meeting that should be available one week prior to the meeting.

#### Public Comments

Any member of the public wishing to submit *brief* oral comments (<5 minutes) must contact Dr. Donald G. Barnes, Designated Federal Officer (DFO) for the Executive Committee, *in writing*, no later than close of business Tuesday, February 29th at USEPA Science Advisory Board (1400A), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; fax (202) 501-0323; or via e-mail at ([barnes.don@epa.gov](mailto:barnes.don@epa.gov)). Those wishing further information concerning the meeting should contact Dr. Barnes at (202) 564-4533.

#### Meeting Access

Individuals requiring special accommodation at this meeting due to disability should contact Dr. Barnes at least five business days prior to the

meeting to insure that appropriate arrangements are made.

### 3. Meeting Change Notice— Environmental Engineering Committee and Its Subcommittees

Notice is hereby given of changes to three meetings of the Science Advisory Board's Environmental Engineering Committee and its Subcommittees. The original meetings were announced in 65 FR 1866, dated Wednesday, January 12, 2000. For further information, please contact Ms. Kathleen Conway, Designated Federal Officer for the Environmental Engineering Committee at (202) 564-4559 or via e-mail at (Conway.Kathleen@epa.gov). The changes follow.

(a) The Technology Evaluation Subcommittee will *not* meet February 23-25, 2000. Instead, it will meet March 6-8, 2000 as part of the week-long Environmental Engineering Committee meeting. There has been no change in the purpose or location for that meeting; only the dates have changed.

The following information from the previous announcement is provided again here for your convenience, "The Environmental Engineering Committee of the Science Advisory Board (SAB) will meet Monday through Friday, March 6-10, 2000 in room 6450 of in the Ariel Rios Building North, 1200 Pennsylvania Avenue, NW, Washington, DC 20004 (adjacent to the escalator to the Federal Triangle Metro Station on 12th Street NW). The meeting will begin at 9:30 a.m. on Monday and end no later than 4:00 p.m. on Friday."

(b) The Natural Attenuation Research Subcommittee of the Science Advisory Board's (SAB) Environmental Engineering Committee (EEC) will conduct a public teleconference meeting Thursday February 24, 2000 between the hours of 3:00 p.m.—5:00 p.m (Eastern Standard Time) as announced. However, *the purpose of this conference call has been changed*. The Subcommittee will not hear the preliminary reactions of individual reviewers to the written materials. Instead, the Subcommittee will discuss the charge and plan the review in light a forthcoming report from the National Research Council.

(c) The Natural Attenuation Research Subcommittee will *not* meet March 6-8, 2000. The Subcommittee plans to reschedule its review of the Agency's Natural Attenuation research program until May. When dates for that meeting have been determined, it will be announced in the **Federal Register**.

### General Information on Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes (unless otherwise noted). Written comments (at least 35 copies) should be received in the SAB Staff Office one week before the meeting so that they can be mailed to the relevant SAB committee or subcommittee for study. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (<http://www.epa.gov/sab>) and in the Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564-4533 or via fax at (202) 501-0256.

Dated: February 8, 2000.

**Donald G. Barnes,**

Staff Director, Science Advisory Board.

[FR Doc. 00-3487 Filed 2-14-00; 8:45 am]

BILLING CODE 6560-50-P

### ENVIRONMENTAL PROTECTION AGENCY

[FRL-6537-6]

#### Superfund Probabilistic Risk Assessment to Characterize Uncertainty and Variability

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of availability with request for comment.

**SUMMARY:** The Environmental Protection Agency (EPA) has developed and is requesting public comment on a draft guidance entitled "Risk Assessment Guidance for Superfund Volume 3 Part A: Process for Conducting Probabilistic Risk Assessment (RAGS 3A)." It is available electronically on the Internet at <http://www.epa.gov/superfund/pubs.htm#r>. RAGS 3A addresses the technical and policy issues associated with the use of probabilistic risk assessment (PRA) in the EPA hazardous waste sites cleanup program, commonly known as Superfund. PRA, if applied appropriately, can better characterize uncertainty and variability in the risk estimates than the traditional point estimate approach. The guidance presents a recommended tiered process

for conducting both human health and ecological PRA using Monte Carlo analysis, with emphasis on applying sensitivity analysis to identify important sources of variability and uncertainty in risk estimates, applying frequency distributions to characterize variability in exposure, and quantifying uncertainty in the mean contaminant concentration. The draft RAGS 3A should not be used or cited until it is finalized. RAGS 3A provides guidance to EPA staff and also to the public and to the regulated community on how EPA generally intends that the PRA be implemented to evaluate risk at more complex Superfund sites addressed under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). The guidance is designed to describe EPA's national policy on the use of PRA. PRA is not expected to be relevant at every site. The document does not substitute for EPA's statutes or regulations, nor is it a regulation itself. Thus, it cannot impose legally-binding requirements on EPA, States, or the regulated community. EPA may change this guidance in the future, as appropriate.

Further, Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), 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 and regulatory policies 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."

RAGS 3A does not have federalism implications. It 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. As explained above, RAGS 3A does not impose legally-binding requirements on the States. It is a technical risk assessment guidance which discusses a statistical risk assessment approach that may be used at more complex Superfund sites. Thus, the requirements of section 6 of the Executive Order do not apply to RAGS 3A.

**DATES:** You may submit comments until April 21, 2000. Comments received after

that date will be considered to the extent feasible; however, EPA will not delay finalizing the guidance in order to accommodate late comments.

**ADDRESSES:** You are invited to submit written comments to: EPA, Superfund Docket RAGS 3A-2, Mail Code 5202G, Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460. For cost savings the draft RAGS 3A document is available electronically on the Internet and EPA plans to print the document only after it is finalized. The Superfund Docket containing the RAGS 3A document and public comments is physically located at 1235 Jefferson Davis Highway, Crystal Gateway I Building street level, Arlington, Virginia. The docket is available for inspection between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Federal holidays. Appointments to review the docket can be made by calling (703) 603-9232. The public may copy a maximum of 266 pages from the docket free of charge, however a charge of 15 cents will be incurred for each additional page, plus a \$25.00 administrative fee.

**FOR FURTHER INFORMATION CONTACT:** S. Steven Chang, Office of Emergency and Remedial Response (5204G), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460, at (703) 603-9017, by E-Mail at Chang.Steven@epa.gov, or the RCRA/Superfund Hotline at (800) 424-9346 (in the Washington, DC metropolitan area, (703) 412-9810). The Telecommunications Device for the Deaf (TDD) Hotline number is (800) 553-7672 (in the Washington, DC metropolitan area, (703) 412-3323).

**SUPPLEMENTARY INFORMATION:**

**Introduction**

The U.S. Environmental Protection Agency (EPA) responds to releases and threatened releases of hazardous substances under the authority of CERCLA. Regulations governing such responses are found in the National Oil and Hazardous Substances Pollution Contingency Plan or NCP. The process for remedy selection in the NCP generally involves performance of a remedial investigation to identify the nature and extent of contamination at National Priorities List sites. In general, sampling results and site observations obtained in the field are used in the baseline risk assessment to identify specific contaminants and exposure pathways of concern and to determine whether remedial action is warranted.

Today's **Federal Register** notice introduces a draft guidance on use of a

tool which could evaluate the uncertainty and variability associated with risk estimates developed as part of the baseline risk assessment for hazardous waste sites. The RAGS 3A document builds upon basic concepts of risk assessment outlined in the RAGS Volume 1 (U.S. EPA, 1989),<sup>1</sup> the "Guiding Principles for Monte Carlo Analysis" and the "Policy for Use of Probabilistic Analysis in Risk Assessment" (U.S. EPA, 1997).<sup>2</sup> PRA is not a requirement, and will not be appropriate at many sites. The guidance focuses on Monte Carlo analysis as a method of quantifying uncertainty and variability in risk. Primarily targeted toward the risk assessors, it is intended to be most accessible to those readers who are familiar with risk assessment and basic statistic concepts. The development of a PRA could involve significant investment of time by the risk assessor and risk manager to determine the extent and scope of the assessment. A tiered approach to PRA is advocated, beginning with evaluating the results of a point estimate approach. Important considerations include the time required to perform the PRA, the additional resources involved in developing the PRA, the available data on exposure that will be used in the assessment, and the value added by conducting the PRA.

**Background**

Probabilistic risk analysis, as exemplified by Monte Carlo analysis, has been in use since 1946. However, the application of PRA to human health and ecological risk assessment is a more recent application. As a result, the Agency believes that those using PRA analysis would benefit from development of additional guidance.

In 1997, the EPA announced the "Policy for Use of Probabilistic Analysis in Risk Assessment at the U.S. EPA" (U.S. EPA, 1997), indicating the Agency's interest in probabilistic analysis in human health and ecological risk assessment. This 1997 policy states that "It is the policy of the U.S. Environmental Protection Agency that such probabilistic analysis techniques as Monte Carlo analysis, given adequate supporting data and credible assumptions, can be viable statistical tools for analyzing variability and

uncertainty in risk assessments. As such, and provided that the conditions described below are met, risk assessments using Monte Carlo analysis or other probabilistic techniques will be evaluated and utilized in a manner that is consistent with other risk assessments submitted to the Agency for review or consideration. It is not the intent of this policy to recommend that probabilistic analysis be conducted for all risk assessments supporting risk management decisions. Such analysis should be a part of a tiered approach to risk assessment that progresses from simpler (e.g., deterministic) to more complex (e.g., probabilistic) analyses as the risk management situation requires. Use of Monte Carlo or other such techniques in risk assessments shall not be cause, per se, for rejection of the risk assessment by the Agency. For human health risk assessments, the application of Monte Carlo and other probabilistic techniques has been limited to exposure assessments in the majority of cases. The current (1997) policy, Conditions for Acceptance and associated guiding principles are not intended to apply to dose response evaluations for human health risk assessment until this application of probabilistic analysis has been studied further. In the case of ecological risk assessment, however, this policy applies to all aspects including stressor and dose-response assessment."

Based on this (1997) Policy the Superfund program is developing guidance for implementation of PRA to better characterize variability and uncertainty in fate and transport, and exposure assessment for human health and ecological risk assessments, and dose-response assessment for ecological risk assessments.

**Goals**

EPA welcomes feedback on today's draft RAGS 3A document. EPA will review public comments received on the draft RAGS 3A document and, where appropriate, incorporate changes responsive to those comments.

EPA is seeking public comment at this time in order to ensure hearing the widest range of views and obtaining all information relevant to the development of policy, not because doing so is a legal requirement. EPA does, however, expect to respond to the principal comments received on the draft RAGS 3A document as a matter of public information.

<sup>1</sup>U.S. EPA, 1989, Risk Assessment Guidance for Superfund: Volume 1: Human Health Evaluation Manual, Part A, Interim Final. EPA/540/1-89/002. Office of Emergency and Remedial Response, Washington, DC. NTIS PB90-155581.

<sup>2</sup>U.S. EPA, 1997, "Guiding Principles for Monte Carlo Analysis." EPA/630/R-97/001. Office of Research and Development Risk Assessment Forum, Washington, DC.

Dated: February 9, 2000.

**Stephen Luftig,**

*Office Director, Office of Emergency and Remedial Response.*

[FR Doc. 00-3492 Filed 2-14-00; 8:45 am]

BILLING CODE 6560-50-U

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-6536-5]

**Notice of Proposed Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act**

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

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. 9601-9675, notice is hereby given that a proposed purchaser agreement ("Purchaser Agreement") associated with the Metro Container Corporation Site in Trainer, Pennsylvania was executed by the Environmental Protection Agency and the Department of Justice and is now subject to public comment, after which the United States may modify or withdraw its consent if comments received disclose facts or considerations which indicate that the Purchaser Agreement is inappropriate, improper, or inadequate. The Purchaser Agreement would resolve certain potential EPA claims under section 107 of CERCLA, 42 U.S.C. 9607, against Trainer Industries, L.L.C. ("Purchaser"). The settlement would require the Purchaser to, among other things, pay the sum of \$15,000 to the EPA Hazardous Substance Superfund, provide an irrevocable right of access to EPA, and record notice of the agreement in the local land records.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed Purchaser Agreement. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

**DATES:** Comments must be submitted on or before March 16, 2000.

**Availability**

The proposed Purchaser Agreement and additional background information relating to the proposed Purchaser Agreement are available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the proposed Purchaser Agreement may be obtained from Suzanne Canning, U.S. Environmental Protection Agency, Regional Docket Clerk (3RC00), 1650 Arch Street Philadelphia, PA 19103. Comments should reference the "Metro Container Corporation Site Prospective Purchaser Agreement" and "EPA Docket No. CERC-PPA-99-06," and should be forwarded to Suzanne Canning at the above address or through electronic mail at "canning.suzanne@epa.gov."

**FOR FURTHER INFORMATION CONTACT:** Andrew S. Goldman (3RC41), Sr. Assistant Regional Counsel, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103, Phone: (215) 814-2487.

Dated: February 1, 2000.

**Bradley M. Campbell,**

*Regional Administrator, Region III.*

[FR Doc. 00-3486 Filed 2-14-00; 8:45 am]

BILLING CODE 6560-50-P

**FEDERAL COMMUNICATIONS COMMISSION**

**Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission**

February 7, 2000.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (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 estimate; (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.

**DATES:** Written comments should be submitted on or before March 16, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s), contact Judy Boley at 202-418-0214 or via the Internet at jboley@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060-0859.

*Title:* Suggested Guidelines for Petitions for Ruling under Section 253 of the Communications Act.

*Form No.:* Not applicable.

*Type of Review:* Extension to a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 80.

*Estimated Time Per Response:* 63 to 125 hours per response.

*Frequency of Response:* On occasion reporting requirement.

*Total Annual Burden:* 6,280 hours.

*Total Annual Cost:* Not applicable.

*Needs and Uses:* Section 253 of the Communications Act of 1934, as amended, 47 U.S.C. 253, added by the Telecommunications Act of 1996, requires the Commission, with certain important exceptions, to preempt the enforcement of any state or local statute or regulation, or other state or local legal requirement (to the extent necessary) that prohibits or has the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. The Commission's consideration of preemption begins with the filing of a petition by an aggrieved party. The petition is placed on public notice and commented on by others. The Commission's decision is based on the public record, generally composed of the petition and comments. The Commission has considered a number of preemption items since the passage of the Telecommunications Act of 1996, and believes it in the public interest to inform the public of the information necessary to support its full

consideration of the issues likely to be involved in preemption actions.

The Public Notice establishes guidelines relating to its consideration of preemption petitions. Consideration of a petition requesting Commission action pursuant to Section 253 necessarily will involve state or local statutes, regulations, ordinances, or other legal requirements that will likely be initially unfamiliar to the Commission. In order to render a timely and informed decision, the Commission expects petitions and commenters to provide it with relevant information sufficient to describe the legal regime involved in the controversy and to establish the factual basis necessary for decision.

The Commission will use the information to discharge its statutory mandate relating to the preemption of state or local statutes or other state or local legal requirements.

*OMB Control No.:* 3060-0876.

*Title:* USAC Board of Directors Nomination Process (47 CFR Section 54.703) and Review of Administrator's Decision (47 CFR Sections 54.719-54.725).

*Form No.:* Not applicable.

*Type of Review:* Extension to a currently approved collection.

*Respondents:* Business or other for-profit, not-for-profit institutions.

*Number of Respondents:* 22.

*Estimated Time Per Response:* 20 to 32 hours.

*Frequency of Response:* On occasion reporting requirement, third party disclosure requirement.

*Total Annual Burden:* 560 hours.

*Total Annual Cost:* Not applicable.

*Needs and Uses:* The Telecommunications Act of 1996 (1996 Act) directed the Commission to initiate a rulemaking to reform our system of universal service so that universal service is preserved and advanced as markets move toward competition. To fulfill that mandate, based on the recommendations of the Federal-State Joint Board on Universal Service, the Commission adopted a Report and Order in CC Docket No. 96-45, on May 7, 1997, to implement the congressional directives set out in section 254 of the Communications Act of 1934, as amended by the 1996 Act. In the Report and Order (released July 18, 1997), the Commission appointed the National Exchange Carrier Association, Inc. (NECA) the temporary administrator of the universal service support mechanisms, subject to creating a separate subsidiary, the Universal Service Administrative Company (USAC), to administer the support

programs. The Commission also directed NECA, as a condition of its appointment as temporary administrator, to create two unaffiliated corporations to administer portions of the schools and libraries and rural health care programs. NECA established the Schools and Libraries Corporation (SLC) and the Rural Health Care Corporation (RHCC).

In connection with supplemental appropriations legislation enacted on May 1, 1998, Congress directed the Commission to establish a single entity to administer federal universal service. In a May 8, 1998 Report to Congress, the Commission proposed that, by January 1, 1999, USAC would serve as the single entity responsible for administering all of the universal service support mechanisms including the schools and libraries and rural health care support mechanisms. On November 20, 1998, the Commission released an Order directing the merger of SLC and RHCC into USAC as the single entity responsible for administering the universal service support mechanisms as of January 1, 1999. The Order adopted rules that will govern USAC following the required merger.

Pursuant to 47 CFR 54.703, industry and non-industry groups may submit to the Commission for approval nominations for individuals to be appointed to the USAC Board of Directors.

The USAC Board currently consists of the following seventeen members: (1) Three incumbent local exchange carrier representatives (one director representing Bell Operating Companies and GTE, one director representing ILECs (other than Bell Operating Companies) with annual operating revenues in excess of \$40 million, and one director representing ILECs (other than Bell Operating Companies) with annual revenues of \$40 million or less); (2) two interexchange carrier representatives (one director representing interexchange carriers with more than \$3 billion in annual operating revenues and one director representing interexchange carriers with annual operating revenues of \$3 billion or less); (3) one commercial mobile radio service representative; (4) one competitive local exchange carrier representative; (5) one cable operator representative; (6) one information service provider representative; (7) three school representatives; (8) one library representative; (9) one rural health care provider representative; (10) one low income consumer representative; (11) one state telecommunications regulator; and (12) one state consumer advocate representative.

47 CFR 54.719-54.725 contain the procedures for Commission review of USAC decisions, including the general filing requirements pursuant to which parties must file requests for review. An affected party would be permitted to file a petition for Commission review with the Bureau within thirty days of an action taken by USAC. The appellant must state specifically its interest in the matter presented for review. The appellant also must provide the Commission with a full statement of relevant, material facts with supporting affidavits and documentation. In addition, the appellant must state concisely the question presented for view, with reference, where appropriate, to the relevant Commission rule, Commission order, or statutory provision. The appellant also must state the relief sought and the relevant statutory or regulatory provision pursuant to which such relief is sought. If an appellant alleges prohibited conduct by a third party, the appellant shall serve a copy of the appeal on such third party, who shall have an opportunity to file an opposition. Similarly, appellants shall serve on USAC a copy of the appeal of a USAC decision filed with the Commission.

Affected parties are encouraged to bring issues to the attention of the division head or the USAC CEO to determine whether the matter can be handled without a formal appeal to the Commission.

The Commission uses the information to select USAC's Board of Directors and to ensure that requests for review are filed properly with the Commission. The information requested is not otherwise available. Without such information, the Commission could not appoint a representative body to USAC's Board of Directors nor resolve requests for review and, therefore, could not fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended.

Federal Communications Commission.

**Magalie Roman Salas,**  
Secretary.

[FR Doc. 00-3431 Filed 2-14-00; 8:45 am]

BILLING CODE 6712-01-U

## FEDERAL COMMUNICATIONS COMMISSION

### Sunshine Act Meeting

#### Open Commission Meeting Thursday, February 17, 2000

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on

Thursday, February 17, 2000, which is scheduled to commence at 9:30 a.m. in

Room TW-C305, at 445 12th Street, SW, Washington, DC.

Item No.	Bureau	Subject
1	Common Carrier .....	Title: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities (CC Docket No. 98-67). Summary: The Commission will consider revisions to its rules governing telecommunications services for individuals with hearing and speech disabilities.
2	Common Carrier, Cable Services, Engineering and Technology, International, and wireless Telecommunications.	Title: Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996 (CC Docket No. 98-146). Summary: The Commission will consider a Notice of Inquiry pursuant to Section Offering in the Commercial Mobile Radio Services (WT Docket No. 97-207) Summary: The Commission will consider a Memorandum Opinion and Order on Reconsideration and Report and Order concerning rules for facilitating calling party pays.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Media Relations, telephone number (202) 418-0500; TTY (202) 418-2555.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857-3800; fax (202) 857-3805 and 857-3184; or TTY (202) 293-8810. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its-inc@ix.netcom.com. Their Internet address is <http://www.itsi.com>.

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993-3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966-2211 or fax (202) 966-1770. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834-0100; fax number (707) 834-0111.

Federal Communications Common.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00-3698 Filed 2-11-00; 1:58 pm]

BILLING CODE 6712-01-M

## 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. Additional information on all bank holding companies may be obtained from the National Information Center website at [www.ffiec.gov/nic/](http://www.ffiec.gov/nic/).

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 10, 2000.

### A. Federal Reserve Bank of Atlanta

(Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. *Speed Bankshares, L.P.*, Meridian, Mississippi; to become a bank holding company by acquiring approximately 51 percent of the voting shares of Great Southern Capital Corporation, Meridian, Mississippi, and thereby indirectly acquire Great South National Bank, Meridian, Mississippi.

**B. Federal Reserve Bank of Dallas**  
(W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Texas Capital Bancshares, Inc.*, Dallas, Texas; to acquire 100 percent of the voting shares of BankDirect, SSB, Dallas, Texas, a *de novo* bank.

Board of Governors of the Federal Reserve System, February 9, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00-3449 Filed 2-14-00; 8:45 am]

BILLING CODE 6210-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Notice of a Meeting of the National Bioethics Advisory Commission (NBAC)

**SUMMARY:** Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the National Bioethics Advisory Commission. The Commission will discuss its ongoing projects: (a) ethical issues in international research and (b) ethical and policy issues in the oversight of human subjects research in the United States. Some Commission members may participate by telephone conference.

The meeting is open to the public and opportunities for statements by the public will be provided on February 29 from 1:00–1:30 pm.

*Dates/Times, and Location*

February 29, 2000, 8:30 am–5 pm—  
Hilton Washington Dulles Airport,  
13869 Park Center Road, Herndon, VA  
March 1, 2000, 8:00 am–3:00 pm—Same  
Location as Above

**SUPPLEMENTARY INFORMATION:** The President established the National Bioethics Advisory Commission (NBAC) on October 3, 1999 by Executive Order 12975 as amended. The mission of the NBAC is to advise and make recommendations to the National Science and Technology Council, its Chair, the President, and other entities on bioethical issues arising from the research on human biology and behavior, and from the applications of that research.

**Public Participation**

The meeting is open to the public with attendance limited by the availability of space on a first come, first serve basis. Members of the public who wish to present oral statements should contact Ms. Jody Crank by telephone, fax machine, or mail as shown below as soon as possible, at least 4 days before the meeting. The Chair will reserve time for presentations by persons requesting to speak and asks that oral statements be limited to five minutes. The order of persons wanting to make a statement will be assigned in the order in which requests are received. Individuals unable to make oral presentations can mail or fax their written comments to the NBAC staff office at least five business days prior to the meeting for distribution to the Commission and inclusion in the public record. The Commission also accepts general comments at its website at [bioethics.gov](http://bioethics.gov). Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact NBAC staff at the address or telephone number listed below as soon as possible.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jody Crank, National Bioethics Advisory Commission, 6100 Executive Boulevard, Suite 5B01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax number 301–480–6900.

Dated: February 10, 2000.

**Eric M. Meslin,**

*Executive Director, National Bioethics Advisory Commission.*

[FR Doc. 00–3554 Filed 2–14–00; 8:45 am]

BILLING CODE 4160–17–U

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Office of the Secretary**

**Annual Update of the HHS Poverty Guidelines**

**AGENCY:** Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** This notice provides an update of the HHS poverty guidelines to account for last (calendar) year's increase in prices as measured by the Consumer Price Index.

**EFFECTIVE DATE:** These guidelines go into effect on the day they are published (unless an office administering a program using the guidelines specifies a different effective date for that particular program.)

**ADDRESS:** Office of the Assistant Secretary for Planning and Evaluation, Room 404E, Humphrey Building, Department of Health and Human Services (HHS), Washington, DC 20201.

**FOR FURTHER INFORMATION CONTACT:** *For information about how the poverty guidelines are used in a particular program, contact the Federal (or other) office which is responsible for that program.*

For general information about the poverty guidelines (but NOT for information about a particular program—such as the Hill-Burton Uncompensated Services Program—that uses the poverty guidelines), contact Gordon Fisher, Office of the Assistant Secretary for Planning and Evaluation, Room 404E, Humphrey Building, Department of Health and Human Services, Washington, DC 20201—telephone: (202) 690–5880; persons with Internet access may visit the poverty guidelines Internet site at <http://aspe.hhs.gov/poverty/poverty.htm>.

*For information about the Hill-Burton Uncompensated Services Program (no-fee or reduced-fee health care services at certain hospitals and other health care facilities for certain persons unable to pay for such care), contact the Office of the Director, Division of Facilities Compliance and Recovery, HRSA, HHS, Room 10C–16, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857—telephone: (301) 443–5656 or 1–800–638–0742 (for callers outside Maryland) or 1–800–492–0359 (for callers in Maryland); persons with Internet access may visit the Division of Facilities Compliance and Recovery Internet home page site at <http://www.hrsa.gov/osp/dfcr>. The Division of Facilities Compliance and Recovery notes that as set by 42 CFR 124.505(b),*

the effective date of this update of the poverty guidelines for facilities obligated under the Hill-Burton Uncompensated Services Program is sixty days from the date of this publication.

*For information about the percentage multiple of the poverty guidelines to be used on immigration forms such as INS Form I–864, Affidavit of Support, contact the U.S. Immigration and Naturalization Service. To obtain information on the most recent applicable poverty guidelines from the Immigration and Naturalization Service, call 1–800–375–5283. Persons with Internet access may obtain the information from the Immigration and Naturalization Service Internet site at <http://www.ins.usdoj.gov/graphics/howdoi/affsupp.htm>.*

*For information about the Department of Labor's Lower Living Standard Income Level (a self-sufficiency criterion with the poverty guidelines for certain Workforce Investment Act employment and training programs), contact Ronald E. Putz, U.S. Department of Labor—telephone: (202) 219–7694, extension 142—e-mail: [rputz@doleta.gov](mailto:rputz@doleta.gov).*

*For information about the number of people in poverty (since 1959) or about the Census Bureau (statistical) poverty thresholds, contact the HHES Division, Room 1472, Federal Office Building #3, U.S. Bureau of the Census, Washington, DC 20233—telephone: (301) 457–3242— or send e-mail to [hhes-info@census.gov](mailto:hhes-info@census.gov); persons with Internet access may visit the Poverty section of the Census Bureau's World Wide Web site at <http://www.census.gov/hhes/www/poverty.html>.*

**2000 POVERTY GUIDELINES FOR THE 48 CONTIGUOUS STATES AND THE DISTRICT OF COLUMBIA**

Size of family unit	Poverty guideline
1 .....	\$ 8,350
2 .....	11,250
3 .....	14,150
4 .....	17,050
5 .....	19,950
6 .....	22,850
7 .....	25,750
8 .....	28,650

For family units with more than 8 members, add \$2,900 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

2000 POVERTY GUIDELINES FOR  
ALASKA

Size of family unit	Poverty guideline
1 .....	\$10,430
2 .....	14,060
3 .....	17,690
4 .....	21,320
5 .....	24,950
6 .....	28,580
7 .....	32,210
8 .....	35,840

For family units with more than 8 members, add \$3,630 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

2000 POVERTY GUIDELINES FOR  
HAWAII

Size of family unit	Poverty guideline
1 .....	\$ 9,590
2 .....	12,930
3 .....	16,270
4 .....	19,610
5 .....	22,950
6 .....	26,290
7 .....	29,630
8 .....	32,970

For family units with more than 8 members, add \$3,340 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

(Separate poverty guideline figures for Alaska and Hawaii reflect Office of Economic Opportunity administrative practice beginning in the 1966–1970 period. Note that the Census Bureau poverty thresholds—the primary version of the poverty measure—have never had separate figures for Alaska and Hawaii. The poverty guidelines are not defined for Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, the Republic of the Marshall Islands, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and Palau. In cases in which a Federal program using the poverty guidelines serves any of those jurisdictions, the Federal office which administers the program is responsible for deciding whether to use the contiguous-states-and-DC guidelines for those jurisdictions or to follow some other procedure.)

The preceding figures are the 2000 update of the poverty guidelines required by section 673(2) of the Omnibus Budget Reconciliation Act (OBRA) of 1981 (Pub. L. 97–35). As required by law, this update reflects last year's change in the Consumer Price

Index (CPI-U); it was done using the same procedure used in previous years.

Section 673(2) of OBRA–1981 (42 U.S.C. 9902(2)) requires the use of the poverty guidelines as an eligibility criterion for the Community Services Block Grant program. The poverty guidelines are also used as an eligibility criterion by a number of other Federal programs (both HHS and non-HHS). Due to confusing legislative language dating back to 1972, the poverty guidelines have sometimes been mistakenly referred to as the “OMB” (Office of Management and Budget) poverty guidelines or poverty line. In fact, OMB has never issued the guidelines; the guidelines are issued each year by the Department of Health and Human Services (formerly by the Office of Economic Opportunity/Community Services Administration). The poverty guidelines may be formally referenced as “the poverty guidelines updated annually in the **Federal Register** by the U.S. Department of Health and Human Services under authority of 42 U.S.C. 9902(2).”

The poverty guidelines are a simplified version of the Federal Government's statistical poverty thresholds used by the Bureau of the Census to prepare its statistical estimates of the number of persons and families in poverty. The poverty guidelines issued by the Department of Health and Human Services are used for administrative purposes—for instance, for determining whether a person or family is financially eligible for assistance or services under a particular Federal program. The poverty thresholds are used primarily for statistical purposes. Since the poverty guidelines in this notice—the 2000 guidelines—reflect price changes through calendar year 1999, they are approximately equal to the poverty thresholds for calendar year 1999 which the Census Bureau expects to issue in September or October 2000. (A preliminary version of the 1999 thresholds is now available from the Census Bureau.)

In certain cases, as noted in the relevant authorizing legislation or program regulations, a program uses the poverty guidelines as only one of several eligibility criteria, or uses a percentage multiple of the guidelines (for example, 125 percent or 185 percent of the guidelines.) Non-Federal organizations which use the poverty guidelines under their own authority in non-Federally-funded activities also have the option of choosing to use a percentage multiple of the guidelines such as 125 percent or 185 percent.

While many programs use the guidelines to classify persons or families as either eligible or ineligible, some other programs use the guidelines for the purpose of giving priority to lower-income persons or families in the provision of assistance or services.

In some cases, these poverty guidelines may not become effective for a particular program until a regulation or notice specifically applying to the program in question has been issued.

The poverty guidelines given above should be used for both farm and non-farm families. Similarly, these guidelines should be used for both aged and non-aged units. The poverty guidelines have never had an aged/non-aged distinction; only the Census Bureau (statistical) poverty thresholds have separate figures for aged and non-aged one-person and two-person units.

**Definitions**

There is no universal administrative definition of “family,” “family unit,” or “household” that is valid for all programs that use the poverty guidelines. Federal programs in some cases use administrative definitions that differ somewhat from the statistical definitions given below; the Federal office which administers a program has the responsibility for making decisions about administrative definitions. Similarly, non-Federal organizations which use the poverty guidelines in non-Federally-funded activities may use administrative definitions that differ from the statistical definitions given below. In either case, to find out the precise definitions used by a particular program, one must consult the office or organization administering the program in question.

The following statistical definitions (derived for the most part from language used in U.S. Bureau of the Census, Current Population Reports, Series P60–185 and earlier reports in the same series) are made available for illustrative purposes only; in other words, these statistical definitions are not binding for administrative purposes.

(a) *Family*. A family is a group of two or more persons related by birth, marriage, or adoption who live together; all such related persons are considered as members of one family. For instance, if an older married couple, their daughter and her husband and two children, and the older couple's nephew all lived in the same house or apartment, they would all be considered members of a single family.

(b) *Unrelated individual*. An unrelated individual is a person 15 years old or over (other than an inmate of an institution) who is not living with

any relatives. An unrelated individual may be the only person living in a house or apartment, or may be living in a house or apartment (or in group quarters such as a rooming house) in which one or more persons also live who are not related to the individual in question by birth, marriage, or adoption. Examples of unrelated individuals residing with others include a lodger, a foster child, a ward, or an employee.

(c) *Household*. As defined by the Bureau of the Census for statistical purposes, a household consists of all the persons who occupy a housing unit (house or apartment), whether they are related to each other or not. If a family and an unrelated individual, or two unrelated individuals, are living in the same housing unit, they would constitute two family units (see next item), but only one household. Some programs, such as the Food Stamp Program and the Low-Income Home Energy Assistance Program, employ administrative variations of the "household" concept in determining income eligibility. A number of other programs use administrative variations of the "family" concept in determining income eligibility. Depending on the precise program definition used, programs using a "family" concept would generally apply the poverty guidelines separately to each family and/or unrelated individual within a household if the household includes more than one family and/or unrelated individual.

(d) *Family Unit*. "Family unit" is not an official U.S. Bureau of the Census term, although it has been used in the poverty guidelines **Federal Register** notice since 1978. As used here, either an unrelated individual or a family (as defined above) constitutes a family unit. In other words, a family unit of size one is an unrelated individual, while a family unit of two/three/etc. is the same as a family of two/three/etc.

Note that this notice no longer provides a definition of "income." This is for two reasons. First, there is no universal administrative definition of "income" that is valid for all programs that use the poverty guidelines. Second, in the past there has been confusion regarding important differences between the statistical definition of income and various administrative definitions of "income" or "countable income." The precise definition of "income" for a particular program is very sensitive to the specific needs and purposes of that program. To determine, for example, whether or not taxes, college scholarships, or other particular types of income should be counted as "income" in determining eligibility for a specific

program, one must consult the office or organization administering the program in question; that office or organization has the responsibility for making decisions about the definition of "income" used by the program (to the extent that the definition is not already contained in legislation or regulations).

Dated: February 9, 2000.

**Donna E. Shalala,**

*Secretary of Health and Human Services.*

[FR Doc. 00-3478 Filed 2-10-00; 2:30 pm]

BILLING CODE 4154-05-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### CDC Advisory Committee on HIV and STD Prevention: Meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

**NAME:** CDC Advisory Committee on HIV and STD Prevention.

**TIME AND DATE:** 3 p.m.-4:30 p.m., February 28, 2000.

**PLACE:** Teleconference Call

*Telephone Bridge Number for Federal Participants:* 404-639-4100.

*Conference Telephone Bridge Number for Non-Federal Participants:* 1-800-713-1971.

*Conference Code:* 293470.

**STATUS:** Open to the public, limited only by the space available. The teleconference will accommodate approximately 100 people.

**PURPOSE:** This Committee is charged with advising the Director, CDC, regarding objectives, strategies, and priorities for HIV and STD prevention efforts including maintaining surveillance of HIV infection, AIDS, and STDs, the epidemiologic and laboratory study of HIV/AIDS and STDs, information/education and risk reduction activities designed to prevent the spread of HIV and STDs, and other preventive measures that become available.

**MATTERS TO BE DISCUSSED:** Agenda items include a discussion of recommendations pertaining to evolving HIV prevention priorities related to programs, surveillance and research.

**CONTACT PERSON FOR MORE INFORMATION:** Paulette Ford, Committee Management Analyst, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road, NE, M/S E-07, Atlanta, Georgia 30333.

Telephone 404/639-8008, fax 404/639-8600, e-mail pbf7@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: February 10, 2000.

**John Burckhardt,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 00-3611 Filed 2-14-00; 8:45 am]

BILLING CODE 4163-18-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 00D-0218]

#### Draft "Guidance for Reviewers: Potency Limits for Standardized Dust Mite and Grass Allergen Vaccines: A Revised Protocol;" Availability

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled "Guidance for Reviewers: Potency Limits for Standardized Dust Mite and Grass Allergen Vaccines: A Revised Protocol" dated January, 2000. The draft guidance document provides information on the revised release limits to be used by the Center for Biologics Evaluation and Research (CBER) for its evaluation of standardized dust mite and grass allergen vaccines submitted to CBER for lot release. The establishment of suitable potency limits for standardized allergen vaccines submitted to CBER for lot release helps to ensure the safety, purity, and potency of these products.

**DATES:** Written comments may be submitted at any time, however, comments should be submitted by May 15, 2000, to ensure their adequate consideration in preparation of the final document.

**ADDRESSES:** Submit written requests for single copies of "Guidance for Reviewers: Potency Limits for Standardized Dust Mite and Grass Allergen Vaccines: A Revised Protocol" dated January, 2000 to the Office of Communication, Training, and Manufacturers Assistance (HFM-40),

Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1-800-835-4709 or 301-827-1800, or by fax by calling the FAX Information System at 1-888-CBER-FAX or 301-827-3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

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

**FOR FURTHER INFORMATION CONTACT:** Joseph L. Okrasinski, Center for Biologics Evaluation and Research (HFM-17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, 301-827-6210.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

FDA is announcing the availability of a draft document entitled "Guidance for Reviewers: Potency Limits for Standardized Dust Mite and Grass Allergen Vaccines: A Revised Protocol" dated January, 2000. The draft guidance document, when finalized, would provide information to FDA reviewers regarding broader relative potency limits for CBER evaluation of standardized dust mite and grass allergen vaccines submitted to CBER for lot release. Issues addressed in the guidance document, include but are not limited to, the following: (1) Diagnostic Equivalence, (2) therapeutic equivalence, (3) safety equivalence, (4) lot-to-lot variation in allergen vaccine potency, and (5) current and broadened CBER release limits for standardized dust mite and grass allergen vaccines submitted to CBER for lot release.

This draft guidance document represents the agency's current thinking with regard to the potency limits for standardized dust mite and grass allergen vaccines. It does not create or confer any rights for or on any person and does not operate to bind FDA or the

public. An alternative approach may be used if such approach satisfies the requirement of the applicable statute, regulations, or both. As with other guidance documents, FDA does not intend this document to be all-inclusive and cautions that not all information may be applicable to all situations. The document is intended to provide information and does not set forth requirements.

**II. Comments**

This draft 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 document. Submit Written comments at any time, however, comments should be submitted by May 15, 2000, to ensure adequate consideration in preparation of the final 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.

**III. Electronic Access**

Persons with access to the Internet may obtain the document at <http://www.fda.gov/cber/guidelines.htm>.

Dated: February 8, 2000.  
**Margaret M. Dotzel,**  
*Acting Associate Commissioner for Policy.*  
 [FR Doc. 00-3407 Filed 2-14-00; 8:45 am]  
**BILLING CODE 4160-01-F**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Resources and Services Administration**

**Agency Information Collection Activities: Proposed Collection: Comment Request**

In compliance with the requirement for opportunity for public comment on proposed data collection projects

(section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104-13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443-1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

**Proposed Project: Grants for Hospital Construction and Modernization—Federal Right of Recovery and Waiver of Recovery (42 CFR, Subpart H) (OMB No. 0915-0099)—Extension**

The regulation known as "Federal Right of Recovery and Waiver of Recovery," provides a means for the Federal Government to recover grant funds and a method of calculating interest when a grant-assisted facility under Title VI and XVI is sold or leased, or there is a change in use of the facility. It also allows for a waiver of the right of recovery under certain circumstances. Facilities are required to provide written notice to the Federal Government when such a change occurs; and to provide copies of sales contracts, lease agreements, estimates of current assets and liabilities, value of equipment, expected value of land on the new owner's books and remaining depreciation for all fixed assets involved in the transactions, and other information and documents pertinent to the change of status.

**ESTIMATES OF ANNUALIZED HOUR BURDEN**

Regulation	Number of respondents	Responses per respondent	Hours per response	Total burden hours
124.704(b) and 707 .....	20	1	3	60

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14-36, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Written comments should be received within 60 days of this notice.

Dated: February 7, 2000.

**Jane Harrison,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. 00-3409 Filed 2-14-00; 8:45 am]

BILLING CODE 4160-15-U

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Resources and Services Administration**

**Agency Information Collection Activities: Submission for OMB Review; Comment Request**

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)-443-1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

**Proposed Project: Maternal and Child Health Services Block Grant Annual Report, Needs Assessment and Application Guidance (OMB No. 0915-0172)—Revision**

The Health Resources and Services Administration (HRSA) proposes to revise the Guidance and Forms for the Application and Annual Report for the Maternal and Child Health Services Title V Block Grant Program. The guidance is used annually by the 50 States and nine jurisdictions in making application for Block Grants under Title V of the Social Security Act, and in preparing the required annual report. The proposed revisions follow and build on extensive modifications made to the guidance and forms in 1997. The proposed revisions are of two types: (1) Editorial and technical revisions based on the experiences of the States and jurisdictions in using the guidance and forms in 1998 and 1999; and, (2) The addition of a standard set of measures to be used in conducting the formal needs assessment required by Title V every five years. This needs assessment will be required of each State and jurisdiction in fiscal year 2000.

The addition of the core set of measures for use in conducting the formal needs assessment follows discussions with State Maternal and Child Health Directors over the last two years. The changes incorporated in the 1997 revisions have been reflected in major changes in the Title V program, with much more emphasis on accountability and performance measurement as part of the performance partnership concept on which those changes were built. The inclusion now of standard measures for all States and jurisdictions to use in conducting the five-year needs assessment is a natural progression in the development of the Federal-State partnership process.

Following approval of the 1997 revisions, HRSA developed and instituted an automated electronic data collection and reporting system, the Title V Electronic Reporting Package (Title V ERP). The ERP has greatly reduced the burden on the States and jurisdictions, because it provides for automatic calculations of ratios, rates, and percentages, carries data over from year to year, and assures that data used in multiple tables are entered only once. The ERP also provides for text entry, and facilitates the orderly printing of tables, text, and required appendices.

The estimated response burden is as follows:

Type of form	Number of respondents	Responses per respondent	Burden hours per response	Total burden hours
Annual Report and Application with Needs Assessment (FY 2000):				
States .....	50	1	500	25,000
Jurisdictions .....	9	1	270	2,430
Annual Report and Application without Needs Assessment (FY 2001 and FY 2002)				
States .....	50	1	335	16,750
Jurisdictions .....	9	1	135	1,215
Total Average Annual Reporting Burden .....				21,122

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to:

Wendy A. Taylor, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: February 7, 2000.

**Jane Harrison**

*Director, Division of Policy Review and Coordination.*

[FR Doc. 00-3408 Filed 2-14-00; 8:45 am]

BILLING CODE 4160-15-U

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-4420-D-07]

**Redelegation of Authority for Review and Approval or Disapproval of PHA Plans**

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice of Redelegation of Authority.

**SUMMARY:** In this notice, the Assistant Secretary for Public and Indian Housing redelegates the authority for review and approval or disapproval of the 5-year Plans and Annual Plans of a public

housing agencies (PHAs) under 24 CFR part 903, and conducting all activities related to such review, approval or disapproval, to the Offices of Public Housing Hub Directors, Program Center Coordinators and to the Directors of Troubled Agency Recovery Centers, with exceptions.

**EFFECTIVE DATE:** January 28, 2000.

**FOR FURTHER INFORMATION CONTACT:** Rod Solomon, Office of Policy, Program and Legislative Initiatives, Office of Public and Indian Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4116, Washington, DC 20410. Telephone number: (202) 708-0713. This is not a toll-free number. This number may be

accessed via TTY by calling the Federal Information Relay Service at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:** On October 21, 1999 (64 FR 56844), HUD published its final rule implementing section 511 of the Quality Housing and Work Responsibility Act of 1998 (Public Law 105-276, approved October 21, 1998; 112 Stat. 2461) (referred to as the "Public Housing Reform Act"). Section 511 of the Public Housing Reform Act, which added a new section 5A to the U.S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*; see 1437c-1), introduces the public housing agency (PHA) plans—a 5-Year Plan and an Annual Plan. Through these plans a PHA will advise HUD, its residents and members of the public of the PHA's mission for serving the needs of low-income and very low-income families, and the PHA's strategy for addressing those needs.

In accordance with section 511, the Secretary of HUD has the authority to review, approve or disapprove PHA plans submitted by PHAs. Section 511 is implemented in regulations found at 24 CFR part 903.

By separate delegation, the Secretary has elsewhere delegated to the Assistant Secretary for PIH the authority for administering the U.S. Housing Act of 1937, subject to certain exceptions.

Accordingly, the Assistant Secretary for PIH redelegates that authority as follows:

#### **Section A. Authority Redelegated**

The Assistant Secretary for Public and Indian Housing redelegates the authority for: review, approval or disapproval of PHAs' 5-year Plans and Annual Plans ("plans") under 24 CFR part 903, and conducting all activities related to such review, approval or disapproval of the plans, to the Offices of Public Housing Hub Directors, Program Center Coordinators and Directors of Troubled Agency Recovery Centers, except as provided in Section B, below.

#### **Section B. Authority Excepted**

(1) The authority redelegated does not include the authority to waive regulations; and

(2) The Offices of Public Housing Hub Directors, Program Center Coordinators and Directors of Troubled Agency Recovery Centers may exercise the authority redelegated to disapprove a PHA plan on the grounds that the plan and/or its content is prohibited by or inconsistent with applicable Federal law only with the concurrence of the Assistant Secretary or his or her designee.

#### **Section C. Authority to Further Redelegate**

The authority redelegated in Section A may not be further redelegated.

**Authority:** Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: January 28, 2000.

**Harold Lucas,**

*Assistant Secretary for Public and Indian Housing.*

[FR Doc. 00-3439 Filed 2-14-00; 8:45 am]

**BILLING CODE 4210-33-P**

### **DEPARTMENT OF THE INTERIOR**

#### **Fish and Wildlife Service**

#### **Endangered and Threatened Species Permit Application**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of application.

The following applicant requests an amendment to their permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

#### **Permit Number TE842849-3**

*Applicant:* Davey Resource Group, Kent, Ohio (Michael Johnson, P.I.)

The applicant requests an amendment to their permit to take (harass, capture and release) endangered Indiana bats (*Myotis sodalis*) in a larger geographical area, to include the following states: Ohio, Michigan, Indiana, Illinois, Kentucky, Tennessee, Virginia, West Virginia, and Pennsylvania. Activities are proposed for the enhancement of survival of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111-4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111-4056. Telephone: (612/713-5350); FAX: (612/713-5292).

Dated: February 9, 2000.

**Charles M. Wooley,**

*Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.*  
[FR Doc. 00-3531 Filed 2-14-00; 8:45 am]

**BILLING CODE 4310-55-P**

### **DEPARTMENT OF THE INTERIOR**

#### **Bureau of Land Management**

**[WY-920-00-1320-EL, WYW149826]**

#### **Coal Lease Exploration License, WY**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Invitation for Coal Exploration License.

**SUMMARY:** Pursuant to section 2(b) of the Mineral Leasing Act of 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1976, 90 Stat. 1083, 30 U.S.C. 201(b), and to the regulations adopted at 43 CFR 3410, all interested parties are hereby invited to participate with Triton Coal Company, LLC on a pro rata cost sharing basis in its program for the exploration of coal deposits owned by the United States of America in the following-described lands in Campbell County, WY:

T. 52 N., R. 72 W., 6th P.M., Wyoming;  
Sec. 17: Lot 16;  
Sec. 20: Lots 1-3, 6-10, 15, 16;  
Sec. 21: Lots 3-6, 10-15.  
Containing 868.11 acres, more or less.

All of the coal in the above-described land consists of unleased Federal coal within the Powder River Basin Known Recoverable Coal Resource Area. The purpose of the exploration program is to obtain data on the Anderson and Canyon coal seams.

**ADDRESSES:** The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management (BLM). Copies of the exploration plan are available for review during normal business hours in the following offices (serialized under number WYW149826): BLM, Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, WY 82003; and, BLM, Casper Field Office, 2987 Prospector Drive, Casper, WY 82604.

**SUPPLEMENTARY INFORMATION:** This notice of invitation will be published in The News-Record of Gillette, WY, once each week for two consecutive weeks beginning the week of February 14, 2000, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the Bureau of Land

Management and Triton Coal Company, LLC no later than thirty days after publication of this invitation in the **Federal Register**. The written notice should be sent to the following addresses: Triton Coal Company, LLC, Attn: Steve Salonek, P.O. Box 3027, Gillette, WY 82717, and the BLM, Wyoming State Office, Minerals and Lands Authorization Group, Attn: Mavis Love, P.O. Box 1828, Cheyenne, WY 82003.

The foregoing is published in the **Federal Register** pursuant to 43 CFR 3410.2-1(c)(1).

Dated: February 3, 2000.

**Mavis Love,**

*Acting Chief, Leasable Minerals Section.*

[FR Doc. 00-3066 Filed 2-14-00; 8:45 am]

BILLING CODE 4310-22-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[CA-650-1430-ER; CACA-40856]

#### Public Meeting

**AGENCY:** Bureau of Land Management.

**ACTION:** Public Meeting.

**SUMMARY:** Notice is hereby given that the Bureau of Land Management will convene a Public Meeting to discuss a proposed ranch in the community of Trona, California on March 8, 2000 from 7:00 P.M. to 9:00 P.M. in the Trona High School Library. The purpose of this public meeting is to identify and address public issues and concerns, and to assess the nature and extent of potential environmental impacts which should be addressed in the Environmental Assessment.

**EFFECTIVE DATE:** Immediately upon publication.

**FOR FURTHER INFORMATION CONTACT:** Peter Graves, Ridgecrest Field Office, BLM, 300 South Richmond Road, Ridgecrest, CA 93555, (760) 384-5429.

**SUPPLEMENTAL INFORMATION:** On June 29, 1999, Rocking "R" Ranch submitted to the Bureau of Land Management an "Application For Land For Recreation or Public Purpose" to operate a public ranch for the rescue and rehabilitation of abused and neglected horses. The proposed ranch would be located on public land near the community of Trona, California. The land is more fully described as follows:

#### Mount Diablo Meridian, California

T. 25 S., R. 43 E.,  
Sec. 18, SW<sup>1</sup>/<sub>4</sub>.

Containing 40.00 acres more or less, in the County of San Bernardino, State of California.

The Bureau of Land Management, Ridgecrest Field Office, will convene a public meeting beginning at 7:00 P.M. local time on Wednesday, March 8, 2000, in the Trona High School Library, 83600 Trona Road, Trona, California concerning the proposed Rocking "R" Ranch. The purpose of this public meeting is to identify and address public issues and concerns, and to assess the nature and extent of potential environmental impacts which should be addressed in the Environmental Assessment. Written comments are requested and should be submitted no later than March 3, 2000, to Peter G. Graves, Resource Management Specialist, Bureau of Land Management, 300 South Richmond Road, Ridgecrest, CA 93555. For more information, contact Peter G. Graves at (760) 384-5429.

Dated: February 4, 2000.

**Hector A. Villalobos,**

*Field Office Manager.*

[FR Doc. 00-3429 Filed 2-14-00; 8:45 am]

BILLING CODE 4310-40-M

## 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 February 5, 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 March 1, 2000.

**Carol D. Shull,**

*Keeper of the National Register.*

### ALASKA

#### Nome Borough-Census Area

Old St. Joseph's Catholic Church, Bering and Seppala Sts., Nome, 00000149

### ARKANSAS

#### Crawford County

Chester Masonic Lodge and Community Building, Jct. of Front and Dickson Sts., Chester, 00000150

### FLORIDA

#### Duval County

Elks Club Building, (Downtown Jacksonville MPS), 201-213 N. Laura St., Jacksonville, 00000151

### GEORGIA

#### Webster County

Webster County Jails, Unnamed city street at the jct. of Cass St. and Old Post Office Rd., Preston, 00000152

### ILLINOIS

#### Cook County

Somerset Hotel,  
1152-1154 S. Wabash Ave., Chicago,  
00000153

### IOWA

#### Woodbury County

Newton, James P., House and Maid Cottage,  
2312 Nebraska St., Sioux City, 00000154

### KANSAS

#### Ellis County

Ellis Congregational Church, Eighth and Washington Sts., Ellis, 00000156

#### Finney County

Hope House, 1112 Gillespie Place, Garden City, 00000157  
Little Finnup House, 401 N. Ninth St., Garden City, 00000155

#### Leavenworth County

Hund School, 31874 179th St., Leavenworth, 00000158

#### Saline County

Masonic Temple, 336 S. Santa Fe Ave., Salina, 00000192

### LOUISIANA

#### East Baton Rouge Parish

Highland Stockade, Address Restricted,  
Baton Rouge, 00000191

#### Livingston Parish

Walker High School, 13443 Burgess Ave., Walker, 00000159

### MASSACHUSETTS

#### Suffolk County

Fulton-Commercial Streets Historic District (Boundary Increase),  
81-95 Richmond St., Boston, 00000160

### MONTANA

#### Chouteau County

West Quincy Granite Quarry, Flat Creek Rd., Square Butte, 00000163

#### Fergus County

Lewistown Satellite Airfield Historic District,  
US 87, Lewistown, 00000162

### NEBRASKA

#### Adams County

Heartwell Park Historic District, 105-106 Lakeside Dr. 110-602 Forest Blvd., and 923 and 1109 N. Elm St., Hastings, 00000168  
McCue—Trausch Farmstead, Address Restricted, Hastings, 00000165

**Boone County**

St. Anthony's Church and School, 514 W. Main St. and 103 N 6th St., Cedar Rapids, 00000172

**Douglas County**

Farnam Building, 1607-1617 Farnam St., Omaha, 00000171  
Keeline Building, 319 S 17th St., Omaha, 00000170  
Moses, G.C., Block, 1234-1244 S 13th St., Omaha, 00000169

**Red Willow County**

McCook YMCA, 424 Norris Ave., McCook, 00000167

**Sioux County**

Sandford Dugout, Address Restricted, Mitchell, 00000166

**NEW JERSEY****Essex County**

Pine Street Historic District, Roughly bounded by Glenridge Ave., the NJ TRANSIT Boonton Line, Pine and Baldwin Sts., Montclair, 00000175

**Hunterdon County**

Readingsburg Historic District, Cokesbury and Stone Mill Rds., NJ 639, Clinton, 00000176

**NEW YORK****Wayne County**

Gates Hall and Pultneyville Public Square, Lake Rd., Pultneyville, 00000177

**NORTH CAROLINA****Warren County**

Warren County Fire Tower, 4.5 mi. S of Warrenton on NC 58 S, Liberia, 00000164

**OHIO****Cuyahoga County**

Harp Apartments, 1389 W. 64th St., Cleveland, 00000180  
White Chewing Gum Company Building, 10307 Detroit Ave., Cleveland, 00000181

**Vinton County**

Masonic Lodge #472, 18 Commercial St., Zaleski, 00000182

**OKLAHOMA****Canadian County**

El Reno High School, 405 S. Choctaw, El Reno, 00000179  
El Reno Municipal Swimming Pool Bath House, 715 S. Morrison, El Reno, 00000178

**SOUTH DAKOTA****Brown County**

South Dakota Dept. of Transportation Bridge No. 07-009-060, (Historic Bridges in South Dakota MPS), Local Rd. over Elm Dam Spillway, Frederick, 00000185  
South Dakota Dept. of Transportation Bridge No. 07-091-330, (Historic Bridges in South Dakota MPS), Cty Highway over State of South Dakota RR tracks, Aberdeen, 00000183  
South Dakota Dept. of Transportation Bridge No. 07-220-454, (Historic Bridges in South

Dakota MPS), Local Rd. over Mud Creek, Stratford, 00000184  
South Dakota Dept. of Transportation Bridge No. 07-268-030, (Historic Bridges in South Dakota MPS), Local Rd. over James River, Hecal, 00000186  
South Dakota Dept. of Transportation Bridge No. 07-304-414, (Historic Bridges in South Dakota MPS), Local Rd. over Ferney Ravine, Ferney, 00000187

**TEXAS****Tarrant County**

Arlington Post Office, 200 W. Main St., Arlington, 00000188

**WASHINGTON****Walla Walla County**

Whitehouse—Crawford Planing Mill, 212 N. 3rd Ave., Walla Walla, 00000189

**WISCONSIN****Eau Claire County**

Anderson, Brady and Waldermar Ager House, 514 W. Madison St., Eau Claire, 00000190

Due to Procedural Error a request for Removal has been made for the following resource:

**NORTH CAROLINA****Mecklenburg County**

McAuley Farm (Rural Mecklenburg County MPS), 10724 Alexanderana Rd., Charlotte vicinity 91000024

There has been a request for removal for the following resources:

**SOUTH CAROLINA****Charleston County**

Laurel Hill, Off US 17, McClellanville, 85002359

**Cherokee County**

Robbs House, (Gaffney MRA), 310 W. Burford St., Gaffney, 86000593  
Sarratt House, (Gaffney MRA), 217 Marion St., Gaffney, 86000599  
Victory Cotton Oil Company Complex, (Gaffney MRA), W side of Frederick St. between Hill and Johnson Sts., Gaffney, 86000596  
West End Elementary School, (Gaffney MRA), Floyd Baker Blvd. And Broad St., Gaffney, 86000600

**Florence County**

Gregg, Dr. Benjamin, House, 315 S. Colt St., Florence, 78002508

**Georgetown County**

China Grove, SC 512, Georgetown vicinity, 82003851

**Greenville County**

Old Textile Hall, 322 W. Washington St., Greenville, 80003672

**Lancaster County**

Stewart-Sapp House, (Lancaster County MPS), SC 522 and SC 28, Tradesville vicinity, 90000097

**Lexington County**

George's Grist and Flour Mill, (Lexington County MRA), Gibson's Pond Rd., Lexington, 83003877

**Newberry County**

Stewart House, (Newberry MRA), 1001 Wilson St., Newberry, 80003685

**Orangeburg County**

Rocks Plantation, 7 mi. E of Eutawville off SC 6, Orangeburg vicinity, 76001709

**Richland County**

Zion Protestant Episcopal Church, (Lower Richland County MRA), SC 263, Eastover, 86000543

**Spartanburg County**

Franklin Hotel, 185 E. Main St., Spartanburg, 83002207

**Williamsburg County**

Black Mingo Baptist Church, SE of Nesmith, Nesmith vicinity, 80003713

[FR Doc. 00-3410 Filed 2-14-00; 8:45 am]

BILLING CODE 4310-70-P

**DEPARTMENT OF THE INTERIOR****Bureau of Reclamation****Information Collection Activities; Proposed Collection; Comment Request; Extension**

**AGENCY:** Bureau of Reclamation, Interior.

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

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces that the Bureau of Reclamation (Reclamation) is seeking an extension of the following information collection: Diversions, Return Flow, and Consumptive Use of Colorado River Water in the Lower Colorado River Basin, OMB No. 1006-0015. Before submitting the information collection request to the Office of Management and Budget for approval, Reclamation is soliciting comments on specific aspects of the information collection.

**DATES:** Comments on this notice must be received by April 17, 2000.

**ADDRESSES:** Address all comments concerning this notice to Information Collection Officer, Bureau of Reclamation, D-7924, P.O. Box 25007, Denver, Colorado 80225-0007.

**FOR FURTHER INFORMATION CONTACT:** Susan Rush, Information Collection Officer, (303) 445-2047; Internet address: srush@do.usbr.gov.

**SUPPLEMENTARY INFORMATION:** Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of

Reclamation's functions, including whether the information will have practical use; (b) the accuracy of Reclamation's estimated time and cost burdens of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, use, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including increased use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

**Title:** Diversions, Return Flow, and Consumptive Use of Colorado River Water in the Lower Colorado River Basin.

**OMB No.:** 1006-0015.

**Abstract:** Reclamation delivers Colorado River water to water users for diversion and beneficial consumptive use in the States of Arizona, California, and Nevada. Under Supreme Court order, the United States is required, at least annually, to prepare and maintain complete, detailed, and accurate records of diversions of water, return flow, and consumptive use. This information is needed to ensure that a State or a water user within a State does not exceed its authorized use of Colorado River water. Water users are obligated to provide information on diversions and return flows to Reclamation by provisions in their water delivery contracts. Reclamation determines the consumptive use by subtracting return flow from diversions or by other engineering means. Without the information collected, Reclamation could not comply with the order of the United States Supreme Court to prepare and maintain detailed and accurate records of diversions, return flow, and consumptive use.

**Description of respondents:** The Lower Basin States (Arizona, California, and Nevada), local and tribal entities, water districts, and individuals that use Colorado River water.

**Frequency:** Annually, or otherwise as determined by the Secretary of the Interior.

**Estimated completion time:** An average of 6 hours per respondent.

**Annual responses:** 54 respondents.

**Annual burden hours:** 324.

Dated: February 7, 2000.

**John E. Redlinger,**

*Acting Area Manager, Boulder Canyon Operations Office, Lower Colorado Region.*  
[FR Doc. 00-3335 Filed 2-14-00; 8:45 am]

BILLING CODE 4310-94-P

## DEPARTMENT OF LABOR

### Office of the Secretary

#### Submission for OMB Review; Comment Request

February 8, 2000.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). A copy of the ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 219-5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OHSA, and VETS contact Darrin King ((202) 219-5096 ext. 151 or by E-mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395-7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
  - enhance the quality, utility, and clarity of the information to be collected; and
  - minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

**Agency:** Employment and Training Administration.

**Title:** Governor's Requests for Advances from the Federal Unemployment Account or Requests for Voluntary Repayment of Such Advances.

**OMB Number:** 1205-0199.

**Affected Public:** State, Local, or Tribal Government.

**Frequency:** On Occasion.

**Number of Respondents:** 1.

**Estimated time per respondent:** 1 Hour.

**Total burden hours:** 1 Hour.

**Description:** The process through which States request advances from the Federal Unemployment Account in the Unemployment Trust Fund and make voluntary repayments of the advances to the Federal Unemployment Account.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 00-3508 Filed 2-14-00; 8:45 am]

BILLING CODE 4510-30-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA-W) issued during the period of January and February, 2000.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

#### Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-36,688; Flynt Fabrics, Inc., Wadesboro, NC

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA-W-37,100; *Maine Yankee Atomic Power Co., Wiscasset, ME*  
 TA-W-37,246; *Epperheimer, Inc., Kenai, AK*  
 TA-W-37,204; *General Electric, GE Capital, Brookfield, WI*  
 TA-W-37,204; *General Electric, GE Capital, Brookfield, WI*  
 TA-W-37,299; *L.G. & E Natural Gathering & Processing, Hobbs, NM*  
 TA-W-37,177; *Acker & Jablow Fabrics LTD, New York, NY*  
 TA-W-37,248; *FirstFleet, Inc., Harlingen, TX*  
 TA-W-37,234; *Seagate Technology, Inc., Customer Service Operations & Research and Design Center, Oklahoma City, OK*  
 The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.  
 TA-W-37,075; *Steeltech, Milwaukee, WI*  
 TA-W-36,954; *Intel Corp., Chandler Assembly Test Facility, Chandler, AZ*  
 TA-W-36,991; *Piezo Crystal, Carlisle, PA*  
 TA-W-37,096; *Royal Oak Enterprises, Meta, MO*  
 TA-W-37,144; *AlliedSignal, Mishawaka, IN*  
 TA-W-37,109; *DMI Furniture, Inc., Plant #4, Ferdinand, IN*  
 TA-W-37,242; *Wardson, Inc., Adamsville, TN*  
 TA-W-37,189; *B.F. Goodrich, Fairbanks Morse Engine Div., Beloit, WI*  
 TA-W-37,086; *Garden State Tanning, Inc., Adrian, MI*

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-37,164; *Fogel Neckwear Corp., New York, NY*

The investigation revealed that criteria (2) and criteria (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or an appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

TA-W-37,201; *Drummond Co., Inc., Cedrum Mine Walker County, Birmingham, AL*

U.S. imports of coal from all sources were negligible (less than one percent of U.S. production) during the relevant period.

### Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA-W-37,183; *Lido Fashions, Paterson, NJ; November 19, 1998.*  
 TA-W-37,121; *Quantegy, Inc., Opelika, AL; November 10, 1998.*  
 TA-W-37,206; *Tultex Corp., Roxboro, NC and Longhurst, NC; December 10, 1998.*  
 TA-W-37,112; *Sourceone Manufacturing Services LLC, Brookhill and North Avenue Plants, Baltimore, MD; November 1, 1998.*  
 TA-W-37,157; *The Chinet Co., Waterville, ME; November 30, 1998.*  
 TA-W-37,071; *Technistar Corp., Longmont, CO; October 27, 1998.*  
 TA-W-37,032; *FAG Bearings, Joplin, MO; October 21, 1998.*  
 TA-W-37,026; *Stupp Corp., Baton Rouge, LA; October 14, 1998.*  
 TA-W-37,158; *Paramount Knit, Bourbon, MO; November 30, 1998.*  
 TA-W-37,085; *Tulon, Inc., Gardena, CA; November 10, 1998.*  
 TA-W-37,115; *Neles Automation, Field Control Div., Shrewsbury, MA; November 15, 1998.*  
 TA-W-37, 268; *Hampton Industries, Inc., Warrenton, NC; January 24, 1999.*  
 TA-W-37, 033; *United Technologies Automotive, Inc., a/k/a Lear Corp. Ceramic Ave. Plant, Zanesville, OH; February 7, 1999.*  
 TA-W-37, 235; *Angelica Image Apparel, Ackerman Facility, Ackerman, MS; December 16, 1998.*  
 TA-W-37, 042; *Wilson Sporting Goods Co., Sparta, TN; October 22, 1998.*  
 TA-W-37, 197; *Kellwood Co., Sportswear Div., Calhoun City, MS; December 6, 1998.*  
 TA-W-37, 253; *TAB Products, Turlock, CA; December 18, 1998.*  
 TA-W-37, 196; *Littonian Shoe Co., Littlestown, PA; January 29, 2000.*  
 TA-W-37, 228 & A, B; *Third Generation, Inc, Latta, SC, Ware Shoals, SC and Honea Path, SC; December 22, 1998.*  
 TA-W-37, 892; *NEC Technologies, Inc., Georgia Plant, McDonough, GA; August 25, 1998.*  
 TA-W-37, 233; *Dana Corp., Parish Light Vehicle Structures Div., Reading, PA; February 9, 2000.*  
 TA-W-36, 990 & A, B & C; *Bayer Clothing Group, Inc., Target Square Facility, Clearfield, PA, Fletcherville Facility, Clearfield, PA, Hyde Facility, Hyde, PA and Kent Facility, Curwensville, PA; October 5, 1998.*

TA-W-37, 006; *Kim Michaels, Inc., Hammonton, NJ; October 12, 1998.*  
 TA-W-37, 180; *Russell Manufacturing, Inc., Lebanon, VA; December 3, 1998.*  
 TA-W-37, 971; *United Distillers and Vintners of North America, Allen Park, MI; September 28, 1998.*  
 TA-W-36, 961; *General Electric Meter Business, Single Phase Residential Meter Final Assembly, Somersworth, NH; September 29, 1998.*  
 TA-W-37, 007; *Metlakatla Forest Products, Metlakatla, AK; October 7, 1998.*  
 TA-W-37, 126; *Spartan Mills, Beaumont Mills Plant, Spartanburg, SC; November 15, 1998.*  
 TA-W-37, 014; *Spartan Mills, John H. Montgomery Plant, Chesnee, SC; October 20, 1998.*

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103-182) concerning transitional adjustment assistance hereinafter called (NAFTA-TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA-TAA issued during the month of January and February, 2000.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA-TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' for separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

**Negative Determinations NAFTA-TAA**

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to worker' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

- NAFTA-TAA-03597; *Spartan Mills, Beaumont Mills Plant, Spartansburg, SC*  
 NAFTA-TAA-03618; *B.F. Goodrich, Fairbanks Morse Engine Div., Beloit, WI*  
 NAFTA-TAA-03648; *Wardson, Inc., Adamsville, TN*  
 NAFTA-TAA-03541; *FAG Bearings, Joplin Plant, Joplin, MO*  
 NAFTA-TAA-03539; *Stupp Bros., Inc., Stupp Corp., Baton Rouge, LA*  
 NAFTA-TAA-03569; *Kim Michaels, Inc., Hammonton, NJ*  
 NAFTA-TAA-03557; *Royal Oak Enterprises, Meta, MO*  
 NAFTA-TAA-03536; *Spartan Mills, John H. Montgomery Plant, Chesnee, SC*  
 NAFTA-TAA-0346 A; *UNIFI, Inc., Raeford Plant, NC and Sanford Plant, Sanford, NC*  
 NAFTA-TAA-03584; *Masonite Corp., Pilot Rock, Or*  
 NAFTA-TAA-03643; *Republic Builders Products Corp., Oyersburg, TN*  
 NAFTA-TAA-03344; *Flynt Fabrics, Inc., Wadesboro, NC*  
 NAFTA-TAA-03591; *Vincent Dress, Inc., Jermyn, PA*  
 NAFTA-TAA-03599; *Hagale Industries, Inc., Marshfield, MO*  
 NAFTA-TAA-03567; *DMI Furniture, Inc., Desk Plant #4, Ferdinand, IN*  
 NAFTA-TAA-3693; *Lower Umpqua Federal Credit Union, Reedsport, OR*  
 NAFTA-TAA-03675; *KTI Energy of Martinsville, Inc., Martinsville, VA*  
 NAFTA-TAA-03664; *Snap-On, Inc., Ottawa, IL*  
 NAFTA-TAA-03634; *General Electric, GE Capital, Brookfield, WI*  
 NAFTA-TAA-03659; *FirstFleet, Inc., Harlingen, TX*

The investigation revealed that workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

**Affirmative Determinations NAFTA-TAA**

- NAFTA-TAA-03526; *IMC Plastics, Inc., Tualatin, OR: October 20, 1998.*  
 NAFTA-TAA-03697; *O'Bryan Brothers, Inc., Richland Center, WI: January 10, 1999.*

NAFTA-TAA-03576; *Champion Laboratories, Inc., Fuel Filter Technologies, Inc., Shelby Township, MI: November 5, 1998.*

NAFTA-TAA-03652; *ABB Automation, Inc., Electronic & Systems Assembly Div., Williamsport, PA: December 28, 1998.*

NAFTA-TAA-03573; *Hempfield Foundries Co., Greensburg, PA: November 9, 1998.*

NAFTA-TAA-03586; *Neles Automation, Field Control Div., Shrewsbury, MA: November 15, 1998.*

NAFTA-TAA-03626; *Russell Manufacturing, Lebanon, VA: December 3, 1998.*

NAFTA-TAA-03404; *Thomas & Betts Corp., Communications Division, Kent, WA: August 16, 1998.*

NAFTA-TAA-03655; *Nutone, Inc., Coppell, TX: January 4, 1999.*

NAFTA-TAA-03607; *The Chinnet Co., Waterville, ME: December 1, 1998.*

NAFTA-TAA-03639; *Dana Corp., Parish Light Vehicle Structures Div., Reading, PA: January 24, 2000.*

NAFTA-TAA-03511; *Metlakatla Forest Products, Metlakatla, AK: October 15, 1998.*

NAFTA-TAA-03600; *Garden State Tanning, Inc., Adrian, MI: November 8, 1998.*

NAFTA-TAA-03608; *White Swan-Meta, Dawson Springs, KY: December 2, 1998.*

NAFTA-TAA-03619; *Sulzer Pumps, Portland, OR: December 7, 1998.*

NAFTA-TAA-03620; *VF Workwear, Inc., Erwin, TN: December 7, 1998.*

NAFTA-TAA-03667; *Winpak Portion Packaging, Bristol, PA: January 7, 1999.*

I hereby certify that the aforementioned determinations were issued during the month of January and February, 2000. Copies of these determinations are available for inspection in Room C-4318, U.S. Department of Labor, 2000 Constitution Avenue, NW, Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: February 9, 2000.

**Grant D. Beale,**

*Program Manager, Division of Trade Adjustment Assistance.*

[FR Doc. 00-3507 Filed 2-14-00; 8:45 am]

BILLING CODE 4510-30-M

**DEPARTMENT OF LABOR****Employment and Training Administration**

[TA-W-35,970]

**Glenoit Corporation, Jacksboro, Tennessee; Notice of Negative Determination on Reconsideration**

On November 15, 1999, the Department issued an Affirmative Determination Regarding Application for Reconsideration applicable to workers of the subject firm. The Union of Needletrades, Industrial and Textile Employees, AFL-CIO, CLC, (UNITE) presented evidence that the Department's survey of the subject firm's customers was incomplete. The notice was published in the **Federal Register** on November 23, 1999 (64 FR 65728).

The Department initially denied TAA to workers producing fleece fabric at Glenoit Corporation located in Jacksboro, Tennessee, based on the finding that the "contributed importantly" test of the worker group eligibility requirements of Section 222 of the Trade Act of 1974, as amended, was not met. The investigation revealed that the customers responding to a customer survey reported no increase in import purchases of fleece fabric during the relevant time period of the investigation (1997 to 1998 and the first half of 1999 compared to first half of 1998).

At the Department's request, the subject firm identified additional declining customers. On reconsideration, the Department conducted further survey of the subject firm's major declining customers. One respondent reported replacing purchases of fleece fabric from Glenoit with imports. This customer, however, accounted for an insignificant percentage of the subject firm's sales decline. Other respondents to the survey reported no import purchases of fleece fabric like or directly competitive with that produced by the workers of the firm.

**Conclusion**

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Glenoit Corporation, Jacksboro, Tennessee.

Signed at Washington, DC, this 2nd day of February 2000.

**Grant D. Beale,**

*Program Manager, Division of Trade Adjustment Assistance.*

[FR Doc. 00-3503 Filed 2-14-00; 8:45 am]

BILLING CODE 4510-30-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-37,257, TA-W-37,257A]

#### Great American Knitting Mills, Bally, Pennsylvania and Great American Knitting Mills, Pottstown, Pennsylvania; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on January 18, 2000, in response to a worker petition which was filed by the company on behalf of its workers at Great American Knitting mills, located in Bally and Pottstown, Pennsylvania. The workers produce men's socks.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would

serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 31st day of January, 2000.

**Grant D. Beale,**

*Program Manager, Office of Trade Adjustment Assistance.*

[FR Doc. 00-3497 Filed 2-14-00; 8:45 am]

BILLING CODE 4510-30-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II,

Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address show below, not later than February 25, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than February 25, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

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

**Grant D. Beale,**

*Program Manager, Division of Trade Adjustment Assistance.*

#### PETITIONS INSTITUTED ON 01/31/2000

TA-W	Subject firm (petitioners)	Location	Date of petition	Product(s)
37,282	Hewlett Packard Co. (Wkrs)	Vancouver, WA	01/17/2000	Printers for Computers.
37,283	Nordic Group LLC (Wkrs)	Hubbard, OR	01/12/2000	Outerwear.
37,284	Fruit of the Loom (Wkrs)	St. Martinville, LA	12/15/1999	Briefs and T-Shirts.
37,285	R.L.F. Neckwear, Inc (UNITE)	Belleville, NJ	01/11/2000	Men's Bow Ties.
37,286	Northern Automotive (Wkrs)	West Salem, WI	01/15/2000	Design Automotive Interior Parts.
37,287	American Timber Co. (Co.)	Olney, MT	01/14/2000	Stud Lumber and By-Products.
37,288	Custom Packaging Systems (Co.)	Manistee, MI	01/11/2000	Flexible Intermediate Bulk Containers.
37,289	M. Glosser & Sons Scrap (USWA)	Johnstown, PA	01/14/2000	Various Steel Products.
37,290	Ochoco Lumber Co. (Wkrs)	John Day, OR	01/10/2000	Lumber.
37,291	IMC Kalium (Wkrs)	Carlsbad, NM	01/07/2000	Langbeintie, Muriate Sulphate & Potash.
37,292	Deepwater Corrosion (Wkrs)	Houston, TX	01/13/2000	Corrosion Services.
37,293	Intermet Ironton Iron (GMP)	Ironton, OH	01/19/2000	Automobile Bedplates and Crankshafts.
37,294	Ball Foster (Wkrs)	Marion, IN	01/13/2000	Glass Beverage Containers.
37,295	Hylton House (Wkrs)	Kenbridge, VA	12/01/1999	Upholstered Furniture.
37,296	BICC General (Wkrs)	Williamstown, MA	01/10/2000	Cordsets.
37,297	Smiley Container (PACE)	Poplar Bluff, MO	01/19/2000	Candy Boxes.
37,298	Apparel Specialist (Co.)	Green Bay, WI	01/14/2000	Embroidered and Screened Cloth.
37,299	Standard Candy Co., Inc (Co.)	Nashville, TN	01/19/2000	King Leo Stick Candy.
37,300	Award Windows (Wkrs)	Ferndale, WA	01/13/2000	Commercial Windows.

[FR Doc. 00-3505 Filed 2-14-00; 8:45 am]  
BILLING CODE 4510-30-M

**DEPARTMENT OF LABOR**

**Employment and Training Administration**

[TA-W-36,770]

**Lawson Mardon Thermoplate Corporation, Piscataway, New Jersey; Notice of Termination of Investigation**

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 30, 1999 in response to a worker petition which was filed by a company official on behalf of former workers at Lawson Mardon Thermoplate Corporation, Piscataway, New Jersey.

The Department of Labor has been unable to locate an official of the company to provide the information necessary to render a trade adjustment assistance determination. Consequently, the Department of Labor cannot conduct an investigation to make a determination as to whether the workers are eligible for adjustment assistance benefits under the Trade Act of 1974. Therefore, further investigation in this matter would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 28th day of January, 2000.

**Grant D. Beale,**  
*Program Manager, Office of Trade Adjustment Assistance.*

[FR Doc. 00-3500 Filed 3-14-00; 8:45 am]  
BILLING CODE 4510-30-M

**DEPARTMENT OF LABOR**

**Employment and Training Administration**

[TA-W-36,243 et al.]

**Levi Strauss and Company, et. al.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance**

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance on June 24, 1999, applicable to workers of Levi Strauss and Company, Morrilton Sewing

Facility located in Morrilton, Arkansas. The notice was published in the **Federal Register** on July 20, 1999 (64 FR 38921).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of men's slacks and men's and women's jeans. New information received by the company shows that worker separations have occurred at the following facilities of Levi Strauss & Company: Little Rock Rescreen and Little Rock Customer Service, Little Rock, Arkansas, KB's Environmental Service, Menifee, Arkansas and Zimmerman Food Service, Morrilton, Arkansas. The Little Rock Rescreen and Little Rock Customer Service provided inspection, various customer services and distribution for Levi Strauss & Company. KB's Environmental Service and Zimmerman Food Service provided janitorial and cafeteria services for the subject firm's Morrilton Sewing Facility located in Morrilton, Arkansas which closed in early 1999.

The intent of the Department's certification is to include all workers of the subject firm, including full time contractors working at the above mentioned facilities, adversely affected by increased imports of men's slacks and men's and women's jeans.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA-W-36,243 is hereby issued as follows:

All workers of the following facilities of Levi Strauss & Company: Morrilton Sewing Facility, Morrilton, Arkansas (TA-W-36,243), Little Rock Rescreen, Little Rock, Arkansas (TA-W-36,243D), Little Rock Customer Service Center, Little Rock, Arkansas (TA-W-36,234E), KB's Environmental Service, Menifee, Arkansas (TA-W-36,243F) and Zimmerman Food Service, Morrilton, Arkansas (TA-W-36,243G) who became totally or partially separated from employment on or after May 10, 1998 through June 24, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 1st day of February, 2000.

**Grant D. Beale,**  
*Program Manager, Division of Trade Adjustment Assistance.*

[FR Doc. 00-3504 Filed 2-14-00; 8:45 am]  
BILLING CODE 4510-30-M

**DEPARTMENT OF LABOR**

**Employment and Training Administration**

**Investigation Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance**

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than February 25, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than February 25, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC, this 24th day of January, 2000.

**Grant D. Beale,**  
*Program Manager, Division of Trade Adjustment Assistance.*

**Appendix**

PETITIONS INSTITUTED ON 01/24/2000

TA-W	Subject firm (petitioners)	Location	Date of petition	Product(s)
37,263 .....	London International (Comp) .....	Dothan AL .....	01/10/2000	Test and Package Condoms
37,263 .....	Fayette Glove Co. (Wkrs) .....	Fayette, AL .....	01/11/2000	Surgical Gloves
37,264 .....	KTI Energy of Martinsville (Comp)	Martinsville, VA .....	01/12/2000	Steam

## PETITIONS INSTITUTED ON 01/24/2000—Continued

TA-W	Subject firm (petitioners)	Location	Date of petition	Product(s)
37,265	O'Bryan Brothers, Inc (Wkrs)	Richland Center, WI	01/10/2000	Sew Ladies' Lingerie, Slips, Robes
37,266	Tecumseh (Comp)	Trenton, TN	01/10/2000	Hermetic Motors/Stators
37,267	Hass Tailoring (UNITE)	Baltimore, MD	01/11/2000	Men's Suits, Sportcoats, Trousers
37,268	Hampton Industries, Inc (Wkrs)	Warrenton, NC	12/02/1999	Knit Tops
37,269	Strong Wood Products (Comp)	Strong, ME	01/12/2000	Toothpicks
37,270	Charles Industries, Ltd (Comp)	Jasonville, IN	12/17/2000	Small Transformers
37,271	Dynamic Details, Inc (Comp)	Colorado Spring, CO	01/11/2000	Printed Wiring Boards
37,272	Winpak Portion Packaging (USWA)	Bristol, PA	01/07/2000	Plastic Packaging
37,273	Cumberland Apparel (Wkrs)	Monticello, KY	01/10/2000	Children's Sleepwear
37,274	Fasco Motors Group (Wkrs)	Eldon, MO	01/04/2000	Electric Motors
37,275	Walls Industries, Inc (Comp)	Carthage, MO	01/04/2000	Work Clothing
37,276	Gatesville Walls Ind. (Comp)	Gatesville, TX	01/12/2000	Insulated Clothing
37,277	Partlow-West Co (The) (Comp)	New Hartford, NY	01/13/2000	Temperature Controllers
37,278	Cheraw Dyeing and Finish (Comp)	Cheraw, SC	01/11/2000	Dye Woven Fabrics
37,279	Sterling Diagnostic (Wkrs)	Brevard, NC	01/06/2000	Xray Film and Polyester Base
37,280	John Plant Co (The) (Comp)	Ramseur, NC	01/13/2000	Industrial Work Gloves
37,281	Appleton Papers, Inc (Comp)	Camp Hill, PA	12/21/1999	Carbonless Paper

[FR Doc. 00-3506 Filed 2-14-00; 8:45 am]

BILLING CODE 4510-30-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-37,222]

#### Wagener Manufacturing Company, a Division of Foster Industries Incorporated, Wagener, South Carolina; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on January 3, 2000 in response to a worker petition which was filed on behalf of workers at Wagener Manufacturing Company, a division of Foster Industries, Incorporated, located in Wagener, South Carolina.

An active certification covering the petitioning group of workers remains in effect (TA-W-36,937). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 4th day of January 2000.

**Grant D. Beale,**

*Program Manager, Office of Trade Adjustment Assistance.*

[FR Doc. 00-3502 Filed 2-14-00; 8:45 am]

BILLING CODE 4510-30-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-37,182]

#### Wolverine Tube, Inc., Roxboro, North Carolina; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 20, 1999 in response to a worker petition which was filed on the same date on behalf of workers at Wolverine Tube, Inc., Roxboro, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

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

**Grant D. Beale,**

*Program Manager, Office of Trade Adjustment Assistance.*

[FR Doc. 00-3499 Filed 2-14-00; 8:45 am]

BILLING CODE 4510-30-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

[NAFTA-03161, et al.]

#### Levi Strauss and Company, et al.; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 USC 2273), the Department of Labor issued a

Certification for NAFTA Transitional Adjustment Assistance on June 24, 1999, applicable to workers of Levi Strauss and Company, Morrilton Sewing Facility, located in Morrilton, Arkansas. The notice was published in the **Federal Register** on July 20, 1999 (FR 38922).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of men's slacks and men's and women's jeans. New information received by the company shows that worker separations have occurred at the following facilities of Levis Strauss & Company: Little Rock Rescreen and Little Rock Customer Service, Little Rock, Arkansas, KB's Environmental Service, Menifee, Arkansas and Zimmerman Food Service, Morrilton, Arkansas. The Little Rock Rescreen and Little Rock Customer Service provided inspection, various customer services and distribution for Levi Strauss & Company. KB's Environmental Service and Zimmerman Food Service provided janitorial and cafeteria services for the subject firm's Morrilton Sewing Facility located in Morrilton, Arkansas which closed in early 1999.

The intent of the Department's certification is to include all workers of the subject firm, including full time contractors working at the above mentioned facilities, adversely affected by increased imports from Canada and Mexico.

The amended notice applicable to NAFTA-03161 is hereby issued as follows:

All workers of the following facilities of Levi Strauss & Company: Morrilton Sewing Facility, Morrilton, Arkansas (NAFTA-03161), Little Rock Rescreen, Little Rock Arkansas (NAFTA-03161D), Little Rock Customer Service Center, Little Rock,

Arkansas (NAFTA—3161E), KB's Environmental Service, Menifee, Arkansas (NAFTA—03161F) and Zimmerman Food Service, Morrilton, Arkansas (NAFTA—03161G) who became totally or partially separated from employment on or after May 10, 1998 through June 24, 2001 are eligible to apply for NAFTA-TAA Section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 1st day of February, 2000.

**Grant D. Beale,**

*Program Manager, Division of Trade Adjustment Assistance.*

[FR Doc. 00-3498 Filed 2-14-00; 8:45 am]

BILLING CODE 4510-30-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

[NAFTA-03613]

#### Wolverine Tube, Inc., Roxoboro, North Carolina; Notice of Termination of Investigation

Pursuant to Section 250 of the Trade Act of 1974, an investigation was initiated on December 3, 1999 on behalf of workers Wolverine Tube, Inc., Roxoboro, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

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

**Grant D. Beale,**

*Program Manager, Office of Trade Adjustment Assistance.*

[FR Doc. 00-3501 Filed 2-14-00; 8:45 am]

BILLING CODE 4510-30-M

## NATIONAL EDUCATION GOALS PANEL

### Meeting

**AGENCY:** National Education Goals Panel.

**ACTION:** Notice of Meeting.

**SUMMARY:** This notice sets forth the date and location of a forthcoming meeting of the National Education Goals Panel. This notice also describes the functions of the Panel.

**DATE AND TIME:** Saturday, February 26, 2000 from 9:00 a.m. to 11:00 a.m.

**ADDRESSES:** National Press Club, 529 14th Street, NW, HOLEMAN LOUNGE, Washington, DC 2005.

**FOR FURTHER INFORMATION CONTACT:** Ken Nelson, Executive Director, 1255 22nd

Street, NW, Suite 502, Washington, DC 20037. Telephone: (202) 724-0015.

**SUMMARY:** The National Education Goals Panel was established to monitor, measure and report state and national progress toward achieving the eight National Education Goals, and report to the states and the Nation on that progress.

The meeting is open to the public. Agenda items will include: A Panel discussion on data and reporting issues with presentations given by Cynthia D. Price, Associate Director of Analysis and Reporting, NEGP, on background of data issues; Gary Philips, Acting Commissioner of the National Center for Education Statistics (NCES), on the perspective of NCES; and Mark Musick, Chair and President, respectively, of the National Assessment Board (NAGB) and the Southern Regional Education Board (SREB), on the perspectives of NAGB and SREB; as well as an action to establish a Data and Reporting Task Force.

Also included on the agenda will be the passing of the gavel from Governor Paul E. Patton (D-KY), NEGP Chair, 1999 to Governor Tommy G. Thompson, (R-WI), NEGP Chair, 2000. At that time Governor Thompson will announce the Panel's initiatives for the year 2000.

Dated: February 9, 2000.

**Ken Nelson,**

*Executive Director, National Education Goals Panel*

[FR Doc. 00-3425 Filed 2-14-00; 8:45 am]

BILLING CODE 4010-01-M

## NATIONAL SCIENCE FOUNDATION

### National Science Board; Nominations for Membership

The National Science Board (NSB) is the policymaking body for the National Science Foundation (NSF). The Board consists of 24 members appointed by the President, with the advice and consent of the Senate, for six-year terms, in addition to the NSF Director *ex officio*. Section 4(c) of the National Science Foundation Act of 1950, as amended, states that: "The persons nominated for appointment as members of the Board (1) shall be eminent in the fields of the basic, medical, or social sciences, engineering, agriculture, education, research management, or public affairs; (2) shall be selected solely on the basis of established records of distinguished service; and (3) shall be so selected as to provide representation of the views of scientific and engineering leaders in all areas of the Nation."

The Board and the NSF Director solicit and evaluate nominations for submission to the President. Nominations accompanied by biographical information may be forwarded to the Chairman, National Science Board, 4201 Wilson Boulevard, Arlington, VA, 22230, no later than March 31, 2000.

Any questions should be directed to Mrs. Susan E. Fannoney, Staff Assistant, National Sciences Board Office (703) 306-2000.

Dated: February 10, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00-3542 Filed 2-14-00; 8:45 am]

BILLING CODE 7555-01-M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Civil and Mechanical Systems; 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 Civil and Mechanical Systems (1205)

**Date/Time:** March 20, 2000 and March 21, 2000, 8:00 a.m. to 5:00 p.m.

**Place:** NSF, 4201 Wilson Boulevard, Room 365, Arlington, Virginia 22230.

**Type of Meeting:** Closed.

**Contact Person:** Dr. Alison Flatau, Program Director, Dynamic Systems and Control, Sensor Technologies for Civil and Mechanical Systems, National Science Foundation, 4201 Wilson Boulevard, Room 545 Arlington, VA. (703) 306-1361.

**Purpose of Meeting:** To provide advice and recommendations concerning proposals submitted to NSF for financial support.

**Agenda:** To review and evaluate nominations for the FY'00 Sensor Technologies for Civil and Mechanical Systems Review Panel 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. 552(b)(4) and (6) of the Government in the Sunshine Act.

Dated: February 10, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00-3538 Filed 2-14-00; 8:45 am]

BILLING CODE 7555-01-M

## NATIONAL SCIENCE FOUNDATION

### Special emphasis Panel in Civil and Mechanical Systems; 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 Civil and Mechanical Systems (1205).

*Date/Time:* March 23, 2000 and March 24, 2000, 8 a.m. To 5 p.m.

*Place:* NSF, 4201 Wilson Boulevard, Room 530, Arlington, Virginia 22230.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Alison Flatau, Program Director, Dynamic Systems and Control, Sensor Technologies for Civil and Mechanical Systems, National Science Foundation, Room 545, Arlington, VA 22230 (703) 306-1361.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate nominations for the FY'00 Dynamic Systems and Control Review Panel 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 10, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00-3543 Filed 2-14-00; 8:45 am]

BILLING CODE 7555-01-M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Civil and Mechanical Systems; 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 Civil and Mechanical Systems (1205).

*Date/Time:* March 20, 2000 and March 21, 2000, 8 a.m. to 5 p.m.

*Place:* NSF, 4201 Wilson Boulevard, Room 530, Arlington, Virginia 22230.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Alison Flatau, Program Director, Dynamic Systems and Control, Sensor Technologies for Civil and Mechanical Systems, National Science Foundation, 4201 Wilson Boulevard, Room 545, Arlington, VA 22230. (703) 306-1361.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate nominations for the FY'00 Sensor Technologies for Civil and Mechanical Systems Review Panel 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 10, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00-3544 Filed 2-14-00; 8:45 am]

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:* April 3-7, 10, 11, 13, & 14, 2000; 8:30 a.m.-5:00 p.m.

*Place:* Rooms 120, 130, 310, 365, 370, 530 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, VA 22230. Telephone (703) 306-1395 x 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 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. 00-3536 Filed 2-14-00; 8:45 am]

BILLING CODE 7555-01-M

## NATIONAL SCIENCE FOUNDATION

### Advisory Panel for Economics, Decision and Management Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation (NSF) announces the following four meetings of the Advisory Panel for Economics, Decision, and Management Sciences (17559):

1. *Date & Time:* April 7-8, 2000; 9:00 a.m. to 5:00 p.m.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

*Contact Person:* Dr. Daniel H. Newlon, Program Director for Economics, National Science Foundation, 4201 Wilson Boulevard, Suite 995, Arlington, VA 22230. Telephone: (703) 306-1753.

*Agenda:* To review and evaluate Economics proposals as part of the selection process for awards.

2. *Date & Time:* April 27-28, 2000; 9:00 a.m. to 5:00 p.m.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Room 970, Arlington, VA 22230

*Contact Person:* Dr. Hal Arkes, Program Director for Decision, Risk & Management Sciences (DRMS), National Science Foundation, 4201 Wilson Boulevard, Suite 995, Arlington, VA 22230. Telephone: (703) 306-1757.

*Agenda:* To review and evaluate DRMS proposals as part of the selection process for awards.

3. *Date & Time:* March 31-April 1 and April 3-4, 2000; 9:00 a.m. to 5:00 p.m.

*Room:* National Science Foundation, 4201 Wilson Boulevard, Rooms 950 and 970, Arlington, VA 22230.

*Contact Person:* Dr. Mariann (Sam) Jelinek, Program Director for Innovation and Organizational Change (IOC), National Science Foundation, 4201 Wilson Boulevard, Suite 995, Arlington, VA 22230. Telephone: (703) 306-1757.

*Agenda:* To review and evaluate IOC proposals as part of the selection process for awards.

*Type of Meetings:* Closed.

*Purpose of Meetings:* To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

*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 10, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00-3540 Filed 2-14-00; 8:45 am]

BILLING CODE 7555-01-M

## NATIONAL SCIENCE FOUNDATION

### Advisory Panel for Economics, Decision, and Management Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation (NSF) announces the following meetings of the Committee of Visitors for the Advisory Panel for Economics, Decision and Management Sciences (1760):

1. *Date/Time:* March 27, 28 and 29, 2000; 8:30 a.m.-5:00 p.m.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Room 970, Arlington, VA.

*Contact Person:* Dr. Daniel Newlon, Program Director for Economics, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306-1753.

*Agenda:* To review and evaluate Economics proposals as part of the selection process for awards.

2. *Date/Time:* March 27, 28 and 29, 2000; 8:30 a.m.-5:00 p.m.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Room 970, Arlington, VA.

*Contact Person:* Dr. Hal Arkes, Program Director for Decision, Risk and Management Sciences (CRMS), National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306-1757.

*Agenda:* To review and evaluate DRMS proposals as part of the selection process for awards.

3. *Date/Time:* March 27, 28 and 29, 2000; 8:30 a.m.-5:00 p.m.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Room 970, Arlington, VA.

*Contact Person:* Dr. Mariann (Sam) Jelinek, Program Director for Innovation and Organizational Change (IOC), National Science Foundation, 4201 Wilson Boulevard, Suite 995, Arlington, VA 22230. Telephone: (703) 306-1757.

*Agenda:* To review and evaluate IOC proposals as part of the selection process for awards.

*Type of Meetings:* Closed.

*Purpose of Meetings:* To provide advice and recommendations concerning support for research proposals submitted to NSF for financial support.

*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 10, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00-3541 Filed 2-14-00; 8:45 am]

BILLING CODE 7555-01-M

## NATIONAL SCIENCE FOUNDATION

### Committee on Equal Opportunities in Science and Engineering; 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:* Committee on Equal Opportunities in Science and Engineering (#1173).

*Date/Time:* February 17, 2000, 8 am-5 pm; February 18, 2000, 8:30 am-3 pm.

*Place:* Room 1295, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

*Type of Meeting:* Open.

*Contact Person:* Bernice Anderson, Executive Secretary, Room 855, NSF, 4201 Wilson Blvd., Arlington, VA 22230. (703) 306-1655 ext. 5819.

*Minutes:* May be obtained from the contact person at the above address.

*Purpose of Meeting:* To advise NSF on policies and activities of the Foundation to encourage full participation of women, minorities, and persons with disabilities currently underrepresented in scientific,

engineering, professional, and technical fields and to advise NSF concerning implementation of the provisions of the Science and Engineering Equal Opportunities Act.

*Agenda:*

1. Briefing on Congressional Activities related to science and engineering, including briefing on FY 2001 Congressional Budget;

2. Briefing on Graduate Fellowship Program;

3. Planning for CEOSE Biannual report;

4. Update on activities of the Commission on the Advancement of Women and Minorities in Science, Engineering, and Technology Development (CAWMSET).

Dated: February 10, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00-3545 Filed 2-14-00; 8:45 am]

BILLING CODE 7555-01-M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following:

*Name and Committee Code:* Special Emphasis in Mathematical Sciences (1204).

*Date and Time:* February 22-23, 2000; 8:30 A.M. until 5 P.M.

*Place:* Room 380, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Person:* Lloyd Douglas, Program Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306-1874.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate proposals concerning the Infrastructure 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 10, 2000.

**Karen J. York,**

*Committee Management Officer, Division of Human Resources Management.*

[FR Doc. 00-3548 Filed 2-14-00; 8:45 am]

BILLING CODE 7555-01-M

**NATIONAL SCIENCE FOUNDATION****Advisory Panel for Methods, Cross-Directorate, and Science and Society; Notice of Meeting**

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation (NSF) announces the following meetings of the COV Advisory Panel for Methods, Cross-Directorate, and Science and Society (1760):

*Date & Time:* March 1-3, 2000; 8:30 a.m.—5:00 p.m.

*Place:* National Science Foundation, 4201 Wilson Blvd., Rooms 920 and 530, Arlington, VA 22230.

*Contact Person:* Rachele Hollander, Program Director for SDEST, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306-1743.

*Agenda:* To review and evaluate SDEST proposals as part of the selection process for awards.

*Date/Time:* March 1-3, 2000; 8:30 a.m.—5:00 p.m.

*Place:* National Science Foundation, 4201 Wilson Blvd., Rooms 920 and 530, Arlington, VA 22230.

*Contact Person:* Dr. Michael M. Sokal, Program Director for Science & Technology Studies, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306-1742.

*Agenda:* To review and evaluate STS as part of the selection process for awards.

*Date/Time:* March 1-3, 2000.

*Place:* National Science Foundation, 4201 Wilson Blvd., Rooms 920 and 530, Arlington, VA 22230.

*Contact Person:* Dr. Cheryl L. Eavey, Program Director for Methods, Measurement & Statistics, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306-1729.

*Agenda:* To review and evaluate MMS proposals as part of the selection process for awards.

*Type of Meetings:* Closed.

*Purpose of Meetings:* To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

*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 10, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00-3537 Filed 2-14-00; 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 3-4, 2000; 8:00 a.m. to 5:00 p.m.

*Place:* Room 680, 4201 Wilson Boulevard, Arlington, VA.

*Type of Meeting:* Part-Open.

*Contact Person:* Dr. Avi Chaudhuri, Program Director, Sensory Systems, Division of Integrative Biology and Neuroscience, Suite 685, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306-1424.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to HSF for financial support.

*Minutes:* May be obtained from the contact person listed above.

*Agenda:* Open Session: April 3, 2000; 4:00 p.m. to 5:00 p.m., to discuss goals and assessment procedures. Closed Session: April 4; 8:00 a.m. to 5:00 p.m., and April 3, 8:00 a.m. to 4:00 p.m. and 5:00 p.m. to 6:00 p.m. To review and evaluate Sensory Systems 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 10, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00-3539 Filed 2-14-00; 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 2-4, 2000; 9 a.m.—5:30 p.m.

*Place:* National Science Foundation, 4201 Wilson Blvd., Room 1015, Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Person:* Boris Kayser, Program Director for Theoretical Physics, National Science Foundation, 4201 Wilson Blvd.,

Room 1015, Arlington, VA 22230. Telephone: (703) 306-1889.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support in the Theoretical Physics Program.

*Agenda:* To review and evaluate 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 10, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00-3546 Filed 2-14-00; 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:*

February 20-22, 2000; 9 a.m.—5:30 p.m.

*Place:*

National Science Foundation, 4201 Wilson Blvd., Room 1020, Arlington, VA 22230.

*Type of Meeting:*

Closed.

*Contact Person:*

Boris Kayser, Program Director for Theoretical Physics, National Science Foundation, 4201 Wilson Boulevard, Room 1015, Arlington, VA 22230. Telephone: (703) 306-1889.

*Purpose of Meeting:*

To provide advice and recommendations concerning proposals submitted to NSF for financial support in the Theoretical Physics Program.

*Agenda:*

To review and evaluate 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 10, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00-3547 Filed 2-14-00; 8:45 am]

BILLING CODE 7555-01-M

**NUCLEAR REGULATORY COMMISSION**

[Docket No. 40-8838-MLA ASLBP No. 00-776-04-MLA]

**Designation of Presiding Officer**

Pursuant to delegation by the Commission, see 37 Fed. Reg. 28,710 (Dec. 29, 1972), and the Commission's regulations, see 10 CFR 2.1201, 2.1207, notice is hereby given that (1) a single member of the Atomic Safety and Licensing Board Panel is designated as Presiding Officer to rule on petitions for leave to intervene and/or requests for hearing; and (2) upon making the requisite findings in accordance with 10 CFR 2.1205(h), the Presiding Officer will conduct an adjudicatory hearing in the following proceeding: U.S. Army—Jefferson Proving Ground Site.

This proceeding, which will be conducted pursuant to 10 CFR Part 2, Subpart L, of the Commission's Regulations, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings," concerns a request for hearing submitted by Save The Valley, Inc. The request was filed in response to a notice of consideration by the Nuclear Regulatory Commission staff of a request by the U.S. Army to amend its materials license to authorize decommissioning of its Jefferson Proving Ground Site in Madison, Indiana. The notice of consideration of the application and opportunity for hearing was published in the **Federal Register** at 64 FR 70294 (Dec. 16, 1999).

The Presiding Officer in this proceeding is Administrative Judge Alan S. Rosenthal. Pursuant to the provisions of 10 CFR 2.722, 2.1209, Administrative Judge Thomas D. Murphy has been appointed to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents, and other materials shall be filed with Judge Rosenthal and Judge Murphy in accordance with 10 CFR 2.1203. Their addresses are:

Administrative Judge Alan S. Rosenthal,  
Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001

Administrative Judge Thomas D. Murphy, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001

This designation of presiding officer is issued pursuant to the authority of the Chief Administrative Judge of the

Atomic Safety and Licensing Board Panel.

Issued at Rockville, Maryland, this 9th day of February 2000.

**G. Paul Bollwerk, III,**

*Chief Administrative Judge, Atomic Safety and Licensing Board Panel.*

[FR Doc. 00-3514 Filed 2-14-00; 8:45 am]

BILLING CODE 7590-01-P

**NUCLEAR REGULATORY COMMISSION****Atomic Safety and Licensing Board**

[Docket No. 50-423-LA-3; ASLBP No. 00-771-01-LA]

**Northeast Nuclear Energy Company (Millstone Nuclear Power Station, Unit No. 3; Facility Operating License NPF-49); Notice of Hearing**

February 9, 2000.

This proceeding involves the proposed increase in capacity (through the addition of high-density storage racks) of the spent fuel storage pool of the Millstone Nuclear Power Station, Unit No. 3, a pressurized water reactor located in New London County, Connecticut. In response to a Notice of Opportunity for Hearing, published at 64 FR 48672 (September 7, 1999), Connecticut Citizens Against Millstone (CCAM) and Long Island Citizens Against Millstone (CAM) submitted a timely request for a hearing. On October 19, 1999, an Atomic Safety and Licensing Board, consisting of Dr. Richard F. Cole, Dr. Charles N. Kelber, and Charles Bechhoefer, who serves as Chairman, was established to preside over this proceeding. 64 FR 57485 (October 25, 1999).

Notice is hereby given that, following the holding of a prehearing conference in New London, Connecticut, the Atomic Safety and Licensing Board has, by Prehearing Conference Order dated February 9, 2000, LBP-00-02, granted the request for a hearing/petition to intervene submitted by CCAM and CAM. Parties to this proceeding are the Licensee, Northeast Nuclear Energy Company (NNEC); CCAM; CAM; and the Staff of the Nuclear Regulatory Commission.

This proceeding will be conducted either under the Commission's hearing procedures in 10 CFR part 2, subpart G or, if requested by any party by February 22, 2000, under the Commission's hybrid hearing procedures set forth in 10 CFR part 2, subpart K.

During the course of this proceeding, the Atomic Safety and Licensing Board, pursuant to 10 CFR 2.715(a), will entertain limited appearance statements

from any member of the public who is not a party to the proceeding, for the purpose of stating his or her views on the issues involved in this proceeding. Although these statements are not evidence and do not become part of the decisional record, they may assist the Atomic Safety and Licensing Board and the parties in their consideration of matters at issue in this proceeding. Limited appearance statements should be made in writing. If the Atomic Safety and Licensing Board conducts an oral argument or in-person prehearing conference or evidentiary hearing, the Board may at its discretion hear oral statements, at a time and location yet to be determined. Written statements, and requests to make oral statements, should be submitted to the Office of the Secretary, Rulemaking and Adjudications Staff, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of such statement or request should also be served on the Chairman of the Atomic Safety and Licensing Board, T3 F23, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, or CXB2@nrc.gov.

Documents related to this proceeding, issued prior to December 1, 1999, are available in print form for public inspection at the Commission's Public Document Room (PDR), 2120 L St. NW, Washington, D.C. Documents issued subsequent to November 1, 1999 are available electronically through the Agencywide Documents Access and Management System (ADAMS), with access to the public through NRC's Internet Web site (Public Electronic Reading Room Link, (<http://www.nrc.gov/NRC/ADAMS/index.html>)). The PDR and the majority of public libraries have terminals for public access to the Internet.

Rockville, Maryland, February 9, 2000.

For the Atomic Safety and Licensing Board.

**Charles Bechhoefer,**

*Chairman, Administrative Judge.*

[FR Doc. 00-3515 Filed 2-14-00; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-263]

### Northern States Power Company; Monticello Nuclear Generating Plant; Notice of Consideration of Approval of Transfer of Operating Authority Under Facility Operating License and Conforming Amendment, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of operating authority under Facility Operating License No. DPR-22 for the Monticello Nuclear Generating Plant, currently held by Northern States Power Company (NSP), as owner and licensed operator of Monticello. The transfer would be to a new operating company called Nuclear Management Company, LLC (NMC). The Commission is also considering amending the license for administrative purposes to reflect the proposed transfer.

By application dated November 24, 1999, seeking approval of the transfer, the Commission was informed that NSP has entered into Nuclear Power Plant Operating Services Agreements with NMC. Under these Agreements, NMC is to assume exclusive responsibility for the operation and maintenance of Monticello. NSP's ownership of Monticello will not be affected by the proposed transfer of operating authority, according to the application. Likewise, NSP's entitlement to capacity and energy from Monticello will not be affected by the transfer of operating authority. No physical changes to the facility or operational changes are being proposed in the application.

The proposed amendment would reflect the transfer of authority under the license to operate Monticello from NSP to NMC.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of

1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By March 6, 2000, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)-(2).

Requests for a hearing and petitions for leave to intervene should be served upon John H. O'Neill, Jr., counsel for NSP, at Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037 (tel: 202-663-8148; fax: 202-663-8007; e-mail: john.o'neill@shawpittman.com); and the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear

Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by March 18, 2000, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated November 24, 1999, 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 7th day of February 2000.

For the Nuclear Regulatory Commission.

**Claudia M. Craig,**

*Chief, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00-3517 Filed 2-14-00; 8:45 am]

BILLING CODE 7590-01-M

## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-282 and 50-306; Docket No. 72-10]

### Northern States Power Company; Prairie Island Nuclear Generating Plant, Units 1 and 2, and Prairie Island Independent Spent Fuel Storage Installation; Notice of Consideration of Approval of Transfer of Operating Authority Under Facility Operating Licenses and Materials License and Conforming Amendments, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is

considering the issuance of an order under 10 CFR 50.80 and 10 CFR 72.50 approving the transfer of operating authority under Facility Operating Licenses Nos. DPR-42 and DPR-60 for the Prairie Island Nuclear Generating Plant, Units 1 and 2, and Materials License No. SNM-2506 for the Prairie Island Independent Spent Fuel Storage Installation (ISFSI), currently held by Northern States Power Company (NSP), as owner and licensed operator of Prairie Island, Units 1 and 2, and Prairie Island ISFSI. The transfer would be to a new operating company called Nuclear Management Company, LLC (NMC). The Commission is also considering amending the licenses for administrative purposes to reflect the proposed transfer.

By application dated November 24, 1999, seeking approval of the transfer, the Commission was informed that NSP has entered into Nuclear Power Plant Operating Services Agreements with NMC. Under these Agreements, NMC is to assume exclusive responsibility for the operation and maintenance of Prairie Island, Units 1 and 2, and Prairie Island ISFSI. NSP's ownership of Prairie Island, Units 1 and 2, and Prairie Island ISFSI will not be affected by the proposed transfer of operating authority, according to the application. Likewise, NSP's entitlement to capacity and energy from Prairie Island, Units 1 and 2, will not be affected by the transfer of operating authority. No physical changes to the facilities or operational changes are being proposed in the application.

The proposed amendments would reflect the transfer of authority under the licenses to operate Prairie Island, Units 1 and 2, and Prairie Island ISFSI from NSP to NMC.

Pursuant to 10 CFR 50.80 and 10 CFR 72.50, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the

Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility or the license of an independent spent fuel storage installation which does not more than conform the license to reflect the transfer action, involves respectively, "no significant hazards consideration" or "no genuine issue as to whether the health and safety of the public will be significantly affected." No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By March 6, 2000, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)-(2).

Requests for a hearing and petitions for leave to intervene should be served upon John H. O'Neill, Jr., counsel for NSP, at Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037 (tel: 202-663-8148; fax: 202-663-8007; e-mail: john.o'neill@shawpittman.com); and the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of

the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by March 18, 2000, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated November 24, 1999, 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 7th day of February 2000.

For the Nuclear Regulatory Commission.  
**Claudia M. Craig,**

*Chief, Section 1, Project Directorate III,  
Division of Licensing Project Management,  
Office of Nuclear Reactor Regulation.*

[FR Doc. 00-3518 Filed 2-14-00; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[Docket 72-1014]

### Holtec International; Issuance of Environmental Assessment and Finding of No Significant Impact Regarding the Request for Exemption From Requirements of 10 CFR Part 72

By letter dated January 12, 2000, Holtec International (Holtec or applicant) requested an exemption, pursuant to 10 CFR 72.7, from the requirements of 10 CFR 72.234(c). Holtec, located in Marlton, New Jersey, is seeking Nuclear Regulatory

Commission (NRC or the Commission) approval to fabricate three HI-STORM 100 overpacks, and one HI-TRAC-125 transfer cask prior to issuance of the Certificate of Compliance (CoC) for the HI-STORM 100 system. The HI-STORM 100 overpack and the HI-TRAC-125 transfer cask are basic components of the HI-STORM 100 system, a cask system designed for the dry storage of spent nuclear fuel. The HI-STORM 100 system is intended for use under the general license provisions of 10 CFR part 72, subpart K, by Southern Nuclear Operating Company at the Edwin I. Hatch Power Plant (Hatch), located in Baxley, Georgia.

### Environmental Assessment (EA)

#### *Identification of Proposed Action*

By letter dated October 26, 1995, as supplemented, and pursuant to 10 CFR part 72, Holtec submitted an application to the NRC for a CoC for the HI-STORM 100 system. This application is currently under consideration by the NRC staff. The applicant is seeking Commission approval to fabricate three HI-STORM 100 overpacks and one HI-TRAC 100 transfer cask prior to the Commission's issuance of a CoC for the HI-STORM 100 system. The applicant requests an exemption from the requirements of 10 CFR 72.234(c), which state that "Fabrication of casks under the Certificate of Compliance must not start prior to receipt of the Certificate of Compliance for the cask model." The proposed action before the Commission is whether to allow fabrication, including material procurement, prior to issuance of the CoC and to grant this exemption pursuant to 10 CFR 72.7.

#### *Need for the Proposed Action*

Holtec requested the exemption from 10 CFR 72.234(c) to ensure the availability of overpacks so that Hatch can continue loading dry storage casks as planned. Hatch plans to begin loading the three HI-STORM 100 systems in April 2001. Holtec has requested this exemption to allow Hatch sufficient time for training and pre-operational testing. To support Hatch's cask loading schedule, Holtec stated that it must begin fabrication activities in early April 2000; 3 months prior to the scheduled issuance of the HI-STORM 100 CoC, in July 2000.

The HI-STORM 100 application, dated October 26, 1995, is under consideration by the Commission. It is anticipated that, if approved, the HI-STORM-100 CoC may be issued by July 2000. The proposed fabrication exemption will not authorize use of the

HI-STORM 100 overpacks to store spent fuel. That will occur only when, and if, a CoC is issued. NRC approval of the exemption request should not be construed as NRC's favorable consideration of Holtec's application for a CoC. Holtec will bear the risk of all activities conducted under the exemption, including the risk that the three HI-STORM 100 overpacks and one HI-TRAC-125 transfer cask that Holtec plans to construct may not be usable because they may not meet the specifications or conditions delineated in a CoC that the NRC may ultimately approve.

#### *Environmental Impacts of the Proposed Action*

Regarding the fabrication exemption, the Environmental Assessment for the final rule, "Storage of Spent Nuclear Fuel in NRC-Approved Storage Casks at Nuclear Power Reactor Sites" (55 FR 29181 (1990)), considered the potential environmental impacts of overpacks which are used to store spent nuclear fuel under a CoC and concluded that there would be no significant environmental impacts. The proposed action now under consideration would not permit use of the overpacks, but would only permit fabrication. There are no radiological environmental impacts from fabrication since overpack fabrication does not involve radioactive materials. The major non-radiological environmental impacts involve use of natural resources due to overpack fabrication. Each HI-STORM 100 overpack weighs approximately 100 tons and is constructed of primarily metal and concrete. The HI-TRAC-125 transfer cask weighs approximately 125 tons and is made primarily of steel and lead. The amount of materials required to fabricate these components is expected to have very little impact on the associated industry. Fabrication of the metal components would be at a metal fabrication facility. Fabrication of the concrete overpacks would be partially done at a metal fabrication facility and completed by pouring the concrete at the Hatch site. The metal and concrete used in the fabrication of these components is insignificant compared to the amount of metal and concrete used in construction annually in the United States. If the components are not usable, the components could be disposed of or recycled. The amount of metal and concrete disposed of is insignificant compared to the amount of metal and concrete that is disposed of annually in the United States. Based upon this information, the fabrication of these components will have no significant impact on the environment

since no radioactive materials are involved, and the amount of natural resources used is minimal.

#### *Alternative to the Proposed Action*

Since there is no significant environmental impact associated with the proposed actions, any alternatives with equal or greater environmental impact are not evaluated. The alternative to the proposed actions would be to deny approval of the exemption and, therefore, not allow fabrication until a CoC is issued. This alternative would have the same environmental impact.

Given that there are no significant differences in environmental impact between the proposed action and the alternative considered, and that the applicant has a legitimate need to fabricate the components prior to certification and is willing to assume the risk that any fabricated components may not be approved or may require modification, the Commission concludes that the preferred alternative is to grant an exemption from the prohibition on fabrication prior to receipt of a CoC.

#### *Agencies and Persons Consulted*

Mr. J. Setzer, Chief of Program Coordination, Department of Natural Resources, State of Georgia, was contacted about the Environmental Assessment for the proposed action and had no comments.

#### **Finding of No Significant Impact**

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR Part 51. Based upon the foregoing Environmental Assessment, the Commission finds that the proposed action of granting an exemption from 10 CFR 72.234(c) so that Holtec may fabricate three HI-STORM 100 overpacks and one HI-TRAC-125 transfer cask prior to issuance of a CoC will not significantly impact the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

The request for the exemption from 10 CFR 72.234(c) was filed on January 12, 2000. For further details with respect to this action, see the application for CoC for the HI-STORM 100 system, dated October 26, 1995. On July 30, 1999, a preliminary Safety Evaluation Report and proposed CoC for the HI-STORM 100 system were issued by the NRC staff to initiate rulemaking to add the HI-STORM 100 system to the list of approved cask designs in 10 CFR

72.214. The exemption request and CoC application are docketed under Docket No. 72-1014. These documents are available for public review at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20555.

Dated at Rockville, Maryland, this 8th day of February 2000.

For the Nuclear Regulatory Commission.

**E. William Brach, Director,**

*Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 00-3516 Filed 2-14-00; 8:45 am]

BILLING CODE 7590-01-P

**PENSION BENEFIT GUARANTY CORPORATION**

**Interest Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of interest rates and assumptions.

**SUMMARY:** This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or are derivable from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's web site (<http://www.pbgc.gov>).

**DATES:** The interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in February 2000. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in March 2000.

**FOR FURTHER INFORMATION CONTACT:** Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202-326-4024. (For TTY/TDD users, call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

**SUPPLEMENTARY INFORMATION:**

**Variable-Rate Premiums**

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate in

determining a single-employer plan's variable-rate premium. The rate is the "applicable percentage" (currently 85 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

The assumed interest rate to be used in determining variable-rate premiums for premium payment years beginning in February 2000 is 5.64 percent (*i.e.*, 85 percent of the 6.63 percent yield figure for January 2000).

The following table lists the assumed interest rates to be used in determining variable-rate premiums for premium payment years beginning between March 1999 and February 2000.

For premium payment years beginning in:	The assumed interest rate is:
March 1999 .....	4.56
April 1999 .....	4.74
May 1999 .....	4.72
June 1999 .....	4.94
July 1999 .....	5.13
August 1999 .....	5.08
September 1999 .....	5.16
October 1999 .....	5.16
November 1999 .....	5.32
December .....	5.23
January 2000 .....	5.40
February 2000 .....	5.64

**Multiemployer Plan Valuations Following Mass Withdrawal**

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in March 2000 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 4th day of February, 2000.

**David M. Strauss,**

*Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 00-3459 Filed 2-14-00; 8:45 am]

BILLING CODE 7708-01-P

**OFFICE OF PERSONNEL MANAGEMENT**

**Excepted Service**

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

**FOR FURTHER INFORMATION CONTACT:** Director, Staffing Reinvention Office, Employment Service (202) 606-0830.

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on December 27, 1999 (64 FR 72369). Individual authorities established or revoked under Schedules A and B and established under Schedule C between November 1, 1999, and December 31, 1999, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities has been published June 30 of last year.

**Schedule A**

No Schedule A authorities were established or revoked during November or December 1999.

**Schedule B**

No Schedule B authorities were established or revoked during November or December 1999.

**Schedule C**

The following Schedule C authorities were established during November thru December 1999:

*Broadcasting Board of Governors*

Senior Advisor to the Director, International Broadcasting Bureau. Effective November 2, 1999.

*Commission on Civil Rights*

Special Assistant to the Commissioner. Effective November 5, 1999.

*Department of Agriculture*

Confidential Assistant to the Deputy Administrator, Office of Community Development. Effective November 1, 1999.

Confidential Assistant to the Chief, Natural Resources Conservation Service. Effective November 3, 1999.

Confidential Assistant to the Director, Office of Civil Rights. Effective November 5, 1999.

Confidential Assistant to the Director, Office of Communications. Effective November 5, 1999.

Confidential Assistant to the Administrator, Rural Utilities Service. Effective November 18, 1999.

Staff Assistant to the Press Secretary to the Director, Office of Communications. Effective November 24, 1999.

Confidential Assistant to the Director, Office of Communications. Effective November 24, 1999.

Staff Assistant to the Chief (Program Support Assistant) to the Chief, Natural Resources and Environment. Effective December 2, 1999.

Deputy Press Secretary to the Director, Office of Communications. Effective December 15, 1999.

Staff Assistant to the Administrator, Agricultural Marketing Service. Effective December 15, 1999.

Staff Assistant to the Administrator, Agricultural Research Service. Effective December 22, 1999.

#### *Department of Commerce*

Special Assistant to the Under Secretary for Oceans and Atmospheric Administration. Effective November 22, 1999.

#### *Department of Defense*

Special Assistant to the Special Assistant to the Secretary of Defense for White House Liaison. Effective November 3, 1999.

Confidential Assistant to the Director, Defense Research and Engineering. Effective December 13, 1999.

Special Assistant to the Assistant Secretary of Defense (Special Operations and Low Intensity Conflict). Effective December 13, 1999.

Special Assistant for Outreach to the Deputy Under Secretary of Defense (Environmental Security). Effective December 20, 1999.

#### *Department of Education*

Confidential Assistant to the Director, Office of Public Affairs, Office of the Secretary. Effective November 2, 1999.

Confidential Assistant to the Director, America Reads Challenge. Effective November 5, 1999.

Confidential Assistant to the Director, America Reads Challenge. Effective November 5, 1999.

Special Assistant to the Assistant Secretary, Office for Civil Rights. Effective December 22, 1999.

Special Assistant to the Assistant Secretary, Office of Interagency Affairs and Community Service. Effective December 22, 1999.

#### *Department of Energy*

Special Assistant for Communications to the Assistant Secretary for Environmental Management. Effective November 15, 1999.

Director, Energy Advisory Board to the Secretary of Energy. Effective November 18, 1999.

Senior Policy Advisor to the Secretary of Energy. Effective December 6, 1999.

Executive Assistant to the Secretary of Energy. Effective December 7, 1999.

Senior Policy Advisor to the Secretary of Energy. Effective December 15, 1999.

Special Assistant to the Director, Consumer Information. Effective December 22, 1999.

Special Projects Officer to the Deputy Assistant Secretary, Office of Power Technology. Effective December 23, 1999.

Special Assistant to the Deputy Assistant Secretary for Natural Gas and Petroleum Technology. Effective December 23, 1999.

#### *Department of Health and Human Services*

Confidential Assistant to the Administrator, Health Care Financing Administration. Effective November 8, 1999.

#### *Department of Housing and Urban Development*

Special Assistant to the Advisor for Management Reform and Operations. Effective November 12, 1999.

Director of Operations to the Advisor for Management Reform and Operations. Effective November 18, 1999.

Associate General Deputy Assistant Secretary to the Assistant Secretary for Housing. Effective December 15, 1999.

Deputy Assistant Secretary to the Assistant Secretary for Administration. Effective December 15, 1999.

Special Assistant to the Deputy Secretary. Effective December 16, 1999.

Special Assistant to the Assistant Secretary for Community Planning and Development. Effective December 22, 1999.

Special Assistant to the Assistant Secretary for Community Planning and Development. Effective December 22, 1999.

Special Assistant to the Assistant Secretary for Community Planning and Development. Effective December 22, 1999.

Special Assistant to the Advisor for Management Reform and Operations. Effective December 23, 1999.

Special Counsel to the General Counsel. Effective December 23, 1999.

Special Counsel to the General Counsel. Effective December 23, 1999.

Deputy Assistant Secretary for Research to the Assistant Secretary for Policy Development and Research. Effective December 23, 1999.

#### *Department of the Interior*

Deputy Director, Office of Insular Affairs to the Director, Office of Insular Affairs. Effective November 5, 1999.

Deputy Assistant Secretary for Workforce Diversity to the Assistant Secretary for Policy, Management and Budget. Effective November 9, 1999.

Special Assistant to the Chief of Staff. Effective November 18, 1999.

Special Assistant to the Deputy Chief of Staff. Effective November 22, 1999.

Senior Advisor to the Assistant Secretary, Policy Management and Budget. Effective December 1, 1999.

Special Assistant to the Deputy Chief of Staff. Effective December 15, 1999.

Senior Advisor to the Director, Bureau of Land Management. Effective December 15, 1999.

#### *Department of Justice*

Counsel to the Assistant Attorney General, Environmental and Natural Resources Division. Effective November 5, 1999.

Staff Assistant to the Director, Office of Public Affairs. Effective November 15, 1999.

Special Assistant to the Director, Community Relations Service. Effective December 7, 1999.

#### *Department of Labor*

Special Assistant to the Assistant Secretary for Policy. Effective November 1, 1999.

Special Assistant to the Assistant Secretary for Public Affairs. Effective November 5, 1999.

Attorney-Advisor (Labor) to the Solicitor of Labor. Effective November 24, 1999.

Special Assistant to the Assistant Secretary of Labor. Effective November 29, 1999.

Special Assistant to the Assistant Secretary for Public Affairs. Effective December 1, 1999.

Speech Writer to the Assistant Secretary for Public Affairs. Effective December 2, 1999.

Chief of Staff to the Assistant Secretary, Office of Congressional and Intergovernmental Affairs. Effective December 7, 1999.

Special Assistant to the Secretary of Labor. Effective December 22, 1999.

#### *Department of State*

Senior Advisor to the Under Secretary for Public Diplomacy and Public Affairs. Effective November 3, 1999.

Staff Assistant to the Under Secretary for Economic, Business and Agricultural Affairs. Effective November 3, 1999.

Staff Assistant to the Deputy to the Chief of Staff. Effective November 22, 1999.

Program Officer to the Deputy Assistant Secretary, Bureau of Public Affairs. Effective December 6, 1999.

Management Analyst to the Deputy Assistant Secretary for Logistics Management. Effective December 15, 1999.

Protocol Officer (Visits) to the Chief of Protocol. Effective December 16, 1999.

#### *Department of Transportation*

Special Assistant to the Assistant to the Secretary and Director of Public Affairs. Effective November 5, 1999.

Special Assistant to the Assistant Secretary for Budget and Programs. Effective November 15, 1999.

Senior Advisor to the Administrator, Federal Railroad Administration. Effective November 18, 1999.

Special Assistant for Scheduling and Advance to the Director of Scheduling and Advance. Effective December 7, 1999.

#### *Department of the Treasury*

Special Assistant to the Executive Secretary. Effective November 15, 1999.

Deputy Executive Secretary to the Executive Secretary. Effective November 29, 1999.

#### *Department of Veterans Affairs*

Special Assistant to the Secretary of Veterans Affairs. Effective December 7, 1999.

Confidential Assistant to the Secretary of Veterans Affairs. Effective December 17, 1999.

#### *Environmental Protection Agency*

Special Assistant to the Deputy Administrator. Effective December 28, 1999.

#### *Federal Communications Commission*

Senior Advisor to the Director, Office of Legislative and Intergovernmental Affairs. Effective December 9, 1999.

#### *Federal Deposit Insurance Corporation*

Secretary to the Chairman. Effective November 9, 1999.

#### *Office of Management and Budget*

Confidential Assistant to the Associate Director, National Security and International Affairs. Effective November 5, 1999.

Special Assistant to the Director, Office of Management and Budget. Effective November 15, 1999.

#### *Office of Personnel Management*

Senior Advisor for Communications to the Director, Office of Communications. Effective December 17, 1999.

#### *Small Business Administration*

Senior Advisor to the Deputy Administrator. Effective December 22, 1999.

Senior Advisor to the Associate Deputy Administrator for Entrepreneurial Development. Effective December 22, 1999.

Regional Administrator, Region V, Chicago, IL to the Assistant Director, for Field Operations. Effective December 28, 1999.

#### *U.S. International Trade Commission*

Staff Assistant to the Commissioner. Effective December 22, 1999.

**Authority:** 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954-1958 Comp., P.218.

Office of Personnel Management.

**Janice R. Lachance,**

*Director.*

[FR Doc. 00-3411 Filed 2-14-00; 8:45 am]

BILLING CODE 6325-01-P

#### **OFFICE OF PERSONNEL MANAGEMENT**

#### **Federal Prevailing Rate Advisory Committee Open Committee Meetings**

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, February 24, 2000

Thursday, March 16, 2000

Thursday, March 30, 2000

The meeting will start at 10:00 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

This scheduled meeting will start in open session with both labor and

management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on this meeting may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5559, 1900 E Street, NW., Washington, DC 20415 (202) 606-1500.

February 4, 2000.

**John F. Leyden,**

*Chairman, Federal Prevailing Rate Advisory Committee.*

[FR Doc. 00-3412 Filed 2-14-00; 8:45 am]

BILLING CODE 6325-01-P

#### **SECURITIES AND EXCHANGE COMMISSION**

#### **Proposed Collection; Comment Request**

Upon Written Request, Copies Available  
From: Securities and Exchange  
Commission, Office of Filings and  
Information Services, Washington, DC  
20549

New: Survey on Reciprocal Subpoena  
Enforcement

SEC File No. 270-479

OMB Control No. 3235-new

Notice is hereby give that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information

summarized below. The Commission plans to submit this proposed survey to the Office of Management and Budget for approval.

The survey is called the Securities and Exchange Commission Survey on Reciprocal Subpoena Enforcement. The staff created the survey pursuant to a Congressional directive in the Securities Litigation Uniform Standards Act of 1998 ("1998 Act"). The 1998 Act requires the Commission, in consultation with state securities commissions (or similar agencies) to "seek to encourage the adoption of State laws providing for reciprocal enforcement by State securities commissions of subpoenas issued by another State securities commission\* \* \*". The 1998 Act further requires the SEC to submit a report to Congress by November 2000 which identifies the states that have adopted such laws, describes the actions the Commission and the state commissions have taken to promote such laws, and identifies any further actions the Commission recommends for such purposes.

The survey seeks information regarding (1) the states' laws authorizing providing assistance to other states with subpoenas, (2) the states' experiences in seeking assistance from other states with their subpoenas, (3) the states' experiences in requesting assistance from other states with their subpoenas and (4) each state's proposals and suggestions regarding reciprocal subpoena enforcement. The Commission will use the information gathered in the survey to write the report to Congress.

The survey will be sent to all of the states, the District of Columbia and Puerto Rico. It is estimated that there will be approximately 52 respondents to the survey and that each full response will take approximately 30 minutes. Thus, the total reporting burden of the survey will be about 26 hours. The survey is voluntary and may be completed at the option of the recipient. Responses will not be kept confidential. An agency may not sponsor, conduct, or require response to an information collection unless a currently valid OMB control number is displayed.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, (iii) enhance the quality,

utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartrell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W. Washington, DC 20549.

Dated: February 3, 2000.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-3434 Filed 2-14-00; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

Upon Written Request, Copies Available

From: Securities and Exchange Commission, Office of Filings and Information Services, 450 5th Street, N.W., Washington, D.C. 20549  
Extension: Rule 18f-3; SEC File No. 270-385; OMB Control No. 3235-0441

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension and approval on the collection of information described below.

Section 18(f)(1)<sup>1</sup> of the Investment Company Act of 1940<sup>2</sup> (the "Investment Company Act") prohibits registered open-end management investment companies ("funds") from issuing any senior security. Rule 18f-3 under the act<sup>3</sup> exempts from section 18(f)(1) a fund that issues multiple classes of shares representing interests in the same portfolio of securities (a "multiple class fund") if the fund satisfies the conditions of the rule. In general, each class must differ in its arrangement for shareholder services or distribution or both, and must pay the related expenses of that different arrangement.

The rule includes one requirement for the collection of information. A multiple class fund must prepare and fund directors must approve a written

plan setting forth the separate arrangement and expense allocation of each class, and any related conversion features or exchange privileges ("rule 18f-3 plan").<sup>4</sup> Approval of the plan must occur before the fund issues any shares of multiple classes, and whenever the fund materially amends the plan. In approving the plan, the fund board, including a majority of the independent directors, must determine that the plan is in the best interests of each class and the fund as a whole.

The requirement that the fund prepare and directors approve a written rule 18f-3 plan is intended to ensure that the fund compiles information relevant to the fairness of the separate arrangement and expense allocation for each class, and that directors review and approve the information. Without a blueprint that highlights material differences among classes, directors might not perceive potential conflicts of interests when they determine whether the plan is in the best interests of each class and the fund. In addition, the plan may be useful to Commission staff in reviewing the fund's compliance with the rule.

There are approximately 550 multiple class funds.<sup>5</sup> Based on a review of typical rule 18f-3 plans, the Commission's staff estimates that the 550 funds together make an average of 275 responses each year to prepare and approve a written rule 18f-3 plan, requiring approximately 5.5 hours per response, and a total of 1512.5 burden hours per year in the aggregate.<sup>6</sup> The estimated annual burden of 1512.5 hours represents an increase of 912.5 hours over the prior estimate of 600 hours. The increase in burden hours is attributable to more accurate estimates of the burden hours that reflect additional time spent by professionals and time spent by directors. The estimated number of multiple class funds has decreased, however, from 600 to 550.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

<sup>4</sup> Rule 18f-3(d).

<sup>5</sup> This estimate is based on data from Form N-SAR, the semi-annual report that funds file with the Commission.

<sup>6</sup> The estimate reflects the assumption that each multiple class fund prepares and approves a rule 18f-3 plan every two years when issuing a new class or amending a plan (or that 275 of all 550 funds prepare and approve a plan each year). The estimate assumes that the time required to prepare a plan is 3 hours per plan (or 825 hours for 275 funds annually), and the time required to approve a plan is an additional 2.5 hours per plan (or 687.5 hours for 275 funds annually).

<sup>1</sup> 15 U.S.C. 80a-18(f)(1).

<sup>2</sup> 15 U.S.C. 80a.

<sup>3</sup> 17 CFR 270.18f-3.

Complying with this collection of information requirement is necessary to obtain the benefit of relying on rule 18f-3. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: February 8, 2000.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-3445 Filed 2-14-00; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[File No. 1-500]

### Wellness Universe, Inc.; Order of Suspension of Trading

February 11, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Wellness Universe, Inc. ("Wellness" because of questions about the accuracy and adequacy of publicly disseminated information concerning, among other things: the business prospects of Wellness and Synpan Corporation ("Synpan"), a related entity; the employment of Synpan officers; and a purportedly planned initial public offering of Synpan securities.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EST, on February 11, 2000 through 11:59 p.m. EST, on February 25, 2000.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-3656 Filed 2-11-00; 12:09 pm]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 3-42403; File No. SR-CHX-99-0]

### Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Access to an After-Hours Trading Session

February 7, 2000.

#### I. Introduction

On August 2, 1999, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder<sup>2</sup> a proposed rule change relating to access to an after-hours trading session ("E-Session"). On September 28, 1999, the Exchange filed an amendment to the proposed rule change, proposing several technical amendments to the filing, including substituting the term "E-Session" for the term "night trading" and deleting all references to market makers.<sup>3</sup>

The proposed rule change, as amended, was published for comment in the **Federal Register** on October 7, 1999.<sup>4</sup> No comments were received on the proposal. This order approves the proposed rule change, as amended.

#### II. Description of the Proposal

The Exchange proposes to provide rules that govern access to the CHX trading floor (and related trading privileges) during an E-Session that operates after the Primary Trading Session and Post Primary Trading Session.<sup>5</sup>

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Ellen J. Neely, Vice President and General Counsel, CHX, to Alton S. Harvey, Chief, Office of Market Watch, Division of Market Regulation, SEC, September 27, 1999 ("Amendment No. 1").

<sup>4</sup> See Securities Exchange Act Release No. 41968 (September 30, 1999), 64 FR 54701.

<sup>5</sup> At the time the CHX filed the proposal, the Commission had not yet approved CHX's proposal implementing an E-Session (SR-CHX-99-16). The Commission granted approval of SR-CHX-99-66 on October 13, 1999. See Securities Exchange Act Release No. 42004 (October 13, 1999) 64 FR 56548 (October 20, 1999). Consequently, upon approval of the current proposal, these rules will be immediately applicable to the E-Session.

Under the proposed rules, a person or entity may access the E-Session through his or its own existing Exchange membership or by leasing the rights to a membership. The rights and privileges that can be leased for the E-Session will be limited to access rights to the trading floor during the E-Session in the capacity of a floor broker or co-specialist only ("E-Session trading privileges"). To lease the E-Session trading privileges of a membership, a person or entity would be required to register with and be approved by the Exchange as a member or member organization under the Exchange's Constitution and Rules. The lessee would not be entitled to sublease the privileges and rights and would not be able to vote such interest.<sup>6</sup> Further, the lessee of the E-Session trading privilege will be required to provide proof of an agreement with a registered clearing firm that is approved by the Exchange and provide evidence that such clearing firm will guarantee the lessee's obligations for any and all losses incurred through his or its lease of the E-Session trading privileges. The lessee will be required to execute a lease agreement, which would be required to be approved by the Exchange.

With respect to lessors, the proposed rules would require that the lessor be either: (i) An Approved Lessor, as defined in Article I.A. of the Exchange rules; (ii) a member or member organization that leases its membership privileges to a lessee for the Primary Trading Session; or (iii) a member or member organization that owns a membership and uses the membership for his or its own purposes during the Primary Trading Session.

Finally, the proposed rules would permit the Exchange to terminate the E-Session trading privileges upon 30 days written notice if the Exchange determines that it is in the best interest of the Exchange.

#### III. Discussion

The Commission has reviewed carefully the CHX's proposed rule change and finds, for the reasons set forth below, that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,<sup>7</sup> and in particular, with the requirements of section 6(b).<sup>8</sup> In particular, the Commission finds the proposal, which sets forth access to the

<sup>6</sup> The voting right would be retained by the person who is designated as the Voting Designee on the seat.

<sup>7</sup> In approving this rule, the Commission has considered its impact on efficiency, competition, and capital information. 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b).

CHX's E-Session, is consistent with the Section 6(b)(5)<sup>9</sup> requirements in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public.

Under the proposal, the Exchange will allow a person or entity to access the E-Session through his or its own existing Exchange membership, or by leasing the rights to a membership, and will limit the rights and privileges that can be leased for the E-Session to access rights to the trading floor during the E-Session as a floor broker or co-specialist only. Additionally, lessees will be required to register with and be approved by the Exchange as a member or member organization under the Exchange's Constitution and Rules, and will not be entitled to sublease the privileges and rights, nor will they be allowed to vote their interest. The Commission believes that the proposed limitations on access to the E-Session, coupled with the proposed restrictions on the rights of E-Session lessees, should prevent fraudulent and manipulative acts, by allowing the CHX to closely monitor the E-Session.

Additionally, the CHX proposes to require lessees to provide proof of an agreement with a registered clearing firm that is approved by the Exchange, and provide evidence that such clearing firm will guarantee the lessee's obligations for any and all losses incurred through his or its lease of the E-Session trading privileges. The Commission finds that this provision is consistent with section 6(b)(5) of the Act<sup>10</sup> because these requirements should help to ensure that investors are adequately protected with regard to the clearing of trades, and that the Exchange has some recourse should the lessee fail to perform any other contractual obligations.

The Exchange has also proposed that the lessee be considered a "member" or "member organization" for purposes of federal securities laws, and the Exchange's Certificate of Incorporation, Constitution and Rules, except in certain circumstances set forth in the rules. The Commission finds that this requirement is consistent with section 6(b)(5) of the Act<sup>11</sup> in that it should help to ensure that lessees participating in the E-Session are subject to the same standards and requirements as are participants in the Primary Trading Session and the Post Primary Trading Session. This proposed requirement also

should help to ensure that participants in all three trading sessions are treated equally.

Finally, the Commission believes that the proposed provision which permits the Exchange to terminate the E-Session trading privileges if the Exchange determines that it is in the best interests of the Exchange, is consistent with section 6(b)(5) of the Act<sup>12</sup> in that it is designed to specifically allow the Exchange, if necessary, to take action to protect investors.

#### IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change, as amended (SR-CHX-99-08), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-3436 Filed 2-14-00; 8:45 am]

BILLING CODE 8010-01-M

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42402; File No. SR-NASD-99-45]

#### Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to the Public Disclosure Program

February 7, 2000.

#### I. Introduction

On September 15, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary NASD Regulation, Inc. ("NASD Regulation" or "NASDR"), filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder.<sup>2</sup> In its proposal, NASD Regulation seeks to amend certain aspects of the Public Disclosure Program ("PDP"). Notice of the Proposal was published in the **Federal Register** on December 23,

1993.<sup>3</sup> The Commission received no comment letters on the filing and this order approves the proposal.

#### II. Description of the Proposal

NASD Regulation proposes to amend certain aspects of the PDP in an effort to make the operation of the PDP clearer and fairer to NASD members, associated persons, and the public. The PDP is described in Interpretive Material 8310-2 of the NASD Rules ("the Interpretation"). Under the PDP, NASD Regulation discloses to the public certain information regarding employment history, other business experience, and disciplinary history of NASD members and associated persons. NASD Regulation uses information reported on the uniform forms<sup>4</sup> to the Central Registration Depository ("CRD") as the source for the PDP. One of the primary purposes of the PDP is to help investors make informed choices about the individuals and firms with whom they may wish to do business.

#### Persons Subject to the Interpretation

NASD Regulation seeks to clarify which firms or persons will be subject to disclosure through the PDP. Although the NASD currently releases information about current or former members and associated persons, the Interpretation does not explicitly address the issue of disclosure regarding former members and associated persons. Under NASD Regulation's proposal, the firms or persons subject to disclosure through the PDP will be: (1) Current and former NASD members; (2) persons currently associated with an NASD member; and (3) persons who have been associated with an NASD member within the preceding two years. This two-year disclosure period coincides with the period in which an individual can return to the industry without being required to requalify by examination and the initial period in which an

<sup>3</sup> See Securities Exchange Act Release No. 42240 (December 16, 1999), 64 FR 72125 (File No. SR-NASD-99-45).

<sup>4</sup> The uniform forms are Form BD (the Uniform Application for Broker-Dealer Registration); Form BDW (the Uniform Request for Broker-Dealer Withdrawal); Form U-4 (the Uniform Application for Securities Industry Registration or Transfer); Form U-5 (the Uniform Termination Notice for Securities Industry Registration); and Form U-6 (the Uniform Disciplinary Action Reporting Form). Except for the Form U-6, the Commission has approved all of these forms. See Securities Exchange Act Release No. 41594 (July 2, 1999), 64 FR 37586 (July 12, 1999) (adoption of the amended Form BD); Securities Exchange Act Release No. 41356 (April 30, 1999), 64 FR 25144 (May 10, 1999) (adoption of the amended Form BDW); Securities Exchange Act Release No. 41560 (June 25, 1999), 64 FR 36059 (July 2, 1999) (order approving the new Forms U-4 and U-5).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>17</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

individual remains subject to the jurisdiction of the Association.<sup>5</sup>

#### *Clarification of the "Required to Reported" Standard*

NASD Regulation also seeks to clarify its "required to be reported" standard and the effect of this standard on former members and associated persons, especially in light of former members and associated persons' limited ability to submit information to amend or update a disclosure record.<sup>6</sup> Until 1996, the NASD only released information actually reported on Form U-4 or Form BD. In 1996, the Commission approved a rule change that permitted the NASD to release information "required to be reported" on Form U-4 or Form BD.<sup>7</sup> One of the reasons for the proposal was that in some instances, the NASD possessed information about a currently registered person that should have been reported on the person's Form U-4, but the amended Form U-4 had not yet been submitted. The rule change allowed the NASD to release all of the information that it possessed that was "required to be reported" on the Forms U-4 and BD, thereby ensuring that investors received more complete information. The current Interpretation does not, however, explicitly address events and proceedings reported on Form U-5 or Form U-6.<sup>8</sup>

<sup>5</sup> See NASD Rules 1021(c) and 1031(c); NASD By-Laws Article V, Section 4. Article V, Section 4 of the By-Laws provides that a person whose association with a member has been terminated or revoked shall continue to be subject to the NASD's jurisdiction for certain specified purposes. Under that provision, the two-year period begins on the effective date of the termination, and may be extended under certain circumstances. For purposes of disclosure under the PDP, the two-year period would begin on the effective date of the termination and would not be extended beyond the initial two-year period. The effective date of termination is the date that the Form U-5 is captured by the CRD system. Conversation between Mary Dunbar, Office of General Counsel, NASD Regulation, and Joseph P. Corcoran, Attorney, Division of Market Regulation, Commission on December 10, 1999.

<sup>6</sup> With the exception of a former associated person filling out Part II of the Form U-5 Internal Review Disclosure Reporting Page ("DRP"), there is currently no other mechanism for a former associated person or member to submit information to amend or update a disclosure record.

<sup>7</sup> See Securities Exchange Act Release No. 37797 (October 9, 1996), 61 FR 53984 (October 16, 1996).

<sup>8</sup> Form U-6 is filed by state securities regulators and self-regulatory organizations ("SRO") to report disciplinary and other matters that are also required to be reported on Form U-4 or Form BD. Form U-6 includes DRPs in five categories: (1) Bankruptcy/SIPC/Compromise with Creditors; (2) Civil Judicial; (3) Criminal; (4) Regulatory Action; and (5) SRO Arbitration/Reparation. The format of the Form U-6 DRPs parallels the format of the DRPs used for the Forms U-4, U-5, and BD for those categories. Generally, the Form U-6 reports the identifying information on the subject of the filing (*i.e.*, the individual or entity), the regulator reporting the

NASD Regulation presently interprets the "required to be reported" standard for *current* members and associated persons to include all information reported on Form U-4 or Form BD, as well as information that has been reported on a Form U-5 or Form U-6 that should be, but has not yet been, reported on a Form U-4 or Form BD. For example, a former employer of a currently registered representative may report a customer complaint against that registered representative by amending his Form U-5. NASD Regulation includes information about this complaint in any public disclosure report it issues about the registered representative, even if the current employer of the registered person has not updated his Form U-4 to reflect the complaint.

For *former* members and associated persons, the current interpretation of the "required to be reported" standard has a different result because once an association or membership is terminated, there is no longer a requirement to report on Form U-4 or Form BD, respectively. Consequently, when NASD Regulation receives a public disclosure request about a former associated person or member, NASD Regulation releases all information reported to CRD *up to* the date of the termination of association or membership. However, events and proceedings reported on an initial or amended Form U-5 or Form BD,<sup>9</sup> or on Form U-6 *after* an individual has terminated his association or *after* termination of a firm's membership, are not released under the PDP. If a former associated person or member reapplies and is approved for NASD registration or membership, NASD Regulation resumes public disclosure under the "required to be reported" standard, which included releasing all information reported on any uniform form during any period of active or inactive registration or membership.

Under the proposed rule change, NASD Regulation will begin releasing information reported on Form U-6 for former members and associated persons, subject to the two-year time limitation discussed above. Among other things, NASD Regulation believes that the information reported on Form U-6 is highly reliable because it is filed by state securities regulators and self-regulatory organizations ("SROs"). NASD Regulation, however, does not

action, and a brief description of the matter being reported, including its status or final resolution.

<sup>9</sup> The Commission notes that copies of a firm's Form BDW are available to the public through the Commission's Public Reference Room

currently release information that has been reported on a Form U-5 regarding *former* registered persons and does not propose any change to this policy.

#### *Clarifications of Other Types of Information Released Through the PDP*

NASD Regulation proposes to clarify that it releases information on awards rendered in the NASD's arbitration forum involving securities or commodities disputes between members and public customers through the PDP, even though this information is not required to be reported on the Form BD. This information is already available to the public pursuant to NASD arbitration rules.<sup>10</sup> and the PDP receives this information from the NASD's Office of Dispute Resolution.

NASD also proposes to continue its current policy of not releasing social security numbers, home addresses, or physical description information reported on the uniform forms. Further, the proposed rule change clarifies that NASD Regulation will not release information through the PDP that it is otherwise prohibited from releasing under Federal law *e.g.*, criminal history record information provided by the Federal Bureau of Investigations.<sup>11</sup> The criminal history information that is released through the PDP is the information provided by the associated person or the member on the uniform forms.

Additionally, NASD Regulation proposes to discontinue public disclosure of a limited category of CRD information that it deems to be factually incorrect. NASD Regulation occasionally receives requests to expunge an event from CRD where the person who was the subject of the CRD filing can demonstrate to the NASD's satisfaction that it was factually impossible for him to have been involved in the event (*e.g.*, a person was named in an arbitration as a branch manager of a firm, and the person was working at a different firm at that time). NASD Regulation and the North American Securities Administrators Association ("NASAA") agree that factually incorrect information can be expunged from the CRD if the person obtains a court order of expungement. However, NASD Regulation believes that obtaining a court order can be time-consuming and expensive. Further, NASD Regulation believes that information that can be proven to be factually incorrect should be expunged from the CRD system without a court order and is discussing this issue with

<sup>10</sup> See NASD Rule 10330(f).

<sup>11</sup> 28 CFR 50.12(b).

NASAA. Until an agreement is reached with NASAA on expunging factually incorrect information from the CRD system, NASD Regulation will discontinue releasing this information via the PDP. NASD Regulation plans to develop guidelines to implement this policy.

#### *Automation of Public Disclosure Reports*

NASD Regulation also proposes to automate the preparation of disclosure reports. Currently, when NASD Regulation receives a public disclosure request, NASD Regulation staff reviews the CRD record of the subject of the request, identifies events that must be disclosed under the Interpretation, and manually prepares a summary report for the requester. Under the proposal, NASD Regulation will discontinue the manual preparation of these reports and instead use a computer program that automatically generates a report after drawing information directly from the Web CRD database. The report then will be sent by regular or electronic mail to the requester.

One consequence of this approach is that the automatically generated reports will include verbatim any comment submitted by a registered representative, firm, or regulator in response to the last question on the DRPs of the uniform forms.<sup>12</sup> NASD Regulation will inform members and registered persons via a Notice to Members and other communications that the NASD believes that members and registered persons may be subject to civil liability or NASD regulatory sanctions if they submit offensive or potentially defamatory language on the uniform forms. In the future, NASD Regulation may develop electronic notices that would appear on the electronic screen when forms are being completed on-line advising Web CRD users of this issue. NASD Regulation plans to undertake a continuing program to educate members and registered persons on this issue.

After the proposal goes into effect, NASD Regulation will address objections to disclosure of customer names, confidential customer information, or offensive or potentially defamatory language on a case-by-case basis in the following manner. After receiving an objection, NASD

Regulation will identify the filer (*i.e.*, a member firm, regulatory, or self-regulatory organization) of the uniform form containing the language in question and notify the filer of the objectives. NASD Regulation will provide the filer with the opportunity to amend the filing to remove the language in controversy. If the filer determines not to amend, NASD Regulation will apply a balancing test to weigh the value of the language in controversy for regulatory and investor protection purposes against the objector's asserted privacy rights and/or defamation claims.<sup>13</sup> Based on the outcome of this test, NASD Regulation may determine to redact the language in controversy from reports prepared under the PDP. NASD Regulation will inform any requester of a report that has been redacted of the reasons for the redaction. NASD Regulation staff anticipates that objections to disclosure will be infrequent. If objections are more frequent than anticipated, NASD Regulation staff will consider alternative approaches.

### III. Discussion

The Commission finds that the proposal is consistent with the requirements of Section 15A of the Act<sup>14</sup> and the rules and regulations thereunder that govern the NASD.<sup>15</sup> In particular, the Commission finds that the proposal is consistent with Section 15A(b)(6) of the Act<sup>16</sup> which requires, among other things, that the rules of an association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission believes that the proposal will help further one of the primary objectives of the PDP—to help investors make informed choices about the individuals and firms with whom they choose to do business. Under the PDP, NASD Regulation will now release information contained on the Form U-6, which contains disciplinary and other information provided by SROs and state regulators. This information should help investors determine whether to conduct or continue to conduct business with a particular firm or individual. Further, the disclosure of this additional

information may serve as a deterrent to fraudulent activity.

The Commission also believes that the proposal will help clarify the standards NASD Regulation uses to release information on current or former associated persons and firms. For example, NASD Regulation has clarified its policy about the release of information on a former associated person. Under the proposed rule change, NASD Regulation will release information on a former associated person for a two-year period after the associated person's effective date of termination. This clarification helps balance an investor's interest in obtaining information about a former associated person with the former associated person's interest in privacy.

In addition, the Commission believes that the automation of public disclosure reports should benefit investors and the NASD. For investors, the automation of public disclosure reports should help them receive information in a timelier manner, which in turn should help them make quicker decisions about the individuals and firms with whom they choose to do business. For the NASD, the automation of public disclosure reports should help it reduce its costs in providing these reports to the public.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>17</sup> that the proposed rule change (SR-NASD-99-45) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-3446 Filed 2-14-00; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42401; File No. SR-PCX-99-38]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Statistical Reports Provided to Market Makers

February 7, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 5, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the

<sup>12</sup> This question typically asks for a summary of the circumstances or details relating to the disclosure event. The response comments are not currently included in the manual reports prepared by the staff and may contain customer names, confidential account information, or offensive or potentially defamatory language (NASD Regulation believes that this type of language will rarely appear on the uniform forms).

<sup>13</sup> If it is impossible for a filer to amend, *e.g.*, the firm is defunct or the person is no longer registered, then NASD Regulation also will apply the balancing test and proceed as described above.

<sup>14</sup> 15 U.S.C. 78o-3.

<sup>15</sup> In addition, pursuant to Section 3(f) of the Act, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>16</sup> 15 U.S.C. 78o-3(b)(6).

<sup>17</sup> 15 U.S.C. 78s(b)(2).

<sup>18</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the PCX. The Exchange filed Amendment No. 1<sup>3</sup> to the proposed rule change on January 11, 2000. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to adopt a new procedure, codified in proposed Exchange Rule 6.41, whereby the Exchange would furnish PCX market makers with statistical reports that reflect trading volumes and identify specific trading activity in particular option issues to be used by PCX market makers for marketing and business development purposes. Below is the text of the proposed rule change. Proposed new language is in italics.

#### *Market Maker Marketing Reports*

Rule 6.41. The Exchange will provide its Market Makers with statistical reports designed to measure trading volume and participation in trading activity in each option issue traded on the Exchange. The reports will provide monthly trading information that will identify, by order flow provider, the issue and number of contracts traded, the LMM post where the issue is traded, the contra and executing broker symbols, and whether the trade was executed through the Exchange's Automatic Execution System, through the Limit Order Book, or manually in the trading crowd.

### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the PCX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

<sup>3</sup>Letter from Robert P. Pacileo, Staff Attorney, Regulatory Policy, PCX, to Richard C. Strasser, Assistant Director, Division of Market Regulation, Commission, dated January 7, 2000 ("Amendment No. 1"). Amendment No. 1 adds Exchange Rule 6.41 to the text of Exchange Rule 6.

#### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

##### **1. Purpose**

The Exchange proposes to furnish its market makers with statistical reports designed to measure trading volume and participation in trading activity in each option issue traded on the Exchange. The reports will provide monthly trading information that will identify, by order flow provider, the issue and number of contracts traded, the Lead market maker ("LMM") post where the issue is traded, the contra and executing broker symbols, and whether the trade was executed through the Exchange's Automatic Execution System, through the Limit Order Book, or manually in the trading crowd.

The Exchange believes these reports will help market makers develop marketing plans specific to order flow providers that the market makers can use to help them increase order flow sent to the PCX. The reports will identify which order flow providers currently are bringing trades to the PCX and how those orders are being executed. In addition, the reports are designed to help PCX market makers support their business relationships and encourage further business development with those order flow providers. Furthermore, these reports will help the market makers identify specific customers to whom they should direct their marketing efforts. The Exchange believes that these reports will help the market makers focus on specific business needs of their customers, so that they can attract more business to the PCX. Finally, the Exchange believes the reports will help it compete for order flow in multiply traded issues.

##### **2. Statutory Basis**

The proposed rule change is consistent with Section 6(b) of the Act<sup>4</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>5</sup> in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(5).

necessary or appropriate in furtherance of the purposes of the Act.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange did not solicit or receive written comments on the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR-PCX-99-38 and should be submitted by March 7, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 00-3435 Filed 2-14-00; 8:45 am]

BILLING CODE 8010-01-M

<sup>6</sup> 17 CFR 200.30-3(a)(12).

**OFFICE OF THE UNITED STATES  
TRADE REPRESENTATIVE**

**Generalized System of Preferences;  
Imports Statistics Relating to  
Competitive Need Limitations;  
Invitation for Public Comment**

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice; Invitation for Public Comment.

**SUMMARY:** The Trade Policy Staff Committee (TPSC) is informing the public of interim 1999 import statistics relating to Competitive Need Limitations (CNL) under the Generalized System of Preferences (GSP) program. The TPSC also invites public comments by 5:00 p.m. March 31, regarding possible de minimis CNL waivers with respect to particular articles, and possible redesignations under the GSP program of articles currently subject to CNLs.

**FOR FURTHER INFORMATION CONTACT:** GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., Room 518, Washington, DC 20508. The telephone number is (202) 395-6971.

**SUPPLEMENTARY INFORMATION:**

**I. Competitive Need Limitations**

Section 503(c)(2)(A) of the Trade Act of 1974, as amended (the "1974 Act") (19 U.S.C. 2463(c)(2)(A)), provides for Competitive Need Limitations on duty-free treatment under the GSP program. When the President determines that a beneficiary developing country exported to the United States during a calendar year either (1) a quantity of a GSP-eligible article having a value in excess of the applicable amount for that year (\$90 million for 1999), or (2) a quantity of a GSP-eligible article having a value equal to or greater than 50 percent of the value of total U.S. imports of the article from all countries (the "50 percent" CNL), the President shall terminate GSP duty-free treatment for that article from that beneficiary developing country by no later than July 1 of the next calendar year.

**II. Discretionary Decisions**

**A. De Minimis Waivers**

Section 503(c)(2)(F) of the 1974 Act provides the President with discretion to waive the 50 percent CNL with respect to an eligible article imported from a beneficiary developing country if the value of total imports of that article from all countries during the calendar year did not exceed the applicable amount for that year (\$14.5 million for 1999).

**B. Redesignation of Eligible Articles**

Where an eligible article from a beneficiary developing country ceased to receive duty-free treatment due to exceeding the CNL in a prior year, Section 503(c)(2)(C) of the 1974 Act provides the President with discretion to redesignate such an article for duty-free treatment if imports in the most recently completed calendar year did not exceed the CNLs.

**III. Implementation of Competitive Need Limitations, Waivers, and Redesignations**

Exclusions from GSP duty-free treatment where CNLs have been exceeded, as well as the return of GSP duty-free treatment to products for which the President has used his discretionary authority to grant redesignations, will be effective July 1, 2000. Decisions on these matters, as well as decisions with respect to de minimis waivers, will be based on full 1999 calendar year import statistics.

**IV. Interim 1999 Import Statistics**

In order to provide advance indication of possible changes in the list of eligible articles pursuant to exceeding CNLs, and to afford an earlier opportunity for comment regarding possible de minimis waivers and redesignations, interim import statistics covering the first 10 months of 1999 are included with this notice.

The following lists contain the HTSUS numbers and beneficiary country of origin for GSP-eligible articles, the value of imports of such articles for the first ten months of 1999, and their percentage of total imports of that product from all countries. The flags indicate the status of GSP eligibility.

Articles marked with an "\*" are those that have been excluded from GSP eligibility for the entire past calendar year. Flags "1" or "2" indicate products that were not eligible for duty-free treatment under GSP for the first six months or last six months, respectively, of 1999.

The flag "D" identifies articles with total U.S. imports from all countries, based on interim 1999 data, less than the applicable amount (\$14.5 million in 1999) for eligibility for a de minimis waiver of the 50 percent CNL.

List I shows GSP-eligible articles from beneficiary developing countries that have exceeded the CNL of \$90 million in 1999. Those articles without a flag identify articles that were GSP eligible during 1999 but stand to lose GSP duty-free treatment on July 1, 2000. In addition, List I shows articles (denoted

with a flag "\*" or "2") which did not have GSP duty-free treatment in all or the last half of 1999.

List II shows GSP-eligible articles from beneficiary developing countries that (1) have not yet exceeded, but are approaching, the \$90 million CNL during the period from January through October 1999, or (2) are close to or above the 50 percent CNL. Depending on final calendar year 1999 import data, these products also stand to lose GSP duty-free treatment on July 1, 2000.

List III is a subset of List II. List III identifies GSP-eligible articles from beneficiary developing countries that are near or above the 50 percent CNL, but that may be eligible for a de minimis waiver of the 50 percent CNL. Actual eligibility for de minimis waivers will depend on final calendar year 1999 import data.

List IV shows GSP articles from beneficiary developing countries which are currently not receiving GSP duty-free treatment, but which have import levels (based on interim 1999 data) below the CNLs and which thus may be eligible for redesignation pursuant to the President's discretionary authority. Articles with a "D" exceed the 50 percent CNL and would require both de minimis waivers and redesignation to receive GSP duty-free treatment. The list may contain articles that may not be redesignated until certain conditions are fulfilled, as for example, where GSP eligibility for articles was suspended because of deficiencies in beneficiary countries' protection of the rights of workers or owners of intellectual property. This list does not include articles from India which do not receive GSP treatment as a result of Presidential Proclamation 6425 of April 29, 1992 (57 FR 19067).

Each list is followed by a summary table that indicates the number of products cited from each beneficiary developing country and the total value of imports of those products from the beneficiary developing country.

The lists appended to this notice are provided for informational purposes only. The attached lists are computer-generated and, based on interim 1999 data, may not include all articles that may be affected by the GSP CNLs. Regardless of whether or not an article is included on the lists, all determinations and decisions regarding the CNLs of the GSP program will depend on full calendar year 1999 import data with respect to each GSP eligible article. Each interested party is advised to conduct its own review of 1999 import data with regard to the possible application of GSP CNLs.

#### IV. Public Comments

All written comments with regard to the matters discussed above should be addressed to: GSP Subcommittee, Office of the U.S. Trade Representative, 600 17th Street, N.W., Room 518, Washington, DC 20508. All submissions must be in English and should conform to the information requirements of 15 CFR 2007. Furthermore, each party providing comments should indicate on the first page of the submission its name, the relevant Harmonized Tariff Schedule subheading(s), the beneficiary country or territory of interest, and the type of action (e.g., the use of the President's *de minimis* waiver authority, etc.) in which the party is interested.

A party must provide fourteen copies of its statement which must be received by the Chairman of the GSP Subcommittee no later than 5 p.m., Friday, March 31. Comments received after the deadline will not be accepted. If the comments contain business confidential information, fourteen copies of a non-confidential version must also be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, the submissions containing confidential information should be clearly marked "confidential" at the top and bottom of each page of the submission. The version that does not contain confidential information should also be

clearly marked, at the top and bottom of each page, "public version" or "non-confidential".

Written comments submitted in connection with these decisions, except for information granted "business confidential" status pursuant to 15 CFR 2007.7, will be available for public inspection shortly after the filing deadline by appointment only with the staff of the USTR Public Reading Room (202) 395-6186. Other requests and questions should be directed to the GSP Information Center at USTR by calling (202) 395-6971.

**Jon Rosenbaum,**

*Chairman, GSP Subcommittee of the TPSC.*

BILLING CODE 3190-01-M

LIST I : ITEMS GRADUATED OR EXCEEDING COMPETITIVE NEED LIMITS

1999 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
*	0603.10.70	Colombia.....	110,253,228	88.2%	Chrysanthemums, standard carnations, anthuriums and orchids, fresh cut
*	2402.10.80	Dominican Republic..	132,952,938	67.6%	Cigars, cheroots and cigarillos containing tobacco, each valued 23 cen
*	3212.90.00	Colombia.....	139,362,355	80.5%	Pigments dispersed in nonaqueous media, in liquid or paste form, used
*	4104.39.40	Argentina.....	117,562,098	57.7%	Upholstery leather, of bovine and equine leather, nesi, without hair o
*	7113.11.50	Thailand.....	99,362,520	26.3%	Silver articles of jewelry and parts thereof, nesoi, valued over \$18 p
*	7113.19.50	Dominican Republic..	106,199,133	4.3%	Precious metal (o/than silver) articles of jewelry and parts thereof, w
*	7113.19.50	India.....	346,072,035	14.1%	Precious metal (o/than silver) articles of jewelry and parts thereof, w
*	7403.11.00	Peru.....	262,221,560	26.2%	Refined copper cathodes and sections of cathodes
*	7403.11.00	Chile.....	155,589,091	15.5%	Refined copper cathodes and sections of cathodes
*	8516.50.00	Thailand.....	98,797,360	13.1%	Microwave ovens of a kind used for domestic purposes
*	8517.21.00	Thailand.....	112,452,877	21.0%	Facsimile machines
*	8544.30.00	Thailand.....	139,069,054	3.4%	Insulated ignition wiring sets and other wiring sets of a kind used in
*	9009.12.00	Thailand.....	111,741,498	10.3%	Electrostatic photocopying apparatus, operating by reproducing the ori

FLAGS: \*1=Excluded full yr; '1'=Excluded January/June; '2'=Excluded July/December

LIST I : ITEMS GRADUATED OR EXCEEDING COMPETITIVE NEED LIMITS

1999 U.S. IMPORTS - JANUARY THROUGH OCTOBER

TOTALS BY PARTNER

PARTNER	IMPORTS	COUNT
Argentina.....	117,562,098	1
Chile.....	155,589,091	1
Colombia.....	249,615,583	2
Dominican Republic..	239,152,071	2
India.....	346,072,035	1
Peru.....	262,221,560	1
Thailand.....	561,423,309	5
TOTAL.....	1,931,635,747	13

LIST II : ITEMS APPROACHING COMPETITIVE NEED LIMITS

1999 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
D	0202.30.02	Uruguay.....	232,016	72.4%	High-qual. beef cuts, boneless, processed, frozen, descr in gen. note
D	0302.69.10	Venezuela.....	4,800	48.9%	Fish, nesi, excl. fillets, livers and roes, fresh or chilled, scaled,
D	0302.69.10	Suriname.....	5,007	51.0%	Fish, nesi, excl. fillets, livers and roes, fresh or chilled, scaled,
D	0306.24.20	Venezuela.....	5,211,487	49.6%	Crabmeat, not frozen
D	04.10.00.00	Indonesia.....	2,976,577	45.3%	Edible products of animal origin, nesi
D	0708.90.30	Dominican Republic..	326,034	51.3%	Pigeon peas, fresh or chilled, shelled or unshelled, if entered Oct. 1
D	0710.29.15	India.....	6,693	48.8%	Lentils, uncooked or cooked by steaming or boiling in water, frozen
D	0711.30.00	Morocco.....	722,487	59.2%	Capers, provisionally preserved but unsuitable in that state for immed
D	0711.40.00	Honduras.....	2,981,228	45.4%	Cucumbers including gherkins, provisionally preserved but unsuitable i
D	0711.40.00	India.....	2,786,005	42.4%	Cucumbers including gherkins, provisionally preserved but unsuitable i
D	0712.90.70	Egypt.....	225,264	81.8%	Dried fennel, marjoram, savory and tarragon nesi, whole, cut, sliced,
D	0713.90.80	India.....	330,052	84.5%	Dried leguminous vegetables nesi, shelled, if entered Sept. 1 through
D	0714.20.10	Colombia.....	16,188	52.4%	Sweet potatoes, frozen, whether or not sliced or in the form of pellet
D	0714.90.10	Costa Rica.....	8,670,909	50.5%	Fresh or chilled dasheens, whether or not sliced or in the form of pel
D	0714.90.20	Costa Rica.....	7,906,514	42.3%	Fresh or chilled yams, whether or not sliced or in the form of pellets
D	0714.90.20	Jamaica.....	8,090,575	43.3%	Fresh or chilled yams, whether or not sliced or in the form of pellets
D	0714.90.45	Costa Rica.....	435,184	52.0%	Frozen dasheens, yams, arrowroot, salep, Jerusalem artichokes and simi
D	0802.50.40	Turkey.....	200,362	45.7%	Pistachios, fresh or dried, shelled
D	0804.50.80	Thailand.....	1,359,861	44.2%	Guavas, mangoes, and mangoosteens, dried
D	0813.40.10	Thailand.....	1,072,516	95.2%	Papayas, dried
D	1102.30.00	Thailand.....	2,476,925	71.6%	Rice flour
D	1102.90.30	El Salvador.....	151,745	90.2%	Cereal flours nesi, mixed together
D	1301.90.40	Brazil.....	79,935	59.8%	Turpentine gum (oleoresinous exudate from living trees)
D	1509.90.40	Turkey.....	8,861,975	50.3%	Olive oil, other than virgin olive oil, and its fractions, not chemica
D	1510.00.60	Morocco.....	2,701,342	66.7%	Edible oil including blends, and their fractions, nesi, not chemica
D	1601.00.40	Brazil.....	120,175	49.1%	Sausages and similar products of beef, beef offal or blood; food prepa
D	1602.50.20	Brazil.....	36,002,992	55.9%	Prepared or preserved beef in airtight containers, other than corned b
D	1604.15.00	Chile.....	6,311,779	60.5%	Prepared or preserved mackerel, whole or in pieces, but not minced
D	1605.90.10	Thailand.....	2,770,837	55.4%	Boiled clams in immediate airtight containers, the contents of which d
D	1702.30.22	Jamaica.....	26,947	48.9%	Glucose & glucose syrup nt containing or containing in dry state less
D	1702.90.35	Brazil.....	2,917,944	100.0%	Invert molasses
D	2001.90.45	India.....	285,342	45.7%	Mangoes, prepared or preserved by vinegar or acetic acid
D	2004.10.40	Peru.....	6,322	100.0%	Yellow (Solano) potatoes, prepared or preserved otherwise than by vine
D	2006.00.70	Thailand.....	1,526,869	46.7%	Fruit nesi, and nuts, except mixtures, preserved by sugar (drained, gl
D	2007.99.48	Republic of South Af	291,054	54.2%	Apple, quince and pear pastes and purees, being cooked preparations
D	2008.19.25	Peru.....	625,237	100.0%	Pecans, otherwise prepared or preserved, nesi
D	2008.19.30	Turkey.....	381,209	62.7%	Pignolia and pistachio nuts, otherwise prepared or preserved, nesi
D	2008.50.20	Turkey.....	7,178	71.3%	Apricot pulp, otherwise prepared or preserved, nesi
D	2008.99.35	Thailand.....	4,073,129	77.6%	Lychees and longans, otherwise prepared or preserved, nesi
D	2008.99.45	Dominican Republic..	29,578	55.3%	Papaya pulp, otherwise prepared or preserved, nesi
D	2008.99.50	Thailand.....	1,313,610	50.9%	Papayas, other than pulp, otherwise prepared or preserved, nesi
D	2611.00.60	Russia.....	5,350,739	49.4%	Tungsten concentrates
D	2707.99.40	Czech Republic.....	302,816	61.9%	Carbazole, from dist.of hi-temp coal tar or wt. of aromatic exceeds no
D	2804.29.00	Ukraine.....	6,032,485	53.9%	Rare gases, other than argon
D	2811.29.50	Brazil.....	5,033,952	49.2%	Other inorganic oxygen compounds of nonmetals, neso
D	2819.10.00	Kazakhstan.....	6,655,259	70.1%	Chromium trioxide
D	2820.90.00	Republic of South Af	711,960	43.9%	Manganese oxides, other than manganese dioxide
D	2825.30.00	Republic of South Af	1,516,727	91.5%	Vanadium oxides and hydroxides
D	2825.70.00	Chile.....	3,640,927	79.1%	Molybdenum oxides and hydroxides
D	2841.61.00	Czech Republic.....	1,083,858	46.6%	Potassium permanganate
D	2841.90.10	Republic of South Af	665,427	56.5%	Vanadates

FLAGS: '1'=Excluded January/June; 'D'=De minimis;

LIST II : ITEMS APPROACHING COMPETITIVE NEED LIMITS  
1999 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
D	2841.90.20	Chile.....	689,044	63.5%	Ammonium perrenate
D	2902.90.40	Hungary.....	81,878	74.1%	Anthraccene and 1,4-di-(2-methylstyryl)benzene
1 D	2909.50.40	Indonesia.....	2,107,326	48.2%	Odoriferous or flavoring compounds of ether-phenols, ether-alcohol-phe
D	2914.40.20	Czech Republic.....	95,720	73.9%	1,2,3-Indantrione monohydrate (Ninhydrin)
D	2915.34.00	Czech Republic.....	146,720	91.7%	Isobutyl acetate
D	2917.19.10	Hungary.....	1,278,705	67.4%	Ferrous fumarate
D	2917.32.00	Poland.....	1,901,403	47.3%	Diocetyl orthophthalates
D	2918.21.50	Brazil.....	4,995,059	82.5%	Salicylic acid and its salts, not suitable for medicinal use
D	2918.90.35	Romania.....	357,200	47.3%	Odoriferous or flavoring compounds of carboxylic acids with additional
D	2921.43.19	Hungary.....	141,437	97.8%	alpha,alpha-Trifluoro-o-toluidine; alpha,alpha,alpha-trifluoro-6
D	2922.12.00	Brazil.....	2,253,788	43.8%	Diethanolamine and its salts
D	2924.21.16	Brazil.....	15,851,755	49.9%	Aromatic ureines and their derivatives pesticides, nesoi
D	2931.00.25	Brazil.....	2,464,539	92.1%	Pesticides of aromatic organo-inorganic (except organo-sulfur) compoun
D	2933.40.08	Hungary.....	450,484	100.0%	4,7-Dichloroquinoline
D	2933.71.00	Colombia.....	8,449,190	47.9%	6-Hexanelactam (epsilon-Caprolactam)
D	2938.10.00	Brazil.....	943,283	60.5%	Rutoside (Rutin) and its derivatives
D	3815.90.10	Russia.....	997,500	83.6%	Reaction initiators, reaction accelerators and catalytic preparations,
D	3823.19.20	Philippines.....	2,449,838	60.9%	Industrial monocarboxylic fatty acids or acid oils from refining deriv
D	4010.19.50	Brazil.....	1,025,155	58.3%	Conveyor belts/beltng of vulcanized rubber, nesoi, combined w/textile
D	4104.39.20	India.....	1,685,865	71.3%	Buffalo leather, without hair on, parchment-dressed or prepared after
D	4106.20.30	Pakistan.....	1,155,319	46.9%	Goat or kidskin leather, w/o hair on, excluding leather of heading 410
D	4107.21.00	Indonesia.....	29,651	79.3%	Leather of reptiles, excluding leather of heading 4108 or 4109, vegeta
D	4202.22.35	Philippines.....	93,634	61.8%	Handbags with or without shoulder strap or without handle, with outer
D	4205.00.60	Panama.....	194,326	44.8%	Articles of reptile leather, nesoi
D	4302.20.60	Brazil.....	145,445	54.2%	Heads, tails, paws and other pieces or cuttings of dressed or tanned f
D	4412.13.25	Brazil.....	4,333,271	97.3%	Plywood sheet n/o 6 mm thick,tropical hard wood outer ply, face ply of
D	4412.14.25	Brazil.....	2,878,994	86.0%	Plywood sheet n/o 6 mm thick,outer ply of nontrropical hardwood,face pl
D	4412.92.40	Ecuador.....	101,864	95.7%	Plywood nesoi,softwood outer plies,least 1 ply trop. hardwood,no parti
D	4412.99.45	Brazil.....	1,526,980	86.1%	Plywood nesoi, softwood outer plies, no trop. hard wood ply, no partic
D	4414.00.00	Thailand.....	64,547,628	25.1%	Wooden frames for paintings, photographs, mirrors or similar objects
D	4601.10.00	India.....	349,497	42.0%	Plaits and similar products of plaiting materials, whether or not asse
D	4808.90.60	Venezuela.....	1,785,534	67.4%	Paper and paperboard, in rolls or sheets, nesoi
D	4823.59.40	Indonesia.....	64,375,392	21.7%	Paper and paperboard of a kind used for writing, printing or other gra
D	5007.10.30	India.....	1,962,269	45.1%	Woven fabrics of noil silk, containing 85 percent or more by weight of
D	5007.90.30	India.....	3,693,908	52.3%	Woven silk fabrics, containing 85 percent or more by weight of silk or
D	5102.10.60	Republic of South Af	69,202	69.2%	Fine animal hair, nesoi, not processed beyond the degreased or carboni
D	5609.00.20	Philippines.....	3,299,856	89.5%	Twine, cordage, rope and cables of abaca or other hard (leaf) fibers (
D	5702.39.10	India.....	365,011	43.8%	Articles of yarn, strip, twine, cordage, rope or cables nesoi, of vege
D	6116.99.35	Philippines.....	512,009	71.0%	Carpets and other textile floor coverings of pile construction, woven,
D	6302.99.10	India.....	86,476	50.2%	Gloves, mittens & mitts specially designed for sports, including ski a
D	7113.19.25	India.....	34,419	69.2%	Toilet and kitchen linen of textile materials nesoi, containing 85% or
D	7113.20.10	Oman.....	31,609,157	58.0%	Gold mixed link necklaces and neck chains
D	7113.20.25	India.....	555,340	69.6%	Base metal clad w/precious metal, rope, curb & like articles in contin
D	7202.21.10	Macedonia (Skopje).....	282,946	69.2%	Base metal clad w/gold mixed link necklaces and neck chains
D	7202.50.00	Kazakhstan.....	7,278,914	94.0%	Ferrosilicon containing by weight more than 55% but not more than 80%
D	7407.22.30	Poland.....	7,707,437	51.2%	Ferrosilicon chromium
D	7418.19.10	India.....	216,060	61.3%	Copper-nickel base alloys (cupro-nickel) or copper-nickel-zinc base al
D	7604.10.10	Russia.....	6,353,923	51.5%	Copper, table, kitchen or other household articles and parts thereof,
D	7604.10.30	Slovenia.....	8,884,450	52.2%	Aluminum (o/than alloy), profiles
D	7608.10.00	Russia.....	5,580,857	50.4%	Aluminum (o/than alloy), bar and rods, with a round cross section
D	7608.10.00	Russia.....	8,253,461	44.8%	Aluminum (o/than alloy), tubes and pipes

FLAGS: '1'=Excluded January/June; 'D'=De minimis;

LIST II : ITEMS APPROACHING COMPETITIVE NEED LIMITS

1999 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
D	7901.20.00	Poland.....	1,949,971	61.0%	Zinc alloy, unwrought
D	8112.91.50	Chile.....	9,971,466	80.2%	Rhenium, unwrought; rhenium, powders
D	8211.95.50	Pakistan.....	38,078	64.6%	Base metal handles for knives (o/than table knives) w/fixed blades
D	8308.10.00	Philippines.....	7,553,340	50.6%	Base metal hooks, eyes, and eyelets, of a kind used for clothing, foot
D	8401.30.00	Croatia.....	1,269,544	53.4%	Fuel elements (cartridges), non-irradiated and parts thereof
D	8410.13.00	Argentina.....	715,000	88.6%	Hydraulic turbines and water wheels of a power exceeding 10,000 kW
D	8411.12.40	Brazil.....	64,756,623	2.0%	Aircraft turbojets of a thrust exceeding 25 kN
D	8414.51.00	Thailand.....	71,770,604	9.2%	Table, floor, wall, window, ceiling or roof fans, with a self-contained
D	8419.50.10	Malta and Gozo.....	4,180,908	42.4%	Brazed aluminum plate-fin heat exchangers
D	8450.90.20	Ecuador.....	11,966	71.5%	Tubs and tub assemblies for household- or laundry-type washing machine
D	8524.53.20	India.....	1,132,416	43.2%	Pre-recorded magnetic tapes of a width exceeding 6.5 mm, nesoi
D	8528.12.80	Thailand.....	698,044	43.1%	Color television reception apparatus nesoi, video display diagonal ove
D	8536.20.00	Dominican Republic..	70,493,182	19.5%	Automatic circuit breakers, for a voltage not exceeding 1,000 V
D	8543.81.00	Philippines.....	4,857,287	53.9%	Proximity cards and tags (electrical)
D	8708.70.45	Brazil.....	64,735,391	9.9%	Pts. & access. of mtr. vehic. of 8701, nesoi, and of 8702-8705, road w
D	8708.99.67	Brazil.....	77,487,765	4.5%	Pts. & access. of motor vehicles of 8701, nesoi, and 8702-8705, pts. f
D	9013.10.30	Ukraine.....	2,097,258	58.3%	Telescopic sights for rifles designed for use with infrared light
D	9106.90.40	Colombia.....	50,580	48.3%	Time locks valued over \$10 each
D	9303.30.40	Macedonia (Skopje)..	75,200	82.9%	Rifles (o/than muzzle-loading), for sport, hunting or target-shootings
D	9606.30.80	Ecuador.....	537,586	43.0%	Button molds & parts of buttons; button blanks (o/than casein)

FLAGS: '1'=Excluded January/June; 'D'=De minimis;

## LIST II : ITEMS APPROACHING COMPETITIVE NEED LIMITS

1999 U.S. IMPORTS - JANUARY THROUGH OCTOBER

## TOTALS BY PARTNER

PARTNER	IMPORTS	COUNT
Argentina.....	715,000	1
Brazil.....	287,553,046	18
Chile.....	20,613,216	4
Colombia.....	8,515,958	3
Costa Rica.....	17,012,607	3
Croatia.....	1,269,544	1
Czech Republic.....	1,629,129	4
Dominican Republic..	70,848,794	3
Ecuador.....	651,416	3
Egypt.....	225,264	1
El Salvador.....	151,745	1
Honduras.....	2,981,228	1
Hungary.....	1,952,504	4
India.....	51,024,501	14
Indonesia.....	69,488,946	4
Jamaica.....	8,117,522	2
Kazakhstan.....	14,362,696	2
Macedonia (Skopje)..	7,354,114	2
Malta and Gozo.....	4,180,908	1
Morocco.....	3,423,829	2
Oman.....	555,340	1
Pakistan.....	1,193,397	2
Panama.....	194,326	1
Peru.....	631,559	2
Philippines.....	18,705,442	7
Poland.....	4,067,434	3
Republic of South Af	3,254,370	5
Romania.....	357,200	1
Russia.....	23,486,150	4
Slovenia.....	5,580,857	1
Suriname.....	5,007	1
Thailand.....	151,610,023	10
Turkey.....	9,450,724	4
Ukraine.....	8,129,743	2
Uruguay.....	232,016	1
Venezuela.....	7,001,821	3
TOTAL.....	806,527,376	122

## LIST III : POSSIBLE de MINIMIS ITEMS

## 1999 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HITSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
D	0202.30.02	Uruguay.....	232,016	72.4%	High-qual. beef cuts, boneless, processed, frozen, descr in gen. note
D	0302.69.10	Venezuela.....	4,800	48.9%	Fish, nesi, excl. fillets, livers and roes, fresh or chilled, scaled,
D	0302.69.10	Venezuela.....	5,007	51.0%	Fish, nesi, excl. fillets, livers and roes, fresh or chilled, scaled,
D	0306.24.20	Venezuela.....	5,211,487	49.6%	Crabmeat, not frozen
D	0410.00.00	Indonesia.....	2,976,577	45.3%	Edible products of animal origin, nesi
D	0708.90.30	Dominican Republic..	326,034	51.3%	Pigeon peas, fresh or chilled, shelled or unshelled, if entered Oct. 1
D	0710.29.15	India.....	6,693	48.8%	Lentils, uncooked or cooked by steaming or boiling in water, frozen
D	0711.30.00	Morocco.....	722,487	59.2%	Capers, provisionally preserved but unsuitable in that state for immed
D	0711.40.00	Honduras.....	2,981,228	45.4%	Cucumbers including gherkins, provisionally preserved but unsuitable i
D	0712.90.70	Egypt.....	2,786,005	42.4%	Cucumbers including gherkins, provisionally preserved but unsuitable i
D	0713.90.80	India.....	225,264	81.8%	Dried fennel, marjoram, savory and tarragon nesi, whole, cut, sliced,
D	0714.20.10	Colombia.....	330,052	84.5%	Dried leguminous vegetables nesi, shelled, if entered Sept. 1 through
D	0714.90.45	Costa Rica.....	16,188	52.4%	Sweet potatoes, frozen, whether or not sliced or in the form of pellet
D	0802.50.40	Turkey.....	200,362	45.7%	Pistachios, fresh or dried, shelled
D	0804.50.80	Thailand.....	1,359,861	44.2%	Guavas, mangoes, and mangosteens, dried
D	0813.40.10	Thailand.....	1,072,516	95.2%	Papayas, dried
D	1102.30.00	Thailand.....	2,476,925	71.6%	Rice flour
D	1102.90.30	El Salvador.....	151,745	90.2%	Cereal flours nesi, mixed together
D	1301.90.40	Brazil.....	79,935	59.8%	Turpentine gum (oleoresinous exudate from living trees)
D	1510.00.60	Morocco.....	2,701,342	66.7%	Edible oil including blends, and their fractions, nesi, not chemically
D	1601.00.40	Brazil.....	120,175	49.1%	Sausages and similar products of beef, beef offal or blood; food prepa
1	1604.15.00	Chile.....	6,311,779	60.5%	Prepared or preserved mackerel, whole or in pieces, but not minced
D	1605.90.10	Thailand.....	2,770,837	55.4%	Boiled clams in immediate airtight containers, the contents of which d
D	1702.30.22	Jamaica.....	26,947	48.9%	Glucose & glucose syrup nt containing or containing in dry state less
D	1702.90.35	Brazil.....	2,917,944	100.0%	Invert molasses
D	2001.90.45	India.....	285,342	45.7%	Mangoes, prepared or preserved by vinegar or acetic acid
D	2004.10.40	Peru.....	6,322	100.0%	Yellow (Solano) potatoes, prepared or preserved otherwise than by vine
D	2006.00.70	Thailand.....	1,526,869	46.7%	Fruit nesi, and nuts, except mixtures, preserved by sugar (drained, gl
D	2007.99.48	Republic of South Af	291,054	54.2%	Apple, quince and pear pastes and purees, being cooked preparations
D	2008.19.25	Peru.....	625,237	100.0%	Pecans, otherwise prepared or preserved, nesi
D	2008.19.30	Turkey.....	381,209	62.7%	Pignolia and pistachio nuts, otherwise prepared or preserved, nesi
D	2008.50.20	Turkey.....	7,178	71.3%	Apricot pulp, otherwise prepared or preserved, nesi
D	2008.99.35	Thailand.....	4,073,129	77.6%	Lychees and longans, otherwise prepared or preserved, nesi
D	2008.99.45	Dominican Republic..	29,578	55.3%	Papaya pulp, otherwise prepared or preserved, nesi
D	2008.99.50	Thailand.....	1,313,610	50.9%	Papayas, other than pulp, otherwise prepared or preserved, nesi
D	2611.00.60	Russia.....	5,350,739	49.4%	Lungsten concentrates
D	2707.99.40	Czech Republic.....	302,816	61.9%	Carbazole, from dist.of hi-temp coal tar or wt. of aromatic exceeds no
D	2804.29.00	Ukraine.....	6,032,485	53.9%	Rare gases, other than argon
D	2811.29.50	Brazil.....	5,033,952	49.2%	Other inorganic oxygen compounds of nonmetals, neso
D	2819.10.00	Kazakhstan.....	6,655,259	70.1%	Chromium trioxide
D	2820.90.00	Republic of South Af	711,960	43.9%	Manganese oxides, other than manganese dioxide
D	2825.30.00	Republic of South Af	1,516,727	91.5%	Vanadium oxides and hydroxides
D	2825.70.00	Chile.....	3,640,927	79.1%	Molybdenum oxides and hydroxides
D	2841.61.00	Czech Republic.....	1,083,858	46.6%	Potassium permanganate
1	2841.90.10	Republic of South Af	665,427	56.5%	Vanadates
D	2841.90.20	Chile.....	689,044	63.5%	Ammonium perrhenate
D	2902.90.40	Hungary.....	81,878	74.1%	Anthracene and 1,4-di-(2-methylstyryl)benzene
1	2909.50.40	Indonesia.....	2,107,326	48.2%	Odoriferous or flavoring compounds of ether-phenols, ether-alcohol-phe
D	2914.40.20	Czech Republic.....	95,720	73.9%	1,2,3-Indantrione monohydrate (Ninhydrin)
D	2915.34.00	Czech Republic.....	146,735	91.7%	Isobutyl acetate

FLAGS: '1'=Excluded January/June; 'D'=De minimis;

LIST III : POSSIBLE de MINIMIS ITEMS

1999 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
D	2917.19.10	Hungary.....	1,278,705	67.4%	Ferrous fumarate
D	2917.32.00	Poland.....	1,901,403	47.3%	Dioctyl orthophthalates
D	2918.21.50	Brazil.....	4,995,059	82.5%	Salicylic acid and its salts, not suitable for medicinal use
D	2918.90.35	Romania.....	357,200	47.3%	Odoriferous or flavoring compounds of carboxylic acids with additional
D	2921.43.19	Hungary.....	141,437	97.8%	alpha,alpha,Trifluoro-o-toluidine; alpha,alpha,alpha-trifluoro-6
D	2922.12.00	Brazil.....	2,253,788	43.8%	Diethanolamine and its salts
D	2931.00.25	Brazil.....	2,464,539	92.1%	Pesticides of aromatic organo-inorganic (except organo-sulfur) compound
D	2933.40.08	Hungary.....	450,484	100.0%	4,7-Dichloroquinoline
D	2938.10.00	Brazil.....	943,283	60.5%	Rutoside (Rutin) and its derivatives
D	3815.90.10	Russia.....	997,500	83.6%	Reaction initiators, reaction accelerators and catalytic preparations,
D	3823.19.20	Philippines.....	2,449,838	60.9%	Industrial monocarboxylic fatty acids or acid oils from refining deriv
D	4010.19.50	Brazil.....	1,025,155	58.3%	Conveyor belts/belting of vulcanized rubber, nesoi, combined w/textile
D	4104.39.20	India.....	1,685,865	71.3%	Buffalo leather, without hair on, parchment-dressed or prepared after
D	4106.20.30	Pakistan.....	1,155,319	46.9%	Goat or kidskin leather, w/o hair on, excluding leather of heading 410
D	4107.21.00	Indonesia.....	29,651	79.3%	Leather of reptiles, excluding leather of heading 4108 or 4109, vegeta
D	4202.22.35	Philippines.....	93,634	61.8%	Handbags with or without shoulder strap or without handle, with outer
D	4205.00.60	Panama.....	194,326	44.6%	Articles of reptile leather, nesoi
D	4302.20.60	Brazil.....	145,445	54.2%	Heads, tails, paws and other pieces or cuttings of dressed or tanned f
D	4412.13.25	Brazil.....	4,333,271	97.3%	Plywood sheet n/o 6 mm thick,tropical hard wood outer ply, face ply of
D	4412.14.25	Brazil.....	2,878,994	86.0%	Plywood sheet n/o 6 mm thick,outer ply of non-tropical hardwood,face pl
D	4412.92.40	Ecuador.....	101,864	95.7%	Plywood nesoi,softwood outer plies,least 1 ply trop. hardwood,no parti
D	4412.99.45	Brazil.....	1,526,980	86.1%	Plywood nesoi, softwood outer plies, no trop. hard wood ply, no partic
D	4601.10.00	India.....	349,497	42.0%	Plaits and similar products of plaiting materials, whether or not asse
D	4808.90.60	Venezuela.....	1,785,534	67.4%	Paper and paperboard, in rolls or sheets, nesoi
D	5007.10.30	India.....	1,962,269	45.1%	Woven fabrics of wool silk, containing 85 percent or more by weight of
D	5007.90.30	India.....	3,693,908	52.3%	Woven silk fabrics, containing 85 percent or more by weight of silk or
D	5102.10.60	Republic of South Af	69,202	69.2%	Fine animal hair, nesoi, not processed beyond the degreased or carboni
D	5607.30.20	Philippines.....	3,299,856	89.5%	Twine, cordage, rope and cables of abaca or other hard (leaf) fibers (
D	5609.00.20	Philippines.....	365,011	43.8%	Articles of yarn, strip, twine, cordage, rope or cables nesoi, of vege
D	5702.39.10	India.....	512,009	71.0%	Carpets and other textile floor coverings of pile construction, woven,
D	6116.99.35	Philippines.....	86,476	50.2%	Gloves, mittens & mitts specially designed for sports, including ski a
D	6302.99.10	India.....	34,419	69.2%	Toilet and kitchen linen of textile materials nesoi, containing 85% or
D	7113.20.10	Oman.....	555,340	69.6%	Base metal clad w/precious metal, rope, curb & like articles in contin
D	7113.20.25	India.....	282,946	69.2%	Base metal clad w/gold mixed link necklaces and neck chains
D	7202.21.10	Macedonia (Skopje)..	7,278,914	94.0%	Ferrosilicon containing by weight more than 55% but not more than 80%
D	7407.22.30	Poland.....	216,060	61.3%	Copper-nickel base alloys (cupro-nickel) or copper-nickel-zinc base al
D	7418.19.10	India.....	6,353,923	51.5%	Copper, table, kitchen or other household articles and parts thereof,
D	7604.10.30	Slovenia.....	5,580,857	50.4%	Aluminum (o/than alloy), bar and rods, with a round cross section
D	7901.20.00	Poland.....	1,949,971	61.0%	Zinc alloy, unwrought
D	8112.91.50	Chile.....	9,971,466	80.2%	Rhenium, unwrought; rhenium, powders
D	8211.95.50	Pakistan.....	38,078	64.6%	Base metal handles for knives (o/than table knives) w/ fixed blades
D	8401.30.00	Croatia.....	1,269,544	53.4%	Fuel elements (cartridges), non-irradiated and parts thereof
D	8410.13.00	Argentina.....	715,000	88.6%	Hydraulic turbines and water wheels of a power exceeding 10,000 kW
D	8419.50.10	Malta and Gozo.....	4,180,908	42.4%	Brazed aluminum plate-fin heat exchangers
D	8450.90.20	Ecuador.....	11,966	71.5%	Tubs and tub assemblies for household- or laundry-type washing machine
D	8524.53.20	India.....	1,132,416	43.2%	Pre-recorded magnetic tapes of a width exceeding 6.5 mm, nesoi
D	8528.12.80	Thailand.....	698,044	43.1%	Color television reception apparatus nesoi, video display diagonal ove
D	8543.81.00	Philippines.....	4,857,287	53.9%	Proximity cards and tags (electrical)
D	9013.10.30	Ukraine.....	2,097,258	58.3%	Telescopic sights for rifles designed for use with infrared light
D	9106.90.40	Colombia.....	50,580	48.3%	Time locks valued over \$10 each
D	9303.30.40	Macedonia (Skopje)..	75,200	82.9%	Rifles (o/than muzzle-loading), for sport, hunting or target-shootings

FLAGS: '1'=Excluded January/June; 'D'=De minimis;

LIST III : POSSIBLE de MINIMIS ITEMS

1999 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS SHARE	DESCRIPTION
D	9606.30.80	Ecuador.....	537,586	43.0% Button molds & parts of buttons; button blanks (o/than casein)

FLAGS: '1'=Excluded January/June; 'D'=De minimis;

## LIST III : POSSIBLE de MINIMIS ITEMS

## 1999 U.S. IMPORTS - JANUARY THROUGH OCTOBER

## TOTALS BY PARTNER

PARTNER	IMPORTS	COUNT
Argentina.....	715,000	1
Brazil.....	28,718,520	13
Chile.....	20,613,216	4
Colombia.....	66,768	2
Costa Rica.....	435,184	1
Croatia.....	1,269,544	1
Czech Republic.....	1,629,129	4
Dominican Republic..	355,612	2
Ecuador.....	651,416	3
Egypt.....	225,264	1
El Salvador.....	151,745	1
Honduras.....	2,981,228	1
Hungary.....	1,952,504	4
India.....	19,415,344	13
Indonesia.....	5,113,554	3
Jamaica.....	26,947	1
Kazakhstan.....	6,655,259	1
Macedonia (Skopje)..	7,354,114	2
Malta and Gozo.....	4,180,908	1
Morocco.....	3,423,829	2
Oman.....	555,340	1
Pakistan.....	1,193,397	2
Panama.....	194,326	1
Peru.....	631,559	2
Philippines.....	11,152,102	6
Poland.....	4,067,434	3
Republic of South Af	3,254,370	5
Romania.....	557,200	1
Russia.....	6,348,239	2
Slovenia.....	5,580,857	1
Suriname.....	5,007	1
Thailand.....	15,291,791	8
Turkey.....	588,749	3
Ukraine.....	8,129,743	2
Uruguay.....	232,016	1
Venezuela.....	7,001,821	3
TOTAL.....	170,519,036	103

LIST IV : POSSIBLE REDESIGNATION ITEMS  
1999 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
*	0202.30.10	Argentina.....	0	0.0%	High-qual. beef cuts, boneless, processed, frozen, descr in add. US no
*	0404.90.10	Argentina.....	0	0.0%	Milk protein concentrates
*	0703.10.20	Chile.....	83,927	7.1%	Onion sets, fresh or chilled
*	0703.20.00	Argentina.....	19,863,704	44.7%	Garlic, fresh or chilled
* D	0708.10.20	Guatemala.....	611,733	47.4%	Peas, fresh or chilled, shelled or unshelled, if entered July 1 to Sep
*	0708.90.30	Ecuador.....	192,334	30.2%	Pigeon peas, fresh or chilled, shelled or unshelled, if entered Oct. 1
*	0709.10.00	Chile.....	42,738	4.3%	Globe artichokes, fresh or chilled
* D	0709.20.10	Peru.....	9,799,535	79.6%	Asparagus, fresh or chilled, not reduced in size, if entered September
2 D	0710.29.30	Dominican Republic..	1,747,477	63.9%	Pigeon peas, uncooked or cooked by steaming or boiling in water, froze
*	0710.29.30	Ecuador.....	395,723	14.4%	Pigeon peas, uncooked or cooked by steaming or boiling in water, froze
*	0710.80.70	Guatemala.....	1,358,539	16.8%	Vegetables nesi, uncooked or cooked by steaming or boiling in water, f
* D	0710.80.93	Guatemala.....	2,134,373	50.8%	Okra, reduced in size, frozen
*	0711.30.00	Turkey.....	291,850	23.9%	Capers, provisionally preserved but unsuitable in that state for immed
2	0712.90.30	Peru.....	35,018	28.7%	Dried tomatoes, whether or not cut or sliced but not further prepared
*	0712.90.74	Turkey.....	127,463	0.6%	Dried tomatoes in powder, but not further prepared
2	0713.33.20	El Salvador.....	241,132	14.8%	Dried kidney beans, including white pea beans, shelled, if entered May
*	0713.90.10	Peru.....	279,986	39.4%	Seeds of leguminous vegetables nesi, of a kind used for sowing
* D	0714.10.10	Costa Rica.....	4,896,997	93.6%	Cassava (manioc), frozen, whether or not sliced or in the form of pell
* D	0714.10.20	Costa Rica.....	7,456,342	98.9%	Cassava (manioc), fresh, chilled or dried, whether or not sliced or in
2	0714.20.10	Dominican Republic..	0	0.0%	Sweet potatoes, frozen, whether or not sliced or in the form of pellet
* D	0714.20.20	Dominican Republic..	4,337,082	94.8%	Sweet potatoes, fresh, chilled or dried, whether or not sliced or in t
* D	0802.50.20	Turkey.....	842,975	100.0%	Pistachios, fresh or dried, in shell
*	0802.90.80	Guatemala.....	0	0.0%	Nuts nesi, fresh or dried, in shell
2 D	0805.90.00	Turkey.....	221,361	49.2%	Citrus fruit, nesi, fresh or dried, including kumquats, citrons and be
* D	0811.20.40	Chile.....	549,214	49.1%	Blackberries, mulberries and white or red currants, frozen, in water o
* D	0811.90.10	Costa Rica.....	2,981,486	45.8%	Bananas and plantains, frozen, in water or containing added sweetening
* D	0811.90.50	Costa Rica.....	3,016,295	73.8%	Pineapples, frozen, in water or containing added sweetening
*	0813.10.00	Turkey.....	27,288,847	96.8%	Apricots, dried
* D	0813.30.00	Argentina.....	2,462,652	47.2%	Apples, dried
*	1005.90.20	Argentina.....	0	0.0%	Yellow dent corn
*	1005.90.40	Argentina.....	26,740	0.4%	Corn (maize), other than seed and yellow dent corn
* D	1007.00.00	Argentina.....	17,110	42.7%	Grain sorghum
* D	1106.30.20	Ecuador.....	54,959	47.3%	Flour, meal and powder of banana and plantain
*	1301.90.40	Indonesia.....	0	0.0%	Turpentine gum (oleoresinous exudate from living trees)
*	1403.90.40	India.....	564,343	35.3%	Piassava, couch-grass and other vegetable materials nesi, of a kind us
* D	1602.50.09	Argentina.....	11,344,675	91.7%	Prepared or preserved meat of bovine animals, cured or pickled, not co
*	1602.50.20	Argentina.....	24,675,476	38.3%	Prepared or preserved beef in airtight containers, other than corned b
2 D	1604.14.50	Colombia.....	434,421	45.9%	Tunas and skipjack, not in airtight containers, not in bulk or in imme
*	1604.14.50	Indonesia.....	62,492	6.6%	Tunas and skipjack, not in airtight containers, not in bulk or in imme
* D	1604.14.50	Thailand.....	810,692	47.8%	Prepared or preserved snails, other than sea snails
*	1701.11.05	Brazil.....	0	0.0%	Cane sugar, raw, in solid form, w/o added flavoring or coloring, subje
*	1701.11.10	Dominican Republic..	64,977,206	16.6%	Cane sugar, raw, in solid form, w/o added flavoring or coloring, subje
*	1701.11.10	Brazil.....	68,589,367	17.6%	Cane sugar, raw, in solid form, w/o added flavoring or coloring, subje
*	1701.11.10	Argentina.....	8,661,544	2.2%	Cane sugar, raw, in solid form, w/o added flavoring or coloring, subje
*	1701.11.20	Guatemala.....	30,265,512	51.8%	Cane sugar, raw, in solid form, to be used for certain polyhydric alco
*	1701.11.20	Brazil.....	0	0.0%	Cane sugar, raw, in solid form, to be used for certain polyhydric alco
*	1701.12.10	Brazil.....	0	0.0%	Beet sugar, raw, in solid form, w/o added flavoring or coloring, subje
*	1701.91.05	Brazil.....	0	0.0%	Cane/beet sugar & pure sucrose, refined, solid, w/added coloring but n
* D	1701.91.10	Brazil.....	14,792	64.5%	Cane/beet sugar & pure sucrose, refined, solid, w/added coloring but n
*	1701.99.05	Brazil.....	0	0.0%	Cane/beet sugar & pure sucrose, refined, solid, w/o added coloring or

FLAGS: \*'=Excluded full year; '2'=Excluded July/December; 'D'=De minimis;

LIST IV : POSSIBLE REDESIGNATION ITEMS  
 1999 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
*	1701.99.10	Brazil.....	595,463	3.1%	Cane/beet sugar & pure sucrose, refined, solid, w/o added coloring or
2	1702.30.22	Argentina.....	0	0.0%	Glucose & glucose syrup nt containing or containing in dry state less
*	1702.90.35	Belize.....	0	0.0%	Invert molasses
2	1702.90.40	Brazil.....	30,948,576	96.3%	Other cane/beet syrups nesi
*	1702.90.40	Dominican Republic..	0	0.0%	Other cane/beet syrups nesi
*	1703.10.30	Dominican Republic..	1,461,974	34.8%	Cane molasses imported for (a) the commercial extraction of sugar or (
2	1703.90.50	Poland.....	4,887,091	28.9%	Molasses nesi
*	1806.10.65	Brazil.....	0	0.0%	Cocoa powder, o/90% by dry wt of sugar, nesi, subject to add. US note
2	1806.20.22	Turkey.....	0	0.0%	Chocolate, ov 2kg, cont. milk solids, not in blocks 4.5 kg or more, su
* D	1806.32.55	Colombia.....	146,472	57.2%	Cocoa preps, not filled, in blocks, slabs or bars weighing 2 kg or les
*	2002.90.40	Turkey.....	0	0.0%	Tomatoes in powder, prepared or preserved otherwise than by vineg
*	2004.10.40	Colombia.....	0	0.0%	Yellow (solano) potatoes, prepared or preserved otherwise than by vineg
2	2005.10.00	Turkey.....	19,800	28.6%	Homogenized vegetables, prepared or preserved otherwise than by vineg
*	2007.99.48	Argentina.....	21,447	3.9%	Apple, quince and pear pastes and purees, being cooked preparations
*	2007.99.50	Brazil.....	736,408	9.5%	Guava and mango pastes and purees, being cooked preparations
2	2008.19.30	Pakistan.....	29,381	4.8%	Pignolia and pistachio nuts, otherwise prepared or preserved, nesi
*	2008.30.10	Dominican Republic..	30,794	21.6%	Peel of oranges, mandarins, clementines, wilkings and similar citrus h
*	2008.50.20	Argentina.....	0	0.0%	Apricot pulp, otherwise prepared or preserved, nesi
* D	2008.99.13	Costa Rica.....	4,975,216	57.0%	Banana pulp, otherwise prepared or preserved, nesi
* D	2008.99.23	Dominican Republic..	116,060	89.4%	Cashew apples, mameyes colorados, sapodillas, soursops and sweetsops,
*	2009.30.10	Honduras.....	0	0.0%	Lime juice, unfit for beverage purposes
*	2106.90.12	Dominican Republic..	0	0.0%	Compound alcoholic preparations of a kind used for the manufacture of
*	2202.90.36	Dominican Republic..	0	0.0%	Single fruit or vegetable juice (other than orange), fortified with vi
* D	2208.90.05	Trinidad and Tobago.	2,487,487	81.0%	Bitters, not fit for use as beverages
*	2401.20.57	Indonesia.....	0	0.0%	Tobacco, partly or wholly stemmed/stripped, n/threshed or similarly pr
* D	2516.90.00	Republic of South Af	2,013,344	46.5%	Porphyry, basalt and other monument. or build. stone (except granite/s
*	2603.00.00	Chile.....	35,544,357	43.3%	Copper ores and concentrates
*	2603.00.00	Indonesia.....	45,490,456	55.4%	Copper ores and concentrates
2	2607.00.00	Peru.....	514,936	19.9%	Lead ores and concentrates
*	2804.69.10	Brazil.....	11,701,133	16.0%	Silicon, containing by weight less than 99.99 percent but not less tha
*	2805.40.00	Argentina.....	0	0.0%	Mercury
*	2813.90.50	Argentina.....	0	0.0%	Sulfides of nonmetals, excluding carbon disulfide and sulfides of arse
*	2832.30.10	Argentina.....	0	0.0%	Sodium thiosulfate
*	2839.90.00	Argentina.....	0	0.0%	Silicates and commercial alkali metal silicates, excluding those of so
* D	2840.11.00	Turkey.....	1,485,283	86.5%	Anhydrous disodium tetraborate (refined borax)
* D	2840.19.00	Turkey.....	1,213,776	99.7%	Disodium tetraborate (refined borax) except anhydrous
*	2841.30.00	Argentina.....	103,423	1.8%	Sodium dichromate
*	2841.50.00	Argentina.....	0	0.0%	Chromates and dichromates except of sodium, potassium, lead or zinc; p
*	2843.30.00	Colombia.....	37,928,882	92.6%	Gold compounds
*	2843.30.00	Chile.....	0	0.0%	Gold compounds
*	2843.30.00	Argentina.....	0	0.0%	Gold compounds
* D	2849.10.00	Argentina.....	168,695	64.4%	Calcium carbide
*	2849.90.50	Republic of South Af	12,450,712	63.7%	Carbides, nesi
*	2850.00.50	Argentina.....	0	0.0%	Hydrides, nitrides, azides, silicides and borides other than of calciu
* D	2902.11.00	Argentina.....	1,997,854	51.5%	Cyclohexane
*	2904.90.15	Brazil.....	0	0.0%	4-Chloro-3-nitro-alpha,alpha,alpha-trifluorotoluene; and other specifi
*	2905.11.20	Trinidad and Tobago.	75,359,384	37.6%	Methanol (Methyl alcohol), other than imported only for use in product
*	2905.12.00	Argentina.....	1,757,456	5.8%	Propan-1-ol (Propyl alcohol) and Propan-2-ol (isopropyl alcohol)
*	2905.13.00	Argentina.....	106,546	8.5%	Butan-1-ol (n-Butyl alcohol)
*	2905.22.50	Argentina.....	0	0.0%	Acyclic terpene alcohols, other than geraniol and isophytol
*	2906.11.00	Brazil.....	2,085,060	8.4%	Menthol

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LIST IV : POSSIBLE REDESIGNATION ITEMS  
 1999 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
*	2906.14.00	Argentina	0	0.0%	Terpineols
*	2907.23.00	Brazil	183,187	2.3%	4,4'-Isopropylidenediphenol (Bisphenol A, Diphenylpropane) and its s
*	2912.13.00	Colombia	0	0.0%	Butanal (Butyraldehyde, normal isomer)
*	2914.12.00	Argentina	542,460	8.9%	Butanone (Methyl ethyl ketone)
*	2914.13.00	Argentina	127,546	1.7%	4-Methylpentan-2-one (Methyl isobutyl ketone)
*	2915.31.00	Brazil	0	0.0%	Ethyl acetate
*	2915.70.00	Argentina	83,047	0.2%	Palmitic acid, stearic acid, their salts and esters
*	2917.14.50	Argentina	29,378	0.5%	Maleic anhydride, except derived in whole or in part from benzene or o
*	2918.21.50	Argentina	0	0.0%	Salicylic acid and its salts, not suitable for medicinal use
*	2918.22.10	Argentina	1,211,080	14.2%	O-Acetylsalicylic acid (Aspirin)
*	2918.22.10	Turkey	0	0.0%	O-Acetylsalicylic acid (Aspirin)
*	2918.22.50	Argentina	0	0.0%	Salts and esters Of O-acetylsalicylic acid
*	2921.42.23	Guatemala	0	0.0%	3,4-Dichloroaniline
*	2929.10.15	Argentina	0	0.0%	Mixtures of 2,4- and 2,6-toluenediisocyanates
*	2932.99.90	Argentina	56,812	0.0%	Nonaromatic heterocyclic compounds with oxygen hetero-atom(s) only, ne
*	2933.40.30	Argentina	0	0.0%	Pesticides of heterocyclic compounds with nitrogen hetero-atom(s) only
*	2933.90.55	Argentina	0	0.0%	Aromatic or modified aromatic analgesics, etc., affecting the CNS, of
*	2934.90.15	Brazil	2,005,362	18.4%	Aromatic or modified aromatic herbicides of other heterocyclic compou
*	3204.12.20	Argentina	121,032	0.7%	Acid black 61 and other specified acid and mordant dyes and preparatio
*	3204.12.30	Argentina	0	0.0%	Mordant black 75, blue 1, brown 79, red 81, 84 and preparations based
*	3204.12.45	Argentina	217,865	0.9%	Acid dyes, whether or not premetallized, and preparations based thereo
*	3204.12.50	Argentina	0	0.0%	Synthetic acid and mordant dyes and preparations based thereon, nesoi
*	3209.90.00	Argentina	56,195	0.1%	Paints and varnishes based on synthetic polymers or chemically modifi
* D	3301.12.00	Brazil	8,376,493	64.6%	Essential oils of orange
*	3301.19.10	Argentina	0	0.0%	Essential oils of grapefruit
*	3301.90.10	Argentina	0	0.0%	Extracted oleoresins consisting essentially of nonvolatile components
*	3307.20.00	Argentina	0	0.0%	Personal deodorants and antiperspirants
*	3307.49.00	Argentina	9,645	0.0%	Preparations for perfuming or deodorizing rooms, including odoriferous
2	3501.90.20	Dominican Republic	0	0.0%	Casein glues
*	3504.00.50	Argentina	0	0.0%	Peptones and their derivatives; protein substances and their derivativ
*	3506.99.00	Argentina	0	0.0%	Prepared glues and other prepared adhesives, excluding adhesives based
*	3701.10.00	Argentina	0	0.0%	Photographic plates and film in the flat, sensitized, unexposed, of an
*	3702.10.00	Argentina	0	0.0%	Photographic film in rolls, sensitized, unexposed, for X-ray use; of a
*	3706.10.30	Argentina	3,500	0.7%	Sound recordings on motion-picture film of a width of 35 mm or more, s
*	3707.90.32	Argentina	521,685	0.1%	Chemical preparations for photographic uses, nesoi
*	3806.30.00	Argentina	0	0.0%	Ester gums
*	3824.60.00	Indonesia	0	0.0%	Sorbitol other than that of subheading 2905.44
*	3824.90.40	Brazil	790,660	1.4%	Fatty substances of animal or vegetable origin and mixtures thereof, n
*	3901.90.90	Argentina	0	0.0%	Polymers of ethylene, nesoi, in primary forms, other than elastomeric
*	3902.10.00	Argentina	2,027	0.0%	Polypropylene, in primary forms
*	3902.20.50	Argentina	3,775,114	28.9%	Polyisobutylene, other than elastomeric, in primary forms
*	3902.90.00	Argentina	450,183	1.3%	Polymers of propylene or of other olefins, nesoi, in primary forms
*	3903.90.50	Argentina	0	0.0%	Polymers of styrene, nesoi, in primary forms
*	3904.21.00	Brazil	0	0.0%	Polyvinyl chloride, mixed with other substances, nonplasticized, in pr
*	3904.40.00	Argentina	0	0.0%	Vinyl chloride copolymers nesoi, in primary forms
*	3906.10.00	Argentina	0	0.0%	Polymethyl methacrylate, in primary forms
*	3906.90.50	Argentina	13,227	0.0%	Acrylic polymers (except plastics or elastomers), in primary forms, ne
*	3907.30.00	Argentina	0	0.0%	Epoxide resins in primary forms
*	3907.60.00	Argentina	21,948	0.0%	Polyethylene terephthalate in primary forms
*	3907.99.00	Argentina	0	0.0%	Polyesters nesoi, saturated, in primary forms
*	3909.10.00	Argentina	0	0.0%	Urea resins; thiourea resins

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LIST IV : POSSIBLE REDESIGNATION ITEMS  
 1999 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
*	3909.50.50	Argentina.....	0	0.0%	Polyurethanes, other than elastomeric or cements, in primary forms
*	3913.90.20	Argentina.....	1,131,966	1.2%	Polysaccharides and their derivatives, nesoi, in primary forms
* D	3920.59.80	Dominican Republic..	586,647	42.6%	Plates, sheets, film, etc, noncellular, not reinforced, laminated, com
*	3921.90.50	Argentina.....	352,572	0.3%	Nonadhesive plates, sheets, film, foil and strip, nonflexible, nesoi,
*	3923.90.00	Argentina.....	102,907	0.0%	Articles nesoi, for the conveyance or packing of goods, of plastics
*	3926.20.30	Pakistan.....	1,131,862	22.4%	Gloves specially designed for use in sports, nesoi, of plastics
*	4006.10.00	Brazil.....	72,415	21.7%	"Camel-back" strips of unvulcanized rubber, for retreading rubber tire
*	4011.10.10	Brazil.....	81,976,212	5.3%	New pneumatic radial tires, of rubber, of a kind used on motor cars (i
*	4011.10.10	Argentina.....	17,350,207	1.1%	New pneumatic radial tires, of rubber, of a kind used on motor cars (i
*	4011.10.50	Brazil.....	472,105	1.3%	New pneumatic tires excluding radials, of rubber, of a kind used on mo
*	4011.20.10	Brazil.....	83,389,555	5.6%	New pneumatic radial tires, of rubber, of a kind used on buses or truc
*	4011.20.50	Brazil.....	475,948	0.3%	New pneumatic tires excluding radials, of rubber, of a kind used on bu
*	4104.21.00	Argentina.....	2,188,488	14.3%	Bovine leather, without hair on, vegetable pretanned but not further p
*	4104.22.00	Brazil.....	817,000	12.3%	Bovine leather, without hair on, pretanned, other than vegetable preta
*	4104.22.00	Argentina.....	102,670	1.5%	Bovine leather, without hair on, pretanned, other than vegetable preta
*	4104.29.50	Argentina.....	0	0.0%	Upper & sole leather of bovine (ex. buffalo & pretanned bovine) leathe
*	4104.29.90	Argentina.....	40,105	0.2%	Bovine (except buffalo) leather, nesoi, and equine leather, w/o hair, p
*	4104.31.40	Argentina.....	66,457,730	28.3%	Upholstery leather, of bovine and equine leather, without hair on, ful
*	4104.31.50	Argentina.....	695,656	2.3%	Upper & sole leather of bovine (except buffalo) or equine animals, par
*	4104.31.60	Argentina.....	80,127	0.6%	Bovine and equine leather, without hair on, nesoi, full grains and grai
*	4104.31.80	Argentina.....	10,089,375	11.3%	Bovine and equine leather, without hair on, nesoi, full grains and grai
*	4104.39.50	Argentina.....	265	0.0%	Upper & sole leather of bovine (ex. buffalo) or equine animals, parchme
*	4104.39.50	India.....	17,741	0.5%	Upper & sole leather of bovine (ex. buffalo) or equine animals, parchme
*	4104.39.60	Argentina.....	3,136,940	26.1%	Bovine and equine leather, excl. buffalo, without hair on, parchment-d
*	4104.39.80	Argentina.....	4,415,853	11.6%	Bovine and equine leather, excl. buffalo, without hair on, parchment-d
*	4105.20.60	Argentina.....	476	0.0%	Sheep or lamb skin leather, w/o wool on, excl. leather of heading 4108
*	4106.12.00	India.....	36,084	15.4%	Goat or kidskin leather, w/o hair on, not incl. chamois, patent, paten
* D	4106.12.00	Pakistan.....	186,800	79.7%	Goat or kidskin leather, w/o hair on, not incl. chamois, patent, paten
*	4106.19.30	Pakistan.....	195,554	24.8%	Goat or kidskin leather, without hair on, not incl. chamois, patent, p
*	4106.20.30	India.....	749,664	30.4%	Goat or kidskin leather, w/o hair on, excluding leather of heading 410
*	4106.20.60	India.....	1,318,323	37.0%	Goat or kidskin leather, w/o hair on, excluding leather of heading 410
* D	4106.20.60	Pakistan.....	1,877,209	52.7%	Goat or kidskin leather, w/o hair on, excluding leather of heading 410
*	4107.21.00	Argentina.....	0	0.0%	Leather of reptiles, excluding leather of heading 4108 or 4109, vegeta
*	4107.90.60	Argentina.....	0	0.0%	Leather of animals, nesoi, without hair on, not including chamois, pate
*	4109.00.70	Argentina.....	0	0.0%	Patent laminated leather or metallized leather, other than calf or kip
*	4201.00.60	Argentina.....	3,675,497	5.2%	Saddlery and harnesses for animals nesoi (incl. traces, leads, knee pa
*	4203.21.20	Pakistan.....	131,169	0.8%	Batting gloves, of leather or of composition leather
*	4203.21.55	Pakistan.....	172,292	13.4%	Cross-country ski gloves, mittens and mitts, of leather or of composit
*	4203.21.60	Pakistan.....	421,292	9.7%	Ski or snowmobile gloves, mittens and mitts, nesoi, of leather or of co
*	4203.21.80	Pakistan.....	7,003,587	9.9%	Gloves, mittens and mitts specially designed for use in sports, nesoi,
*	4205.00.60	Argentina.....	0	0.0%	Articles of reptile leather, nesoi
*	4303.10.00	Argentina.....	1,195,049	1.4%	Articles of apparel and clothing accessories, of furskins
*	4411.29.90	Brazil.....	0	0.0%	Fiberboard nesoi, density between 0.5 g/cm3 and 0.8 g/cm3
*	4412.13.25	Indonesia.....	0	0.0%	Plywood sheet n/o 6 mm thick,tropical hard wood outer ply, face ply of
*	4412.14.30	Brazil.....	20,348,681	16.8%	Plywood sheets n/o 6 mm thick, outer ply of nontrropical hardwood, with
*	4412.14.30	Indonesia.....	26,539,056	22.0%	Plywood sheets n/o 6 mm thick, outer ply of nontrropical hardwood, with
*	4412.14.55	Brazil.....	732,811	3.7%	Plywood sheets n/o 6 mm thick, outer ply of nonconiferous wood, surfac
*	4412.14.55	Indonesia.....	893,883	4.5%	Plywood sheets n/o 6 mm thick, outer ply of nonconiferous wood, surfac
*	4412.22.40	Colombia.....	160,109	23.0%	Plywood nesoi, at least one hardwood outer ply, w/tropical hardwood pl
* D	4412.29.45	Ecuador.....	3,307,415	87.3%	Plywood nesoi, at least one hardwood outer ply nesoi, no particle boar
*	4412.29.45	Indonesia.....	0	0.0%	Plywood nesoi, at least one hardwood outer ply nesoi, no particle boar

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1999 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
2	4412.92.50	Guyana.....	54,245	39.9%	Plywood nesoi,softwood outer plies, at least 1 ply trop. hardwood, no
*	4412.92.50	Indonesia.....	0	0.0%	Plywood nesoi,softwood outer plies, at least 1 ply trop. hardwood, no
*	4412.99.55	Colombia.....	0	0.0%	Plywood nesoi, softwood outer plies, no trop. hard wood ply, no partic
*	4421.90.60	Brazil.....	0	0.0%	Wooden skewers, candy sticks, ice cream sticks, tongue depressors, dri
*	4602.10.23	Indonesia.....	0	0.0%	Articles of a kind normally carried in the pocket or in the handbag, o
*	4802.52.10	Argentina.....	0	0.0%	Writing paper, weighing 40 g/m2 to 150 g/m2, cont. n/o 10% by weight t
*	4809.10.20	Guatemala.....	0	0.0%	Carbon or similar copying paper, in rolls over 36 cm wide or rectangul
*	4823.20.10	Brazil.....	0	0.0%	Paint filters and strainers of paper or paperboard
* D	4823.90.20	Philippines.....	6,012,029	51.2%	Articles of papier-mache, nesl
*	5701.10.13	Pakistan.....	36,850	6.4%	Carpet & other textile floor covering,hand-knotted/hand-inserted,w/ov
*	5702.10.10	Pakistan.....	4,203	0.9%	Certified hand-loomed and folklore products being "Kelem", "Schumacks"
* D	5702.49.15	India.....	842,288	51.0%	Carpets and other textile floor coverings of pile construction, woven,
*	5702.91.20	Pakistan.....	4,148	1.1%	Certified hand-loomed & folklore floor covering, woven not on power-dr
*	5805.00.20	Pakistan.....	0	0.0%	Certified hand-loomed and folklore hand-woven tapestries nesoi and nee
2	5904.92.00	Guatemala.....	0	0.0%	Floor coverings consisting of a coating applied on a textile backing,
*	6304.99.10	Pakistan.....	0	0.0%	Wall hangings, not knitted or crocheted, of wool or fine animal hair,
*	6304.99.40	Pakistan.....	280	34.3%	Certified hand-loomed and folklore pillow covers of wool or fine anima
*	6501.00.60	Colombia.....	0	0.0%	Hat forms, hat bodies and hoods, not blocked to shape or with made bri
*	6908.10.20	Thailand.....	531,484	7.2%	Glazed ceramic tiles, cubes & similar arts. w/largest area enclosabl
*	6910.10.00	Brazil.....	947,912	1.3%	Porcelain or china ceramic sinks, washbasins, baths, bidets, water clo
*	6910.90.00	Brazil.....	35,316	0.0%	Ceramic (o/than porcelain or china) sinks, washbasins, baths, bidets,
*	6910.90.00	Argentina.....	1,329,345	0.8%	Ceramic (o/than porcelain or china) sinks, washbasins, baths, bidets,
*	6911.90.00	Brazil.....	27,510	0.1%	Porcelain or china (o/than bone china) household and toilet articles (
*	6912.00.44	Brazil.....	0	0.0%	Ceramic (o/than porcelain or china) household mugs and steins w/o atka
*	7007.11.00	Argentina.....	0	0.0%	Toughened (tempered) safety glass, of size and shape suitable for inco
*	7106.92.50	Chile.....	0	0.0%	Silver (including silver plated with gold or platinum), in semimanufac
*	7109.00.00	Peru.....	0	0.0%	Base metals or silver clad with gold, but not further worked than seml
*	7113.19.21	Peru.....	7,082,549	24.2%	Gold rope necklaces and neck chains
*	7113.19.50	Turkey.....	77,603,101	3.1%	Precious metal (o/than silver) articles of jewelry and parts thereo, w
*	7114.11.60	Argentina.....	2,300	0.0%	Articles of silver nesoi, for household, table or kitchen use, toilet
2	7114.19.00	Peru.....	0	0.0%	Precious metal (o/than silver) articles, nesoi, whether or not plated
2 D	7115.90.30	Colombia.....	9,355,623	82.1%	Gold (including metal clad with gold) articles (o/than jewelry or gol
*	7115.90.30	Argentina.....	0	0.0%	Gold (including metal clad with gold) articles (o/than jewelry or gol
*	7115.90.40	Argentina.....	6,950	0.1%	Silver (including metal clad with silver) articles (o/than jewelry or
*	7116.10.10	Thailand.....	6,536	0.3%	Natural pearl articles
*	7116.20.05	Thailand.....	5,021,954	17.2%	Jewelry articles of precious or semiprecious stones, valued over \$
*	7116.20.15	Thailand.....	1,280,528	4.7%	Jewelry articles of precious or semiprecious stones, valued over \$40 p
* D	7117.90.55	Peru.....	900,832	42.7%	Imitation jewelry nesoi, not of base metal, n/o 20 cents/doz. pcs or p
*	7202.21.50	Argentina.....	0	0.0%	Ferrosilicon containing by weight more than 55% but not more than 80%
*	7202.30.00	Brazil.....	0	0.0%	Ferrosilicon manganese
*	7202.30.00	Argentina.....	0	0.0%	Ferrosilicon manganese
*	7202.50.00	Russia.....	3,530,384	23.4%	Ferrosilicon chromium
*	7307.21.50	Brazil.....	0	0.0%	Stainless steel, not cast, flanges for tubes/pipes, not forged or forg
*	7307.91.30	Brazil.....	150,112	5.1%	Alloy steel (o/than stainless), not cast, flanges for tubes/pipes, for
*	7308.90.95	Argentina.....	348,375	0.1%	Iron or steel, structures (excluding prefab structures of 9406) and pa
*	7315.90.00	Argentina.....	333,603	2.2%	Iron or steel, parts of chain (other than articulated link chain)
*	7403.12.00	Peru.....	134,473	3.6%	Refined copper, wire bars
2 D	7403.12.00	Russia.....	3,439,405	94.4%	Refined copper, wire bars
*	7403.12.00	Chile.....	0	0.0%	Refined copper, wire bars
*	7403.21.00	Chile.....	0	0.0%	Copper-zinc base alloys (brass), unwrought nesoi
*	7403.22.00	Chile.....	10,992	0.4%	Copper-tin base alloys (bronze), unwrought nesoi

FLAGS: \*1=Excluded full year; \*2=Excluded July/December; 'D'=De minimis;

LIST IV : POSSIBLE REDESIGNATION ITEMS  
1999 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
*	7403.23.00	Chile.....	0	0.0%	Copper-nickel base alloys (cupro-nickel) or copper-nickel-zinc base al
*	7403.29.00	Chile.....	0	0.0%	Copper alloys (o/than copper-zinc, copper-tin, copper-nickel(cupro-nic
*	7407.21.90	Brazil.....	1,997,360	2.9%	Copper-zinc base alloys (brass), bars & rods nesoi, not having a recta
*	7407.22.30	Russia.....	146,957	0.2%	Copper-nickel base alloys (cupro-nickel) or copper-nickel-zinc base al
*	7409.11.50	Argentina.....	132,796	0.4%	Refined copper, plates, sheets and strip, in coils, with a thickness o
*	7409.21.00	Argentina.....	0	0.0%	Copper-zinc base alloys (brass), plates, sheets and strip, in coils
*	7409.39.50	Hungary.....	0	0.0%	Copper-tin base alloys (bronze), plates, sheets and strip, with a thic
*	7411.21.50	Trinidad and Tobago.....	0	0.0%	Copper-zinc base alloys (brass), tubes and pipes, other than seamles
*	7604.10.30	Venezuela.....	0	0.0%	Aluminum (o/than alloy), bar and rods, with a round cross section
*	7605.11.00	Venezuela.....	0	0.0%	Aluminum (o/than alloy), wire, with a maximum cross-sectional dimensio
*	7614.90.20	Venezuela.....	3,947,253	35.6%	Aluminum, elect. conductors of stranded wire, cables & the like (o/tha
*	7614.90.50	Venezuela.....	0	0.0%	Aluminum, stranded wire, cables and the like (o/than w/steel core), no
2	7801.99.30	Dominican Republic..	0	0.0%	Lead (o/than refined lead), bullion
*	7901.11.00	Argentina.....	1,662,759	0.2%	Zinc (o/than alloy), unwrought, containing o/99.99% by weight of zinc
*	7901.12.50	Argentina.....	749,992	0.2%	Zinc (o/than alloy), unwrought, o/than casting-grade zinc, containing
*	7904.00.00	Republic of South Af	753,106	35.5%	Zinc, bars, rods, profiles and wire
*	7905.00.00	Peru.....	18,752,165	89.7%	Zinc, plates, sheets, strip and foil
*	8104.11.00	Russia.....	20,877,018	31.7%	Magnesium, unwrought, containing at least 99.8 percent by weight of ma
*	8112.30.60	Russia.....	280,086	4.8%	Germanium, unwrought
*	8207.20.00	Argentina.....	5,665	0.0%	Interchangeable dies for drawing or extruding metal, and base metal pa
*	8211.92.60	Pakistan.....	1,682,629	48.4%	Hunting knives w/fixed blades, with wood handles
*	8408.20.20	Brazil.....	17,183,804	10.9%	Compression-ignition internal-combustion piston engines to be installe
*	8408.20.90	Brazil.....	29,179	0.1%	Compression-ignition internal-combustion piston engines used for propu
*	8409.91.50	Brazil.....	35,199,855	2.3%	Parts nesi, used solely or principally with spark-ignition internal-co
*	8409.91.50	Argentina.....	4,129,991	0.2%	Parts nesi, used solely or principally with spark-ignition internal-co
*	8409.91.99	Argentina.....	3,751,239	1.1%	Parts nesi, used solely or principally with spark-ignition internal-co
*	8409.99.91	Argentina.....	2,506,958	0.6%	Parts nesi, used solely or principally with spark-ignition internal-co
*	8412.10.00	Russia.....	4,668,529	40.7%	Reaction engines other than turbojets
*	8413.30.10	Brazil.....	15,791,104	8.2%	Fuel-injection pumps for compression-ignition engines, not fitted with
*	8477.51.00	Argentina.....	47,485	0.0%	Machinery for molding or retreading pneumatic tires or for molding or
*	8480.30.00	Argentina.....	2,924	0.0%	Molding patterns
*	8481.30.20	Argentina.....	0	0.0%	Check valves of iron or steel for pipes, boiler shells, tanks, vats or
*	8481.80.30	Argentina.....	342,306	0.1%	Taps, cocks, valves & similar appliances for pipes, boiler shells, tan
*	8481.80.90	Argentina.....	2,180,223	0.1%	Taps, cocks, valves & similar appliances for pipes, boiler shells, tan
*	8481.90.30	Argentina.....	2,380	0.0%	Parts of hand operated and check appliances for pipes, boiler shells,
*	8503.00.65	Argentina.....	0	0.0%	Stators and rotors for electric motors & generators of heading 8501, n
2	8517.80.10	Indonesia.....	42,226,732	5.1%	Telephone sets, nesoi
*	8517.90.24	Costa Rica.....	6,875,920	2.1%	Other electrical telephonic apparatus, nesoi
2	8517.90.24	Costa Rica.....	57,867	0.0%	Parts of electrical telephonic switching or terminal apparatus, incorp
*	8524.52.10	Argentina.....	5,912	0.0%	Pre-recorded magnetic video tape recordings of a width exceeding 4 mm
*	8525.20.05	Philippines.....	5,070,588	32.7%	Citizens Band (CB) transceivers, hand-held
*	8528.12.16	Thailand.....	40,332,379	28.0%	Non-high def. color television reception app., nonprojection, w/CRT, d
*	8531.20.00	Thailand.....	34,119,680	4.8%	Indicator panels incorporating liquid crystal devices (LCD's) or light
*	8534.00.00	Thailand.....	57,000,138	3.1%	Printed circuits, without elements (other than connecting elements) fi
*	8535.40.00	Dominican Republic..	0	0.0%	Lightning arrestors, voltage limiters and surge suppressors, for a vol
*	8536.90.40	Argentina.....	0	0.0%	Electrical terminals, electrical splicers and electrical couplings, wa
*	8536.90.80	Argentina.....	0	0.0%	Electrical apparatus nesi, for switching or making connections to or i
*	8538.90.80	Argentina.....	161,738	0.0%	Other parts nesi, suitable for use solely or principally with the appa
*	8708.40.50	Brazil.....	610,818	2.2%	Pts. & access. of mtr. vehic. of 8701, nesoi, and of 8705, gear boxes
*	8708.60.80	Argentina.....	0	0.0%	Pts. & access. of mtr. vehic. of 8701, nesoi, and of 8704-870
*	8708.70.60	Argentina.....	6,300	0.0%	Pts. & access. of mtr. vehic. of 8701, nesoi, and of 8702-8705, pts. &

FLAGS: \*1=Excluded full year; \*2=Excluded July/December; \*D=De minimis;

LIST IV : POSSIBLE REDESIGNATION ITEMS

1999 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
*	8708.99.80	Argentina.....	1,044,484	0.0%	Pts. & access., nesoi, of motor vehicles of 8701, nesoi, and 8702-8705
*	8716.90.50	Argentina.....	2,520	0.0%	Parts of trailers and semi-trailers and vehicles, not mechanically pro
*	9001.30.00	Indonesia.....	53,637,300	46.1%	Contact lenses
*	9003.90.00	Argentina.....	0	0.0%	Parts of frames and mountings for spectacles, goggles or the like
*	9105.19.10	Brazil.....	0	0.0%	Alarm clocks nesoi, not electrically operated, movement measuring not
*	9105.19.40	Brazil.....	0	0.0%	Alarm clocks nesoi, not electrically operated, movement measuring ove
*	9113.10.00	Argentina.....	0	0.0%	Watch straps, watch bands and watch bracelets, of precious metal or of
*	9113.20.60	Argentina.....	0	0.0%	Parts of watch bracelet of base metal, whether or not gold- or silver-
*	9405.30.00	Thailand.....	3,132,364	0.8%	Lighting sets of a kind used for Christmas trees
*	9506.62.80	Pakistan.....	940,480	1.3%	Inflatable balls (o/than footballs and soccer balls) nesoi
*	9506.91.00	Pakistan.....	217,721	0.0%	Arts. and equip. for general physical exercise, gymnastics or athletic
* D	9614.20.60	Turkey.....	101,061	81.0%	Smoking pipes and bowls, wholly of clay, and other smoking pipes w/bow

FLAGS: \*'=Excluded full year; '2'=Excluded July/December; 'D'=De minimis;

LIST IV : POSSIBLE REDESIGNATION ITEMS  
 1999 U.S. IMPORTS - JANUARY THROUGH OCTOBER

TOTALS BY PARTNER		
PARTNER	IMPORTS	COUNT
Argentina.....	208,369,151	125
Belize.....	0	1
Brazil.....	386,284,218	46
Chile.....	36,231,228	11
Colombia.....	48,025,507	9
Costa Rica.....	23,384,203	6
Dominican Republic..	73,257,240	14
Ecuador.....	3,950,431	4
El Salvador.....	241,132	1
Guatemala.....	34,370,157	8
Guyana.....	54,245	1
Honduras.....	0	1
Hungary.....	0	1
India.....	3,528,443	6
Indonesia.....	176,536,531	15
Pakistan.....	14,035,457	18
Peru.....	37,499,494	10
Philippines.....	11,082,617	2
Poland.....	4,887,091	1
Republic of South Af	15,217,162	3
Russia.....	32,795,422	6
Thailand.....	141,425,063	9
Trinidad and Tobago.	77,846,871	3
Turkey.....	109,195,517	13
Venezuela.....	3,947,253	4
TOTAL.....	1,442,164,433	318

[FR Doc. 00-3399 Filed 2-14-00; 8:45 am]

BILLING CODE 3190-01-C

**OFFICE OF THE UNITED STATES  
TRADE REPRESENTATIVE**

**Practices of the Government of  
Canada and of the Province of Ontario  
Regarding Measures Affecting Tourism  
and Sport Fishing**

**ACTION:** Notice of results of section 302 investigation and invitation for public comments.

**SUMMARY:** The United States Trade Representative (USTR) has conducted an investigation initiated under section 302(a) of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2412(a)), with respect to certain acts, policies and practices of the Government of Canada and of the Province of Ontario that may discriminate against U.S. providers of tourism services. The USTR initiated this investigation on April 29, 1999, in response to a petition filed by the Border Waters Coalition Against Discrimination in Services Trade. Subsequently, the Government of Canada and the Province of Ontario have taken steps that provide a satisfactory resolution of the dispute concerning the acts, policies, and practices that are the subject of this investigation. Therefore, pursuant to section 304(a)(1)(B) of the Trade Act, the USTR has determined that the appropriate action in this case is to terminate the investigation and to monitor the Canadian and Ontario Governments' implementation of these measures to eliminate those acts, policies, and practices. The USTR invites public comment with respect to this action.

**ADDRESSES:** Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508.

**FOR FURTHER INFORMATION CONTACT:** Mary Ryckman, Director for Canadian Affairs, (202) 395-3412, or Steven F. Fabry, Associate General Counsel, (202) 395-3582.

**SUPPLEMENTARY INFORMATION:** On March 15, 1999, the Border Waters Coalition Against Discrimination in Services Trade filed a petition pursuant to section 302(a) of the Trade Act alleging that certain acts, policies and practices of the Government of Canada and the Province of Ontario are actionable under section 301. In particular, the petition alleged that Ontario impaired the ability of Minnesota tourist establishments (fishing resorts, fishing guides, outfitters, and others) to compete against their Canadian counterparts by prohibiting U.S. recreational fishermen from keeping their catch if they lodged on the Minnesota side of certain lakes

that straddle the U.S.-Canadian border. U.S. fishermen who lodged instead in Ontario tourist establishments were permitted to keep their catch. The petition alleged that, as a result, U.S. resorts, fishing guides, and other businesses tied to sport fishing suffered discrimination. The petition further alleged that Canadian immigration officials required U.S. fishing guides to obtain Canadian work authorizations to guide fishing trips into Canada. The petition also alleged that these acts, policies or practices had caused a sharp fall-off in the tourism industry, which directly or indirectly generates over \$700 million in revenues per year in the Minnesota counties bordering Ontario. On April 29, 1999, the USTR determined that an investigation should be initiated under section 302(a) of the Trade Act. See 64 FR 28545.

During the course of this investigation, the U.S. Government held a series of consultations with the Government of Canada and the Province of Ontario on the matters under investigation. On October 29, 1999, the Province of Ontario announced that it had revoked the provincial measures that were under investigation in this matter. On November 4, 1999, the Government of Canada agreed that the immigration measure under investigation would be reviewed by the NAFTA Temporary Entry Working Group. The USTR has determined that these measures and agreements provide a satisfactory resolution of the matters that are the subject of this investigation and that it is therefore appropriate to terminate this investigation. The USTR will continue to monitor implementation by the Government of Canada and the Province of Ontario of these measures and agreements.

Prior to terminating this 301 action, the USTR consulted with the domestic industry that filed the petition and with the State of Minnesota. An opportunity for public comment prior to this action was not possible in view of the need to provide prompt relief to the domestic industry.

**Public Comments**

Interested members of the public are invited to submit comments to USTR regarding this action. USTR will review these comments upon receipt.

Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) and must be filed on or before March 13, 2000. Comments must be in English and provided in twenty copies to: Sybia Harrison, Staff Assistant to the Section 301 Committee, Room 223, Office of the U.S. Trade Representative, 600 17th

Street, NW, Washington, DC 20508. Comments will be placed in a file (Docket 301-119) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the file that is open to public inspection.

Copies of the public version of the petition and other relevant documents are available for public inspection in the USTR Reading Room. An appointment to review the docket may be made by calling Brenda Webb (202) 395-6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, and is located in Room 101.

**William Busis,**

*Chairman, Section 301 Committee.*

[FR Doc. 00-3437 Filed 2-14-00; 8:45 am]

BILLING CODE 3190-01-M

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**Agency Information Collection Activity  
Under OMB Review**

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 7, 1999, [FR 64, pages 54720-54721].

**DATE:** Comments must be submitted on or before March 16, 2000. A comment to OMB is most effective if OMB receives it within 30 days of publication.

**FOR FURTHER INFORMATION CONTACT:** Judy Street on (202) 267-9895.

## SUPPLEMENTARY INFORMATION:

**Federal Aviation Administration (FAA)**

*Title:* Employment Standards—Parts 107 and 108 of the Federal Aviation Regulations.

*Type of Request:* Extension of a currently approved collection.

*OMB Control Number:* 2120-0554.

*Forms:* N/A.

*Affected Public:* 1,305 airport operators and air carrier operators.

*Abstract:* Section 105 of Public Law 101-604, the Aviation Security Improvement Act of 1990, directed the FAA to prescribe standards for the hiring, continued employment and contracting of air carrier and appropriate airport security personnel. These standards were developed and have become part of 14 CFR parts 107 and 108. Airport operators will maintain at their principal business office at least one copy of evidence of compliance with training requirements for all employees having unescorted access privileges to security areas. Air carrier ground security coordinators are required to maintain at least one copy of the annual evaluation of their security-related functions.

*Estimated Annual Burden Hours:* 16,297 burden hours annually.

**ADDRESSES:** Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725-17th Street, NW., Washington, DC 20503, Attention: FAA Desk Officer.

*Comments Are Invited On:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on February 9, 2000.

**Steve Hopkins,**

*Manager, Standards and Information Division, APF-100.*

[FR Doc. 00-3448 Filed 2-14-00; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF TRANSPORTATION

**Federal Aviation Administration**

**Notice of Intent to Rule on Application 00-03-C-00-MDT to Impose and Use the Revenue from a Passenger Facility Charge (PFC) at Harrisburg International Airport, Middletown, PA**

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

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Harrisburg International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (P.L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before March 16, 2000.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Ms. Roxane Wren, Harrisburg Airports District Office, 3911 Hartzdale Drive, Suite 1100, Camp Hill, PA 17011.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. David Holdsworth, Executive Director of the Susquehanna Area Regional Airport Authority at the following address: Susquehanna Area Regional Airport Authority, 135 York Drive, Suite 100, Middletown, PA 17057-5078.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Susquehanna Area Regional Airport Authority under section 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Ms. Roxane Wren, Program Specialist, Harrisburg Airports District Office, 3911 Hartzdale Drive, Suite 1100, Camp Hill, PA 17011, 717-730-2830. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Harrisburg International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (P.L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 20, 2000, the FAA determined that the application to impose and use the revenue from a PFC

submitted by Susquehanna Area Regional Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 22, 2000.

The following is a brief overview of the application.

*PFC Application No.:* 00-03-C-00-MDT.

*Level of the proposed PFC:* \$3.00.

*Proposed charge effective date:* July 1, 2000.

*Proposed charge expiration date:* May 1, 2002.

*Total estimated PFC revenue:* \$3,715,249.00.

*Brief description of proposed project(s):*

- Relocate Terminal Loop Road
- Enplaned/Deplaned Drive Expansion

- Loading Bridge Replacements (2)
- PFC Application Development

*Class or classes of air carriers which the public agency has requested not be required to collect PFCs:* Nonscheduled/On-Demand Air Carriers.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional airports office located at: Fitzgerald Federal Building #111, Airports Division, AEA-610, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Susquehanna Area Regional Airport Authority.

Issued in Camp Hill, PA on January 28, 2000.

**Sharon A. Daboin,**

*Manager, Harrisburg ADO, Eastern Region.*

[FR Doc. 00-3447 Filed 2-14-00; 8:45 am]

BILLING CODE 4819-13-M

## DEPARTMENT OF TRANSPORTATION

**Maritime Administration**

[Docket No. MARAD-2000-6905]

**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 titled "Monthly Report of Ocean Shipments Moving Under Export-Import Bank Financing."

**DATES:** Comments should be submitted on or before April 17, 2000.

**FOR FURTHER INFORMATION CONTACT:**

Thomas W. Harrelson, Office of Cargo Preference, Maritime Administration, 400 Seventh Street, SW, Room 8118, Washington, D.C. 20590, telephone number—202-366-4610. Copies of this collection can also be obtained from that office.

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Monthly Report of Ocean Shipments Moving Under Export-Import Bank Financing.

*Type of Request:* Approval of an existing information collection.

*OMB Control Number:* 2133-0013.

*Form Number:* MA-518.

*Expiration Date of Approval:* Three years from the date of approval.

*Summary of Collection of*

*Information:* Title 46 App. U.S.C. 1241-1, Public Resolution 17, 73rd Congress (PR 17), requires MARAD to monitor and enforce the U.S.-flag shipping requirements relative to the loans/guarantees extended by the Export-Import Bank (Eximbank) to foreign borrowers. PR 17 requires that shipments financed by Eximbank and that move by sea, must be transported exclusively on U.S.-flag registered vessels unless a waiver is obtained from MARAD.

*Need and Use of the Information:* The prescribed monthly report is necessary for MARAD to fulfill its responsibilities under PR 17, to ensure compliance of ocean shipping requirements operating under Eximbank financing, and to ensure equitable distribution of shipments between U.S.-flag and foreign ships. MARAD will use this information to report annually to Congress the total shipping activities during the calendar year.

*Description of Respondents:* Shippers subject to Eximbank financing requirements.

*Annual Responses:* 336 responses.

*Annual Burden:* 168 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, D.C. 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.

Dated: February 10, 2000.

**Joel C. Richard,**

Secretary.

[FR Doc. 00-3525 Filed 2-14-00; 8:45 am]

BILLING CODE 4915-81-P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket No. MARAD-2000-6904]

#### 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 "Information to Determine Seamen's Reemployment Rights—National Emergency."

**DATES:** Comments should be submitted on or before April 17, 2000.

**FOR FURTHER INFORMATION CONTACT:**

Christopher Krusa, Office of Maritime Labor, Training, and Safety, Maritime Administration, 400 Seventh Street, SW, Room 7302, Washington, D.C. 20590, telephone number—202-366-2648. Copies of this collection can also be obtained from that office.

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Information to Determine Seamen's Reemployment Rights—National Emergency.

*Type of Request:* Approval of an existing information collection.

*OMB Control Number:* 2133-0526.

*Form Number:* None.

*Expiration Date of Approval:* Three years from the date of approval.

*Summary of Collection of Information:* MARAD is requesting approval of this collection in an effort to implement provisions of the Maritime Security Act of 1996. These provisions amend the Merchant Marine Act, 1936, to grant reemployment rights and other benefits to certain merchant seamen

servicing on vessels used by the United States for a war, armed conflict, national emergency, or maritime mobilization need. As such, this rule establishes the procedure for obtaining the necessary MARAD certification for reemployment rights and other benefits conferred by statute and MARAD's assistance in pursuing these statutory rights and benefits.

*Need and Use of the Information:* This information collection requires merchant seamen to provide documents indicating their period of employment and their merchant mariner's status. The information provided will allow MARAD to determine eligibility for reemployment rights when the employment is related to a designated national service.

*Description of Respondents:* U.S. merchant seamen who have completed designated national service in time of war or national emergency and are seeking reemployment with a prior employer.

*Annual Responses:* 50 responses.

*Annual Burden:* 50 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, D.C. 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>.

Dated: February 10, 2000.

By Order of the Maritime Administrator.

**Joel C. Richard,**

Secretary.

[FR Doc. 00-3526 Filed 2-14-00; 8:45 am]

BILLING CODE 4910-81-P

**DEPARTMENT OF TRANSPORTATION****National Highway Traffic Safety Administration****Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review**

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on October 27, 1999 [64 FR 57924-57925].

**DATES:** Comments must be submitted on or before March 16, 2000.

**FOR FURTHER INFORMATION CONTACT:** Marlene Markison at the National Highway Traffic Safety Administration, Office of State and Community Services (NSC-01), 202-366-0166. 400 Seventh Street, SW, Room 6240, Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:****National Highway Traffic Safety Administration**

*Title:* 23 CFR part 1313 Certification Requirements for State Grants for Drunk Driving Prevention Program.

*OMB Number:* 2127-0501.

*Type of Request:* Extension of a currently approved collection.

*Abstract:* The Section 410 program was created by the Drunk Driving Prevention Act of 1988 and codified in 23 U.S.C. 410. As originally conceived, States could qualify for basic and supplemental grants under the Section 410 program if they met certain criteria. To qualify for a basic grant, States had to provide for an expedited driver's license suspension or revocation system and a self-sustaining drunk driving prevention program. To qualify for a supplemental grant, States had to be eligible for a basic grant and provide mandatory blood alcohol testing program, an underage drinking program, an open container and consumption program, or a suspension of registration and return of license plate program.

*Affected Public:* Those state, local, and tribal government officials applying for impaired driving grants.

*Estimated Total Annual Burden:* 2,340.

**ADDRESSES:** Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725-17th Street, NW, Washington, D.C. 20503, Attention NHTSA Desk Officer.

*Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on February 9, 2000.

**Herman L. Simms,**

*Associate Administrator for Administration.*

[FR Doc. 00-3534 Filed 2-14-00; 8:45 am]

**BILLING CODE 4910-59-P**

**DEPARTMENT OF TRANSPORTATION****National Highway Traffic Safety Administration****Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review**

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on October 27, 1999 [64 FR 57924-57925].

**DATES:** Comments must be submitted on or before March 16, 2000.

Attention NHTSA Desk Officer.

**FOR FURTHER INFORMATION CONTACT:** Sharon Vaughn at the National Highway Traffic Safety Administration, Office of Chief Counsel (NCC-30), 202-366-1834. 400 Seventh Street, SW, Room 5219, Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:** National Highway Traffic Safety Administration.

*Title:* Designation of Agent.

*OMB Number:* 2127-0040.

*Type of Request:* Extension of a currently approved collection.

*Abstract:* This collection of information applies to motor vehicle and motor vehicle equipment manufacturers located outside of the United States (foreign manufacturers). Every manufacturer offering a motor vehicle or item of motor vehicle equipment for importation into the United States is statutorily required to designate in writing an agent upon whom service of all administrative and judicial processes, notices, orders, decisions and requirements may be made for and on behalf of the manufacturer.

*Affected Public:* Foreign manufacturers of motor vehicles and motor vehicle equipment located outside of the United States, which are importing these items into the United States.

*Estimated Total Annual Burden:* 70.

**ADDRESSES:** Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725-17th Street, NW, Washington, DC 20503, Attention NHTSA Desk Officer.

*Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on February 9, 2000.

**Herman L. Simms,**

*Associate Administrator for Administration.*

[FR Doc. 00-3535 Filed 2-14-00; 8:45 am]

**BILLING CODE 4910-59-P**

## DEPARTMENT OF TRANSPORTATION

## Surface Transportation Board

[STB Finance Docket No. 33842]

**Canadian National Railway Company, Grand Trunk Western Railroad Incorporated, Illinois Central Railroad Company, Burlington Northern Santa Fe Corporation, and the Burlington Northern and Santa Fe Railway Company; Common Control**

AGENCY: Surface Transportation Board.

ACTION: Decision No. 6; Request for Comments on Procedural Schedule; Establishment of Schedule for Any Comments on Petition for Waiver or Clarification of Certain Requirements of the Board's Regulations.

**SUMMARY:** Pursuant to 49 CFR 1180.4(b), Burlington Northern Santa Fe Corporation (BNSFC) and The Burlington Northern and Santa Fe Railway Company (BNSFR),<sup>1</sup> and Canadian National Railway Company (CNR), Grand Trunk Western Railroad Incorporated (GTW), and Illinois Central Railroad Company (IC),<sup>2</sup> have notified the Surface Transportation Board (Board) of their intention to file an application<sup>3</sup> seeking Board authorization under 49 USC 11323-25 and 49 CFR part 1180 for a transaction (referred to as the BNSF/CN transaction) under which BNSF and CN would be brought under common control. In a prior decision (Decision No. 1, served December 28, 1999, and published in the **Federal Register** on January 4, 2000, at 65 FR 318), the Board found that the BNSF/CN transaction contemplated by applicants is a "major" transaction. In today's decision, the Board is requesting comments from interested persons on the procedural schedule proposed by applicants, and is setting a schedule for any comments on the applicants' petition for waiver or clarification of certain requirements of the Board's regulations.

**DATES:** Written comments on the procedural schedule and the petition for waiver or clarification must be filed with the Board no later than March 1, 2000. Applicants' reply is due by March 6, 2000.

**ADDRESSES:** An original and 25 copies of all documents filed in this proceeding must refer to STB Finance Docket No. 33842 and must be sent to the Surface

Transportation Board, Office of the Secretary, Case Control Unit, ATTN: STB Finance Docket No. 33842, 1925 K Street, NW, Washington, DC 20423-0001. In addition, one copy of each document filed in this proceeding must be sent to the Administrative Law Judge assigned to entertain and rule upon all disputes concerning discovery in this proceeding (an ALJ will be assigned to this proceeding in the near future), and to each of applicants' representatives: (1) Erika Z. Jones, Mayer, Brown & Platt, 1909 K Street, NW, Washington, DC 20006-1101 (representing BNSF), and (2) Paul A. Cunningham, Harkins Cunningham, 801 Pennsylvania Avenue, NW, Suite 600, Washington, DC 20004-2664 (representing CN).

In addition to submitting an original and 25 copies of all paper documents filed with the Board, parties must also submit, on diskettes (3.5-inch IBM-compatible floppies) or compact discs, one electronic copy of each such document (e.g., textual materials, electronic workpapers, data bases and spreadsheets used to develop quantitative evidence). Textual materials must be in, or convertible by and into, WordPerfect 7.0. Spreadsheets must be in some version of Lotus, Excel, or Quattro Pro.<sup>4</sup> Each diskette or compact disc should be clearly labeled with the identification acronym and number of the corresponding paper document, see 49 CFR 1180.4(a)(2), and a copy of such diskette or compact disc should be provided to any other party upon request. The data contained on the diskettes or compact discs submitted to the Board may be submitted under seal (to the extent that the corresponding paper copies can be submitted under seal pursuant to the protective order previously entered in this proceeding), and will be for the exclusive use of the Board employees reviewing substantive and/or procedural matters in this proceeding. The flexibility provided by such computer data is necessary for efficient review of these materials by the Board and its staff.<sup>5</sup>

**FOR FURTHER INFORMATION CONTACT:** Julia M. Farr, (202) 565-1613. [TDD for the hearing impaired: 1-800-877-8339.]

<sup>4</sup>The results derived from electronic workpapers must be reproducible, i.e., all underlying data bases, computer programs (FORTRAN, COBOL, C++, etc.) and electronic spreadsheets must be submitted in evidence. Program flows and logic trails must also be included. Computer programs must be submitted in both source code and executable modules. Electronic spreadsheets must be executable and all cell inputs must be documented.

<sup>5</sup>The electronic submission requirements set forth in this decision supersede, for the purposes of this proceeding, the otherwise applicable electronic submission requirements set forth in our regulations. See 49 CFR 1104.3(a).

**SUPPLEMENTARY INFORMATION:** In their BN/CN-8 petition filed February 3, 2000, applicants have proposed a procedural schedule to govern the course of the BNSF/CN proceeding. In their BN/CN-9 petition filed February 4, 2000, applicants have requested waiver or clarification of certain of the Board's 49 CFR part 1180 Railroad Consolidation Procedures, and of certain other regulations governing filings related to the primary application.<sup>6</sup>

**Applicants' Proposed Procedural Schedule**

The procedural schedule proposed by applicants is as follows:<sup>7</sup>

- F: Primary application (and any related applications) filed.
- F+30: Board notice of acceptance of primary application (and any related applications) published in the **Federal Register**.
- F+45: Notification of intent to participate in proceeding due. Description of anticipated inconsistent and responsive applications due; petitions for waiver or clarification due with respect to such applications.
- F+120: Inconsistent and responsive applications due. All comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application (and any related applications) due. Comments by U.S. Department of Justice and U.S. Department of Transportation due.
- F+140: Notice of acceptance (if required) of inconsistent and responsive applications published in the **Federal Register**.
- F+205: Response to inconsistent and responsive applications due. Response to comments, protests, requests for conditions, and other opposition due. Rebuttal in support of primary application (and any related applications) due.
- F+240: Rebuttal in support of inconsistent and responsive applications due.
- F+270: Briefs due, all parties (not to exceed 60 pages for applicants and not to exceed 30 pages for others).
- F+300: Oral argument (close of evidentiary record).
- F+305: Voting conference (at Board's discretion).

<sup>6</sup>The application that will seek authorization for the BNSF/CN transaction is referred to as the "primary" application. Any other application, petition, or notice that will be filed by the BNSF/CN applicants is referred to as a "related" application.

<sup>7</sup>The term "F" designates the date of filing of the application and "F + n" means "n" days following that date.

<sup>1</sup> BNSFC and BNSFR are referred to collectively as BNSF.

<sup>2</sup> CNR, GTW, and IC are referred to collectively as CN.

<sup>3</sup> BNSF and CN are referred to collectively as applicants.

F+365: Date of service of final decision.

Applicants propose that we further provide: that, immediately upon each evidentiary filing, the filing party must place all documents relevant to the filing (other than documents that are privileged or otherwise protected from discovery) in a depository open to all parties, and must make its witnesses available for discovery depositions; that access to documents subject to protective order will be appropriately restricted; that discovery relating to applications and other filings (including responsive and inconsistent applications), where permitted, will begin immediately upon their filing; and that the ALJ assigned to this matter will have the authority initially to resolve any discovery disputes.

Applicants also propose that parties wishing to engage in discovery be directed to consult with the ALJ who will be designated to handle all discovery matters and to resolve initially all discovery disputes; and that the ALJ be given authority to adopt discovery guidelines (which, applicants indicate, they intend to seek) and to rule on discovery matters, but not to modify the procedural schedule. Applicants further propose that we require: that appeals of ALJ decisions must be filed within 3 working days of the date of a bench ruling, or, in its absence, the date of a written ruling; and that replies to appeals, and also replies to any motion filed with the Board itself in the first instance, must be filed within 3 working days of the date of filing of such appeal or motion.

As respects environmental matters, applicants propose that they be allowed to develop, in consultation with the Board's Section of Environmental Analysis (SEA), a schedule for their environmental submissions, one element of which (applicants indicate) will be a Safety Integration Plan that will be prepared under the guidelines established by the Federal Railroad Administration (FRA). Applicants add that any party contemplating the filing of an inconsistent or responsive application should similarly be required to consult with SEA to confirm the schedule for its environmental filings, with the understanding that a responsive environmental report for any such application should be filed 20 days before such application (i.e., on Day F+100 in the schedule proposed by applicants), unless the responsive/inconsistent applicant can certify that the transaction proposed in its application does not require environmental documentation pursuant to 49 CFR 1105.6(c)(2).

As further respects environmental matters, applicants indicate that their proposed schedule assumes that the final environmental assessment (EA) or environmental impact statement (EIS) will be available prior to oral argument (which applicants would schedule for Day F+300). Applicants add that, if more time should be needed to complete the EA or EIS, that need could be accommodated by an appropriate extension.

#### **Petition for Waiver or Clarification.**

In their BN/CN-9 petition, applicants seek waiver or clarification of certain requirements of the Board's Railroad Consolidation Procedures, 49 CFR part 1180, subpart A, and of certain other regulations governing filings related to the BNSF/CN primary application. Applicants seek, in particular: (A) waiver or clarification to provide that the primary application is not required to include effects of the proposed transaction that would take place entirely outside the United States, and therefore may be limited to effects within, and on traffic to and from, the United States; (B) waiver or clarification of 49 CFR 1180.3(a) to exclude Grand Trunk Corporation, Illinois Central Corporation, CCP Holdings, Inc., and North American Railways, Inc. (NAR) from the definition of "applicant"; (C) waiver or clarification of 49 CFR 1180.3(b) to limit the definition of "applicant carriers" to those Board-regulated rail carriers in which either CN or BNSF now holds a majority interest, and, where the Board's rules require the submission of information or data pertaining to "applicant carriers," waiver or clarification to permit applicants to submit, as appropriate, information or data pertaining to CNR and BNSFC, or CNR and BNSFR, as appropriate, and their respective majority-owned subsidiaries on a consolidated basis; (D) waiver or clarification of 49 CFR 1180.6(a)(2)(v) to permit applicants to submit employee impact data using the classifications and format described in Appendices A and B to the BN/CN-9 petition; (E) waiver or clarification of 49 CFR 1180.6(b)(1), (2), and (4) to permit applicants to file only (a) the most recent Securities and Exchange Commission (SEC) Form 40-F for CNR and the most recent Form 10-Ks for BNSFC and BNSFR, (b) the joint BNSFC/CNR proxy statement/circular/prospectus included in Forms F-4 and S-4 filed by CNR and NAR in connection with the contemplated issuance of shares of CNR voting stock and shares of NAR common stock at the closing of the BNSF/CN control transaction, and (c) the most recent

annual reports to shareholders of CNR and BNSFC; (F) waiver or clarification of 49 CFR 1180.6(b)(3), (6), and (8), relating to matters of corporate structure and intercorporate relationships, to permit applicants to exclude certain data that (applicants claim) is not relevant to a thorough evaluation of the BNSF/CN primary application; (G) waiver of 49 CFR 1105.10(a) and 1150.1(b) to provide that applicants may advise SEA, by no later than 30 days before the filing of the BNSF/CN primary application, of any control-related construction projects that will be the subject of applications for approval, petitions for exemption, or notices of exemption related to the primary application; and (H) certain assertedly related relief to permit the filing of any directly-related abandonment applications (or notices of, or petitions for, exemption) together with the primary application and the processing of any such abandonment applications on the same schedule as the control proceeding, as well as the waiver or clarification of certain abandonment regulations pursuant to 49 CFR 1152.24(e)(5).

#### **Request for Comments**

We invite all interested persons to submit written comments on applicants' proposed procedural schedule by March 1, 2000. In addition, interested persons who wish to comment on applicants' petition for waivers and clarifications will be permitted to do so by the same March 1, 2000 deadline.<sup>8</sup> Interested parties have already raised some concerns about filing requirements for this transaction, and in the interest of docket management, comments on these matters will be permitted so long as they are filed by March 1, 2000. Applicants' reply to any filings made by March 1 will be due by March 6, 2000.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: February 9, 2000.

<sup>8</sup> Our permitting comments with respect to the waivers and clarifications sought by applicants supersedes the otherwise applicable provisions of 49 CFR 1180.4(f)(3) (which provides that, in general, replies to a petition for waiver are not permitted). We are superseding that regulation in view of the uniqueness of some of the issues raised by the proposed BNSF/CN transaction. We have entertained replies to petitions for waiver or clarification in rail consolidation proceedings where the circumstances warranted. See *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation*, STB Finance Docket No. 33388, Decision No. 7, slip op. at 8-9 and 9 n.22 (STB served May 30, 1997).

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 00-3527 Filed 2-14-00; 8:45 am]

BILLING CODE 4915-00-P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 33731]

#### Ellis County Rural Rail Transportation District—Construction and Operation Exemption—Ellis County, TX

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice of Exemption.

**SUMMARY:** Under 49 U.S.C. 10502, the Board conditionally exempts from the prior approval requirements of 49 U.S.C. 10901 the construction and operation by Ellis County Rural Rail Transportation District of a 4.8-mile line of railroad in Ellis County, TX.

**DATES:** The exemption will not become effective until the environmental process is completed. Once that process is completed, the Board will issue a further decision addressing the environmental matters and establishing an exemption effective date at that time, if appropriate. Petitions to reopen must be filed by March 6, 2000.

**ADDRESSES:** Send pleadings, referring to STB Finance Docket No. 33731, to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423-0001; and (2) Donald G. Avery, 1224 Seventeenth Street, NW, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Beryl Gordon, (202) 565-1600. [TDD for the hearing impaired: 1-800-877-8339.]

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Da-To-Da Office Solutions, Suite 210, 1925 K Street, N.W., Washington, DC 20006. Telephone: (202) 289-4357. [TDD for the hearing impaired: 1-800-877-8339.]

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: February 8, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes and Commissioner Clyburn.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 00-3528 Filed 2-14-00; 8:45 am]

BILLING CODE 4915-00-P

## DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0120]

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before March 16, 2000.

**FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT:** Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273-8030 or FAX (202) 273-5981. Please refer to "OMB Control No. 2900-0120."

**SUPPLEMENTARY INFORMATION:**

*Title:* Report of Treatment by Attending Physician, VA FL 29-551a.

*OMB Control Number:* 2900-0120.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* This form letter is used to collect information from attending physician to determine the insured's eligibility for disability insurance benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 23, 1999, at page 51586.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 5,069 hours.

*Estimated Average Burden Per Respondent:* 15 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 20,277.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydtt,

OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395-4650. Please refer to "OMB Control No. 2900-0120" in any correspondence.

Dated: December 30, 1999.

By direction of the Secretary.

**Sandra S. McIntyre,**

*Information Management Service.*

[FR Doc. 00-3451 Filed 2-14-00; 8:45 am]

BILLING CODE 8320-01-U

## DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0131]

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before March 16, 2000.

**FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT:** Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273-8030 or FAX (202) 273-5981. Please refer to "OMB Control No. 2900-0131."

**SUPPLEMENTARY INFORMATION:**

*Title:* Request for Supplementary Information on Medical and Nonmedical Application, VA Form Letter 29-615.

*OMB Control Number:* 2900-0131.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* The form letter is used by the policyholder to apply for new issue, reinstatement or change of plan on Government Life Insurance. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of

information was published on September 20, 1999, at page 50867.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 3,000 hours.

*Estimated Average Burden Per Respondent:* 20 minutes.

*Frequency of Response:* On occasion.  
*Estimated Number of Respondents:* 9,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395-4650. Please refer to "OMB Control No. 2900-0131" in any correspondence.

Dated: December 30, 1999.

By direction of the Secretary.

**Sandra S. McIntyre,**

*Management Analyst, Information Management Service.*

[FR Doc. 00-3452 Filed 2-14-00; 8:45 am]

BILLING CODE 8320-01-U

## DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0208]

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Veterans Health Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before March 15, 2000.

**FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT:** Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273-8030 or FAX (202) 273-5981. Please refer to "OMB Control No. 2900-0208."

**SUPPLEMENTARY INFORMATION:**

*Titles:*

a. Daily Log—Formal Contract, VA Form 10-6131.

b. Architect-Engineer Fee Proposal, VA Form 10-6298.

c. Supplement to SF 129, Solicitation Mailing List Application, VA Form 10-6299.

*OMB Control Number:* 2900-0208.

*Type of Review:* Reinstatement, without change, of a previously approved collection for which approval has expired.

*Abstract:*

a. VA Form 10-6131 is used by contractors to furnish daily reports verifying work progress and assure proper contract compliance.

b. VA Form 10-6298 is used by architect-engineering firms to submit a fee proposal on the scope and complexity of an individual project.

c. VA Form 10-6299 is mailed with SF 129, Solicitation Mailing List Application, to prospective bidders on VA contract projects.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 23, 1999 at page 20061.

*Affected Public:* Business or other for-profit, and State, Local or Tribal Government.

*Estimated Annual Burden:* 7,400 hours.

a. Daily Log—Formal Contract, VA Form 10-6131—3,600 hours.

b. Architect-Engineer Fee Proposal, VA Form 10-6298—800 hours.

c. Supplement to SF 129, Solicitation Mailing List Application, VA Form 10-6299 3,000 hours.

*Estimated Average Burden Per Respondent:*

a. Daily Log—Formal Contract, VA Form 10-6131—12 minutes.

b. Architect-Engineer Fee Proposal, VA Form 10-6298—4 hours.

c. Supplement to SF 129, Solicitation Mailing List Application, VA Form 10-6299—1 hour.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 21,200.

a. Daily Log—Formal Contract, VA Form 10-6131—18,000.

b. Architect—Engineer Fee Proposal, VA Form 10-6298—200.

c. Supplement to SF 129, Solicitation Mailing List Application, VA Form 10-6299—3,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt,

OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395-4650. Please refer to "OMB Control No. 2900-0208" in any correspondence.

Dated: December 30, 1999.

By direction of the Secretary.

**Sandra McIntyre,**

*Management Analyst, Information Management Service.*

[FR Doc. 00-3453 Filed 2-14-00; 8:45 am]

BILLING CODE 8320-01-U

## DEPARTMENT OF VETERANS AFFAIRS

OMB Control No. 2900-0139

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before March 16, 2000.

**FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT:** Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273-8030 or FAX (202) 273-5981. Please refer to "OMB Control No. 2900-0139."

**SUPPLEMENTARY INFORMATION:**

*Title:* Notice—Payment Not Applied, VA Form 29-4499A.

*OMB Control Number:* 2900-0139.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* This notice solicits comments for information needed to determine eligibility to reinstate government life insurance.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on

September 20, 1999, at pages 50867–50868.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 300 hours.

*Estimated Average Burden Per*

*Respondent:* 15 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 1,200.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395-4650. Please refer to "OMB

Control No. 2900-0139" in any correspondence.

Dated: December 30, 1999.

By direction of the Secretary.

**Sandra S. McIntyre,**

*Management Analyst, Information Management Service.*

[FR Doc. 00-3457 Filed 2-14-00; 8:45 am]

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# Federal Register

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**Tuesday,  
February 15, 2000**

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**Part II**

## **Federal Communications Commission**

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**47 CFR Parts 11, 73, and 74  
Creation of Low Power Radio Service;  
Final Rule**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 11, 73 and 74

[MM Docket No. 99–25; FCC 00–19; RM 9208, 9242]

#### Creation of Low Power Radio Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document establishes rules authorizing the operation of two new classes of low power FM (LPFM) radio stations. LP100 stations will operate at a maximum power of 100 watts and LP10 stations at a maximum power of 10 watts. The LPFM service will provide opportunities for new voices to be heard and will be implemented in a manner that best serves the public interest.

**DATES:** Effective April 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Julie Barrie, (202) 418–2130, Policy and Rules Division, Mass Media Bureau; Engineering Contact: Keith Larson, (202) 418–2600, Mass Media Bureau.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order ("R&O"), FCC 00–19, adopted January 20, 2000; released January 27, 2000. The full text of the Commission's R&O is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room TW–A306), 445 12 St. SW, Washington, DC. The complete text of this R&O may also be purchased from the Commission's copy contractor, International Transcription Services (202) 857–3800, 1231 20th St., NW, Washington, DC 20036.

#### Synopsis of Report and Order

##### I. Introduction

1. With this *Report & Order*, we authorize the licensing of two new classes of FM radio stations—one operating at a maximum power of 100 watts and one at a maximum power of 10 watts. Both types of stations, known as low power FM stations (LPFM), will be authorized in a manner that protects existing FM service. They will be operated on a noncommercial educational basis by entities that do not hold an attributable interest in any other broadcast station or other media subject to our ownership rules. Initially, only entities located in the communities the stations serve will be eligible to participate in this service. Even once this eligibility criterion is relaxed, we will grant a significant selection preference to locally-based applicants.

We believe that the LPFM service authorized in this proceeding will provide opportunities for new voices to be heard and will ensure that we fulfill our statutory obligation to authorize facilities in a manner that best serves the public interest.

2. In establishing this new service, we are determined to preserve the integrity and technical excellence of existing FM radio service, and not to impede its transition to a digital future. In this regard, our own technical studies and our review of the record persuade us that 100-watt LPFM stations operating without 3rd-adjacent channel separation requirements will not result in unacceptable new interference to the service of existing FM stations. Moreover, imposing 3rd-adjacent channel separation requirements on LPFM stations would unnecessarily impede the opportunities for stations in this new service, particularly in highly populated areas where there is a great demand for alternative forms of radio service. We will not, therefore, impose 3rd-adjacent channel separation requirements. To avoid any possibility of compromising existing service, given the new nature of the LPFM service, we will impose separation requirements for low power with respect to full power stations operating on co-, 1st- and 2nd-adjacent and intermediate frequency (IF) channels. We believe that the rules we are adopting will maintain the integrity of the FM band and preserve the opportunity for a transition to a digital radio service in the future, while affording significant opportunities for new radio service.

##### II. Issue Analysis

###### A. Goals

3. The *Notice of Proposed Rulemaking (NPRM)* we adopted on January 28, 1999, (64 FR 7577, February 16, 1999) responded to petitions for rule making and related comments indicating substantial interest in, and public support for, increased citizens' access to the airwaves. In the year since we issued the *NPRM*, proposing rules authorizing the operation of new low power FM radio stations, we have received comments and letters from thousands of individuals and groups seeking licenses for new radio stations. Many of these comments, which will be discussed in greater detail below, included comprehensive engineering studies and valuable suggestions for service rules. These comments—from churches or other religious organizations, students, labor unions, community organizations and activists, musicians, and other citizens—reflect a

broad interest in service from highly local radio stations strongly grounded in their communities. In authorizing this new service today, we enhance locally focused community-oriented radio broadcasting.

4. Our goal in creating a new LPFM service is to create a class of radio stations designed to serve very localized communities or underrepresented groups within communities. To that end, in the *NPRM* we proposed to establish two classes of low power FM radio service: a 1000-watt primary service and a 100-watt secondary service. We also sought comment on whether to establish a secondary class of stations operating between one and 10 watts. Commenters supporting low power radio generally argued for the creation of an LPFM service consisting of 100 or 10 watt stations. Most commenters did not support the creation of 1000 watt stations, arguing that the local aspect of LPFM service could be diminished by the size of the service area of such stations. Some commenters opposing the institution of 1000 watt service argued that 1000 watt stations present a greater interference potential than 100 or 10 watt stations. We also stated in the *NPRM* a hope that the largest of the proposed LPFM stations, at 1000 watts, could serve as a proving ground and an "entry" opportunity for new entrants into the full-power broadcasting industry. While we continue to view this as a worthwhile goal, we are persuaded by commenters that establishment of a 1000 watt service would not best fulfill our goals at the present time. Our establishment of a low power radio service consisting of two classes operating at maximums of 100 watts and 10 watts will allow licensees to serve their local communities, and will permit a greater number of new stations to be authorized, fostering a diversity of new voices on the airwaves.

5. Another goal expressed in the *NPRM* was that any new LPFM service specifically include the voices of community based schools, churches and civic organizations. In the *NPRM*, we raised the question of whether the LPFM service should include both commercial and noncommercial licensees or whether it should be entirely noncommercial. We also proposed that any stations of one to 10 watts be exclusively noncommercial, as we did not see commercial potential in stations with such limited service areas. Many of the commenters supporting LPFM strongly supported the establishment of an entirely noncommercial service. We tentatively concluded that auctions would be

required if mutually exclusive applications for commercial LPFM facilities were filed, but noted that licenses for noncommercial educational or public broadcast stations are specifically exempted from auction by section 309(j). Given the overwhelming support for the establishment of a noncommercial service, and the tendency of auctions to skew the allocation of licenses away from noncommercial entities that are more likely to serve underrepresented sections of the community, we conclude that eligibility for LPFM licenses should be limited to noncommercial, educational entities and public safety entities.

6. Finally, in proposing the creation of a new LPFM service, we made clear that we will not compromise the integrity of the FM spectrum. We are committed to creating a low power FM radio service only if it does not cause unacceptable interference to existing radio service. The *NPRM* proposed that current restrictions on 3rd-adjacent channel operations might be eliminated in order to establish an LPFM service and also sought comment as to whether 2nd-adjacent channel separations are necessary. The modification of our existing rules concerning channel separations has generated extensive comment, as well as extensive engineering studies. Our Office of Engineering and Technology has conducted its own engineering tests, and has comprehensively reviewed the studies submitted by commenters. The rules adopted today reflect our well-considered conclusion that the elimination of 3rd-adjacent channel separation requirements for LPFM stations will not cause unacceptable levels of interference to existing radio stations. We recognize that the elimination of restrictions on both the 2nd- and 3rd-adjacent channels would create many more opportunities for community-based LPFM stations, but, given the ambiguity in the record on this issue and our commitment to ensure that the new LPFM service does not unacceptably interfere with existing radio services or impede a digital future for radio broadcasting, we must proceed cautiously. Accordingly, we will impose 2nd-adjacent channel separation requirements on LPFM stations.

#### B. Classes of Service

7. *Background.* In the *NPRM*, the Commission proposed to authorize two classes of LPFM stations: (1) an LP1000 class which would be for primary stations operating with an effective radiated power (ERP) of between 500 and 1,000 watts and with an antenna

height above average terrain (HAAT) up to 60 meters, and (2) an LP100 class which would be for stations operating on a secondary basis with between 50 and 100 watts ERP and with antennas up to 30 meters HAAT. We also sought comment on a very low power secondary LP10 service with an ERP between one and 10 watts. For each proposal, the Commission sought comment on the power levels associated with each class, the eligibility for such stations and the effects that each class may have on the full power radio service.

8. *Comments. LP1000.* Generally speaking, the proposal to authorize LP1000 stations generated the most controversy among the commenters. The topic was one of the few areas that generated opposition by both current full service broadcasters and low power radio proponents, although for different reasons. Commenters connected to the existing broadcast industry and the Association of Federal Communications Consulting Engineers (AFCCE) expressed their concerns regarding the large potential for interference posed by such operations. Additionally, AFCCE, as well as commenters that generally support the LP1000 proposal, expressed concerns that the service could preclude other lower powered LPFM stations. Most commenters supporting the LP1000 proposal proposed to limit LP1000 stations to rural areas or areas where sufficient spectrum could be found for both LP1000 and LP100 classes of service.

9. *LP100.* The proposal for LP100 stations generated the most positive comments. Commenters generally felt that LP100 stations would provide a reasonable coverage area while remaining small enough to continue focusing on local needs. From an engineering standpoint, various commenters, stated that the LP100 proposal appears "reasonable" and the proposed power range would allow the use of equipment, such as exciters and simple single bay antennas, that are already available. Not all comments were favorable, however. In general most negative comments shared the view stated by Disney that "[a] secondary LP100 service is undesirable for two reasons: first, because it would be difficult to establish a procedural and enforcement framework that would adequately protect FM broadcasters from interference; and second, because LP100 stations would create only marginal new radio listenership given the overriding levels of interference they would receive from full service stations."

10. *LP10.* The Commission's proposal for an LP10 service operating with 10 watts or less elicited both highly favorable support and vociferous opposition. Most support for the proposal came from individuals and public interest groups. The comments in favor of LP10 generally viewed such a service as suitable for school campuses and local community organizations that wish to serve small areas and do not have the resources to construct and operate a higher-powered facility. Furthermore, given what they saw as a smaller potential for interference, these groups considered LP10 as the best option for crowded urban areas where higher-powered facilities are not likely to fit. On the other hand, most comments opposing the LP10 proposal came from broadcasters and individuals concerned that the Commission would not be able to enforce its rules against the numerous LP10 stations and that widespread interference would result.

11. *Decision.* We will not authorize 1000 watt stations. We will, however, authorize LP100 and LP10 stations, in two separate stages. First, we will license LP100 stations. These stations generally will provide coverage appropriate to community needs and interests expressed in the record in this rule making. The Mass Media Bureau is delegated authority to issue an initial and subsequent public notices inviting the filing of applications for LP100 stations on dates consistent with this Order and processing requirements. After a period of time sufficient to process the initial LP100 applications, the Mass Media Bureau is authorized to open a filing window for applications for LP10 stations, which can also serve very localized community needs. We adopt this sequential process in order to provide the larger (100 watt) stations with their greater service areas the first opportunity to become established. Given that some LP10 stations can be sited where LP100 stations cannot, we expect that opportunities will remain for LP10 after the initial demand for LP100 stations has been accommodated. Additionally, our own resources will be better spent first advancing service to relatively greater areas.

12. However, the record, including comments from both current broadcasters and public interest groups who were opposed to stations as large as 1000 watts, convinces us that licensing such a service is not in the public interest. As argued by commenters, 1000 watt stations may pose a greater interference concern for existing broadcasters and are not necessary to meet the most pressing and widespread demand for service

expressed in the record. Moreover, LP1000 stations could have a significant preclusive effect on the licensing of LP100 and LP10 stations. Yet, these lower powered stations will permit many more opportunities for community-oriented service than would 1000-watt stations.

#### 1. LP100 Service

13. LP100 stations will be authorized to operate with maximum facilities equivalent to 100 watts ERP at 30 meters (100 feet) HAAT and minimum facilities equivalent to 50 watts at 30 meters (100 feet). This would permit a maximum 1 mV/m contour (60 dBu) with a radius of approximately 5.6 kilometers (3.5 miles), subject to the radio environment. Depending on population density, such a station could serve hundreds or thousands of listeners. This service will allow LPFM licensees to broadcast affordably to communities of moderate size and interest groups that are geographically proximate, such as ethnic, professional, industry and student groups, and retirement neighborhoods. Spectrum rights and responsibilities for this service are addressed below.

#### 2. LP10 Service

14. LP10 stations will operate at between one and 10 watts ERP and an antenna height of up to 30 meters (100 feet) HAAT. Such stations will produce a 60 dBu signal out to about 1.6 to 3.2 kilometers (1 to 2 miles) from the antenna site. Such stations will fit in some locations where LP100 stations cannot, due to separation requirements, and will provide groups with the opportunity to operate stations that reach smaller communities or groups with a common interest. Spectrum rights and responsibilities for this service are addressed below.

### C. Nature of Service and Licensees

#### 1. Noncommercial Educational Service

15. *Background.* In proposing the creation of a new LPFM service, the Commission set forth its goals of encouraging diverse voices on the nation's airwaves and creating opportunities for new entrants in broadcasting. We raised the question of whether the service should be noncommercial in nature. We noted that while mutually exclusive commercial broadcast applications are subject to auction, certain noncommercial stations are specifically exempted from our auction authority.

16. *Comments.* Of those commenters supporting LPFM, an overwhelming majority endorsed establishing it as a

noncommercial service. Commenters stressed the diversity that would be created by a noncommercial service, and argued that noncommercial radio is the best way to serve local communities. Other commenters, however, argued that low-power FM licensees should be available to both noncommercial and commercial licensees.

17. *Decision.* We will establish LPFM as a noncommercial educational service. Our goals in establishing this new service are to create opportunities for new voices on the air waves and to allow local groups, including schools, churches and other community-based organizations, to provide programming responsive to local community needs and interests. We believe that a noncommercial service is more likely to fulfill this role effectively than a commercial service. Commercial broadcast stations, by their very nature, have commercial incentives to maximize audience size in order to improve their ratings and thereby increase their advertising revenues. We are concerned that these commercial incentives could frustrate achievement of our goal in establishing this service: to foster a program service responsive to the needs and interests of small local community groups, particularly specialized community needs that have not been well served by commercial broadcast stations. We believe that noncommercial licensees, which are not subject to commercial imperatives to maximize audience size, are more likely than commercial licensees to serve small, local groups with particular shared needs and interests, such as linguistic and cultural minorities or groups with shared civic or educational interests that may now be underserved by advertiser-supported commercial radio and higher powered noncommercial radio stations. We note that commenters addressing this issue favored establishing LPFM as a noncommercial service by a substantial margin, though some have argued that a commercial service could provide ownership opportunities for new entrants. While we have considered the entrepreneurial opportunities that low power radio stations might create, we nonetheless conclude that a noncommercial service would best serve the Commission's goals of bringing additional diversity to radio broadcasting and serving local community needs in a focused manner.

18. Establishing LPFM as a noncommercial service will have the added benefit of giving us additional flexibility to assign licenses for this service in a manner that is most likely to place them in the hands of local

community groups that are in the best position to serve local community needs. As a general matter, where mutually exclusive applications are filed for initial commercial licenses or construction permits, the licenses or permits must be awarded by competitive bidding pursuant to 47 U.S.C. 309(j). Licenses for noncommercial educational broadcast stations, as described in section 397(6) of the Act, however, are not subject to competitive bidding. Accordingly, having decided to establish LPFM as a noncommercial service, we will require that LPFM licensees comply with the eligibility requirements of section 397(6) of the Act.

19. Section 397(6) of the Act defines "noncommercial educational broadcast station" as a station which:

(A) Under the rules and regulations of the Commission in effect on the effective date of this paragraph, is eligible to be licensed by the Commission as a noncommercial educational radio or television broadcast station and which is owned and operated by a public agency or nonprofit private foundation, corporation, or association; or

(B) Is owned and operated by a municipality and which transmits only noncommercial programs for education purposes. Since the statute incorporates by reference the Commission's noncommercial eligibility rules, we must look to those rules in determining noncommercial eligibility under section 397(6) of the Act. The Commission's rules limit eligibility for noncommercial radio stations to nonprofit educational organizations that show that the station will be used "for the advancement of an educational program." In applying this rule, the Commission has required that applicants be (a) a government or public educational agency, board or institution, or (b) a private, nonprofit educational organization, or (c) a nonprofit entity with a demonstrated educational purpose. We require that an applicant described in (a) or (b) have an educational program and demonstrate how its programming will be used for the advancement of that program. An applicant applying as (c) must specifically show (i) that it is in fact a nonprofit educational organization, (ii) that it has an educational objective, and (iii) how its programming will further that objective.

20. The requirement that NCE licensees provide programming that advances an educational objective may be satisfied by a variety of programs, including but not limited to

“instructional programs, programming selected by students, bible study, cultural programming, in-depth news coverage, and children’s programs such as Sesame Street that entertain as they teach.” We have also stated that “in order to qualify as an educational station, it is not necessary that the proposed programming be exclusively educational.” Given the latitude that entities have under our rules to qualify as NCEs, we do not believe that limiting eligibility for LPFM licenses to NCEs will unduly limit the range of groups that will be eligible to apply for LPFM licenses or the services that they can provide.

## 2. Public Safety and Transportation

21. *Background.* One appropriate use of LPFM stations is use by public safety or transportation organizations. Although the *NPRM* did not specifically raise this issue, a number of commenters proposed it.

22. *Comments.* We received a number of comments from public safety and transportation entities arguing that they would use LPFM stations to serve communities’ need for public safety and traffic information.

23. *Decision.* The public safety and transportation commenters propose important uses for low power FM stations. LPFM stations could be used by state or local governments or other not-for-profit entities to provide traffic, weather, and other public safety information to local communities. The use of LPFM stations for public safety purposes will further our goal of better serving local communities. Certain of these entities already hold TIS or other broadcast licenses. We emphasize, however, that we will not exempt these licenses from the cross-ownership restrictions, described below, and will therefore require TIS licensees or other public safety or transportation licensees, to return their existing licenses upon the initiation of LPFM service. Thus, in addition to noncommercial, educational organizations, associations or entities as described above, public safety radio services used by state or local governments or not-for-profit organizations, as defined in 47 U.S.C. 309(j)(2)(A), will be eligible for LPFM licenses.

### D. Eligibility and Ownership

24. In order to further our diversity goals and foster local, community-based service, we will not allow any broadcaster or other media entity subject to our ownership rules to control or to hold an attributable ownership interest in an LPFM station or enter broadcast related operating agreements

with an LPFM licensee. Additionally, to foster the local nature of LPFM service, we are limiting eligibility to local entities during the *first two years* LPFM licenses are available. We are also adopting a significant local ownership preference to be applied in resolving mutually exclusive applications. After local entities have had an opportunity to apply for construction permits, we will permit applications by qualified non-local applicants. After the first two years, we will permit multiple ownership of LPFM stations nationally, but only up to a maximum of 10 LPFM stations over a phased-in period.

25. Throughout this discussion we use the term “community” in a manner different from our traditional use of the term. Here, we use the term to refer to the very small area and population group that will make up the potential service area and audience of an LPFM station. Given the very small nature of LPFM service contours and prospective audiences, we do not expect LPFM service areas to be coincident with traditional political boundaries that we use to define communities in other contexts, such as our allocations process.

## 1. Cross-Ownership Restrictions

26. *Background.* In the *NPRM*, the Commission tentatively concluded that strict cross-ownership restrictions would be appropriate for low power radio. We proposed to prohibit any person or entity with an attributable interest in a broadcast station from having an ownership interest in any LPFM station in any market. We sought comment on whether the proposed strict cross-ownership restrictions would unnecessarily prevent individuals and entities with valuable broadcast experience from contributing to the success of the LPFM service. We also asked for comment on whether broadcasters with an attributable interest in broadcasting stations should be allowed to establish an LPFM station in a community where they do not have an attributable broadcast interest. We proposed to prohibit joint sales agreements, time brokerage agreements, local marketing or management agreements, and similar arrangements between full power broadcasters and low power radio entities. We also sought comment on whether the cross-ownership restriction should be extended to prevent common ownership of LPFM stations with cable systems, newspapers, or other mass media.

27. *Comments.* Several commercial broadcasters, educational broadcasters and individuals propose that cross ownership be allowed. Some

commenters propose that current broadcasters be allowed to apply for LPFM stations, but that they should be required to give up their current station license prior to initiating operations at the LPFM station. Others propose that full service station owners not be barred, so long as the LPFM station is in another market.

28. Most commenters, however, oppose cross-ownership of full-service stations and LPFM stations. Most commenters also support the Commission’s proposal to prohibit arrangements between full service broadcasters and LPFM entities, such as joint sales and time brokerage agreements.

29. *Decision.* We will prohibit common ownership of LPFM and any other broadcast station, including translators and low power television stations, as well as other media subject to our ownership rules. *See:* 47 CFR 73.3555, 76.501.) Thus, no broadcaster or other media entity, or any party with an attributable interest in them, can hold any attributable ownership interest in an LPFM licensee. One of the most important purposes of establishing this service is to afford small, community-based organizations an opportunity to communicate over the airwaves and thus expand diversity of ownership—a purpose inconsistent with common ownership of LPFM stations and existing broadcast facilities or other media interests. Moreover, many of the commenters’ remarks favoring cross ownership are directed to the establishment of the proposed LP1000 service. These arguments regarding efficiencies and economies and competitive standing for stations that might compete commercially, however, are less applicable to noncommercial educational LP100 and LP10 stations. Similarly, our own expressed concern that cross-ownership limits could retard the development of low power radio by excluding entities with broadcast experience is less pressing in the absence of commercial 1000 watt stations. We conclude that our interest in providing for new voices to speak to the community, and providing a medium for new speakers to gain experience in the field, would be best served by barring cross-ownership between LPFM licensees and existing broadcast owners and other media entities. This prohibition is national and absolute in nature, unlike our existing cross-media ownership rules. Thus, for example, a newspaper cannot have an attributable interest in any LPFM station, regardless of whether the newspaper and LPFM station are co-located. We believe our interest in

promoting diversity warrants such a strict approach.

30. We have also decided to prohibit operating agreements in any form, including time brokerage agreements, local marketing or management agreements, and similar arrangements, between full power broadcasters and LPFM broadcasters, or between two or more low power licensees. Many commenters strongly oppose allowing any form of operating agreement that would dilute new ownership in the low power service. We are concerned that such agreements too readily could undermine the strict cross-ownership restriction adopted by allowing an ineligible entity to program or manage an LPFM station. We see no harm, however, in permitting any existing licensee to apply for an LPFM station on the condition that it is otherwise qualified and it represents that it will divest its interest prior to commencement of LPFM operations.

## 2. Requirement That Applicant Be Community-Based

31. *Background.* In the *NPRM*, we sought comment on whether to establish a local residency requirement, although we were not inclined, at that time, to do so. We were concerned that a residency requirement would limit the pool of potential owners of low power stations and would deny opportunity to individuals and entities who resided in a location where no frequency is available, as there will not be low power frequencies available in every community. We also noted that we expected in the case of LP100s and LP10 stations, in particular, that the very nature of the stations would attract primarily local or nearby residents. We note that given our decision to restrict eligibility to noncommercial educational entities, the term "residency" is somewhat misleading. The issue now is whether we should limit applicants to entities based within the local community they wish to serve and, if so, how we should define whether or not they are community-based. Nonetheless, given that the *NPRM* and comments are cast in terms of residency, we will continue to use the term, but do so in the organizational or institutional sense noted here.

32. *Comments.* Most commenters support a requirement that LPFM licensees be locally based. They argue that local residents are more likely to be aware of issues of importance to the local community, and to gear their programming accordingly. On the other hand, many commenters oppose the imposition of a residency requirement. Some argue that a local residency

requirement would be struck down under the standards set forth by *Bechtel v. FCC*. Some point out that a residency requirement is incompatible with a five-to-ten-station national ownership cap.

33. *Decision.* We continue to be concerned about the potentially preclusive effect of a strict local "residency" requirement and do not believe that local sources are the only valuable sources of information and service. Nonetheless, this service is intended to respond to the highly local interests that are not necessarily being met by full-power stations. Furthermore, since LPFM will be a noncommercial educational service, we cannot rely on commercial market forces and business incentives to ensure that local needs are fulfilled. Given the small coverage of LPFM stations, and our intention that the particular needs and interests of these small areas be served, local familiarity is more significant than it might be for a station serving a larger area and population. We thus conclude, after consideration of the comments and on further reflection, that the disadvantages of imposing a requirement that applicants be community-based are outweighed by the benefits to be gained by maximizing the likelihood that LPFM stations are operated by entities grounded in the communities they serve. Accordingly, for the initial and subsequent windows opened within two years after the first filing window for LPFM service has been opened, all LPFM applicants must be based within 10 miles of the station they seek to operate. This means that the applicant must be able to certify that it or its local chapter or branch is physically headquartered, has a campus, or has 75 percent of its board members residing within 10 miles of the reference coordinates of the proposed transmitting antenna. We chose the 10-mile distance as proportionate to most stations' likely effective reach. We are concerned that a larger distance, in many areas of the country, could lead to ownership outside the bounds of the station's real community and the people they will actually serve. We are concerned that a smaller area would too severely and unduly restrict the opportunities presented by LPFM. An organization providing public safety radio services will be considered community-based in the area over which it has jurisdiction. Beginning two years after the first window for LPFM service has been opened, non-local applicants will be eligible to apply in subsequent windows for those classes of stations pursuant to public notices issued by the Mass Media Bureau. By this approach, we intend to

make it more likely that local entities will operate this service. If no local entities come forward, however, we do not want the available spectrum to go unused.

34. We do not find convincing the argument made by some commenters that imposition of a local residency eligibility requirement here would pose the same legal problems as the "integration of ownership and management" factor formerly employed as a comparative criterion in the commercial broadcast service. While that comparative criterion was overturned as arbitrary and capricious in the *Bechtel* case, that case did not invalidate a preference for locally based applicants *per se*. Rather, it rejected a preference for a particular form of business organization—in which station owners worked more than a certain number of hours per week at their station—that had not been shown to provide superior service even though the preference had been used for many years. The preference for local licensees here, in contrast, rests on our predictive judgment that local entities with their roots in the community will be more attuned and responsive to the needs of that community, which have heretofore been underserved by commercial broadcasters. We believe that local residence should carry particular weight here because we envision LPFM as a uniquely local service designed to serve local community needs. We note that while the court invalidated the integration criterion in the *Bechtel* decision, it recognized that an applicant who is familiar with the community is likely to be aware of its special needs.

35. Furthermore, we believe that local roots are particularly important in a noncommercial educational service like LPFM. As noted above, we cannot rely on commercial market forces to ensure that LPFM licensees are responsive to local needs because they will be noncommercial entities providing noncommercial program services. Indeed, Congress and the Commission have long recognized the unique role played by local entities in providing noncommercial educational programming, and we have favored local entities in providing other noncommercial educational services.

36. Finally, we do not believe that our preference for local applicants here raises the concerns voiced by the court in *Bechtel*. The court was concerned in *Bechtel* that the integration preference elevated quantitative factors—the number of hours the station owners promised to work at the station—over arguably more important qualitative factors such as broadcast experience and

established local residence. In contrast, the community-based requirement that we adopt today does not rest on quantitative factors and is not based on promises of future conduct. Rather, we are adopting a simple, straightforward requirement that applicants be based in the local community. In addition, a primary concern underlying the court's decision was that there was no obligation for a successful applicant in the commercial broadcast service to adhere to its integration proposal, and there was no evidence indicating the extent to which licensees had done so in the past. In contrast, LPFM licenses will not be transferable, so we can be assured that a local entity that is awarded the license will continue to operate the station. For these reasons, we do not believe that the community-based requirement that we adopt today suffers from the problems identified by the court in the *Bechtel* decision.

### 3. National Ownership Limits

37. *Background.* In the *NPRM*, we also sought comment on the issue of a national multiple ownership cap. In particular, we asked whether a limit of five or ten stations nationally would provide a reasonable opportunity to attain efficiencies of operation while preserving the availability of the stations to a wide range of applicants and their essentially local character.

38. *Comments.* Comments on this issue are wide-ranging in their opinions. Some groups favor an absolute nationwide one-station-per-owner limit, arguing that a one-station-per-entity cap would distribute the low power stations as widely as possible and create the opportunity for the most diverse ownership. Some commenters support a less strict national cap, arguing that some national cap will promote greater diversity in the service, but that a one-per-owner limit is excessively restrictive. Several commenters agree with the Commission's suggested range of five to ten stations, nationally. Finally, some groups oppose any type of national cap.

39. *Decision.* We are adopting a staged rule, which will initially foster diversity by disallowing any common ownership of LPFM stations, but eventually permit the accumulation of additional stations where local applicants fail to come forward. This will increase the service available to the public and permit the efficiencies that can be achieved by multiple ownership where there is not an immediate local interest in operating a station. To achieve this, we will require that for the first two years of LPFM service, any one entity may own only one LPFM station. The two year-

long period will begin on the day that the first LP100 filing window opens for applications. After the first two years, to bring into use whatever low power stations remain available but unapplied for, we will allow one entity to own up to five stations nationally, and after the first three years of this service, we will allow an entity to own up to ten stations nationwide.

40. In addition to ensuring the fullest use of LPFM spectrum in the long term, we believe that this tiered system will balance the interests of local entities, which we expect to be the first entrants in this service, and national noncommercial educational entities, which may be interested in additional local outlets to increase their reach and to achieve certain efficiencies of operation. We note the attribution exception for national or other large entities with local community-based chapters, discussed below in the attribution section, which will allow the local chapters to apply as individual entities and thus not be constrained by this national ownership provision.

41. In the *NPRM*, we tentatively concluded that Section 202 of the Telecommunications Act of 1996 (the 1996 Act) eliminating national multiple ownership restrictions for existing full power commercial stations does not apply to a new broadcast service. Given our decision to limit LPFM to noncommercial educational broadcasters, section 202 clearly does not apply to LPFM and we need not discuss this issue further.

### 4. Local Ownership Limits

42. *Background.* In the *NPRM*, we proposed to prohibit entities from owning more than one LPFM station in the same community. We were concerned that it would be difficult to achieve wide new entry into the broadcasting market and enhance diversity if more than one low power station in an area were under common control. At the same time, we sought comment on whether such a restriction would inappropriately deny to LPFM licensees the efficiencies achievable through multiple ownership, and on what cooperative arrangements might facilitate the development of LPFM service without unduly diluting its benefits. We also sought comment on the appropriate definition of "market" or "community" for the purposes of LPFM service.

43. *Comments.* Many commenters agree strongly with the Commission's proposal that LPFM ownership should be limited to one station per community. They argue that allowing multiple ownership in a local area

would reduce the number and diminish the diversity of new entrants. Most contend that the demand for stations from local owners will be plentiful and that there will be no need to allow outside owners to own low power stations. A few commenters address the issue of the definition of "community" for the purpose of determining the limitations of local ownership but none offered specific alternative definitions. Some commenters expressed concern that the current Commission definition of a "community" is ambiguous and therefore subject to inequitable application.

44. *Decision.* We will restrict local ownership and allow one entity to own only one LPFM station in a "community." We concur with those commenters who expressed concern over the potential for diminution of diversity in ownership if one entity were allowed to control more than one station in their community. The comments opposing the restriction seem directed to and more appropriate in the context of the proposed 1000 watt service, which could have operated commercially. The primary benefit of local multiple ownership, increased efficiency, is less compelling with respect to LP100 and LP10 noncommercial educational stations, particularly as compared to the benefit to a community of multiple community-based voices. As noted, we use the term community in this *Report and Order* to refer to the very small population group that makes up a station's potential audience. For purposes of the local ownership limits, we will require that no entity own or have an attributable interest in two or more LPFM stations located within 7 miles of each other. That is, to comply with our local ownership limits, the antennas of commonly-owned stations must be separated by at least seven miles. We believe seven miles is appropriate given the approximately 3.5 mile signal reach of LP100 stations. Although the signal reach of LP10 stations is smaller, for the sake of simplicity we will apply the seven-mile ownership separation to both classes of service.

45. In the *NPRM* we noted that section 202 of the 1996 Act permitted significant local multiple ownership of full power commercial radio stations but questioned whether this standard would apply to a new low power service. Our decision here, however, to limit LPFM stations to noncommercial educational service renders this question moot. As discussed above regarding the national multiple ownership issue, section 202, by its

terms, does not apply to noncommercial stations.

46. We note that the attribution exception for local chapters of national entities, discussed in the next section, will allow local chapters to apply as individual entities and thus avoid the bar that the national ownership rules would otherwise impose.

#### 5. Attribution

47. *Background.* Given the significance we have accorded the ownership of LPFM stations, the strict cross-and multiple-ownership rules and the community-based eligibility and selection criteria we are adopting, determining who “owns” or constitutes a low power radio applicant or licensee is critically important. In the *NPRM*, we sought comment on what interests or relationships should be attributable in this regard.

48. *Comments.* Comments on attribution vary widely. Some commenters express concern that if the existing attribution rules were applied to these stations, some entities with large national organizations and small chapters would be unable to hold multiple licenses even though they maintain a local presence and would provide community-oriented programming. Other commenters propose that attribution rules be waived in the case of accredited educational institutions, so that they can hold a full power station and also an LPFM station.

49. *Decision.* We will apply rules similar to the existing commercial attribution rules to determine a licensee’s compliance with the ownership limits set forth above. Because many of the entities that will hold LPFM licenses will be non-stock corporations (or other non-stock entities), we will attribute the interests of the applicant, its parents, its subsidiaries, their officers and members of their governing boards. If an entity that holds an LPFM license does have stock, then the existing attribution rules will apply and voting stock interest of 5% or more will be attributable unless the investor is passive in nature, in which case voting stock interests of 20% or more will be attributable. Partners and non-insulated limited partners are attributable, as are officers and directors. Non-voting stock and debt are not attributable unless they satisfy the “equity-debt-plus” standards set forth in our recent attribution order. Thus, for example, if a full-power broadcaster in a community were to invest in an LPFM licensee in that same community and the investment accounted for more than 33% of the LPFM’s total capitalization, the investment would be attributable

and would violate the cross-ownership ban discussed above. Similarly, if a director of the same full power broadcaster were to act as an officer of the LPFM, the director would be attributed with both stations and would violate the ban. Consistent with the existing commercial attribution rules, however, an exception will apply to certain officers and directors of the parent of an LPFM applicant or licensee. Such an officer or director may hold otherwise attributable interests in a broadcast licensee or other media entity subject to our ownership rules without making the LPFM applicant ineligible, provided the duties and responsibilities of the officer or director are wholly unrelated to the LPFM station and the officer or director recuses himself or herself from consideration of any matters affecting the LPFM station. This exception will avoid making ineligible entities that will serve the purposes of this service well, such as universities or schools, which may have large and diverse board membership, while protecting against control of an LPFM licensee by ineligible media owners. For the same reason, in the LPFM context we will extend the exception to officers and directors of the LPFM applicant or licensee itself, if that entity is a multifaceted organization, such as a university, and the duties and responsibilities of the officer or director are wholly unrelated to the LPFM station and the officer or director recuses himself or herself from consideration of any matters affecting the LPFM station. We emphasize that these exceptions are narrow in scope. An individual holding an attributable media interest may not act as an officer of the LPFM station, nor function in any other attributable role.

50. We will, moreover, include an attribution exception for local chapters of national or other large organizations. In the event that a local chapter can demonstrate that it: (1) Is separately incorporated, and (2) has a distinct local presence and mission, the local chapter can apply for a license in its own right and the national entity’s “ownership” will not be attributed to it. In order to meet this standard, the local entity must be able to show a significant membership within the community, as well as a local purpose that can be distinguished from its national purpose. For example, the general purpose of raising awareness of the toxic waste problem in the United States would not suffice, but raising awareness of the toxic waste problem in particular local areas would meet the local purpose standard.

#### 6. General Character Qualifications and Unlicensed Broadcasters

51. *Background.* In the *NPRM*, we generally proposed to apply the same standards for character qualification requirements to all LPFM broadcasters as we do to full power broadcasters. The Commission asked if commenters saw any reason to distinguish between full and low power radio licensees for this purpose. In addition, we sought comment on whether to disqualify unlicensed broadcasters who once violated or who still are violating Commission rules. We sought comment on whether the Commission should adopt a middle ground and accept applications from parties who have broadcast illegally, but who either (1) promptly ceased operation when advised by the Commission to do so, or (2) voluntarily ceased operation within ten days of the publication of the *NPRM* in the **Federal Register**.

52. *Comments.* Many individuals insist that without radio “pirates,” LPFM would not have been created. Others, such as Amherst and UCC, et al., support the middle ground set forth in the *NPRM*, saying that it is most fair to the interests of future low power broadcasters and to the public. Many commenters believe that anyone who has operated illegally should not be eligible for a license. Some object to restricting parties with an interest in a broadcast station from owning an LPFM station, but allowing “pirates” to own them.

53. *Decision.* We have decided, as we proposed, to apply the same character qualification requirements to low power station licensees as we currently apply to full power licensees. The Commission’s character policy is underpinned by our interest in a licensee’s truthfulness and reliability. We have a critical need to ascertain whether a licensee will in the future be forthright in its dealings with the Commission and operate its station in a manner consistent with the requirements of the Communications Act and the Commission’s rules and policies. No commenter showed a reason to distinguish between full and low power broadcasters on this basis, and we do not believe one exists.

54. The most significant specific question that character concerns raise in the context of this proceeding, as discussed in the *NPRM*, is how past illegal broadcast operations reflect on that entity’s proclivity “to deal truthfully with the Commission and to comply with our rules and policies,” and thus on its basic qualifications to hold a license. We are persuaded to

adopt our original proposal and accept a low power applicant who, if it at some time broadcast illegally, certifies, under penalty of perjury, that: (1) It voluntarily ceased engaging in the unlicensed operation of any station no later than February 26, 1999, without specific direction to terminate by the FCC; or (2) it ceased engaging in the unlicensed operation of any facility within 24 hours of being advised by the Commission to do so. Applicants will be required to make such certifications as part of their applications for an LPFM station. Such certifications will be made with respect to the applicant as well as all parties to the application (*i.e.*, any party with an attributable interest in the applicant). Submission of false or misleading certifications will subject the applicant to enforcement action including fines, revocation of license and criminal penalties.

55. Contrary to some commenters' arguments, this rule does not unconstitutionally infringe on the First Amendment rights of unlicensed broadcasters. Disqualification under this rule is based solely on lack of compliance with statutory and regulatory requirements. All parties should note, however, that as licensed broadcasters, ignorance, whatever its cause, is not considered an excuse for violation, and full compliance with our rules will be required. Moreover, as implied by the provisions of the *NPRM*, the illegality of unauthorized broadcasting must now be presumed to be well-known, and any unlicensed broadcast operation occurring more than 10 days after the *NPRM* was issued will make the applicant ineligible for low power, full power, or any other kind of license and will be subject to fines, seizure of their equipment, and criminal penalties.

## E. Technical Rules

### 1. Spectrum for Low Power Radio

56. *Background.* In the *NPRM*, the Commission stated that it did not intend to allocate new spectrum for a low power radio broadcasting service. The utilization of new spectrum would require listeners to purchase new equipment to receive the service, which would significantly delay the benefits of the service to the public. We proposed to authorize low power radio stations within the FM band only. This determination was based partly on the extent of congestion within the AM band, with numerous existing stations experiencing significant interference. Furthermore, we recognized that low power AM stations were capable of causing significantly higher levels of

interference as a result of AM signal propagation characteristics. With regard to the use of the FM band, we concluded that the large number of existing FM stations precluded us from designating any specific frequencies for LPFM service, as no such channels are available throughout the country. Thus we sought comment on whether we should allow LPFM stations to operate throughout the entire band or restrict the reserved portion of the FM band (Channels 201–220) for noncommercial educational (NCE) stations. We also contemplated that low power radio stations would desire to use auxiliary broadcast frequencies, where available—for example, for studio-to-transmitter links and transmissions of remote broadcasts—and sought comment in this regard.

57. *Comments.* No commenters specifically supported the allocation of new spectrum for the proposed service. Many commenters agreed that existing interference within the AM band and the relative complexity of AM facilities should preclude consideration of a low power AM service. Some commenters, however, argue that an AM low power station should be an option in areas where the FM spectrum is too crowded to permit new stations. With regard to the FM band, most commenters support the view that the reserved band should continue to be reserved for NCE use only. However, several other commenters are particularly concerned that the introduction of numerous new stations in the reserved band would potentially increase interference to existing stations, especially in areas beyond their protected contours. At the same time, other commenters expressed the desire to allow NCE low power stations throughout the FM band.

58. *Decision.* We will authorize low power radio stations throughout the FM band, where the stations will fit, but not in the AM band. Although FM band crowding may preclude or limit LPFM opportunities in certain markets, we are not persuaded that the creation of an AM low power radio service is warranted. We note that we are adopting minimum distance separations between LPFM and full-service stations based upon the assumption that full service stations operate with maximum height and power for their class. Therefore, an LPFM station would generally provide greater protection to stations operating in the reserved band than that afforded to them by other full service stations, for which station facilities are spaced more closely on the basis of the contour protection methodology. Because LPFM stations will be licensed throughout the FM band, they will not be concentrated

in the reserved portion of the FM spectrum. We note, however, that LPFM stations, regardless of their location in the FM band, are reserved to qualified NCEs. We will apply the same interference protection and other technical standards for LPFM operations in the reserved and nonreserved bands. This will facilitate application processing and uniform LPFM technical operating requirements.

59. In view of their relatively smaller service areas, we believe that most LPFM stations will co-locate program origination and transmission facilities. As a result, these stations would not require studio-to-transmitter links (STL) between these facilities. However, we will not foreclose LPFM operators the use of broadcast auxiliary frequencies used by full-service radio stations for this purpose. LPFM stations may also desire to air programming relayed from a remote location, such as an athletic event, or in connection with news gathering. Generally, we will permit entities authorized to operate LPFM stations to use remote pickup frequencies and radio broadcast auxiliary frequencies in the manner in which full-service stations use these frequencies, pursuant to the technical rules and procedures given in subparts D and E of part 74 of our rules. However, we will require that LPFM operations on auxiliary frequencies be secondary to that of full-service broadcast stations and other primary users, given the congestion of frequency use in some locales. We note that TV auxiliary frequencies are licensed to low power TV stations on this basis. An entity seeking to operate an LPFM station may apply for broadcast auxiliary license only after it has been authorized to construct the LPFM station.

### 2. LPFM Spectrum Rights and Responsibilities

60. *Background.* In the *NPRM*, we raised issues regarding the spectrum priority of the contemplated classes of LPFM service. We recognized that our resolution of these issues would affect where LPFM stations could locate and the stability of their operations. Additionally, LPFM interference protection rights and responsibilities could affect existing and future FM radio service. The *NPRM* proposed a 1000-watt primary service and a 100-watt secondary service. It sought comment on a 10-watt class of LPFM station that would be secondary to all other FM radio services. As proposed, LP100 and LP10 stations would not be permitted to interfere within the protected service contours of existing

and future primary stations and would not be protected against interference from these stations. We sought comment on whether LP100 stations should be permitted to select channels without regard to interference received and on the extent to which LP100 stations should protect FM translator and booster stations.

61. *Comments:* Given our decision not to create a 1000-watt LPFM station class, this summary is limited to the issue of spectrum priorities for LP100 and LP10 stations. The comments were divided on whether LPFM stations should have a primary or secondary regulatory status. Several commenters supported primary status for all LPFM stations, mainly to help ensure their survival. Some commenters supported a modified form of primary status for LPFM. Other commenters, including some broadcast licensees, supported a secondary status for LPFM stations.

62. *Decision.* In crafting interference protection rights and responsibilities for an LPFM service, we seek to balance our vital interest in maintaining the technical integrity of existing radio services with our desire to create a supple and viable community-oriented radio service. First and foremost, we must require that new LPFM stations protect radio reception within the service areas of existing full-service stations, as well as the existing services of FM translator and booster stations. Second, LPFM stations, with their much smaller service areas and fewer service regulations, should not prevent FM stations from modifying or upgrading their facilities, nor should they preclude opportunities for new full-service stations. Additionally, LPFM applications will be required to protect vacant FM allotments. Subject to these constraints, however, we want to foster a stable and enduring LPFM service. Once an LPFM station is built and operating, we wish to permit it to continue operating on its channel, wherever possible, as the radio environment changes around it. We want to minimize, to the extent possible, the situations in which we would require an LPFM station to change its channel or cease operating. This measure of stability, we believe, would assist LPFM station applicants or operators in obtaining financing to construct and operate stations and to better serve their communities. It may also create an incentive for the operation of a first local radio station in many communities or radio service that would be responsive to other unmet needs. We believe the approach set forth below appropriately balances the above objectives.

63. *Protection to existing FM radio services:* Applicants for new or modified LP100 or LP10 facilities will be required to meet minimum station separation distances to protect the service contours of authorized commercial and noncommercial FM stations of all classes, including Class D. In the same manner, they will be required to protect the existing service of FM translator and booster stations and LP100 stations. We will also require LPFM applicants to protect full-service FM, FM translator and LP100 facilities proposed in applications (for example, FM minor change applications) filed before a public notice announcing an LPFM application filing window. Applications filed after the release date of an LPFM window notice will not be protected against LPFM applications filed in that window. However, full-service applicants will not be required to protect the facilities proposed in LPFM applications. We believe this approach fairly balances the interests of full-service and LPFM applicants. LPFM station proposals to operate on channels 201–220 will also be required to protect television stations operating on TV Channel 6. Applicants for LP100 stations will not be required to protect authorized LP10 stations or LP10 application proposals, given the relatively smaller service areas of LP10 stations.

64. The extent of interference protection from LPFM stations to existing FM, LPFM and FM translator and booster service generally will be that afforded by minimum station separation requirements. These were designed to provide the same degree of interference protection that full-service stations provide each other. We have added a 20-kilometer buffer to the separations for protecting co-channel and first adjacent channel full-service stations. This buffer will help to protect FM radio facilities that were modified or upgraded in a manner that would create a short-spacing with an operating LPFM station. LPFM stations will not be required to eliminate interference caused to FM stations by their lawful operations. They will, however, be required to eliminate interference caused by operations that violate the terms of the station's authorization or the Commission's Rules; for example, radiation of excessive emissions outside of the station's authorized channel. LPFM station operators will also be required to respond to complaints of "blanketing" interference. They will also be subject to international agreements regarding the elimination of interference to primary Canadian or

Mexican broadcast stations. Until these agreements are modified, we believe it is appropriate to apply to LPFM stations the international provisions applicable to FM translators, which operate at comparable power levels.

65. *LPFM rights and responsibilities with respect to subsequently modified, upgraded or new full-service FM stations.* We are not adopting for the LPFM service many of the regulations applicable to full-service stations; for example LPFM stations will not be required to have a main studio. LPFM stations also will service much smaller areas than full-service stations. For these reasons, we do not believe that an LPFM station should be given an interference protection right that would prevent a full-service station from seeking to modify its transmission facilities or upgrade to a higher service class. Nor should LPFM stations foreclose opportunities to seek new full-service radio stations. Accordingly, operating LPFM stations will not be protected against interference from subsequently authorized full-service facility modifications, upgrades, or new FM stations. Because we will not protect LPFM from future FM facilities, we will not require LPFM applicants to meet minimum distance separation requirements to protect their service areas against interference received. However, as a guide to LPFM applicants, the attached rules includes minimum station separation distances necessary to protect an LPFM station's 60 dBu contour.

66. We expressed our desire to provide a measure of stability to operating LPFM stations. For this purpose, we will permit LPFM stations to continue operating even though they would cause interference within the protected service contours of a subsequent authorized FM service, including new stations and facilities modifications or upgrades of existing stations. In such situations, the LPFM operator would decide whether interference received to its service would permit the station to continue operating on its channel. However, we must make one exception to this policy. FM stations have a core responsibility to service their principal communities. Therefore, we will not permit an operating LPFM station to cause interference within a commercial or NCE FM station's 3.16 mV/m (70 dB) contour. This issue can only arise in connection with a subsequently filed full-service new station or modification application. If grant of such an application would result in predicted interference within the 3.16 mV/m (70 dBu) contour of the proposed station,

the affected LPFM station will be provided an opportunity to demonstrate that interference is unlikely to occur within this contour due to, for example, terrain shielding. If the LPFM station fails to make a sufficient showing, it will be directed to cease operations upon the commencement of program tests by the commercial or NCE FM station.

67. We recognize that actual interference within the 3.16 mV/m contour might still be possible where the LPFM station has demonstrated that it is unlikely. In these circumstances, a complaint of actual interference must be served on the LPFM station and filed with the Commission, attention Audio Services Division. The LPFM station must suspend operations within twenty-four hours of the receipt of a complaint unless the interference has been eliminated by the application of suitable techniques and to the satisfaction of the complainant. An LPFM station may resume operations only at the direction of the Commission. If the Commission determines that a complainant has refused to permit the LPFM station to apply remedial techniques that demonstrably will eliminate the interference without impairment of the original reception of the full-service station, the licensee of the LPFM station will be absolved of further responsibility. As a practical matter we believe that in many cases involving FM station modifications or upgrades, interference to new or expanded areas will be offset by the conservative separation distances met by the LPFM station when it was initially authorized, particularly because of the 20-kilometer interference protection buffer.

### 3. Minimum Distance Separation Requirements

68. *Background.* The *NPRM* tentatively concluded that minimum distance separation requirements for LPFM stations would provide the most efficient means to process a large number of applications while ensuring the overall technical integrity of the FM service. We proposed minimum spacings to protect full-service station operation on the same channel, first-adjacent channel and intermediate frequency (IF) channels. We proposed to exclude third-adjacent channel protection and questioned the need for second-adjacent channel spacing requirements. We noted that the use of a contour overlap methodology could significantly delay the implementation of the LPFM service because it would require substantial preparation on the part of applicants and the Commission and would increase the processing

burden on the staff. The *NPRM* included spacing tables for the proposed LPFM classes based on the interference protection ratios that underlie full-service radio separations and the assumption that stations operate at the maximum height and power for their station class. We sought comment on the accuracy of the specific values listed in these tables. In addition, we requested comment as to whether alternate approaches, including contour overlap methodology and/or more sophisticated terrain modeling programs, should be used at a later time, based on our initial experience in authorizing LPFM service.

69. *Comments.* No comments challenge any of the specific values listed in our proposed minimum distance separation tables. However, one suggests an alternate methodology based upon a full service station's 44 dBu F(50,50) protected service contour, instead of the 60 dBu contour that defines the protected service contours for all NCE and many commercial stations. Although it does not calculate distance separations, some commenters argue that our separation requirements should protect actual service areas beyond protected contours. Several commenters urged either the use of a contour overlap methodology or a combination of contour overlap and separation requirements in order to accommodate the licensing of additional LPFM stations.

70. *Decision.* We recognize that a distance separation methodology will preclude new LPFM stations in some areas. However, we are not persuaded that the potential benefit of some additional stations is substantial enough to warrant the preparation of more complex and costly engineering exhibits based on contour protection and the resulting delays in the authorization of LPFM service. Therefore, we are adopting minimum separation requirements for the LPFM service as the means of protecting full service commercial and noncommercial educational stations. We also adopt spacing rules to protect FM translator stations and other LPFM stations, as well as a spacing table for LPFM stations operating on Channels 201 through 220 with respect to protection of TV Channel 6. As we proposed in the *NPRM*, we will not establish minimum separations between LPFM stations that operate two or three channels apart. Special case spacing tables are also being adopted for Puerto Rico and the U.S. Virgin Islands. Additionally, appropriate spacings will be used for the approximately 20 "grandfathered superpowered" stations operating in the

reserved band. Superpowered stations will be protected under the distance separations for the class of station that most closely approximates its facilities. This determination will be made based upon the stations 1 m V/m reference contour and the procedures for determining class listed in § 73.211. LPFM applicants should be mindful of the fact that the minimum separation distances being adopted will not protect LPFM stations against interference from the full service stations, but are designed to prevent the LPFM station from causing interference to the protected service areas of full-service FM and other protected stations. However, as a guide to LPFM applicants, we are including in the rules a table giving the minimum separations necessary to avoid interference within the LPFM station service areas.

71. The minimum distance separation requirements that we adopt here for LPFM stations do not apply to full-service stations and FM translators. To prevent subsequently filed FM translator stations from causing interference to existing LPFM stations, we will expand the current FM translator interference protection rules to include a requirement that previously authorized LPFM stations be protected. As noted, we will permit a full service station to modify its facility in a manner that reduces these separations to LPFM stations. However, in such cases we generally will not require the LPFM station to cease operation. Instead, the affected stations will have to bear any interference caused by facilities changes, such as an FM transmitter site move. However, so as to reduce the potential impact on the affected stations, the spacing rules we adopt today include a 20 km "buffer" for co-channel and first-adjacent channel LPFM-to-full-service-FM stations. This additional separation is included for two reasons. First of all, we recognize that the FM band is not static. For example, broadcast stations often change transmitter sites to provide better service to their communities and service areas. Same-station-class transmitter site moves are generally less than 20 km from the original site. Therefore, inclusion of the 20 km buffer spacing allows full-service stations room to move while also reducing the potential impact on existing LPFM stations. Second, and equally important, the additional separation affords the LPFM station an increased likelihood that its operation would not cause interference within a full service station's community of license. This additional 20 km separation will apply

only to the initial establishment of the LPFM station. Subsequent site moves by the LPFM station would either need to meet this distance separation requirement, or if the existing spacing were already less than this amount due to a prior site move by a full service station, the spacing could not be less than the currently existing separation.

**72. International Coordination Provisions.** We are also adopting provisions for LP10 and LP100 stations which lie within 320 km of the Canadian or Mexican borders, consonant with existing international agreements between the respective countries. We will apply the existing FM translator rule, 47 CFR 74.1235, and current international coordination procedures to LPFM stations in these areas. In the rules, we include distance separation tables that were intended to ensure compliance with the appropriate international agreements. We will adopt these tables to the extent that foreign stations are provided the appropriate protection. We have also derived similar tables for LP10 stations. We will only accept LPFM proposals that meet these distances. Such proposals will be coordinated as required by the pertinent agreements. In addition, LP10 and LP100 applicants in the U.S. Virgin Islands should be aware that international coordination may be required with the British Virgin Islands in some instances.

#### 4. Second and Third Adjacent Channel Protection

**73. Background.** In the *NPRM* we sought comment on the interference protection criteria to be used to govern the authorization of low power radio services. We stated that low power stations would be subject to existing co-channel and 1st-adjacent channel protections but that to the extent possible we were inclined to authorize low power service without any 2nd- and 3rd-adjacent channel protection standards. We stated our belief that a strong case could be made for not requiring 3rd-adjacent channel protection to or from any of the contemplated classes of LPFM stations. We indicated that such an approach would entail little risk of interference to existing radio service. We noted that areas of potential interference to a full power station would be very small and occur only in the immediate vicinity of the low power transmission facility. We further indicated that such interference would generally only occur if the low power station were located at, or very near, the outer edge of the full power station's service contour where the full power station's signal is the weakest.

We noted that 3rd-adjacent channel protection was eliminated for certain grandfathered and short-spaced full power stations in 1997. On balance, we stated that creating opportunities for a new LPFM service should outweigh any small risks of interference to and from LP1000 and LP100 stations.

**74.** With regard to 2nd-adjacent channel protection, we noted that "grandfathered" short-spaced FM facilities were permitted to modify their facilities without regard to 2nd- and 3rd-adjacent channel spacings during the period from 1964 to 1987, and from 1997 to the present. We indicated that no interference complaints were received as a result of those modifications and found that the small risk of interference was outweighed by improved service. Similarly, we noted that we have been willing in the past to accept small amounts of potential 2nd- and 3rd-adjacent channel interference in the noncommercial FM service where such interference is counterbalanced by substantial service gains. We sought comment on the state of receiver technology and the ability of receivers to operate satisfactorily in the absence of 2nd-adjacent channel protection. We also sought comment on the impact of eliminating 2nd-adjacent channel protection on the possible conversion of existing analog radio services to a digital mode, in particular with regard to in-band-on-channel (IBOC) technology. In this regard, we noted that one IBOC proponent, suggested that 2nd-adjacent channel signals from analog FM stations in the existing radio environment would not pose an interference threat to its digital IBOC signal.

**75. Comments.** Technical studies of FM receivers were filed in response to the *NPRM* by Consumer Electronics Manufacturers Association; by National Association of Broadcasters; and by National Lawyers' Guild, Committee on Democratic Communications. In addition, the Commission's Office of Engineering and Technology conducted a receiver study and placed it in the record of this proceeding. Supplementary findings and critiques were filed with reply comments.

**76. Decision.** We find that the record in this proceeding, including the technical data and other studies submitted, supports a conclusion that any risk of interference from LPFM stations of 100 watts or less is small and, on balance, is outweighed by the benefits of this new service. We conclude that it is not necessary to apply 3rd-adjacent channel protection requirements to or from such stations. We believe that 100-watt or lower LPFM stations operating on 3rd-adjacent

channels will not result in significant new interference to the service of existing FM stations. Nor do we believe such operations are likely to have an adverse effect on digital IBOC signals.

**77.** With regard to 2nd-adjacent channel protection requirements, it appears that the risk of interference from LPFM signals on 2nd-adjacent channels may be somewhat higher. We find that this would also be true with regard to LPFM stations at power levels higher than 100 watts and antenna heights higher than 30 meters. Therefore, we will retain 2nd-adjacent channel protection requirements.

#### 5. Other Technical Standards and Provisions

**78. Background.** In the *NPRM*, we sought comment on which part 73 technical operating requirements for full-service stations should be applied to LPFM stations. In general, most commenters stated that, although some requirements must remain to ensure a quality service, the LP100 and LP10 stations should be held to less stringent requirements than full service stations. While we do not want to overly burden LPFM operators, we nevertheless believe that the technical rules set forth below should apply to the LPFM stations. By doing so, we will not only facilitate technically sound LPFM operations and the use of available equipment, but will permit LPFM stations to engage in services such as those obtained through the multiplexing of FM subcarriers. There are some requirements applicable to full-service stations which we believe can be relaxed or not applied. Accordingly, we will apply certain rules to LP10 stations that apply to existing stations that operate with ten watts transmitter power output (TPO) or less. The following paragraphs set forth the principal technical requirements and provisions for LPFM stations. These technical matters were generally non-controversial to parties who filed comments in this proceeding. Other technical requirements for LPFM stations are given in the rules.

**79. Power/Height restrictions.** Several commenters expressed the desire to operate facilities at heights in excess of those specified as the maximum/minimum facilities for the class. This would enable stations to use existing structures at sites where the localized elevation is such that the 30 meter HAAT would be exceeded regardless of the height of the structure. One commenter, believes we should impose strict maximum height restrictions on LPFM stations since, due to the nature of the Commission's F(50,10)

interference prediction curves, equivalent 1 mV/m (60 dBu) reference contours do not always guarantee proportionally sized interfering contours. We will allow LPFM stations to exceed the class-defined upper height restrictions as long as there is an offsetting decrease in the station's effective radiated power. For this purpose, we will authorize equivalent height and power combinations to produce the 60 dBu contour generated by the maximum and minimum permitted facilities for the LP100 and LP10 stations; e.g., the maximum LP100 facilities of 100 watts and 30 meters produce a 60 dBu contour at a distance of 5.6 km.

80. We recognize that computing a station's HAAT requires access to terrain database and numerous calculations. Therefore, in order to streamline the application process, the staff will utilize a computer program to calculate the antenna HAAT based upon information provided by the LPFM applicant (the coordinates of the proposed antenna, the site elevation above mean sea level, and the antenna height above ground level (AGL)). If the calculated HAAT is less than or equal to 30 meters, the LPFM station will be authorized to operate with any ERP within the maximum and minimum limits for its class. If the HAAT is calculated to exceed 30 meters, the permit will specify maximum and minimum ERP values that would produce the reference 60 dBu contours.

81. *Directional antennas.* Under our current rules, full service FM stations may specify directional antennas to avoid interference to other stations. Such facilities are subject to several strict installation and pattern requirements (see 47 CFR 73.316). Processing these applications is staff intensive. Construction permits for directional facilities generally contain numerous conditions. Since we are relying on a minimum distance separation methodology—rather than a contour-based approach—to provide interference protection, we see no need for stations to employ directional antennas. Accordingly, to simplify applicant requirements and facilitate application processing and ensure that service can be implemented as expeditiously as possible, we will not authorize directional antennas for LPFM stations.

82. *Transmission standards.* The NPRM asked whether different transmission standards should be employed for an LPFM service; for example, whether the bandwidth could be reduced from 200 kHz to some smaller value as a means of reducing the

potential interference from LPFM stations. To ensure technically sound station operations, we have decided to apply to LPFM several transmission standards presently in use for commercial and noncommercial educational FM stations. In most cases, these standards will be met through the use of type certified equipment without need for further adjustment by the LPFM licensee. LPFM stations will be required to adhere to the 200 kHz channel bandwidth applicable to full service stations, as well as the out-of-channel signal attenuation requirements in 47 CFR 73.317, the center frequency drift limits in 47 CFR 73.1545(b), and the limits on modulation in 47 CFR 73.1570(a) and (b). In addition, LPFM stations may, at their option, engage in monophonic or stereophonic broadcasting. LPFM stations may also transmit additional information via inaudible subcarriers during those periods when the audible FM signal is on the air.

83. *Antenna polarization.* We will permit LP10 and LP100 stations throughout the FM band to use horizontally polarized, vertically polarized, or circularly or elliptically polarized antennas, as desired by the applicant. We note that vertical-only polarized antennas have been used in the noncommercial educational FM service to protect reception of TV Channel 6 for nearly 15 years now, without adverse impact. This will afford LPFM stations a wider selection of antennas for use at LPFM stations.

84. *Protection of AM radio radiation patterns.* LPFM applicants should also be aware that antenna structure construction within 3.2 km (2 miles) of a directional AM station or 0.8 km (0.5 miles) of a nondirectional AM station will subject the LPFM station to the requirements of 47 CFR 73.1692. This section requires the affected AM station to make before and after measurements of its installation to insure that the new antenna structure does not adversely affect the signal pattern through reflections of the AM signal produced by the new structure. The LPFM applicant is financially responsible for conducting the measurements and any corrective measures that may need to be undertaken. The measurements can be quite expensive to conduct, and correction even more so. Therefore, we encourage LPFM applicants to locate the antenna more than 3.2 km from any directional AM station, or more than 0.8 km from any AM nondirectional station.

85. *Tower Height/FAA Coordination Requirements.* Any proposal before the Commission that specifies an antenna supporting structure in excess of 61

meters above ground level is subject to the Commission's requirements for antenna structure registration requirements. Certain lower structures located close to air facilities are also subject to these requirements. All structures subject to registration requirements must obtain an FAA Determination of No Air Hazard for the structure before the tower may be registered. In a letter dated June 1, 1999, the FAA expressed some concern regarding the impact LP1000 stations may have upon nearby air facilities. No specific questions were raised regarding the lower powered facilities. Since we are not authorizing an LP1000 service at this time, we will continue determining compliance with our tower registration requirements in the manner set forth.

86. *Blanketing Interference.* For one year after the commencement of transmissions with new or modified facilities, all FM stations are required to take remedial action to resolve blanketing interference complaints occurring within the immediate vicinity of the antenna site. A station's specific blanketing interference radius is defined by our rules. The blanketing contour for an LP100 station would extend approximately 125 meters from the transmitter site and a 10-watt LP10 blanketing contour would extend 39 meters. Thus, the blanketing area of either type of station is very small. We conclude that LPFM stations should be required to resolve blanketing interference complaints in the same manner applicable to full power stations. Although the potential for blanketing interference from LPFM stations may be quite limited, affected parties are entitled to relief from such interference caused by a new source of radiation, whether it is a full-power commercial station or a new low power community broadcaster. Accordingly, we will apply the requirements in § 73.318 to all LPFM stations, in accordance with established precedents.

87. *Potential Television Channel 6 Interference.* Presently, noncommercial educational FM applicants are required to consider the impact of their operations on reception of television Channel 6, which operates on a frequency band (82 to 88 MHz) just below the FM band (88 to 108 MHz) in accordance with the provisions of 47 CFR 73.525. Determining the affected interference area pursuant to this section usually requires complex calculations and detailed contour studies. Given the very limited potential for interference caused by LPFM stations, in order to simplify processing and lessen the filing burden on applicants, we will utilize a spacing

table to protect TV Channel 6 stations. The values given in the table utilize the protection ratios of § 73.525 and worst case facilities for the TV Channel 6 and the LP10 and LP100 stations. On this basis, we do not anticipate that interference will occur. However, we will require LPFM applicants to correct any complaints of interference caused to Channel 6 reception in accordance with our blanketing interference requirements (as are Channel 6 complaints regarding full service stations). In most cases, this will require the installation of simple filters on affected television sets. LPFM applicants will not be required to coordinate their proposals with any potentially affected Channel 6 television station.

88. *Radio Reading Services.* Several radio reading services have expressed concerns about interference from LPFM stations to their service to persons who are blind or who have low vision. Programming provided by radio reading services is transmitted on subcarrier frequencies of a broadcast station, which are not audible on a standard radio. As the subcarrier frequencies are transmitted within the 200 kHz bandwidth of the broadcast station, they receive the same protection from interference as does the main broadcast programming. Thus, insofar as the transmitted subcarrier signal is concerned, there will be no increase in interference. With respect to subcarrier receivers used by the radio reading service audience, the Commission does not set technical standards for radio receivers. Thus, we cannot consider whether additional interference might affect SCA reception in the vicinity of an LPFM station, or whether different receiver construction could reduce possible interference. However, we note that the 20 km buffer between LPFM stations and co-channel or 1st adjacent channel full service FM stations adopted in this *document* should afford additional protection to subcarrier reception than was proposed in the *NPRM*.

89. *Transmitter Certification.* In the *NPRM*, we tentatively concluded LPFM stations should utilize only transmitters deemed "type certified" by the Commission's Office of Engineering and Technology (OET) to ensure the integrity of the FM radio spectrum. Type certification would prevent the use of transmitters with excessive bandwidth or modulation, spurious emissions, excessive power output, or insufficient frequency stability, which could cause interference to other existing stations. A large majority of commenters concurred with this

conclusion. A few licensed amateur radio operators felt that they should be exempt from this requirement, asserting that many amateurs were capable of creating suitable equipment. However, we remain concerned about the significant potential for interference caused by non-type certified transmitters, particularly given the interference-protection standards we are adopting. Nor do we believe that type certification of equipment by the manufacturer will add appreciably to the cost of equipment for a low power broadcast radio station. Accordingly, we will adopt the certification requirement as proposed in the *NPRM*. We emphasize that the use of non-type certified transmitters will not be tolerated. Use of non-type certified transmitters will subject the licensee to enforcement action including, but not limited to, fines.

90. *Unattended Operation.* We anticipate that many LPFM stations will be run as "attended operations," since the transmitter sites will be located at the source of program origination. However, LPFM stations may also be operated in "unattended" mode. During these times, there may be no personnel at the studio or transmitter site to monitor operation. LPFM stations that will operate unattended will be required to advise the Commission by simple letter of the unattended operation, and provide an address and telephone number where a responsible party can be reached during such times. The responsible party must be able at all times to turn off the transmitter within 3 hours of receiving notice from the FCC that the equipment is not functioning properly. In addition, we encourage the use of monitoring equipment that can automatically shut off the transmitter within 3 hours if a fault (such as operation at excessive power operation or center frequency drift) occurs. Finally, during periods when the LPFM station is not transmitting programming on its regular channel, the transmitter must be turned off.

91. *Station Logs.* Station logs provide a mechanism for verifying proper operation of a station, as they require the licensee to examine the operation before making a log entry. Logging requirements for LPFM stations will be minimal. The station log for LPFM will contain only the following entries: (1) Daily observation of proper function of tower obstruction lighting (if required by section 17.47 of the Commission's Rules); (2) dates and a brief explanation regarding station outages due to equipment malfunctioning, servicing or replacement; (3) any operation not in accordance with the station license; (4)

receipt of weekly EAS (Emergency Alert System) test; (5) name of person making the entry.

92. These minimal requirements will not impose any significant burden on LPFM licensees. Except for any required daily tower lighting checks, entries need only be made when necessary. Logs must be retained for two years from the date of the last entry, and station logs must be made available to FCC personnel upon request.

93. *Environmental Requirements.* As with any applicant for a Commission license, an LPFM proponent will have to certify compliance with the environmental requirements of section 1.1307 of our rules. In order to facilitate the preparation and processing of LPFM applications, we will simplify the environmental compliance worksheets included in the current FCC Form 301 to account for the low operating power of LPFM stations.

94. *Radio Astronomy Installation Notifications.* Low power FM broadcast stations will be required to coordinate with and provide protection to the radio quiet zones at Green, West Virginia and at Boulder Colorado, as is required for full service FM stations by § 73.1030. In addition, low power FM applicants in Puerto Rico will need to coordinate with Cornell University regarding the radio coordination zone on that island. This requirement is necessary to ensure that research work at these installations will not be disrupted. Because of the low power and antenna height of LPFM stations, we anticipate that this requirement will affect very few applicants.

## F. Application Processing

### 1. Electronic Filing

95. *Background.* The Commission recently mandated the electronic filing of broadcast applications after a transition period of six months from the date that each form becomes available for filing electronically. Likewise, we proposed in the *NPRM* to require that LPFM applications be filed electronically. We stated that mandatory electronic filing could speed the introduction of LPFM service by enabling the staff to process more quickly and efficiently the large number of LPFM applications that we expect to receive. In addition, we indicated that electronic filing software could be designed to assist applicants with technical issues related to their applications, such as determining what frequencies are available based on current information in the Commission's database. We requested comment as to whether Internet access

is sufficiently universal to warrant mandatory electronic filing of LPFM applications.

96. *Comments.* Commenters that addressed the matter generally support the use of electronic filing, but are divided as to whether it should be mandatory. Several commenters express concern that electronic filing is untried and may delay the introduction of LPFM service. Several commenters urge that, regardless of whether electronic filing is required, LPFM filing procedures should be as simple and inexpensive as possible.

97. *Decision.* We anticipate that electronic forms will be made available via the Commission's World Wide Web site prior to the opening of the first LPFM filing window. Based on our consideration of the record, however, we will not adopt a mandatory electronic filing system for LPFM application forms at this time. Rather, assuming availability of the forms, we will make electronic filing permissive for the first LPFM filing window, which we intend to open for LP100 stations shortly after the effective date of this document. Whether electronic filing is permissive for the second window that we anticipate opening for LP10 stations, as well as for any subsequent LPFM filing windows, will be resolved at a later date and will depend on several factors, including our experience with both electronic and paper filing during the first LPFM window and the time that elapses between the first and second windows.

98. We recognize that, as some commenters point out, there may be disparities among potential LPFM applicants in terms of Internet access and/or computer skills. We believe that making electronic filing permissive at this time will accommodate applicants that might be disadvantaged by mandatory electronic filing. We previously have discussed the significant advantages of a mandatory electronic filing system in terms of realizing savings and efficiencies. We do not believe that electronic filing would necessarily constitute an undue burden or expense for potential LPFM applicants, as the costs of computer and modem equipment continue to fall, and Internet access increasingly is becoming available at minimal cost commercially and at public institutions such as libraries. In addition, the Commission has made, and will continue to make, great efforts to create a simple, user-friendly electronic filing system. However, at present we are determined to be cautious with the first applications for a new service filed by applicants whose resources and familiarity with

Commission processes may be very limited. We will reassess our electronic filing decision after our experience during the first filing window. We can better determine at that time whether the first filing window has provided a reasonable opportunity for interested parties to understand and arrange for Internet access and familiarize themselves with our Web site and electronic filing system. We can then determine whether the public interest benefits of mandatory electronic filing will outweigh any difficulties encountered or inequities expected, and decide whether electronic filing will remain voluntary or be mandated for use by all.

99. Although electronic filing will be permissive, we strongly encourage applicants to take advantage of electronic filing, and expect that many will do so. The forms will be accessible to anyone with a computer and a modem, without the need to purchase any special computer software. The Commission's software will make filing more certain for applicants by automatically notifying them of critical errors or omissions in their applications, and allowing them to correct the applications prior to submission. This software also will provide applicants with immediate verification that their applications have been received by the Commission. In addition, it will allow applicants to submit amendments, make corrections to their previously-filed applications, and submit narrative, explanatory exhibits. Furthermore, we intend to design additional software that will be available on the Commission's Web site to assist interested parties in making a preliminary determination as to which frequencies are available for LPFM use, based on current information in the Commission's database. Thus, LPFM applicants using the electronic filing system also will have access to a form of automated technical assistance in preparing their applications.

## 2. Window Filing Process

100. *Background.* We proposed in the *NPRM* to adopt a window filing approach for LPFM applications, with short filing windows of a few days each to "lessen the occurrence of mutually exclusive applications and speed service to the public." The Commission recently substituted a uniform window filing procedure for the various application procedures for new commercial broadcast stations, and for major changes to existing stations. Under this procedure, the Commission announces by public notice a "window" or specific time period during which applications may be filed. When the

window closes, the staff reviews the applications filed to determine whether any request mutually exclusive authorizations and, therefore, are subject to competitive bidding. Non-mutually exclusive applications are processed in accordance with our general procedures. Groups of mutually exclusive applications are identified by public notice and proceed to auction. The Commission also is considering substituting a window procedure for the two-step, cut-off list procedures now in place for full-service NCE broadcast applications.

101. In the *NPRM*, we also asked for comment as to whether a first come-first served process might serve the public interest better than a window process by more effectively avoiding mutual exclusivity among LPFM applications. We speculated that electronic filing "might give us the capacity to ascertain the precise sequence in which applications are submitted by different parties." Thus, applications conflicting with ones filed "even a moment earlier" might be rejected as unacceptable for filing, avoiding mutual exclusivity in many cases. We noted a number of drawbacks to this approach, however, including the possibility that applicants might lose filing rights based solely on the quality of their Internet connections.

102. *Comments.* Many commenters support a window filing approach, and offer various suggestions as to the appropriate duration of filing windows. Some commenters favor a first come-first served filing system, generally contending that it would be a better means of avoiding mutual exclusivity than a window approach. Several commenters suggest hybrid approaches combining elements of window and first come-first served systems.

103. *Decision.* Based on our consideration of the record, we will adopt a window filing process for LPFM applications. We previously stated that a window process "provides the staff with a mechanism to control effectively the filing and processing of broadcast applications." We believe that such a mechanism is important here because of the large number of LPFM applications that we expect to receive. In addition, the first-come first-served approach envisioned in the *NPRM*, which would determine filing priority based on the exact time that applications are filed, is feasible only if electronic filing is required, which will not be the case, at least initially. Moreover, we are concerned that such an approach, by placing a premium on filing at the earliest possible moment, might unfairly disadvantage certain applicants based solely on the quality of their Internet

connections. The filing of hundreds or thousands of applications at once also might place unbearable strains on the LPFM electronic filing system. A window filing process avoids these pitfalls, as applicants will be able to file at any time over a period of several days without losing filing rights.

104. Once this *document* becomes effective, the Mass Media Bureau, pursuant to delegated authority, will promptly release a public notice announcing a national filing window for LP100 applications. We anticipate that this window will open in May. The notice will be issued at least thirty days in advance of the opening of the filing window. Full power broadcast applications filed on or after the date of release of a public notice announcing the opening of an LPFM window will not preclude the filing of conflicting LPFM applications filed during that window. However, where the conflict ultimately is determined to relate to service inside the city grade contours of the full power station, the LPFM application will be dismissed. The window itself will be open for a period of five business days. We believe that five days, combined with thirty days' specific advance notice and the additional time between the release of this *document* and the public notice announcing the window, should give interested parties sufficient time to prepare and file their LPFM applications, while minimizing the number of mutually exclusive LPFM applications. We emphasize that applications filed before or after the dates specified in the public notice will not be accepted.

105. In accordance with our window filing procedure for commercial broadcast applications, after the LPFM window closes, the staff initially will screen applications for the purpose of identifying those that are mutually exclusive and those that fail to protect existing broadcast stations in accordance with the standards adopted herein. Applications that fail to properly protect these existing stations will be dismissed without the applicant being afforded an opportunity to amend. This will increase the speed and efficiency with which LPFM applications can be processed by the staff. Technically acceptable non-mutually exclusive applications will be further reviewed for acceptability and processed by the staff in accordance with the Commission's general procedures. Groups of mutually exclusive applications will be identified in a subsequent public notice, and will be subject to the selection procedures set forth. After an application is tentatively selected from a mutually

exclusive group, it will be reviewed for acceptability, and a public notice will be released announcing the finding that the application has been tentatively selected and is acceptable for filing. Petitions to deny the application will be due within 30 days of the release of the public notice of its acceptability for filing. Petitions and informal objections will not be considered unless and until the application has been tentatively selected for processing and found acceptable for filing. A tentative selectee whose application is found unacceptable for filing will be given a single opportunity to submit a curative amendment, provided that the amendment is minor and the amended application has the same number of points as originally claimed, or more than the points claimed by the next highest applicant. Tentative selectees whose applications remain unacceptable for filing after this opportunity will be removed from their mutually exclusive groups, and will not be provided with an additional opportunity to amend.

106. As stated, we are developing software to assist interested parties in determining whether specific frequencies may be available at specific locations for LPFM use. This software will not be able to determine conclusively whether a particular frequency will be available for an applicant, as frequency availability also will depend, among other things, on whether competing applications are filed during the LPFM filing window. Nevertheless, we anticipate that the software will help interested parties focus on potentially-available facilities, and will provide technical assistance for interested parties with limited financial resources. We anticipate that this software will be ready for use by the time we announce the first filing window for LPFM applications. The Mass Media Bureau will issue a public notice with information regarding how to access the software and the technical assistance it can provide. Such information also will be posted on the Commission's Web site.

### 3. Selection Among Mutually Exclusive Applications

107. *Background.* In the *NPRM*, we requested comment as to whether the proposed LPFM service should be restricted to NCE applicants or open to both commercial and NCE applicants. We tentatively concluded that, pursuant to statutory requirements, mutually exclusive applications for commercial LPFM facilities would be subject to auction. We asked for comment on alternative methods for resolving

mutual exclusivity among NCE LPFM applicants. We specifically referred commenters to our proceeding reexamining full-service NCE comparative standards, where we sought comment on three possible methods for selecting among mutually exclusive applicants: (1) Comparative hearings; (2) a lottery process weighted in favor of certain applicants based on statutory requirements and other factors; and (3) a system assigning points to applicants based on various selection criteria.

108. *Comments.* Most commenters that address the matter oppose the use of competitive bidding, arguing that it would undermine the Commission's stated goals in establishing the LPFM service. Few commenters support the use of comparative hearings to resolve mutually exclusive NCE applications. There was support among commenters for the use of a lottery process, although most of these commenters argued the merits of lotteries over auctions, rather than over an alternative selection method. A number of commenters also favored the use of a point system. In addition, several commenters suggest that we impose arbitration to resolve mutual exclusivity, and one advocates the use of "conflict reduction methods" such as allowing "liberal channel and coverage changes." Commenters also propose various selection factors for use within a comparative selection process.

109. *Decision.* Based on our consideration of the record, we shall adopt a point system for resolving mutual exclusivity among LPFM applicants. The point system will include three selection criteria: (1) Established community presence; (2) proposed operating hours; and (3) local program origination. The system will employ voluntary time-sharing as a tie-breaker, that is, tied applicants will have an opportunity to aggregate points by submitting time-share proposals. As a last resort, where a tie is not resolved through time-sharing or settlement, we shall award successive equal license terms totaling eight years (the normal license term), without renewal expectancy for any of the licensees.

110. We conclude that the point system we are adopting is superior to alternative selection methods. As discussed above, the LPFM service will be reserved for noncommercial, educational service, and we are precluded by statute from using auctions to award station licenses on channels reserved for NCE use. Accordingly, we need not discuss an auction-based selection mechanism. In our proceeding reexamining full-service NCE comparative standards, we

tentatively rejected comparative hearings because they tend to be lengthy, cumbersome, and resource-intensive, without substantial offsetting benefits. These disadvantages make comparative hearings particularly ill-suited for selecting LPFM applicants. Like comparative hearings, mandatory arbitration and engineering solutions could impose significant delays on the LPFM authorization process and impose additional expenses on applicants. Moreover, although we will encourage individual settlements as a means of resolving mutual exclusivity among LPFM applicants, the Commission lacks the resources to administer a system that would require arbitration or the imposition of engineering solutions in every instance of mutual exclusivity. Finally, we conclude that a lottery system is comparatively inferior to a point system as an LPFM selection method. The primary benefits of a lottery system are the speed and ease with which it may be applied. As discussed, however, a point system offers like benefits. Moreover, there are unresolved legal and policy issues surrounding the use of a lottery system that pose a risk of delaying the introduction of LPFM service to the public. A point system does not entail similar risks. A lottery process is also inherently inferior to a point system in its ability to further the Commission's policy goals due its random nature. This randomness may be mitigated, but not eliminated, by weighting in favor of certain types of applicants. For these reasons, in the case of LPFM service, we reject all of these approaches in favor of a point system.

111. *Point System.* We believe that a point system is the best-suited selection methodology for promoting the Commission's policy goals for the LPFM service and speeding its introduction to the public. The Commission has used a point system procedure with success in the Instructional Television Fixed Service (ITFS). Like lotteries, point systems have the potential to be fast, inexpensive, and administratively efficient. Unlike lotteries, however, point systems make possible the selection of applicants based on objective criteria designed to best advance the public interest in the particular service at issue. Finally, the fact that LPFM licenses are non-transferable eliminates a major potential disadvantage of any system based on selection criteria; it prevents the integrity of the system from being undermined by the rapid assignment or transfer of station licenses by an entity that was awarded the license over other

applicants on some merit basis that is not necessarily found in the buyer.

112. *Point System Operation—Selection Criteria.* Our point system will include three selection criteria for mutually exclusive applicants: (1) Established community presence; (2) proposed operating hours; and (3) local program origination. These criteria are directly related to the advancement of the public interest that the Commission has found warrants the introduction of this new service. To protect the integrity of the selection process and ensure that its full benefits may be realized, we have chosen clear-cut selection factors that are objective in nature and do not require burdensome documentation.

113. *Established Community Presence.* For the reasons set forth, first, applicants that have an established community presence of at least two years' duration will be awarded one point. An applicant will be deemed to have an established community presence where, for a period of at least two years prior to application, the applicant is able to certify that it has been physically headquartered, has had a campus, or has had 75 percent of its board members residing within 10 miles of the reference coordinates of the proposed transmitting antenna. This criterion will favor organizations that have been operating in the communities where they propose to construct an LPFM station and thus have "track records" of community service and established constituencies within their communities. We believe that such applicants, because of their longstanding organizational ties to their communities, are likely to be more attuned to, and have organizational experience addressing, the needs and interests of their communities. In this regard, a number of commenters suggest preferences based on prior community service and/or community support. These suggested factors could be subjective in nature, however, and could be burdensome to demonstrate and verify. In addition, we believe that preferring organizations that have been in existence and physically present in the community for two years will help prevent maneuvering of the point system by those who might otherwise establish multiple organizations to file LPFM applications.

114. As we stated in our discussion of the community-based eligibility requirement, we do not believe this preference for established local entities contravenes the court's concerns in *Bechtel*. In adopting such a comparative factor, we further note that the *Bechtel* court was concerned that quantitative integration factors worked to the virtual

exclusion of other factors the court deemed potentially relevant in determining the relative quality of service that would be provided by an applicant. For LPFM, we are including other selection factors and giving them equivalent weight in the selection process. Moreover, while the two-year presence factor has a quantitative aspect, it is objectively verifiable and does not depend on promises of future performance, as the integration preference did.

115. Applicants claiming points for established community presence will be required to certify in their applications that they meet the above-stated conditions. The application form will identify appropriate documentation that must be made available for the point claimed. Applicants will be required to submit this information at the time of filing and it will be available in our public reference room. As with other broadcast applications, the Commission will rely on certifications but will use random audits to verify the accuracy of the certifications. This information also will enable applicants to verify that competing applicants qualify for the points they claim.

116. *Proposed Operating Hours.* Second, applicants that pledge to operate at least 12 hours per day will be assigned one point. As set forth below, the minimum operating hours for LPFM stations will be five hours per day. This criterion does not impose any additional requirement, but awards points to applicants that pledge longer hours of operation. Applicants that propose more intensive use of the broadcast frequencies they seek will advance the Commission's general policy objective of ensuring efficient spectrum use and providing more programming to serve their communities.

117. *Local Program Origination.* Finally, applicants that pledge to originate locally at least eight hours of programming per day will be assigned one point. For purposes of this criterion, local origination will be defined as the production of programming within 10 miles of the reference coordinates of the proposed transmitting antenna. This criterion derives from the service requirements for full-service broadcast stations, which are required to maintain the capacity to originate programming from their main studios. LPFM licensees will not be subject to main studio requirements, and will have discretion to determine the origination point of their programming. As a comparative selection factor, local program origination can advance the Commission's policy goal of addressing unmet needs for community-oriented

radio broadcasting. In this regard, we believe that an applicant's intent to provide locally-originated programming is a reasonable gauge of whether the LPFM station will function as an outlet for community self-expression.

118. With regard to both the second and the third selection criteria, applicants will be required to certify in their applications that they will meet the qualifying conditions for the points claimed. We will require successful applicants to adhere to their operating hours and local program origination pledges. As these criteria are prospective in nature, they will not be subject to verification at the application stage. The Commission will use random audits to verify the accuracy of the certifications, and will consider written complaints regarding actual performance. Consistent with our current practice, the staff may issue letters of inquiry requiring submission of documentation in connection with such audits. Where analysis of the requested information indicates that licensees have not fulfilled their pledges, appropriate action will be taken, including the possibility of monetary forfeitures and revocation proceedings.

119. In choosing selection criteria, we have carefully considered the comments we received advocating various selection factors, as well as the point system elements under consideration in our proceeding reexamining full-service NCE comparative standards. We believe that the factors we have chosen best balance our interest in furthering the specific localized objectives of the LPFM service and avoiding cumbersome, subjective and manipulable criteria. We note that a number of commenters advocate preferences for entities controlled by minorities. We shall defer consideration of this matter. The Commission is conducting fact-finding studies as to whether such preferences may be justified consistent with the Supreme Court's decision in *Adarand Constructors v. Pena*. Depending on the outcome of these studies, we will consider in the future whether to adopt minority control as a point system factor.

120. *1st Tiebreaker—Voluntary Time-Sharing*. In the event that the point system results in a tie among two or more mutually exclusive applicants, applicants will have the opportunity, within 30 days of the release of a public notice announcing the tie, to submit amendments to their applications incorporating voluntary time-share proposals. Each time-share proponent must propose to operate at least 10

hours per week. Time-share proposals may function as tie-breakers in two different ways. First, all of the tied applicants in a mutually exclusive group may propose a time-share proposal, in which case the staff will review and process all of the tied applications. Second, some of the tied applicants in a mutually exclusive group may submit a time-share proposal, in which case the time-sharers' points will be aggregated. Time-sharers may aggregate points under each of the three selection criteria. The purpose of allowing point aggregation is to encourage time-share arrangements as a means of resolving mutual exclusivity among tied LPFM applicants. In addition, we believe that time-sharing arrangements will serve the public interest by increasing participation by a variety of local community organizations in the operation of LPFM stations.

121. Our decision to incorporate voluntary time-sharing into the point system as a tie-breaker is based on our judgment that voluntary time-share arrangements have the potential to advance the Commission's goals for the new service. We noted in our proceeding reexamining full-service NCE comparative standards that "[a] number of commenters dislike mandatory share-time arrangements, finding them confusing to audiences, and potentially inefficient for licensees." On a voluntary basis, however, time-sharing has significant potential advantages for LPFM applicants. From a practical standpoint, the localized nature of the LPFM service is likely to enhance applicants' ability to time-share. In many cases, the small scale of LPFM operations also may make time-sharing more efficient for LPFM licensees. Furthermore, by increasing the number of new broadcast voices, time-sharing can advance our interest in promoting additional diversity in radio voices and program services through the LPFM service.

122. *Final Tiebreaker—Successive License Terms*. As a last resort, in cases where a tie is not resolved through settlement or time-sharing, the staff will review tied applications for acceptability. Applicants whose applications are grantable will be eligible for equal, successive license terms of no less than one year each, spanning a total of eight years. Successive license terms will not be granted for groups of more than eight tied, grantable applications. In the event of such a situation, the staff will dismiss all but the applications of the eight entities with the longest established community presences, as demonstrated

by the documentation submitted with their applications. If this does not limit the group of applications to eight, the entire group will be deemed ungrantable and will be dismissed if, after a final opportunity to submit settlement proposals within 30 days of the release of a public notice, the situation is not resolved. Where successive license terms are granted, there will be no renewal expectancy for any of the licensees. If for some reason a successive term licensee becomes unable to operate the station during its portion of the license term, that licensee's time will be divided equally among the remaining licensees for that station. If none of the tied, grantable applications proposes same-site facilities, then all will be granted at the same time. The sequence of the applicants' license terms will be determined by the sequence in which they file their applications for licenses to cover their construction permits, based on the day of filing. However, if any of the tied, grantable construction permit applications propose same-site facilities, the applicants proposing such facilities will be required, within an additional 30 days, to submit a settlement agreement proposing the sequence of the license terms for such applicants. If they fail to do so, they will be removed from the mutually exclusive group and the remaining applications will be granted.

123. *Settlements*. Applicants may propose a full settlement at any time during the selection process after the release of the public notice announcing the mutually exclusive group. Such settlements must be universal—that is, they must involve all of the mutually exclusive applicants within a group—and must comply with the Commission's general rules for settlements, including the requirement that the settling parties certify that they have not received consideration for the dismissal of their applications in excess of their legitimate and prudent expenses. Settlements may incorporate voluntary time-share proposals.

124. *Delegated Authority*. As we explained in our proceeding reexamining full-service NCE comparative standards, the Commission currently may delegate authority for applying point systems only to administrative law judges or to individual Commissioners. This statutory restriction is based on the fact that point systems technically are considered a type of simplified hearing. We believe that the staff would be able to administer the LPFM point system in a more streamlined manner than administrative law judges or individual

Commissioners. Therefore, we will seek authority from Congress, through specific legislation, to delegate responsibility to the staff for applying the point system. Until we receive such authority, the staff will refer point system proceedings to the Commission for disposition.

125. *Minor Modification of Authorized LPFM Stations.* We will adopt one exception to the window filing process to permit the filing at any time of certain "minor change" applications. For LP100 stations, a minor change may involve a transmitter site relocation of less than two kilometers. For LP10 stations, a minor change may involve a transmitter site relocation of less than one kilometer. Minor change applications may also propose a change to an adjacent or IF frequency or, upon a technical showing of reduced predicted interference, to any other frequency. Similarly, we will consider as minor any change in frequency necessary to resolve actual interference. All other changes will be classified as "major" and subject to our window filing procedures. Minor change applications also must satisfy the technical and legal requirements applicable to LPFM stations generally.

#### 4. License Terms and Renewals

126. *Background.* In the *NPRM*, we asked how often and how closely we should actively monitor, within the parameters of our statutory responsibility, the performance of LP100 stations in connection with the license renewal process. We asked whether a *pro forma* process would satisfy any statutory requirement, in the absence of specific public complaint. We also asked for comment on whether stations other than LP1000 stations should be authorized for finite, nonrenewable periods, such as five or eight years, to create additional opportunities for new entrants in the LPFM service. We explained that making broadcast outlets available to more speakers is a fundamental premise of this rulemaking effort, and that we did not expect that such a limitation would discourage the very modest investment required to build such a station. We sought comment on whether the disruption of service to the public that non-renewability would involve outweighed the potential benefits of making this service available to more speakers on a consecutive basis.

127. *Comments.* Commenters propose a variety of LPFM license terms and the majority argue that LPFM licenses should be renewable. Commenters suggest license terms of one, two, four, five, and seven years. Other commenters

contend that LPFM stations should have the same eight year license periods granted to full power stations.

128. Most commenters argue that all LPFM licenses should be renewable. Commenters also contend that LPFM licensees should have the same renewal expectancy as existing broadcasters.

129. *Decision.* We will provide LP100 and LP10 licensees with the same license terms and renewal expectancy as full-power FM radio stations. Accordingly, licenses will be renewed for a term not to exceed eight years from the date of expiration of the preceding license and LPFM licenses will be renewed, without consideration of competing applicants, if they have met the renewal standard of section 309(k)(1) of the Act. Upon considering the comments filed in this proceeding, we find that granting renewable licenses is consistent with the goals we are seeking to advance with this service. Moreover, we believe that nonrenewable licenses would discourage licensees from developing facilities and audiences to the fullest extent possible. We therefore will grant, with one exception described in paragraph 132 below, renewable licenses for LPFM stations.

130. Section 73.1020(a) divides the country into 18 different regions containing one or more states for purposes of establishing synchronized schedules for radio and television licenses. Radio station licenses expired under this rule in intervals between October 1, 1995, and August 1, 1998, and those licenses, renewed for eight years, will expire again between September 30, 2003, and July 31, 2006. We consistently grant initial terms for all new broadcast authorizations to fit into this synchronized schedule, although it means initial terms are usually for a period of less than eight years.

131. We adopt these synchronized schedules for LPFM licenses because maintaining the predictability, administrative efficiencies, public awareness, and fairness inherent in the existing synchronized schedule of license cycles serves the public interest. Accordingly, an initial LPFM license granted within any renewal period set forth in § 73.1020 of our rules will be assigned the expiration date assigned to those full-power FM stations licensed in the same region during the same licensing cycle. Because of the cyclical nature of this process, granting initial full eight-year license terms in the middle of a licensing cycle could undermine the synchronization of the whole process. Like full-power licenses, LPFM licenses may then be renewed for a term not to exceed eight years from the

expiration date of the preceding license. This approach will reduce the regulatory burden on LPFM broadcasters by affording them the same maximum license terms now granted other broadcasters, and will correspondingly reduce the associated burdens on the Commission. We see no compelling reason to vary from the term set by Congress for full-power stations. We further note that, while we will authorize eight-year license terms, the public may scrutinize station performance and file complaints with the Commission at any time during the term of an LPFM license.

132. The one exception to this rule pertains to situations where we grant successive license terms under the final tiebreaker procedures. These tiebreaker licenses will not be based on the synchronized licensing cycle of § 73.1020. If applicants were granted last resort tiebreaker licenses conformed to the synchronized schedule, each licensee, depending on where in the renewal cycle we were, might receive authorizations to operate for a very short period of time, *e.g.*, a few months, with no opportunity to renew their license.

133. We will also extend the renewal expectancy provisions of section 309(k)(1) of the Act to LPFM licensees. Providing incumbents with the likelihood of renewal encourages licensees to make investments to ensure quality service. Upon receiving an application for renewal of an LPFM license, we will determine whether the licensee has served the public interest, convenience, and necessity; whether there have been any serious violations of the Act or Commission rules; and whether there have been any serious violations that, taken together, would constitute a pattern of abuse. Only if incumbent LPFM licensees fail to meet these requirements will other applicants be eligible to apply for the same license. As noted, an exception is where the license is held for successive terms as a result of the final tiebreaker procedure. Such licenses will be nonrenewable.

#### 5. Transferability

134. *Background.* In the *NPRM*, we noted that some commenters urged us to restrict the sale of LPFM stations to deter the filing of speculative applications and trafficking in construction permits. We stated our belief that, in light of the limits we proposed on ownership of LPFM stations, we did not believe that it was necessary to restrict the sale of any class of LPFM station. We invited commenters to address this issue, including whether restrictions on sales would be advisable if the Commission

adopts ownership rules other than those proposed in the *NPRM*.

135. *Comments.* While comments on the transferability of LPFM stations were mixed, the majority of commenters that addressed this issue supported either prohibiting transfers altogether or severely restricting them. A few commenters were in favor of permitting transferability of LPFM stations, arguing generally that owners who have invested in such stations should be able to realize the fair market value of such stations.

136. *Decision.* After careful review of the comments, we have decided to prohibit the transfer of construction permits and licenses for LPFM stations. Contrary to our initial view stated in the *NPRM*, we are persuaded that a prohibition on transfers will best promote the Commission's interest in ensuring that spectrum is used for low power operations as soon as possible, without the delay associated with license speculation. We are also persuaded that the goals of this new service, to foster opportunities for new radio broadcast ownership and to promote additional diversity in radio voices and program services, will best be met if unused permits and licenses are returned to the Commission. Given the modest facilities and noncommercial nature of LPFM stations, we do not believe non-transferability will discourage LPFM licensees from serving their listeners.

### G. Programming and Service Rules

#### 1. Public Interest Requirements

137. *Background.* In the *NPRM*, we proposed to require LP1000 licensees to adhere to the same part 73 requirements regarding public interest programming as apply to full-power FM licensees. We noted that this meant that each LP1000 licensee would be required to air programming serving the needs and interests of its community, using its discretion as to how to meet that obligation. We also listed several other rules, such as those regarding the broadcasting of taped, filmed, or recorded material, sponsorship identification, personal attacks, and periodic call sign announcements and sought comment on whether they should apply to LPFM stations. We stated a disinclination, however, to impose public interest programming requirements on LP100 and LP10 licensees, given the size of operations we envisioned and the simplicity we were striving to achieve in this service. We expected that the very nature of LP100 and LP10 would ensure that they

served the needs and interests of their communities.

138. *Comments.* We received few comments on public interest requirements. Some commenters contend that we must apply all of the same basic public interest requirements to LPFM licensees that are applied to full-power broadcasters. Other commenters oppose any requirements for LP100 and LP10 stations, arguing that it would place an unreasonable burden on those stations.

139. *Decision.* Every broadcast licensee is required to operate its station in the public interest. Given the nature of the LPFM service, however, we conclude that certain obligations imposed on full-power radio licensees would be unnecessary if applied to LPFM licensees. We expect that the local nature of this service, coupled with the eligibility and selection criteria we are adopting, will ensure that LPFM licensees will meet the needs and interests of their communities. Thus, for example, consistent with our rules for low power television, we will not adopt a rule requiring LPFM licensees to provide programming responsive to community issues or to maintain a list of issues addressed or specific programs aired.

140. We will, however, apply certain specific rules applicable to all broadcasters to LPFM licensees. First, LPFM operators must, of course, comply with those rules required by statute. Thus, for example, like all broadcasters, LPFM licensees will be expressly prohibited from airing programming that is obscene, and restricted from airing programming that is "indecent" during certain times of the day. They must also comply with our sponsorship identification and political programming rules. In addition, we will require LPFM licensees to comply with our rules regarding taped, filmed, or recorded material, personal attacks, and periodic call sign announcements. Violation of any of these rules by an LPFM licensee would be as detrimental to its audience as violation by a full-power broadcaster, and widespread disregard for these rules could outweigh the benefits to the public this service is intended to bring.

#### 2. Locally Originated Programming

141. *Background.* In the *NPRM*, we sought comment on whether to impose a minimum local origination programming requirement on any of the three proposed classes of LPFM service. We opined that listeners benefit from local programming, because it often reflects needs, interests, circumstances, or perspectives that may be unique to

that community. We also noted that many of LPFM's initial supporters argued that the Commission's rules should actively promote locally oriented programming by, for instance, limiting the amount of network programming a station could air. We expressed an expectation, however, that a significant amount of programming for LPFM stations would be locally produced as a matter of course. We also asserted that programming does not have to be locally produced to have interest or value to the listeners in a particular locale. Accordingly, we stated that we were inclined to give LP100 and LP10 licensees the same discretion as full-power licensees to determine what mix of local and non-local programming would best serve the community. To promote new broadcast voices, however, we proposed that an LPFM station not be permitted to operate as a translator, retransmitting the programming of a full-power station.

142. *Comments.* Many commenters favor the adoption of a locally originated programming obligation. A number of commenters oppose any specific obligations on LPFM licensees regarding locally originated programming. Commenters generally agree that LPFM stations should not be used as translators for retransmitting full-power station programming.

143. *Decision.* We continue to believe that LPFM licensees' provision of a significant amount of locally originated programming will enhance the success of this service. This is why we are encouraging the provision of locally originated programming by means of a licensing preference. However, we also believe that in certain cases, programming need not be locally originated to be responsive to local needs. Therefore, we do not believe it is necessary to impose specific requirements for locally originated programming on LPFM licensees. We believe that the nature of the service, combined with the eligibility criteria and preferences we are adopting, will ensure that LPFM licensees provide locally originated programming or programming that is otherwise responsive to local needs.

144. We do, however, agree with commenters that LPFM stations should not be used for retransmitting, either terrestrially or via satellite, the programming of full-power stations. This would significantly undercut a fundamental basis for the establishment of this service. This prohibition against LPFM stations operating as translators also promotes locally originated programming by eliminating a

significant avenue for obtaining non-locally originated programming.

### 3. Political Programming Rules

145. *Background.* In the *NPRM*, we sought comment on the applicability of political programming rules to each class of low power radio service that we might adopt. We explained that sections 312(a)(7) and 315 of the Communications Act, as amended, underlie some of these rules, and each is explicitly applicable to "broadcast stations." Thus, we lack the discretion not to apply these provisions to any class of LPFM station, regardless of size. We specifically sought comment on how each of these political broadcasting rules should be applied to low-power stations, taking into consideration our statutory mandate.

146. *Comments.* The few comments that we received on this issue support our tentative conclusion to adopt political programming rules for LPFM stations.

147. *Decision.* We conclude that we are required by statute to apply the same political programming rules to low-power stations that we apply to full-power stations. There is ample precedent for how the political programming rules apply to noncommercial stations and thus how the rules will apply to LPFM. For example, section 312(a)(7) of the Communications Act, as amended, requires broadcasters to allow legally qualified candidates for federal office reasonable access to their facilities, but because LPFM stations are noncommercial educational facilities, they must provide such access on a free basis. Section 315(a) of the Communications Act, as amended, requiring equal opportunities for candidates, will also apply.

148. In conformance with the statutory mandate, we will apply the reasonable access and equal opportunities provisions of the statute and the Commission's rules, as well as related policies delineated in prior Commission orders, to LPFM licensees. With respect to reasonable access, the Commission's policy has generally been to defer to the reasonable, good faith judgment of licensees as to what constitutes "reasonable access" under all the circumstances present in a particular case. Noncommercial educational stations, including LPFM stations, however, may not support or oppose any candidate for political office. LPFM licensees cannot charge legally qualified candidates for the time used on their stations and no LPFM licensee may discriminate among candidates "in practices, regulations,

facilities, or services" or "make or give any preference to any candidate for public office." In addition, we will require LPFM licensees to maintain a political file, if needed, to record the requisite particulars. The political file shall be maintained for public inspection at an accessible place in the station's community. Finally, we will resolve any issues involving LPFM licensees on a case-by-case basis to determine whether the licensee is acting within the spirit of the statute and Commission rules and policies on political programming.

### 4. Station Identification

149. *Background.* In the *NPRM*, we sought comment on whether to adopt a call sign system that would identify a low power radio station as such. We noted in the *NPRM* that a nonstandard (five letter) identifying call sign system was used for the first several years of licensing low power television (LPTV) stations, but that the Commission later allowed LPTV stations to adopt call signs that were like those of full power stations, but were appended with the suffix "-LP."

150. *Comments.* Commenters are divided over whether it would be in the public interest to employ special call signs that would help identify LPFM stations as low power. Some commenters argue that the use of call signs would help to identify legitimate from illegal stations, or help with the identification of malfunctioning or interfering stations. Other commenters feel that a new system of call signs for LPFM would be confusing to the public, with little or no compensating public benefit, and suggest that ordinary FM call signs be issued to new LPFM stations. Some commenters also argue that the use of call signs for low power broadcasters would not be burdensome to these broadcasters.

151. *Decision.* The question raised by the *NPRM* was not whether to have call signs for LPFM stations, as apparently misunderstood by some commenters, but whether to include a special designation in the call signs identifying LPFM stations as low power stations. It is imperative for a variety of reasons, including enforcement, convenience to the public, and conformance with international agreements, that all broadcasters, including low power broadcasters, use unique identifiers on the air. We also conclude that it will be extremely beneficial for LPFM operators to build an "identity" and do so in a radio-familiar manner. We were guided on this issue by our experience with low power television. In that service, we require stations' call signs to indicate

that they are low power stations, by appending the suffix "-LP" to their four-letter call signs. We thus will require low power stations to positively identify themselves. To avoid confusion for the public and to inform the public of the reasonable expectations they may have for service, the suffix "-LP" will be appended to LPFM station call signs (e.g., "WXYZ-LP"). Such identification will inform the public that a station is a low power station. An LPFM four-letter call sign cannot exactly duplicate the call sign of any other broadcast station and cannot contain the same first four letters as another station's call sign without that station's written consent. The Commission's current call sign system will be modified to accommodate low power stations in the manner four letter call signs are provided to low power TV stations.

### 5. Operating Hours

152. *Background.* In the *NPRM*, we said we were not inclined to adopt minimum operating hours for LP100 or LP10 stations. However, we expressed our concern that spectrum might be underutilized if low power stations were licensed but unused or underused, and asked for comments on this issue.

153. *Comments.* For LP100 and LP10 services, commenters either argue for: (1) low or no minimum operating hours, because of the cost burden involved in requiring extended hours of operations, or (2) a time sharing arrangement among local broadcasters. This latter group of commenters argue that time sharing arrangements would reduce the part-time warehousing of spectrum that would occur by a single non full-time licensee, and would permit the entry of additional new voices into the local radio market.

154. *Decision.* In order to ensure an effective utilization of channels, we will impose the same minimum operating hour requirements on LP100 and LP10 FM stations that we currently apply to full-power noncommercial educational FM stations. Under our rules, "[a]ll noncommercial educational FM stations are required to operate at least 36 hours per week, consisting of at least 5 hours of operation per day on at least 6 days of the week; however, stations licensed to educational institutions are not required to operate on Saturday or Sunday \* \* \*". These requirements are not extensive and should not impose an inordinate burden on LPFM licensees. In cases where individual parties are interested in applying for LP100 and LP10 stations but do not have sufficient programming to meet the minimum operating hour requirements, we encourage those parties to find other

applicants with whom they could share the license. To accommodate those situations in which the demand for airtime does not exceed the spectrum availability, however, we will not automatically delete a station that is operating at less than the minimum hours. When another applicant comes forward that wants to utilize the underused channel, that applicant can notify the Commission of the incumbent's failure to meet minimum hours and demand that the incumbent return its license or agree to a time-sharing arrangement that will accommodate both parties.

#### 6. Main Studio Rule, Public File Rule and Ownership Reporting Requirements

155. *Background.* In the *NPRM*, we invited comment on whether LPFM stations of each class should be subject to the variety of other rules in part 73 with which full power stations must comply, including, for example, the main studio rule (47 CFR 73.1125(a)), public file rule (47 CFR 73.3526 and 73.3527), and the periodic ownership reporting requirements (47 CFR 73.3615). Given the purposes and power levels of LP1000 stations, we tentatively concluded that LP1000 licensees should generally meet the part 73 rules applicable to full power FM stations. However, the *NPRM* sought comment on whether sufficient useful purpose would be served in applying each rule to these licensees. We were disinclined to apply these service rules to LP10 stations, and sought comment with regard to the rules appropriate for LP100 stations.

156. We also proposed to treat low power radio stations like full power stations for the purposes of our environmental rules and responsibilities under the National Environmental Protection Act. With respect to protection against exposure to radio frequency radiation, we noted that LP1000 and LP100 stations would operate at the power levels of some Class A FM stations and thus the same safety and environmental concerns would seem to apply. We therefore proposed to apply to these stations the maximum permissible exposure limits and related regulatory provisions that apply to FM radio stations. We invited comment on this matter, and specifically on whether and how we should treat LP100 stations differently from LP1000 stations and, if so, why. We also sought comment on how our environmental rules should apply to LP10 stations, if this low power radio class were adopted.

157. *Comments.* Comments were divided on this issue. Most broadcasters

who commented on this issue agree that LPFM stations should generally follow existing regulations for full-power stations, but some note that they should only have minimal day-to-day regulatory requirements because of the difficulty of survival if such stations had to follow the exact rules that full-power stations are required to follow. Many other commenters state that the Commission should not require LPFM stations to comply with a main studio, public file or ownership reporting requirement, because of the burdens they would impose.

158. *Decision.* We conclude that we should not impose the main studio, public file, or ownership reporting requirements on LPFM stations. We believe these requirements would place an undue burden on such small noncommercial educational stations. In addition, we believe that the nature of this service will ensure that LPFM stations are responsive to their communities. This approach is consistent with our treatment of low power television stations.

159. As to equal employment opportunity (EEO) rules, we conclude that all LPFM licensees must comply with the Commission's long-standing prohibition against employment discrimination. We believe that a finding that any broadcaster has engaged in employment discrimination raises a serious question as to its character qualifications to be a Commission licensee. In addition to the prohibition against discrimination, the broadcast EEO Rule also includes EEO program requirements. These requirements are not currently in force. In any event, we did not enforce compliance with the EEO program requirements by broadcast stations with fewer than five full-time employees. Because we anticipate that the vast majority of this class of licensees will employ very few (if any) full-time, paid employees, we do not intend to require LPFM licensees to comply with any EEO program requirements we adopt in our pending rulemaking proceeding.

#### 7. Construction Permits

160. *Background.* In the *NPRM*, the Commission proposed an 18-month construction period for LP100 stations and a twelve-month limit for LP10 stations. The shorter construction time limits for LP100 and LP10 stations (relative to the three-year construction period that is allowed to full-power FM stations) were meant to reflect the simpler construction requirements for these facilities. The 18- and 12-month periods also assumed that difficulties

with obtaining the requisite construction permits would be minimal.

161. *Comments.* Many commenters state that the proposed construction periods for LP100 and LP10 stations are reasonable, given the relatively smaller facilities and simpler construction involved with these stations. Other commenters argue for even shorter construction periods for LP100 and micro-radio services. Some commenters thought that imposing strict construction time limits would help to prevent spectrum hoarding and help encourage the rapid deployment of the spectrum resources.

162. *Decision.* We will adopt an 18-month construction period for both LP10 and LP100 services, and it will be strictly enforced. While we believe that most permittees will be able to and will have ample incentive to construct their low power stations in far less than 18 months, given the relative technical simplicity of LP100 and LP10 stations, we do not wish to burden applicants who may encounter unforeseen difficulties with a shorter construction period. We recognize that while the facilities themselves will be relatively easy to construct, zoning and permitting processes may, in some cases, delay construction. However, we expect that applicants will have well-considered proposals in this regard and we do not intend to grant extensions to the construction permits. Therefore, to avoid the complications and delays of extension rulings, as well as to encourage well-planned and executed proposals, we have allowed what we consider to be more than ample time for permittees to complete construction and begin operation, and we expect to see many stations in operation long before the allowed 18 months.

#### 8. Emergency Alert System

163. *Background.* In the *NPRM*, we proposed to treat LP1000 facilities like full-power FM stations for the purposes of the Emergency Alert System (EAS). We explained that, in this way, we would expect to avoid having significant numbers of people deprived of this critical information resource. By contrast, because of their extremely small coverage areas and correspondingly sized audiences, as well as their limited resources, we proposed that LP10 stations, if authorized, not be required to participate in the EAS. We sought comment on these proposals and also on how LP100 stations, with their intermediate size and audience reach, should fit into the EAS structure.

164. *Comments.* Some commenters argue that compliance should not be

required for LP100 or LP10 stations because small operations and coverage areas make compliance unnecessary and too expensive; stations other than LP100 and LP10 stations can take on the role of alerting the community to emergencies; the short range and secondary status of LP100 stations make them unsuitable for emergency message propagation; and removing LP100 stations from the air during national emergencies would help prevent interference during such crisis times. Other commenters suggest that EAS be required only under certain circumstances. A few commenters provide suggestions on how to overcome the expense involved in EAS participation. Other commenters stress the importance of participation in EAS by all broadcast stations.

165. *Decision.* We conclude that LPFM stations should be required to participate in the EAS structure, but in a modified way. Our requirements will balance the cost of compliance, the ability of stations to meet that cost, and the needs of the listening public to be alerted in emergency situations. LPFM licensees will be able to satisfy our EAS requirements if they install and operate Commission-certified decoding equipment, which will alert station personnel to emergency alerts. Once that decoding equipment is installed, station personnel must pass any national emergency audio message on to listeners as prescribed in our rules. As is the case for full service broadcasters, LPFM participation at the state and local levels will be on a voluntary basis.

166. The EAS is composed of several entities, including FM broadcast stations, LPTV stations, and cable systems operating on an organized basis at the national, state, and local levels. The EAS alert is designed to make viewers and listeners aware of emergencies that may affect them so that they may take appropriate protective action or seek additional information. Though the arguments of financial hardship for LPFM licensees to implement the EAS are well taken, alert messages are potentially important to all listeners and viewers, and commenters do not persuade us that the LPFM stations should, as a class, be exempted from this important public safety function. We will, however, minimize the cost of effective participation for LPFM licensees. Accordingly, we amend § 11.11(a) to include LPFM stations in the list of the EAS entities. We also amend the Broadcast Station Timetable of § 11.11(a) to set out the requirements for LPFM.

167. While we will require EAS participation, we will exempt LPFM

stations from purchasing some of the EAS equipment required for other participants under our rules. In general, EAS equipment must be able to perform the functions described in all of our rules regulating EAS. However, we relaxed some of these requirements for Class D noncommercial educational FM and LPTV stations. Because LPFM stations will also provide service to small audiences, we exempt LPFM stations from the requirement to install and operate encoders. We believe that the cost to LPFM licensees of installing and operating both encoding and decoding equipment outweighs the benefits that these small stations could provide to the public.

168. While we are not requiring LPFM stations to install encoding equipment, all LPFM stations are required to use decoding equipment that notifies the station in case of any emergency. We recognize that there will be costs associated with EAS decoders, but believe the costs are justified. Current Commission-certified integrated encoder/decoder equipment costs \$1,500 or more depending on the options a station wants to install. We note that today's manufacturers only produce certified encoders and decoders as integrated units, as that is the only demand that exists. Noncertified decoding equipment, however, is currently available and is advertised in some places for as little as \$650. Thus, it appears that Commission-certified decoding equipment should be available for well under \$1000 and should be able to reach the market in the near future. Accordingly, we will require the use of Commission-certified EAS decoders or decoder/encoders by all LPFM stations when they commence operations. It will be several months before the first LPFM stations are on the air. Given that decoders are already on the market, this should be ample time to obtain Commission certification and make certified units available for purchase. If certified decoder equipment is not available at that time, we can grant a temporary exemption for LPFM stations until such time as it is reasonably available. Once the licensee has installed decoding equipment, if the station is on the air at the time it receives a national emergency alert message, station personnel must pass the information along to listeners.

169. Finally, we will continue to grant waivers of EAS requirements to broadcasters, including LPFM licensees, on a case-by-case basis in appropriate circumstances upon a sufficient showing of need. As we outlined in the *EAS First Report and Order*, the waiver request must contain at least the

following: (1) Justification for waiver, with reference to the particular rule sections for which a waiver is sought; (2) information about the financial status of the entity, such as a balance sheet and income statement for up to the previous two years (audited, if possible); (3) the number of other entities that serve the requesting entity's coverage area and that have or are expected to install EAS equipment; and (4) the likelihood (such as proximity or frequency) of hazardous risks to the requesting entity's audience.

### III. Conclusion

170. In this final rule, we set the stage for a new dimension in radio broadcasting, creating additional, affordable outlets for the expression of views and the provision of information and entertainment to local communities. By limiting participants in this service to noncommercial, educational organizations, we hope to ensure that this service will meet needs unmet by the commercial radio service. Through eligibility requirements, selection preference factors, and the relatively small range of LPFM stations, we hope to create a service that will serve the distinct needs of small local communities. Mindful of the need to protect the technical integrity of the existing radio service and to preserve its potential transition to digital service, however, we are proceeding cautiously. Accordingly, we are limiting radio stations in the LPFM service to a maximum of 100 watts. We are also maintaining 2nd-adjacent channel protection. Based on our engineers' careful review of the technical data submitted to the Commission, as well as their own studies, we are confident that any risk of interference is small and, on balance, outweighed by the benefits this new service will bring.

### IV. Administrative Matters

171. *Paperwork Reduction Act Analysis.* This *Report and Order* has been analyzed with respect to the Paperwork Reduction Act of 1995, and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and recordkeeping requirements will be subject to approval by the Office of Management and Budget as prescribed by the Act.

### V. Final Regulatory Flexibility Act Analysis

172. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of*

*Proposed Rulemaking (NPRM).* The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. No comments were received in response to the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

#### *Need for and Objectives of the Report and Order*

173. The Commission received petitions for rulemaking asking for the creation of a low power radio service. Because they raised similar or identical issues, the Commission coordinated its responses to them. The Commission released public notices of its receipt of three of the proposals and invited public comment on them. In response to significant public support, the Commission released the *NPRM* to propose a new, low power FM service.

174. In the *Report and Order*, the Commission is adopting a 100-watt class (LP100) and a 10-watt class (LP10). Because of the predicted lower construction and operational costs of LPFM stations as opposed to full power facilities, we expect that small entities would be expected to have few economic obstacles to becoming LPFM licensees. Therefore, this new service may serve as a vehicle for small entities and under-represented groups (including women and minorities) to gain valuable broadcast experience and to add their voices to their local communities.

#### **Summary of Significant Issues Raised by Public Comments in Response to the IRFA**

175. No comments were received in response to the IRFA.

#### *Description and Estimate of the Number of Small Entities to Which Rules Will Apply*

176. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is

independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 per cent) are small entities.

177. The Small Business Administration defines a radio broadcasting station that has \$5 million or less in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial, religious, educational, and other radio stations. The 1992 Census indicates that 96 percent (5,861 of 6,127) radio station establishments produced less than \$5 million in revenue in 1992. Official Commission records indicate that 11,334 individual radio stations were operating in 1992. As of December 31, 1998, Commission records indicate that 12,615 radio stations were operating, of which 7,832 were FM stations.

178. The rules will apply to a new category of FM radio broadcasting service. It is not known how many entities that may seek to obtain a low power radio license. Nor do we know how many of these entities will be small entities. We note, however, that in the year since we issued the *NPRM*, the Commission's LPFM website has received approximately 100,000 hits, demonstrating the interest of individuals and groups in operating such a facility. In addition, we expect that, due to the small size of low power FM stations, small entities would generally have a greater interest than large ones in acquiring them.

#### *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

179. The Commission is creating a new broadcasting service that may allow hundreds or thousands of small entities to become broadcast licensees for the first time. This endeavor will require the collection of information for the purposes of processing applications for (among other things) initial construction permits, assignments and transfers, and renewals. We will also require lower power radio stations to comply with some of the reporting, recordkeeping,

and other compliance requirements as full power radio broadcasters.

#### *Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

180. The RFA requires agencies to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

181. The LP100 and LP10 services are likely to create significant opportunities for new small businesses. In addition, the Commission has taken steps to minimize the impact on existing small broadcasters.

182. *Creating New Opportunities for Small Businesses.* The *Report and Order* adopts a number of rules designed to help small businesses obtain and retain LP100 and LP10 licenses. These include ownership rules, and exemptions from mandatory electronic filing and main studio requirements.

183. The *Report and Order* adopts ownership rules to assist small entities acquire or construct LPFM stations. Parties with attributable interests in any full power broadcast facilities are not eligible to have any ownership interest in any low power radio stations; this prevents large group owners (or even large single-station owners) from constructing and operating LPFM facilities that might otherwise be available to small entities. The local and national ownership restrictions of one station per community and, initially, one station, and ultimately, 10 stations, nationwide are intended to ensure that ample LPFM stations are available for small entities. However, the ownership rules also prohibit small entity full power broadcasters from acquiring LPFM licenses.

184. The *Report and Order* also modifies the application of some of our programming and service requirements for LPFM stations. Full power and LPFM stations alike are required to maintain a public file that includes their authorizations, issues and programming lists, and political files. However, unlike full power stations which must create quarterly issues and programming lists and maintain a main studio with a staff

presence, LPFM stations must generate only annual issues and programming lists, and need not maintain a main studio, and so may operate out of even a private residence. In addition, while full power and LPFM stations both must participate in the Emergency Alert System (EAS) and have decoding equipment, LPFM stations need not purchase encoding equipment. These exemptions from and modifications of the application of the Commission's programming and service requirements to LPFM stations will reduce administrative burdens and costs for small business licensees.

185. The *Report and Order* also adopts filing requirements that should help small businesses. Although the *NPRM* proposed to mandate electronic filing for LPFM stations, the *Report and Order* declined to do so for the first round of LP100 applications. The Commission made this decision because it recognized that there might be a disparity between applicants for LP100 licenses in terms of computer resources and skills. This result should help small businesses without more advanced technological resources still participation in the LP100 application process. The *Report and Order* adopts a window filing process, as opposed to a first-come, first-served process; some commenters claimed that the latter process would favor applicants with superior financial and technical resources.

186. *Minimizing Impact on Existing Small Business Broadcast Stations.* The *Report and Order* has also adopted an

alternative that will minimize the impact on existing small business broadcast stations. LP100 and LP10 stations will be noncommercial, educational stations, and so will not compete with small business commercial broadcasters for advertising revenue.

*Report to Congress*

187. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, see 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Report and Order*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**. See 5 U.S.C. 604(b).

**VI. Ordering Clauses**

188. Accordingly, pursuant to authority contained in sections 1, 4(i), 303 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303, part 73 of the Commission's rules, 47 CFR part 73, is amended.

189. The amendments shall be effective April 17, 2000.

190. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *Report and Order*, including the Final Regulatory Flexibility Act Analysis, to the Chief Counsel for the Small Business Administration.

191. This proceeding is terminated.

**List of Subjects**

47 CFR Part 11

Emergency alert system.

47 CFR Part 73 and Part 74

Radio broadcasting.

Federal Communications Commission.

**Magalie Roman Salas,**  
*Secretary.*

**Rule Changes**

For the reasons set forth in the preamble parts 11, 73 and 74 of Title 47 of the U.S. Code of Federal Regulations is amended to read as follows:

**PART 11—EMERGENCY ALERT SYSTEM (EAS)**

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

**Authority:** 47 U.S.C. 151, 154(i) and (o), 303(r), 544(g) and 606.

2. Section 11.11 is amended by:

(1) Adding in paragraph (a) the words "Low Power FM (LPFM)" in the first sentence after the word "FM".

(2) Revising the table "Timetable Broadcast Stations".

(3) Revising the first sentence of paragraph (b).

3. The amendments are to read as follows:

**§ 11.11 The Emergency Alert System (EAS).**

\* \* \* \* \*

TIMETABLE—BROADCAST STATIONS

Requirement	AM&FM	TV	FM Class D	LPTV	LPFM <sup>1</sup>
Two-tone encoder <sup>2,3</sup> .....	Y	Y	N	N	N
Two-tone decoder <sup>4,5</sup> .....	Y	Y	Y	Y	N
EAS decoder .....	Y 1/1/97	Y 1/1/97	Y 1/1/97	Y 1/1/97	Y
EAS encoder .....	Y 1/1/97	Y 1/1/97	N	N	N
Audio message .....	Y 1/1/97	Y 1/1/97	Y 1/1/97	Y 1/1/97	Y
Video message .....	NA	Y 1/1/97	N/A	Y 1/1/97	N/A

<sup>1</sup> LPTV stations that operate as television broadcast translator stations are exempt from the requirement to have EAS equipment.

<sup>2</sup> Effective July 1, 1995, the two-tone signal must be 8–25 seconds.

<sup>3</sup> Effective January 1, 1998, the two-tone signal may only be used to provide audio alerts to audiences before EAS emergency messages and the required monthly tests.

<sup>4</sup> Effective July 1, 1995, the two-tone decoder must respond to two-tone signals of 3–4 seconds duration.

<sup>5</sup> Effective January 1, 1998, the two-tone decoder will no longer be used.

\* \* \* \* \*

(b) Class D noncommercial educational FM stations as defined in § 73.506, LPFM stations as defined in §§ 73.811 and 73.853, and LPTV stations as defined in § 74.701(f) are not required to comply with § 11.32. \* \* \*

\* \* \* \* \*

4. Section 11.51 (e) is revised to read as follows:

**§ 11.51 EAS code and Attention Signal Transmission requirements.**

\* \* \* \* \*

(e) Class D non-commercial educational FM stations as defined in § 73.506 of this chapter, Low Power FM (LPFM) stations as defined in §§ 73.811

and 73.853 of this chapter, and low power TV (LPTV) stations as defined in § 74.701(f) of this chapter are not required to have equipment capable of generating the EAS codes and Attention Signal specified in § 11.31.

\* \* \* \* \*

5. Section 11.53(a)(3) is revised to read as follows:

**§ 11.53 Dissemination of Emergency Action Notification.**

(a) \* \* \*

(3) Wire services to all subscribers (AM, FM, low power FM (LPFM), TV, LPTV and other stations).

\* \* \* \* \*

6. Section 11.61 is amended by revising the last sentence of paragraph (a)(1)(v) and revising paragraph (a)(2)(iii) to read as follows:

**§ 11.61 Tests of EAS procedures.**

(a) \* \* \*

(1) \* \* \*

(v) \* \* \* Class D non-commercial educational FM, LPFM and LPTV stations are required to transmit only the test script.

(2) \* \* \*

(iii) Class D non-commercial educational FM, LPFM and LPTV stations are not required to transmit this test but must log receipt.

\* \* \* \* \*

**PART 73—RADIO BROADCAST SERVICES**

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

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

2. Section 73.209 is amended by adding paragraph (c) to read, as follows:

**§ 73.209 Protection from interference.**

\* \* \* \* \*

(c) Permittees and licensees of FM stations are not protected from interference which may be created by the grant of a new LPFM station or of authority to modify an existing LPFM station, except in instances where the FM station would receive predicted interference from an LPFM station within the FM station's 3.16 mV/m (70 dBu) contour.

3. Section 73.508 is revised to read as follows:

**§ 73.508 Standards of good engineering practice.**

(a) All noncommercial educational stations and LPFM stations operating with more than 10 watts transmitter power output shall be subject to all of the provisions of the FM Technical Standards contained in subpart B of this part. Class D educational stations and LPFM stations operating with 10 watts or less transmitter output power shall be subject to the definitions contained in § 73.310, and also to those other provisions of the FM Technical Standards which are specifically made applicable to them by the provisions of this subpart.

(b) The transmitter and associated transmitting equipment of each

noncommercial educational FM station and LPFM station licensed for transmitter power output above 10 watts must be designed, constructed and operated in accordance with § 73.317.

(c) The transmitter and associated transmitting equipment of each noncommercial educational FM station licensed for transmitter power output of 10 watts or less, although not required to meet all requirements of § 73.317, must be constructed with the safety provisions of the current national electrical code as approved by the American National Standards Institute. These stations must be operated, tuned, and adjusted so that emissions are not radiated outside the authorized band causing or which are capable of causing interference to the communications of other stations. The audio distortion, audio frequency range, carrier hum, noise level, and other essential phases of the operation which control the external effects, must be at all times capable of providing satisfactory broadcast service. Studio equipment properly covered by an underwriter's certificate will be considered as satisfying safety requirements.

4. Section 73.514 is added to read as follows:

**§ 73.514 Protection from interference.**

Permittees and licensees of NCE FM stations are not protected from interference which may be created by the grant of a new LPFM station or of authority to modify an existing LPFM station, except in instances where the NCE FM station would receive interference from an LPFM station within the 3.16 mV/m (70 dBu) contour.

5. Subpart G of part 73 is revised to read as follows:

**Subpart G—Low Power FM Broadcast Stations (LPFM)**

Sec.

73.801 Broadcast regulations applicable to LPFM stations.

73.805 Availability of channels.

73.807 Minimum distance separation between stations.

73.808 Distance computations.

73.809 Interference protection to full service FM stations.

73.811 LPFM power and antenna height requirements.

73.812 Rounding of power and antenna heights.

73.813 Determination of antenna height above average terrain (HAAT).

73.816 Antennas.

73.825 Protection to Reception of TV Channel 6.

73.840 Operating power and mode tolerances.

73.845 Transmission system operation.

73.850 Operating schedule.

73.853 Licensing requirements and service.

73.854 Unlicensed operations.

73.855 Ownership limits.

73.858 Attribution of LPFM station interests.

73.860 Cross-ownership.

73.865 Assignment and transfer of LPFM authorizations.

73.870 Processing of LPFM broadcast station applications.

73.872 Selection procedure for mutually exclusive LPFM applications.

73.873 LPFM license period.

73.875 Modification of transmission systems.

73.877 Station logs for LPFM stations.

73.878 Station inspections by FCC; availability to FCC of station logs and records.

73.879 Signal retransmission.

73.881 Equal employment opportunities.

**§ 73.801 Broadcast regulations applicable to LPFM stations.**

The following rules are applicable to LPFM stations:

Section 73.201 Numerical definition of FM broadcast channels.

Section 73.220 Restrictions on use of channels.

Section 73.267 Determining operating power.

Section 73.277 Permissible transmissions.

Section 73.297 FM stereophonic sound broadcasting.

Section 73.310 FM technical definitions.

Section 73.312 Topographic data.

Section 73.318 FM blanketing interference.

Section 73.322 FM stereophonic sound transmission standards.

Section 73.333 Engineering charts.

Section 73.503 Licensing requirements and service.

Section 73.508 Standards of good engineering practice.

Section 73.593 Subsidiary communications services.

Section 73.1015 Truthful written statements and responses to Commission inquiries and correspondence.

Section 73.1030 Notifications concerning interference to radio astronomy, research and receiving installations.

Section 73.1201 Station identification.

Section 73.1206 Broadcast of telephone conversations.

Section 73.1207 Rebroadcasts.

Section 73.1208 Broadcast of taped, filmed, or recorded material.

Section 73.1210 TV/FM dual-language broadcasting in Puerto Rico.

Section 73.1211 Broadcast of lottery information.

Section 73.1212 Sponsorship identification; list retention; related requirements.

Section 73.1213 Antenna structure, marking and lighting.

Section 73.1216 Licensee-conducted contests.

Section 73.1217 Broadcast hoaxes.

Section 73.1230 Posting of station license.

Section 73.1250 Broadcasting emergency information.

Section 73.1300 Unattended station operation.

Section 73.1400 Transmission system monitoring and control.  
 Section 73.1520 Operation for tests and maintenance.  
 Section 73.1540 Carrier frequency measurements.  
 Section 73.1545 Carrier frequency departure tolerances.  
 Section 73.1570 Modulation levels: AM, FM, and TV aural.  
 Section 73.1580 Transmission system inspections.  
 Section 73.1610 Equipment tests.  
 Section 73.1620 Program tests.  
 Section 73.1650 International agreements.  
 Section 73.1660 Acceptability of broadcast transmitters.  
 Section 73.1665 Main transmitters.  
 Section 73.1692 Broadcast station construction near or installation on an AM broadcast tower.  
 Section 73.1745 Unauthorized operation.  
 Section 73.1750 Discontinuance of operation.  
 Section 73.1920 Personal attacks.  
 Section 73.1940 Legally qualified candidates for public office.  
 Section 73.1941 Equal opportunities.  
 Section 73.1943 Political file.  
 Section 73.1944 Reasonable access.  
 Section 73.3511 Applications required.  
 Section 73.3512 Where to file; number of copies.  
 Section 73.3513 Signing of applications.  
 Section 73.3514 Content of applications.  
 Section 73.3516 Specification of facilities.  
 Section 73.3517 Contingent applications.  
 Section 73.3518 Inconsistent or conflicting applications.  
 Section 73.3519 Repetitious applications.  
 Section 73.3520 Multiple applications.

Section 73.3525 Agreements for removing application conflicts.  
 Section 73.3539 Application for renewal of license.  
 Section 73.3542 Application for emergency authorization.  
 Section 73.3545 Application for permit to deliver programs to foreign stations.  
 Section 73.3550 Requests for new or modified call sign assignments.  
 Section 73.3561 Staff consideration of applications requiring Commission consideration.  
 Section 73.3562 Staff consideration of applications not requiring action by the Commission.  
 Section 73.3566 Defective applications.  
 Section 73.3568 Dismissal of applications.  
 Section 73.3584 Procedure for filing petitions to deny.  
 Section 73.3587 Procedure for filing informal objections.  
 Section 73.3588 Dismissal of petitions to deny or withdrawal of informal objections.  
 Section 73.3589 Threats to file petitions to deny or informal objections.  
 Section 73.3591 Grants without hearing.  
 Section 73.3593 Designation for hearing.  
 Section 73.3598 Period of construction.  
 Section 73.3599 Forfeiture of construction permit.  
 Section 73.3999 Enforcement of 18 U.S.C. 1464—restrictions on the transmission of obscene and indecent material.

**§ 73.805 Availability of channels.**

Except as provided in § 73.220 of this chapter, all of the frequencies listed in § 73.201 of this chapter are available for LPFM stations.

**§ 73.807 Minimum distance separation between stations.**

Minimum separation requirements for LP100 and LP10 stations, as defined in § 73.811 and § 73.853 of this part, are listed in the following paragraphs. An LPFM station will not be authorized unless these separations are met. Minimum distances for co-channel and first-adjacent channel are separated into two columns. The left-hand column lists the required minimum separation to protect other stations and the right-hand column lists (for informational purposes only) the minimum distance necessary for the LPFM station to receive no interference from other stations. For second-adjacent channels and IF channels, the required minimum distance separation is sufficient to avoid interference received from other stations.

(a) An LP100 station will not be authorized initially unless the minimum distance separations in the following table are met with respect to authorized FM stations, timely filed applications for new and existing FM stations, authorized LP100 stations, LP100 station applications that were timely-filed within a previous window, and vacant FM allotments. LP100 stations are not required to protect LP10 stations.

Station class protected by LP100	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second-adjacent channel minimum separation (km) required	I.F. Channel minimum separations 10.6 or 10.8 MHz
	Required	For no interference received	Required	For no interference received		
LP100 .....	24	24	14	14	( <sup>1</sup> )	( <sup>1</sup> )
D .....	24	24	13	13	6	4
A .....	67	92	56	56	29	7
B1 .....	87	119	74	74	46	9
B .....	112	143	97	97	67	12
C3 .....	78	119	67	67	40	9
C2 .....	91	143	80	84	53	12
C1 .....	111	178	100	111	73	20
C .....	130	203	120	142	93	28

<sup>1</sup> None.

(b) An LP10 station will not be authorized unless the minimum distance separations are met with respect to authorized FM stations, timely-filed applications for new and existing FM stations, vacant FM allotments, or LPFM stations.

Station class protected by LP10	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second-adjacent channel minimum separation (km) required	I.F. Channel minimum separations 10.6 or 10.8 MHz
	Required	For no interference received	required	for no interference received		
LP100 .....	16	22	10	11	( <sup>1</sup> )	( <sup>1</sup> )
LP10 .....	13	13	8	8	( <sup>1</sup> )	( <sup>1</sup> )
D .....	16	21	10	11	6	2
A .....	59	90	53	53	29	5
B1 .....	77	117	70	70	45	8
B .....	99	141	91	91	66	11
C3 .....	69	117	64	64	39	8

Station class protected by LP10	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second-adjacent channel minimum separation (km) required	I.F . Channel minimum separations 10.6 or 10.8 MHz
	Required	For no interference received	required	for no interference received		
C2 .....	82	141	77	81	52	11
C1 .....	103	175	97	108	73	18
C .....	122	201	116	140	92	26

<sup>1</sup> None.

(c) In addition to meeting or exceeding the minimum separations for Class LP100 and Class LP10 stations in paragraphs (a) and (b) of this section, new LP100 and LP10 stations will not be authorized in Puerto Rico or the Virgin Islands unless the minimum distance separations are met with respect to authorized or proposed FM stations:

(1) LP100 STATIONS IN PUERTO RICO AND THE VIRGIN ISLANDS

Station class protected by LP100	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second-adjacent channel minimum separation (km) Required	I.F . Channel minimum separations 10.6 or 10.8 MHz
	Required	For no interference received	required	For no interference received		
A .....	80	111	70	70	42	9
B1 .....	95	128	82	82	53	11
B .....	138	179	123	123	92	20

(2) LP10 Stations in Puerto Rico and the Virgin Islands:

Station class protected by LP10	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second-adjacent channel minimum separation (km) required	I.F . Channel minimum separations 10.6 or 10.8 MHz
	Required	For no interference received	Required	For no interference received		
A .....	72	108	66	66	42	8
B1 .....	84	125	78	78	53	9
B .....	126	177	118	118	92	18

**Note to paragraphs (a), (b), and (c):** Minimum distance separations towards "grandfathered" superpowered Reserved Band stations, are as specified. Full service FM stations operating within the reserved band (Channels 201–220) with facilities in excess of those permitted in § 73.211(b)(1) or § 73.211(b)(3) shall be protected by LPFM stations in accordance with the minimum distance separations for the nearest class as determined under § 73.211. For example, a Class B1 station operating with facilities that

result in a 60 dBu contour that exceeds 39 kilometers but is less than 52 kilometers would be protected by the Class B minimum distance separations. Class D stations with 60 dBu contours that exceed 5 kilometers will be protected by the Class A minimum distance separations. Class B stations with 60 dBu contours that exceed 52 kilometers will be protected as Class C1 or Class C stations depending upon the distance to the 60 dBu contour. No stations will be protected beyond Class C separations.

(d) In addition to meeting the separations (a) through (c), LPFM applications must meet the minimum separation requirements with respect to authorized FM translator stations, cutoff FM translator applications, and FM translator applications filed prior to the release of the Public Notice announcing the LPFM window period:

(1) LP100 stations:

Distance to FM translator 60 dBu contour	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second-adjacent channel minimum separation (km) required	I.F . Channel minimum separation (km) 10.6 or 10.8 MHz
	Required	For no interference received	required	For no interference received		
13.3 km or greater .....	39	67	28	35	21	5
Greater than 7.3 km, but less than 13.3 km .....	32	51	21	26	14	5
7.3 km or less .....	26	30	15	16	8	5

(2) LP10 Stations:

Distance to FM translator 60 dBu contour	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second-adjacent channel minimum separation (km) required	I.F. Channel minimum separation (km) 10.6 or 10.8 MHz
	Required	For no interference received	required	For no interference received		
13.3 km or greater .....	30	65	25	33	20	3
Greater than 7.3 km, but less than 13.3 km .....	24	49	18	23	14	3
7.3 km or less .....	18	28	12	14	8	3

(e) Existing Class LP100 and LP10 stations which do not meet the separations in paragraphs (a) through (e) of this section may be relocated provided that the separation to any short-spaced station is not reduced.

(f) Commercial and noncommercial educational stations authorized under subparts B and C of this part, as well as new or modified commercial FM allotments, are not required to adhere to the separations specified in this rule section, even where new or increased interference would be created.

(g) *International considerations within the border zones.* (1) Within 320 km of the Canadian border, LP100 stations must meet the following minimum separations with respect to any Canadian stations:

Canadian station class	Co-channel (km)	First-adjacent channel (km)	Second-adjacent channel (km)	Third-adjacent channel (km)	Intermediate frequency (IF) channel (km)
A1 .....	45	30	21	20	4
A .....	66	50	41	40	7
B1 .....	78	62	53	52	9
B .....	92	76	68	66	12
C1 .....	113	98	89	88	19
C .....	118	106	99	98	28

(2) Within 320 km of the Mexican border, LP100 stations must meet the following separations with respect to any Mexican stations:

Mexican station class	Co-channel (km)	First-adjacent channel (km)	Second-/third-adjacent channel (km)	Intermediate frequency (IF) channel (km)
A .....	43	32	25	5
AA .....	47	36	29	6
B1 .....	67	54	45	8
B .....	91	76	66	11
C1 .....	91	80	73	19
C .....	110	100	92	27

(3) Within 320 km of the Canadian border, LP10 stations must meet the following minimum separations with respect to any Canadian stations:

Canadian station class	Co-channel (km)	First-adjacent channel (km)	Second-adjacent channel (km)	Third-adjacent channel (km)	Intermediate frequency (IF) channel (km)
A1 .....	33	25	23	19	3
A .....	53	45	43	39	5
B1 .....	65	57	55	51	8
B .....	79	71	70	66	11
C1 .....	101	93	91	87	18
C .....	108	102	100	97	26

(4) Within 320 km of the Mexican border, LP10 stations must meet the following separations with respect to any Mexican stations:

Mexican station class	Co-channel (km)	First-adjacent channel (km)	Second-/third-adjacent channel (km)	Intermediate frequency (IF) channel (km)
A .....	34	29	24	5
AA .....	39	33	29	5
B1 .....	57	50	45	8
B .....	79	71	66	11
C1 .....	83	77	73	18
C .....	102	96	92	26

(5) The Commission will notify the International Telecommunications Union (ITU) of any LPFM authorizations in the US Virgin Islands. Any authorization issued for a US Virgin Islands LPFM station will include a condition that permits the Commission to modify, suspend or terminate without right to a hearing if found by the Commission to be necessary to conform to any international regulations or agreements.

(6) The Commission may, at its option, initiate international coordination of a LPFM proposal even where the above Canadian and Mexican spacing tables are met, if it appears that such coordination is necessary to maintain compliance with international agreements.

**§ 73.808 Distance computations.**

For the purposes of determining compliance with any LPFM distance requirements, distances shall be calculated in accordance with § 73.208(c) of this part.

**§ 73.809 Interference protection to full service FM stations.**

(a) It shall be the responsibility of the licensee of an LPFM station to correct at its expense any condition of interference to the direct reception of the signal of any subsequently authorized commercial or NCE FM station that operates on the same channel, first-adjacent channel, second-adjacent channel or intermediate frequency (IF) channels as the LPFM station, where interference is predicted to occur and actually occurs within the 3.16 mV/m (70 dBu) contour of such stations. Predicted interference within this contour shall be calculated in accordance with the ratios set forth in § 73.215(a)(1) and (2) of this part. Actual interference will be considered to occur whenever reception of a regularly used signal is impaired by the signals radiated by the LPFM station.

(b) An LPFM station will be provided an opportunity to demonstrate in connection with the procession of the commercial or NCE FM application that interference with the 3.16 mV/m contour of such station is unlikely. If the LPFM station fails to so demonstrate, it will be required to cease operations upon the commencement of program tests by the commercial or NCE FM station.

(c) Complaints of actual interference by an LPFM station subject to paragraph (b) within the 3.16 mV/m contour of a commercial or NCE FM station must be served on the LPFM licensee and the Federal Communications Commission, attention Audio Services Division. The LPFM station must suspend operations within twenty-four hours of the receipt of such complaint unless the interference has been resolved to the satisfaction of the complainant on the basis of suitable techniques. An LPFM station may only resume operations at the direction of the Federal Communications Commission. If the Commission determines that the complainant has refused to permit the LPFM station to apply remedial techniques that demonstrably will eliminate the interference without impairment of the original reception, the licensee of the LPFM station is absolved of further responsibility.

(d) It shall be the responsibility of the licensee of an LPFM station to correct any condition of interference that results from the radiation of radio frequency energy outside its assigned channel. Upon notice by the FCC to the station licensee or operator that such interference is caused by spurious emissions of the station, operation of the station shall be immediately suspended and not resumed until the interference has been eliminated. However, short test transmissions may be made during the period of suspended operation to check the efficacy of remedial measures.

(e) In each instance where suspension of operation is required, the licensee shall submit a full report to the FCC in Washington, DC, after operation is resumed, containing details of the nature of the interference, the source of the interfering signals, and the remedial steps taken to eliminate the interference.

**§ 73.811 LPFM power and antenna height requirements.**

(a) LP100 stations: (1) *Maximum facilities.* LP100 stations will be authorized to operate with maximum facilities of 100 watts effective radiated power (ERP) at 30 meters antenna height above average terrain (HAAT). An LP100 station with a HAAT that exceeds 30 meters will not be permitted to operate with an ERP greater than that which would result in a 60 dBu contour of 5.6 kilometers. In no event will an

ERP less than one watt be authorized. No facility will be authorized in excess of one watt ERP at 450 meters HAAT.

(2) *Minimum facilities.* LP100 stations may not operate with facilities less than 50 watts ERP at 30 meters HAAT or the equivalent necessary to produce a 60 dBu contour that extends at least 4.7 kilometers.

(b) LP10 stations: (1) *Maximum Facilities.* LP10 stations will be authorized to operate with maximum facilities of 10 watts ERP at 30 meters HAAT. An LP10 station with a HAAT that exceeds 30 meters will not be permitted to operate with an ERP greater than that which would result in a 60 dBu contour of 3.2 kilometers. In no event will an ERP less than one watt be authorized. No facility will be authorized in excess of one watt ERP at 100 meters HAAT.

(2) *Minimum Facilities.* LP10 stations may not operate with less than one watt ERP.

**§ 73.812 Rounding of power and antenna heights.**

(a) Effective radiated power (ERP) will be rounded to the nearest watt on LPFM authorizations.

(b) Antenna radiation center, antenna height above average terrain (HAAT), and antenna supporting structure height will all be rounded to the nearest meter on LPFM authorizations.

**§ 73.813 Determination of antenna height above average terrain (HAAT).**

HAAT determinations for LPFM stations will be made in accordance with the procedure detailed in § 73.313(d) of this part.

**§ 73.816 Antennas.**

(a) Directional antennas will not be authorized in the LPFM service.

(b) Permittees and licensees may employ nondirectional antennas with horizontal only polarization, vertical only polarization, circular polarization or elliptical polarization.

**§ 73.825 Protection to Reception of TV Channel 6.**

LPFM stations will be authorized on Channels 201 through 220 only if the pertinent minimum separation distances are met with respect to all TV Channel 6 stations.

FM Channel No.	Class LP100 to TV Channel 6 (km)	Class LP10 to TV Channel 6 (km)
201 .....	219	171
202 .....	204	162
203 .....	188	156

FM Channel No.	Class LP100 to TV Channel 6 (km)	Class LP10 to TV Channel 6 (km)
204	179	153
205	167	149
206	156	143
207	151	141
208	151	141
209	151	141
210	151	141
211	151	141
212	149	140
213	147	139
214	145	138
215	143	137
216	142	136
217	142	136
218	139	134
219	137	134
220	136	133

**§ 73.840 Operating power and mode tolerances.**

The transmitter power output (TPO) of an LPFM station must be determined by the procedures set forth in § 73.267 of this part. The operating TPO of an LPFM station with an authorized TPO of more than ten watts must be maintained as near as practicable to its authorized TPO and may not be less than 90% of the minimum TPO nor greater than 105% of the maximum authorized TPO. An LPFM station with an authorized TPO of ten watts or less may operate with less than the authorized power, but not more than 105% of the authorized power.

**§ 73.845 Transmission system operation.**

Each LPFM licensee is responsible for maintaining and operating its broadcast station in a manner that complies with the technical rules set forth elsewhere in this part and in accordance with the terms of the station authorization. In the event that an LPFM station is operating in a manner that is not in compliance with the technical rules set forth elsewhere in this part or the terms of the station authorization, broadcast operation must be terminated within three hours.

**§ 73.850 Operating schedule.**

(a) All LPFM stations will be licensed for unlimited time operation, except those stations operating under a time sharing agreement pursuant to § 73.872.

(b) All LPFM stations are required to operate at least 36 hours per week, consisting of at least 5 hours of operation per day on at least 6 days of the week; however, stations licensed to educational institutions are not required to operate on Saturday or Sunday or to observe the minimum operating requirements during those days

designated on the official school calendar as vacation or recess periods.

**§ 73.853 Licensing requirements and service.**

(a) An LPFM station may be licensed only to:

(1) Nonprofit educational organizations and upon a showing that the proposed station will be used for the advancement of an educational program; and

(2) State and local governments and non-government entities that will provide non-commercial public safety radio services.

(b) Only local applicants will be permitted to submit applications for a period of two years from the date that LP100 and LP10 stations, respectively, are first made available for application. For the purposes of this paragraph, an applicant will be deemed local if it can certify that:

(1) The applicant, its local chapter or branch is physically headquartered or has a campus within 16.1 km (10 miles) of the proposed site for the transmitting antenna;

(2) It has 75% of its board members residing within 16.1 km (10 miles) of the proposed site for the transmitting antenna; or

(3) In the case of any applicant proposing a public safety radio service, the applicant has jurisdiction within the service area of the proposed LPFM station.

**§ 73.854 Unlicensed operations.**

No application for an LPFM station may be granted unless the applicant certifies, under penalty of perjury, to one of the following statements:

(a) Neither the applicant, nor any party to the application, has engaged in any manner including individually or with persons, groups, organizations or

other entities, in the unlicensed operation of any station in violation of section 301 of the Communications Act of 1934, as amended, 47 U.S.C. 301.

(b) To the extent the applicant or any party to the application has engaged in any manner, individually or with other persons, groups, organizations or other entities, in the unlicensed operation of a station in violation of section 301 of the Communications Act of 1934, as amended, 47 U.S.C. 301, such an engagement:

(1) Ceased voluntarily no later than February 26, 1999, without direction from the FCC to do so; or

(2) Ceased operation within 24 hours of being directed by the FCC to terminate unlicensed operation of any station.

**§ 73.855 Ownership limits.**

(a) No authorization for an LPFM station shall be granted to any party if the grant of that authorization will result in any such party holding an attributable interest in two LPFM stations separated by less than 12 km (7 miles).

(b) Nationwide ownership limits will be phased in according to the following schedule:

(1) For a period of two years from the date that the LPFM stations are first made available for application, a party may hold an attributable interest in no more than one LPFM station.

(2) For the period between two and three years from the date that the initial filing window opens for LPFM applications, a party may hold an attributable interest in no more than five LPFM stations.

(3) After three years from the date that the initial filing window opens for LPFM stations, a party may hold an attributable interest in no more than ten stations.

**§ 73.858 Attribution of LPFM station interests.**

Ownership and other interests in LPFM station permittees and licensees will be attributed to their holders and deemed cognizable for the purposes of §§ 73.855 and 73.860, in accordance with the provisions of § 73.3555, subject to the following exceptions:

(a) A director of an entity that holds an LPFM license will not have such interest treated as attributable if such director also holds an attributable interest in a broadcast licensee or other media entity but recuses himself or herself from any matters affecting the LPFM station.

(b) A local chapter of a national or other large organization shall not have the attributable interests of the national organization attributed to it provided that the local chapter is separately incorporated and has a distinct local presence and mission.

(c) A parent or subsidiary of a LPFM licensee or permittee that is a non-stock corporation will be treated as having an attributable interest in such corporation. The officers, directors, and members of a non-stock corporation's governing body and of any parent or subsidiary entity will have such positional interests attributed to them.

**§ 73.860 Cross-ownership.**

(a) No license for an LPFM station shall be granted to any party if the grant of such authorization will result in the same party holding an attributable interest in any other non-LPFM broadcast station, including any FM translator or low power television station, or any other media subject to broadcast ownership restrictions.

(b) A party with an attributable interest in a broadcast radio station must divest such interest prior to the commencement of operations of an LPFM station in which the party also holds an interest.

(c) No LPFM licensee may enter into an operating agreement of any type, including a time brokerage or management agreement, with either a full power broadcast station or another LPFM station.

**§ 73.865 Assignment and transfer of LPFM authorizations.**

(a) An LPFM authorization may not be transferred or assigned except for a transfer or assignment that involves:

- (1) Less than a substantial change in ownership and control; or
- (2) An involuntary assignment of license or transfer of control.

(b) A change in the name of an LPFM licensee where no change in ownership or control is involved may be

accomplished by written notification by the licensee to the Commission.

**§ 73.870 Processing of LPFM broadcast station applications.**

(a) A minor change for an LP100 station authorized under this subpart is limited to transmitter relocations of less than two kilometers. A minor change for an LP10 station authorized under this subpart cannot be limited to transmitter site relocations of less than one kilometer. Minor changes of LPFM stations may include changes in frequency to adjacent or IF frequencies, or, upon a technical showing of reduced interference, to any frequency.

(b) The Commission will specify by Public Notice a window filing period for applications for new LPFM stations and major modifications in the facilities of authorized LPFM stations. LPFM applications for new facilities and for major modifications in authorized LPFM stations will be accepted only during the appropriate window. Applications submitted prior to the window opening date identified in the Public Notice will be returned as premature. Applications submitted after the deadline will be dismissed with prejudice as untimely.

(c) Applications subject to paragraph (b) of this section that fail to meet the § 73.807 minimum distance separations, other than to LPFM station facilities proposed in applications filed in the same window, will be dismissed without any opportunity to amend such applications.

(d) Following the close of the window, the Commission will issue a Public Notice of acceptance for filing of applications submitted pursuant to paragraph (b) of this section that meet technical and legal requirements and that are not in conflict with any other application filed during the window. Following the close of the window, the Commission also will issue a Public Notice of the acceptance for filing of all applications tentatively selected pursuant to the procedures for mutually exclusive LPFM applications set forth at § 73.872. Petitions to deny such applications may be filed within 30 days of such public notice and in accordance with the procedures set forth at § 73.3584. A copy of any petition to deny must be served on the applicant.

(e) Minor change LPFM applications may be filed at any time, unless restricted by the staff, and generally, will be processed in the order in which they are tendered. Such applications must meet all technical and legal requirements applicable to new LPFM station applications.

**§ 73.872 Selection procedure for mutually exclusive LPFM applications.**

(a) Following the close of each window for new LPFM stations and for modifications in the facilities of authorized LPFM stations, the Commission will issue a public notice identifying all groups of mutually exclusive applications. Such applications will be awarded points to determine the tentative selectee. Unless resolved by settlement pursuant to paragraph (e) of this section, the tentative selectee will be the applicant within each group with the highest point total under the procedure set forth in this section, except as provided in paragraphs (c) and (d) of this section.

(b) Each mutually exclusive application will be awarded one point for each of the following criteria, based on application certification that the qualifying conditions are met:

(1) *Established community presence.* An applicant must, for a period of at least two years prior to application, have been physically headquartered, have had a campus, or have had seventy-five percent of its board members residing within 10 miles of the coordinates of the proposed transmitting antenna. Applicants claiming a point for this criterion must submit the documentation set forth in the application form at the time of filing their applications.

(2) *Proposed operating hours.* The applicant must pledge to operate at least 12 hours per day.

(3) *Local program origination.* The applicant must pledge to originate locally at least eight hours of programming per day. For purposes of this criterion, local origination is the production of programming within 10 miles of the coordinates of the proposed transmitting antenna.

(c) *Voluntary time-sharing.* If mutually exclusive applications have the same point total, any two or more of the tied applicants may propose to share use of the frequency by submitting, within 30 days of the release of a public notice announcing the tie, a time-share proposal. Such proposals shall be treated as amendments to the time-share proponents' applications, and shall become part of the terms of the station license. Where such proposals include all of the tied applications, all of the tied applications will be treated as tentative selectees; otherwise, time-share proponents' points will be aggregated to determine the tentative selectees.

(1) Time-share proposals shall be in writing and signed by each time-share proponent, and shall satisfy the following requirements:

(i) The proposal must specify the proposed hours of operation of each time-share proponent;

(ii) The proposal must not include simultaneous operation of the time-share proponents; and (iii) Each time-share proponent must propose to operate for at least 10 hours per week.

(2) Where a station is licensed pursuant to a time-sharing proposal, a change of the regular schedule set forth therein will be permitted only where an written agreement signed by each time-sharing licensee and complying with requirements (i) through (iii) of paragraph (c)(1) of this section is filed with the Commission, Attention: Audio Services Division, Mass Media Bureau, prior to the date of the change.

(d) *Successive license terms.* (1) If a tie among mutually exclusive applications is not resolved through time-sharing in accordance with paragraph (c) of this section, the tied applications will be reviewed for acceptability and applicants with tied, grantable applications will be eligible for equal, successive, non-renewable license terms of no less than one year each for a total combined term of eight years, in accordance with § 73.873. Eligible applications will be granted simultaneously, and the sequence of the applicants' license terms will be determined by the sequence in which they file applications for licenses to cover their construction permits based on the day of filing, except that eligible applicants proposing same-site facilities will be required, within 30 days of written notification by the Commission staff, to submit a written settlement agreement as to construction and license term sequence. Failure to submit such an agreement will result in the dismissal of the applications proposing same-site facilities and the grant of the remaining, eligible applications.

(2) Groups of more than eight tied, grantable applications will not be eligible for successive license terms under this section. Where such groups exist, the staff will dismiss all but the applications of the eight entities with the longest established community presences, as provided in paragraph (b)(1) of this section. If more than eight tied, grantable applications remain, the applicants must submit, within 30 days of written notification by the Commission staff, a written settlement agreement limiting the group to eight. Failure to do so will result in dismissal of the entire application group.

(e) Mutually exclusive applicants may propose a settlement at any time during the selection process after the release of a public notice announcing the mutually exclusive groups. Settlement

proposals must include all of the applicants in a group and must comply with the Commission's rules and policies regarding settlements, including the requirements of §§ 73.3525, 73.3588, and 73.3589. Settlement proposals may include time-share agreements that comply with the requirements of paragraph (c) of this section, provided that such agreements may not be filed for the purpose of point aggregation outside of the thirty-day period set forth in paragraph (c) of this section.

#### **§ 73.873 LPFM license period.**

(a) Initial licenses for LPFM stations not subject to successive license terms will be issued for a period running until the date specified in § 73.1020 for full service stations operating in the LPFM station's state or territory, or if issued after such date, determined in accordance with § 73.1020.

(b) The station license period issued under the successive license term tiebreaker procedures will be determined pursuant to § 73.872(d) and shall be for the period specified in the station license.

(c) The license of an LPFM station that fails to transmit broadcast signals for any consecutive 12-month period expires as a matter of law at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary.

#### **§ 73.875 Modification of transmission systems.**

The following procedures and restrictions apply to licensee modifications of authorized broadcast transmission system facilities.

(a) The following changes are prohibited:

(1) Those that would result in the emission of signals outside of the authorized channel exceeding limits prescribed for the class of service.

(2) Those that would cause the transmission system to exceed the equipment performance measurements prescribed in § 73.508.

(b) The following changes may be made only after the grant of a construction permit application on FCC Form 318.

(1) Any construction of a new tower structure for broadcast purposes, except for replacement of an existing tower with a new tower of identical height and geographic coordinates.

(2) Any change in station geographic coordinates, including coordinate corrections and any move of the antenna to another tower structure located at the same coordinates.

(3) Any change in antenna height more than 2 meters above or 4 meters below the authorized value.

(4) Any change in channel.

(c) The following LPFM modifications may be made without prior authorization from the Commission. A modification of license application (FCC Form 319) must be submitted to the Commission within 10 days of commencing program test operations pursuant to § 73.1620. For applications filed pursuant to paragraph (c)(1) of this section, the modification of license application must contain an exhibit demonstrating compliance with the Commission's radiofrequency radiation guidelines. In addition, applications solely filed pursuant to paragraphs (c)(1) or (c)(2) of this section, where the installation is located within 3.2 km of an AM tower or is located on an AM tower, an exhibit demonstrating compliance with § 73.1692 is also required.

(1) Replacement of an antenna with one of the same or different number of antenna bays, provided that the height of the antenna radiation center is not more than 2 meters above or 4 meters below the authorized values. Program test operations at the full authorized ERP may commence immediately upon installation pursuant to § 73.1620(a)(1).

(2) Replacement of a transmission line with one of a different type or length which changes the transmitter operating power (TPO) from the authorized value, but not the ERP, must be reported in a license modification application to the Commission.

(3) Changes in the hours of operation of stations authorized pursuant to time-share agreements in accordance with § 73.872.

#### **§ 73.877 Station logs for LPFM stations.**

(a) The licensee of each LPFM station must maintain a station log. Each log entry must include the time and date of observation and the name of the person making the entry. The following information must be entered in the station log:

(1) Any extinguishment or malfunction of the antenna structure obstruction lighting, adjustments, repairs, or replacement to the lighting system, or related notification to the FAA. See sections 17.48 and 73.49 of this chapter.

(2) Brief explanation of station outages due to equipment malfunction, servicing, or replacement;

(3) Operations not in accordance with the station license; and

(4) EAS weekly log requirements set forth in § 11.61(a)(1)(v) of this chapter.

(b) [Reserved]

**§ 73.878 Station inspections by FCC; availability to FCC of station logs and records.**

(a) The licensee of a broadcast station shall make the station available for inspection by representatives of the FCC during the station's business hours, and at any time it is in operation. In the course of an inspection or investigation, an FCC representative may require special equipment or program tests.

(b) Station records and logs shall be made available for inspection or duplication at the request of the FCC or its representatives. Such logs or records may be removed from the licensee's possession by an FCC representative or, upon request, shall be mailed by the licensee to the FCC by either registered mail, return receipt requested, or certified mail, return receipt requested. The return receipt shall be retained by the licensee as part of the station records until such records or logs are returned to the licensee. A receipt shall be furnished when the logs or records are removed from the licensee's possession by an FCC representative and this receipt shall be retained by the licensee as part of the station records until such records or logs are returned to the licensee. When the FCC has no further need for such records or logs, they shall be returned to the licensee. The provisions of this rule shall apply solely to those station logs and records that are required to be maintained by the provisions of this part.

(1) Where records or logs are maintained as the official records of a recognized law enforcement agency and the removal of the records from the possession of the law enforcement agency will hinder its law enforcement activities, such records will not be removed pursuant to this section if the chief of the law enforcement agency promptly certifies in writing to the FCC that removal of the logs or records will hinder law enforcement activities of the agency, stating insofar as feasible the basis for his decision and the date when it can reasonably be expected that such records will be released to the FCC.

**§ 73.879 Signal retransmission.**

An LPFM licensee may not retransmit, either terrestrially or via satellite, the signal of a full-power radio broadcast station.

**§ 73.881 Equal employment opportunities.**

*General EEO policy.* Equal employment opportunity shall be afforded by all LPFM licensees and permittees to all qualified persons, and no person shall be discriminated against because of race, color, religion, national origin, or sex.

6. Section 73.1001 is amended by revising paragraphs (b) and (c) to read as follows:

**§ 73.1001 Scope.**

(b) Rules in part 73 applying exclusively to a particular broadcast service are contained in the following: AM, subpart A; FM, subpart B; Noncommercial Educational FM, subpart C; TV, subpart E; and LPFM, subpart G.

(c) Certain provisions of this subpart apply to International Broadcast Stations (subpart F, part 73), LPFM (subpart G, part 73), and Low Power TV, TV Translator and TV Booster Stations (subpart G, part 74) where the rules for those services so provide.

7. Section 73.1620 is amended by revising paragraph (a) and adding paragraph (a)(5) to read as follows:

**§ 73.1620 Program tests.**

(a) Upon the completion of construction of an AM, FM, LPFM, or TV station in accordance with the terms of the construction permit, the technical provisions of the application, the rules and regulations and the applicable engineering standards, program tests may be conducted in accordance with the following:

(5) Except for permits subject to successive license terms, the permittee of an LPFM station may begin program tests upon notification to the FCC in Washington, DC, provided that within 10 days thereafter, an application for license is filed. Program tests may be conducted by a licensee subject to mandatory license terms only during the term specified on such licensee's authorization.

8. Section 73.1660(a) is revised to read as follows:

**§ 73.1660 Acceptability of broadcast transmitters.**

(a) An AM, FM, LPFM, or TV transmitter shall be verified for compliance with the requirements of this part following the procedures described in part 2 of the FCC rules.

9. Section 73.3533 is amended by adding paragraph (a)(8) to read as follows:

**§ 73.3533 Application for construction permit or modification of construction permit.**

(a)(8) FCC Form 318, "Application for Construction Permit for a Low Power FM Broadcast Station."

10. Section 73.3536 is amended by adding paragraph (b)(7) to read as follows:

**§ 73.3536 Application for license to cover construction permit.**

(b)(7) FCC Form 319, "Application for a Low Power FM Broadcast Station License."

11. Section 73.3550(f) is revised to read as follows:

**§ 73.3550 Requirements for new or modified call sign assignments.**

(f) Only four-letter call signs (plus LP, FM, or TV, if used) will be assigned. The four letter call sign for LPFM stations will be followed by the suffix "-LP". However, subject to the provisions of this section, a call sign of a station may be conformed to a commonly-owned station holding a three-letter call sign (plus FM, TV, or LP suffixes, if used).

12. Section 73.3598(a) is revised to read as follows:

**§ 73.3598 Period of construction.**

(a) Each original construction permit for the construction of a new TV, AM, FM or International Broadcast; low power TV; TV translator; TV booster; FM translator; FM booster; or broadcast auxiliary station, or to make changes in such existing stations, shall specify a period of three years from the date of issuance of the original construction permit within which construction shall be completed and application for license filed. Each original construction permit for the construction of a new LPFM station shall specify a period of eighteen months from the date of issuance of the construction permit within which construction shall be completed and application for license filed.

13. Section 73.3617 is revised to read as follows:

**§ 73.3617 Broadcast information available on the Internet.**

The Mass Media Bureau and each of its Divisions provide information on the Internet regarding broadcast rules and policies, pending and completed rulemakings, and pending applications. These sites also include copies of public notices and texts of recent decisions.

The Mass Media Bureau's address is <http://www.fcc.gov/mmb/>; the Audio Services Division address is <http://www.fcc.gov/mmb/asd/>; the Video Services Division is located at <http://www.fcc.gov/mmb/vsd/>; and the Policy and Rules Division's address is <http://www.fcc.gov/mmb/prd/>.

**Part 74—Experimental Radio, Auxiliary, Special Broadcast and Other Program Distributional Services**

1. The authority citation for part 74 continues to read as follows:

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

2. Section 74.432(a) is revised to read as follows:

**§ 74.432 Licensing requirements and procedures.**

(a) A license for a remote pickup station will be issued to: the licensee of an AM, FM, noncommercial FM, low power FM, TV, international broadcast or low power TV station; broadcast network-entity; or cable network-entity.  
\* \* \* \* \*

3. Section 73.532(a) is revised to read as follows:

**§ 74.532 Licensing requirements.**

(a) An aural broadcast STL or an aural broadcast intercity relay station will be licensed only to the licensee or licensees of broadcast stations, including low power FM stations, other than international broadcast stations, and for use with broadcast stations owned entirely by or under common control of the licensee or licensees. An aural broadcast intercity relay station also will be licensed for use by low power FM stations, noncommercial educational FM translator stations assigned to reserved channels (Channels 201–220) and owned and operated by their primary station, by FM translator stations operating within the coverage contour of their primary stations, and by FM booster stations. Aural auxiliary stations licensed to low power FM stations will be assigned on a secondary basis; *i.e.*, subject to the condition that no harmful interference is caused to other aural auxiliary stations assigned to

radio broadcast stations. Auxiliary stations licensed to low power FM stations must accept any interference caused by stations having primary use of aural auxiliary frequencies.  
\* \* \* \* \*

4. The heading for § 74.1204 and paragraph (a) are revised, and paragraph (a)(4) is added to read as follows:

**§ 74.1204 Protection of FM broadcast, FM Translator and LP100 stations.**

(a) An application for an FM translator station will not be accepted for filing if the proposed operation would involve overlap of predicted field contours with any other authorized commercial or noncommercial educational FM broadcast stations, FM translators, and Class D (secondary) noncommercial educational FM stations; or if it would result in new or increased overlap with an LP100 station, as set forth below:  
\* \* \* \* \*

(4) LP100 stations (Protected Contour: 1mV/m)

Frequency separation	Interference contour of proposed translator station	Protected contour of LP100 LPFM station
Cochannel 200 kHz .....	0.1 mV/m (40 dBu) 0.5 mV/m (54 dBu)	1.1 mV/m (60 dBu) 1 mV/m (60 dBu)

\* \* \* \* \*

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# Federal Register

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**Tuesday,  
February 15, 2000**

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## **Part III**

# **Department of Agriculture**

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**Agricultural Marketing Service**

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**7 CFR Part 1218**

**Blueberry Promotion, Research, and  
Information Order; Referendum  
Procedures; Final Rule**

**Proposed Blueberry Promotion, Research,  
and Information Order; Proposed Rule**

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Part 1218**

[FV-99-702-FR]

**Blueberry Promotion, Research, and Information Order; Referendum Procedures****AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Final rule.

**SUMMARY:** The purpose of this rule is to establish procedures which the Department of Agriculture (USDA or the Department) will use in conducting a referendum to determine whether the issuance of the proposed Blueberry Promotion, Research, and Information Order (Order) is favored by the blueberry industry. The Order will be implemented if it is approved by a majority of producers and importers who also represent a majority of the volume of blueberries represented in the referendum. These procedures would also be used for any subsequent referendum under the Order, if it is approved in the initial referendum. The Order is being published in a separate document. This proposed program would be implemented under the Commodity Promotion, Research, and Information Act of 1996 (Act).

**DATES:** This final rule is effective February 16, 2000.

**FOR FURTHER INFORMATION CONTACT:** Oliver L. Flake, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW, Room 2535-S, Washington, D.C. 20250-0244; telephone (202) 720-5976 or fax (202) 205-2800.

**SUPPLEMENTARY INFORMATION:** A referendum will be conducted among eligible blueberry producers and importers to determine whether the issuance of the proposed Blueberry Promotion, Research, and Information Order (Order) (7 CFR Part 1218) is favored by those who would pay assessments under the program. The Order will be implemented if it is approved by a majority of producers and importers voting for approval who also represent a majority of the volume of blueberries represented in the referendum. The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (Act) [Pub. L. 104-427, 7 U.S.C. 7401-7425]. It would cover domestic and imported cultivated blueberries (hereinafter called blueberries). A proposed Order is being published separately in the **Federal Register**.

**Executive Order 12988**

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the Act provides that the Act shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the Act, a person subject to the Order may file a petition with the Secretary of Agriculture (Secretary) stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not established in accordance with the law, and requesting a modification of the Order or an exemption from the Order. Any petition filed challenging the Order, any provision of the Order or any obligation imposed in connection with the Order, shall be filed within two years after the effective date of the Order, provision or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall be the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of entry of the Secretary's final ruling.

**Executive Order 12866**

This rule has been determined not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

**Regulatory Flexibility Act**

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agency is required to examine the impact of the proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such action so that small businesses will not be disproportionately burdened.

The Act, which authorizes the Secretary to consider industry proposals for generic programs of promotion, research, and information for agricultural commodities, became effective on April 4, 1996. The Act provides for alternatives within the terms of a variety of provisions.

Paragraph (e) of Section 518 of the Act provides three options for determining industry approval of a new research and promotion program: (1) By a majority of those voting; (2) by a majority of the volume of the agricultural commodity voted in the referendum; or (3) by a majority of those persons voting who

also represent a majority of the volume of the agricultural commodity voted in the referendum. In addition, section 518 of the Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within three years after assessments first begin under the Order. The North American Blueberry Council, Inc. (proponent), has recommended that the Secretary conduct a referendum. Approval of the Order would be based on a majority of producers and importers voting for approval who also represent a majority of the volume of blueberries represented in the referendum. The proponent also has recommended that a referendum be conducted prior to the proposed Order going into effect.

This rule establishes the procedures under which producers and importers may vote on whether they want a blueberry promotion, research, and information program to be implemented. Blueberry producers and importers of 2,000 pounds or more of blueberries annually would be eligible to vote. The proposed Order provides for an exemption from assessments for producers and importers of less than 2,000 pounds of fresh and processed blueberries. This action will add a new subpart which establishes procedures to conduct an initial and future referenda. The subpart covers definitions, voting instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

There are approximately 2,000 producers, 200 first handlers, 50 importers, and 4 exporters of blueberries who would be subject to the program. It is estimated that 1,818 producers and 32 importers would be eligible to vote in the first referendum. These figures have been revised since publication of the proposed rule. This revision is based upon more current information from a comment received concerning the proposed Order. That comment is discussed in the proposed rule for the Order which is published separately in this issue of the **Federal Register**.

Most of the producers would be classified as small businesses under the criteria established by the Small Business Administration (SBA) [13 CFR 121.601]. Most importers and first handlers would not be classified as small businesses. The SBA defines small agricultural handlers as those whose annual receipts are less than \$5 million, and small agricultural producers are defined as those having annual receipts of not more than \$500,000 annually.

According to USDA's National Agricultural Statistics Service, total production of cultivated blueberries was 172.9 million pounds in 1997, up 35 percent from the 1996 output. Approximately 70.2 million pounds of the total were utilized for fresh market sale and 99.4 million pounds were used for processing (primarily frozen). Blueberries are grown in 35 states. Commercial production operations are located in Michigan (44 percent), New Jersey (19 percent), Oregon (12 percent), Georgia (9 percent), North Carolina (5 percent), Washington (5 percent), Indiana and Florida (2 percent each), and all other states (2 percent). Farm value for the 1997 cultivated blueberry crop was \$141 million, compared with \$113.6 million a year earlier.

U.S. frozen blueberry per capita consumption has been declining rapidly in recent years, decreasing from 0.38 pounds in 1996 to 0.33 pounds in 1997. From calendar year 1991 through 1995, U.S. per capita consumption of frozen blueberries averaged 0.43 pounds.

The United States exported 6.3 million pounds of fresh cultivated blueberries in 1997, valued at \$7.9 million. Canada is the principal destination for U.S. exports—accounting for nearly 79 percent of the total in 1997. Other key markets included Switzerland (7 percent), the United Kingdom (5 percent), and Germany (3 percent). The remaining export volume of fresh cultivated blueberries primarily went to other European and Asian countries.

U.S. exports of frozen cultivated blueberries totaled 22.1 million pounds in 1997 and were valued at \$9.9 million. The largest U.S. export market is Canada, accounting for 90 percent of the total quantity in 1997. Japan was the second largest U.S. market for frozen cultivated blueberries, accounting for 8 percent of the total. The remaining 2 percent of U.S. exports were sent mainly to other Asian and European countries.

In 1997, the United States imported 13.9 million pounds of fresh cultivated blueberries worth \$10.8 million. Imports from Canada alone accounted for 89 percent of the total. Other important fresh cultivated blueberry import sources were Chile with 9 percent of the total and New Zealand with 2 percent. Small amounts were also imported from Mexico and Honduras.

In 1997, total imports of frozen cultivated blueberries were 9.8 million pounds and were valued at \$8.5 million. The vast majority of U.S. frozen blueberry imports (about 96 percent) came from Canada in 1997. U.S. imports of frozen cultivated blueberries from Chile represented 2 percent of the total,

while Mexico accounted for 1 percent of the total. The rest of the 1997 import volume originated from the Netherlands, Costa Rica and Colombia.

This rule provides the procedures under which blueberry producers and importers may vote on whether they want the Order to be implemented. In accordance with the provisions of the Act, subsequent referenda may be conducted, and it is anticipated that these procedures would apply. There are approximately 1,818 producers and 32 importers who will be eligible to vote in the first referendum.

USDA will keep these individuals informed throughout the program implementation and referendum process to ensure that they are aware of and are able to participate in the program implementation process. USDA will also publicize information regarding the referendum process so that trade associations and related industry media can be kept informed.

Voting in the referendum is optional. However, if producers and importers choose to vote, the burden of voting would be offset by the benefits of having the opportunity to vote on whether or not they want to be covered by the program.

The information collection requirements contained in this rule are designed to minimize the burden on producers and importers. This rule provides for a ballot to be used by eligible producers and importers to vote in the referendum. The estimated annual cost of providing the information by an estimated 1,818 producers (2,000 – 182 exempt producers) would be \$909.00 or \$.50 per producer and for an estimated 32 importers (50 – 18 exempt importers) would be \$16.00 or \$.50 per importer.

The Secretary considered requiring eligible voters to vote in person at various USDA offices across the country. The Secretary also considered electronic voting, but the use of computers is not universal, current technology is not reliable enough to ensure that electronic ballots would be received in a readable format, and technology is insufficient at this time to provide sufficient safeguards of voters' confidentiality. Conducting the referendum from one central location by mail ballot would be more cost-effective and reliable. The Department will provide easy access to information for potential voters through a toll-free telephone line.

There are no federal rules that duplicate, overlap, or conflict with this rule.

## Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulation (5 CFR part 1320) which implements the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the referendum ballot, which represents the information collection and recordkeeping requirements that may be imposed by this rule, has been submitted to OMB for approval.

*Title:* National Research, Promotion, and Consumer Information Programs.

*OMB Number:* 0581–0093.

*Expiration Date of Approval:* November 30, 2000.

*Type of Request:* Revision of a currently approved information collection for research and promotion programs.

*Abstract:* The information collection requirements in this request are essential to carry out the intent of the Act. The burden associated with the ballot is as follows:

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.25 hours per response for each producer and importer.

*Respondents:* Producers and importers.

*Estimated Number of Respondents:* 1850.

*Estimated Number of Responses per Respondent:* 1 every 5 years (0.2).

*Estimated Total Annual Burden on Respondents:* 92.5 hours.

The estimated annual cost of providing the information by an estimated 1,818 producers (2,000 – 182 exempt producers) would be \$909.00 or \$.50 per producer and for an estimated 32 importers (50 – 18 exempt importers) would be \$16.00 or \$.50 per importer.

The ballot will be added to the other information collections approved for use under OMB Number 0581–0093.

In the proposed rule published on July 22, 1999, comments were invited on: (a) Whether the proposed collection of information is necessary and whether it will have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The number of respondents and burden have been changed to reflect

more current information provided in a comment received concerning the proposed Order. This comment is discussed in the proposed rule for the Order which is published separately in this issue of the **Federal Register**.

### Background

The Act authorizes the Secretary, under generic authority, to establish agricultural commodity research and promotion orders. The North American Blueberry Council, Inc. (proponent), has requested the establishment of a Blueberry Promotion, Research, and Information Order (Order) pursuant to the Act. The proposed Order would provide for the development and financing of an effective and coordinated program of promotion, research, and information for fresh and processed blueberries. The program would be funded by an assessment levied on producers (to be collected by handlers) and importers (to be collected by the U.S. Customs Service at time of entry into the United States) at a rate of \$12 per ton. In the proposed Order, blueberries are defined as cultivated blueberries grown in or imported into the United States of the genus *Vaccinium Corymbosum* and *Ashei*, including the northern highbush, southern highbush, rabbit eye varieties, any hybrid, and excluding the lowbush (native) blueberry *Vaccinium Angustifolium*.

Assessments would be used to pay for promotion, research, and information; administration, maintenance, and functioning of the U.S.A. Blueberry Council; and expenses incurred by the Secretary in implementing and administering the Order, including referendum costs.

Section 518 of the Act requires that a referendum be conducted among eligible blueberry producers and importers to determine whether they favor the Order. In addition, section 518 of the Act provides for referenda to ascertain approval of an Order to be conducted either prior to its going into effect or within three years after assessments first begin under the Order. According to a proposed rule published separately in this issue of the **Federal Register**, the Order will become effective if it is approved during the initial referendum, which will be held before the program is implemented. The program will be implemented if it is approved by a majority of producers and importers voting for approval who also represent a majority of the volume of blueberries represented in the referendum. Producers and importers of 2,000 pounds or more of blueberries annually will be eligible to vote.

This rule establishes the procedures under which producers and importers may vote on whether they want the blueberry promotion, research, and information program to be implemented. There are approximately 1,850 eligible voters.

This rule would add a new subpart which would establish procedures to be used in this and future referenda. The subpart covers definitions, voting, instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

A proposed rule on the Order was published in the July 22, 1999, issue of the **Federal Register** (64 FR 39790). On the same date, a proposed rule was published on the referendum procedures (64 FR 39803). While no comments were received referencing this proposed rule, changes have been made to the estimates of the numbers of producers and importers and the information collection burden based upon more current information provided in a comment to the proposed Order.

In addition to estimate changes, the Department has revised the referendum requirements. The proponent had recommended that the Order be implemented if approved by producers and importers representing a majority of the volume of blueberries represented in the referendum. The Department will keep this requirement but add a second requirement. In order to be implemented, the Order must also be approved by a majority of the voters in the referendum. The majority of the persons to be covered by the proposed program are small producers. This change was made in order to ensure that these small producers have fair input into the outcome of the referendum. In addition, this change would further the goals of the Secretary's Small Farm Initiative without harming the interests of the larger growers.

Pursuant to the provisions in 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) A proposed rule with request for comments was published in the **Federal Register** and no comments were received; (2) it is necessary to have these procedures in place in order to conduct the referendum in February 2000 prior to the beginning of the 2000 crop year; and (3) no useful purpose will be served by a delay of the effective date.

### List of Subjects in 7 CFR Part 1218

Administrative practice and procedure, Advertising, Blueberries,

Consumer Information, Marketing agreements, Blueberry promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, Title 7, Chapter XI of the Code of Federal Regulations is amended as follows:

1. Part 1218 is added to read as follows:

### PART 1218—BLUEBERRY PROMOTION, RESEARCH, AND INFORMATION ORDER

#### Subpart A—[Reserved]

#### Subpart B—Procedure for the Conduct of Referenda in Connection with the Blueberry Promotion, Research, and Information Order

Sec.	
1218.100	General.
1218.101	Definitions.
1218.102	Voting.
1218.103	Instructions.
1218.104	Subagents.
1218.105	Ballots.
1218.106	Referendum report.
1218.107	Confidential information.

Authority: U.S.C. 7401—7425.

#### Subpart B—Procedure for the Conduct of Referenda in Connection with the Blueberry Promotion, Research, and Information Order

##### § 1218.100 General.

Referenda to determine whether eligible blueberry producers and importers favor the issuance, amendment, suspension, or termination of the Blueberry Promotion, Research, and Information Order shall be conducted in accordance with this subpart.

##### § 1218.101 Definitions.

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the U.S. Department of Agriculture to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Blueberries* means cultivated blueberries grown in or imported into the United States of the genus *Vaccinium Corymbosum* and *Ashei*, including the northern highbush, southern highbush, rabbit eye varieties, and any hybrid, and excluding the lowbush (native) blueberry *Vaccinium Angustifolium*.

(c) *Eligible importer* means any person who imported 2,000 pounds or more of fresh or processed blueberries, that are identified by the numbers 0810.40.0028

and 0811.90.2028, respectively, in the Harmonized Tariff Schedule of the United States or any other numbers used to identify fresh and frozen blueberries. Importation occurs when commodities originating outside the United States are entered or withdrawn from the U.S. Customs Service for consumption in the United States. Included are persons who hold title to foreign-produced blueberries immediately upon release by the U.S. Customs Service, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of blueberries from the U.S. Customs Service when such blueberries are entered or withdrawn for consumption in the United States.

(d) *Eligible producer* means any person who produced 2,000 pounds or more of blueberries in the United States during the representative period who:

- (1) Owns, or shares the ownership and risk of loss of, the crop;
- (2) Rents blueberry production facilities and equipment resulting in the ownership of all or a portion of the blueberries produced;
- (3) Owns blueberry production facilities and equipment but does not manage them and, as compensation, obtains the ownership of a portion of the blueberries produced; or
- (4) Is a party in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce blueberries who share the risk of loss and receive a share of the blueberries produced. No other acquisition of legal title to blueberries shall be deemed to result in persons becoming eligible producers.

(e) *Order* means the Blueberry Promotion, Research, and Information Order.

(f) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term "partnership" includes, but is not limited to:

- (1) A husband and a wife who have title to, or leasehold interest in, a blueberry farm as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property; and
- (2) So-called "joint ventures" wherein one or more parties to an agreement, informal or otherwise, contributed land and others contributed capital, labor, management, or other services, or any variation of such contributions by two or more parties.

(g) *Processed blueberries* means blueberries which have been frozen, dried, pureed, or made into juice.

(h) *Referendum agent* or *agent* means the individual or individuals designated by the Secretary to conduct the referendum.

(i) *Representative period* means the period designated by the Secretary.

(j) *United States* means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

#### § 1218.102 Voting.

(a) Each person who is an eligible producer or an eligible importer, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast only one ballot in the referendum. However, each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce blueberries, in which more than one of the parties is a producer, shall be entitled to cast one ballot in the referendum covering only such producer's share of the ownership.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate producer or importer, or an administrator, executor, or trustee or an eligible entity may cast a ballot on behalf of such entity. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible entity, or an administrator, executive, or trustee of an eligible entity and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) All ballots are to be cast by mail or by facsimile, as instructed by the Secretary.

#### § 1218.103 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

- (a) Determine the period during which ballots may be cast.
- (b) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the

person voting, or on whose behalf the vote is cast, is an eligible voter.

(c) Give reasonable public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as the agent may deem advisable.

(d) Mail to eligible producers and importers whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed Order. No person who claims to be eligible to vote shall be refused a ballot.

(e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process.

(f) Prepare a report on the referendum.

(g) Announce the results to the public.

#### § 1218.104 Subagents.

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions hereunder. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

#### § 1218.105 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

#### § 1218.106 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to the analysis of the referendum and its results.

**§ 1218.107 Confidential information.**

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the

Act and the voting list shall be held confidential and shall not be disclosed.

Dated: February 9, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00-3404 Filed 2-14-00; 8:45 am]

**BILLING CODE 3410-02-P**

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Part 1218****[FV-99-701-PR2]****Proposed Blueberry Promotion, Research, and Information Order****AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would establish an industry-funded promotion, research, and information program for cultivated blueberries. A proposed program—the Blueberry Promotion, Research, and Information Order (Order)—was submitted to USDA by the North American Blueberry Council, Inc. Under the Order, blueberry producers and importers would pay an assessment of \$12 per ton, which would be paid to the proposed U.S.A. Blueberry Council. Producers and importers of less than 2,000 pounds of fresh and processed blueberries annually would be exempt from the assessment. The proposed program would be implemented under the Commodity Promotion, Research, and Information Act of 1996 (Act). In addition, the USDA is announcing that a referendum will be conducted among eligible blueberry producers and importers to determine whether they favor the implementation of the program.

**DATES:** In order to be eligible to vote, blueberry producers and importers must have produced or imported 2,000 pounds or more of blueberries during the period from January 1, 1999 through December 31, 1999 (representative period). The voting period for the referendum will be from March 13 through March 24, 2000.

**FOR FURTHER INFORMATION CONTACT:** Oliver L. Flake, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW, Room 2535-S, Washington, DC 20250-0244; telephone (202) 720-5976 or fax (202) 205-2800.

**SUPPLEMENTARY INFORMATION:** This proposed Order is issued pursuant to the Commodity Promotion, Research, and Information Act of 1996, 7 U.S.C. 7401-7425; Public Law 104-127, enacted April 4, 1996, hereinafter referred to as the Act.

**Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of

the Act provides that the Act shall not affect or preempt any other Federal or state law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the Act, a person subject to the Order may file a petition with the Secretary of Agriculture (Secretary) stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not established in accordance with the law, and requesting a modification of the Order or an exemption from the Order. Any petition filed challenging the Order, any provision of the Order, or any obligation imposed in connection with the Order, shall be filed within two years after the effective date of the Order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Secretary of Agriculture (Secretary) will issue a ruling on a petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Secretary's final ruling.

**Executive Order 12866**

This proposed rule has been determined not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

**Regulatory Flexibility Act**

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Agency is required to examine the impact of the proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

The Act authorizes generic programs of promotion, research, and information for agricultural commodities. Congress found that it is in the national public interest and vital to the welfare of the agricultural economy of the United States to maintain and expand existing markets and develop new markets and uses for agricultural commodities through industry-funded, government-supervised, generic commodity promotion programs.

This program is intended to develop and finance an effective and coordinated program of promotion, research, and information to maintain and expand the markets for cultivated blueberries (hereinafter referred to as

blueberries). A proposal was submitted by the North American Blueberry Council, Inc. (proponent or NABC). The proponent has proposed that blueberry producers and importers approve the program in a referendum in advance of its implementation. In addition, NABC proposed that producers, importers, exporters, and first handlers would serve on a 13-member U.S.A. Blueberry Council (USABC) that would administer the program under USDA's oversight. In order to provide the opportunity for public input into USABC deliberations, the Secretary added one public member to the proponent's proposed USABC. Any person subject to the program may file with the Secretary a petition stating that the Order or any provision of the Order is not in accordance with law and requesting a modification of the Order or an exemption from the Order.

While the proposed Order would impose certain recordkeeping requirements on first handlers, information required under the proposed Order could be compiled from records currently maintained. First handlers would collect and remit the assessments on domestic blueberries to the Council. Their responsibilities would include accurate recordkeeping and accounting of all blueberries purchased or contracted for, including the number of pounds handled, the names of their producers, and when blueberries are purchased. The forms require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act. Such records shall be retained for at least two years. This information is already being maintained as a normal business practice.

In addition, first handlers of blueberries who seek nomination to serve on the USABC would be required to complete a nomination form which would be submitted to the Secretary.

The added burden to first handlers for a blueberry promotion, research, and information program is therefore expected to be minimal.

There is also a minimal paperwork burden on producers. The burden relates to those producers who would seek nomination to serve on the USABC and those who vote in referenda. In addition, the proposed Order would require producers to keep records and to provide information to the USABC or the Secretary when requested. However, it is not anticipated that producers would be required to submit forms to the USABC. Most likely, the information would be obtained through an audit of a producer's records to confirm

information provided by a first handler or if a first handler did not file the required reports as part of the USABC's compliance operation. When seeking nomination to serve on the USABC, producers would be required to complete one form which would be submitted to the Secretary.

In addition, there is a minimal burden on importers. The import assessments would be collected by the U.S. Customs Service (Customs) at time of entry into the United States. Importers would be required to keep records and to provide information to the USABC or the Secretary when requested. However, it is not anticipated that importers would be required to submit forms to the USABC. Importers who seek nomination to serve on the USABC would be required to complete one form which would be submitted to the Secretary.

Further, there would be a minimal burden on exporters who seek nomination to serve on the USABC. They would be required to complete one form which would be submitted to the Secretary.

The estimated annual cost of providing the information to the USABC by an estimated 2,254 respondents (2,000 producers, 200 first handlers, 50 importers, and 4 exporters) would be \$14,570 or \$11,090 for all producers or \$5.55 per producer, \$2,020 for all first handlers or \$10.10 per first handler, \$1,440 for all importers or \$28.80 per importer, and \$20 for all exporters or \$5.00 per exporter.

USDA would oversee program operations and, if the program is implemented, would conduct a referendum (1) every five years to determine whether blueberry producers and importers support continuation of the program, (2) at the request of the USABC, or (3) at the request of 10 percent or more of the number of persons eligible to vote in referenda. Additionally, the Secretary may conduct a referendum at any time to determine whether the continuation, suspension, or termination of the Order or a provision of the Order is favored by those eligible to vote in referenda.

There are approximately 2,000 producers, 200 first handlers, 50 importers, and 4 exporters of blueberries who would be subject to the program. These figures have been revised since publication of the proposed rule. This revision is based upon more current information from a comment received concerning the proposed Order. That comment is discussed later in this proposed rule. Most of the producers would be classified as small businesses under the criteria established by the Small Business Administration (SBA)

[13 CFR 121.601]. Most importers and first handlers would not be classified as small businesses and, while most exporters are large, we assume that some are small. The SBA defines small agricultural handlers as those whose annual receipts are less than \$5 million, and small agricultural producers are defined as those having annual receipts of not more than \$500,000 annually.

The blueberry, along with the cranberry and Concord grape, is one of only three native North American fruits. Blueberries were domesticated from wild highbush blueberries in the early 1900's. Over the years, they have been bred for flavor, size, color, vigor, and yield.

North America is the world's leading producer of blueberries. From 1993 to 1997, cultivated blueberries represented an average of approximately 70 percent of all blueberries produced in the United States with the remainder, known as lowbush (wild) blueberries, produced primarily in Maine. There are over 37 varieties of blueberries, but not all are actively produced for market.

Blueberries are harvested from April through October, with more than 60 percent harvested from mid-June through mid-August. Blueberries are grown in 35 states. Commercial production operations are located in Michigan (44 percent), New Jersey (19 percent), Oregon (12 percent), Georgia (9 percent), North Carolina (5 percent), Washington (5 percent), Indiana and Florida (2 percent each), and all other states (2 percent).

A majority of blueberry growers are relatively small business owners, operating 20- to 30-acre farms which have been in their families for a number of generations. Blueberry acreage is expanding in the United States, with considerable growth in the high-yielding areas of the Northwest and South. Harvested acreage in the United States has more than doubled over the past 15 years, from 21,850 harvested acres in 1980 to an estimated 46,685 harvested acres in 1996.

U.S. blueberry production has more than doubled since the late 1970's, from an average of 35,693 tons during the five-year period 1977 through 1981 to an average of more than 75,500 tons from 1993 through 1997. According to USDA's National Agricultural Statistics Service (NASS), total production of blueberries was 79,485 tons in 1998, a decrease from 84,990 tons in 1997. Approximately 39,493 tons of the total were utilized for fresh market sale and 37,608 tons were processed (primarily frozen).

Farm value of the 1997 blueberry crop was \$141 million, compared with \$113.6 million a year earlier.

U.S. frozen blueberry per capita consumption has been declining rapidly in recent years, decreasing from 0.38 pounds in 1996 to 0.33 pounds in 1997. From calendar year 1991 through 1995, U.S. per capita consumption of frozen blueberries averaged 0.43 pounds.

The United States exported 6.3 million pounds of fresh blueberries in 1997, valued at \$7.9 million. Canada is the principal destination for U.S. exports—accounting for nearly 79 percent of the total in 1997. Other key markets included Switzerland (7 percent), the United Kingdom (5 percent), and Germany (3 percent). The remaining export volume went mostly to other European and Asian countries.

U.S. exports of frozen blueberries totaled 11,050 tons in 1997, and were valued at \$9.9 million. The largest U.S. export market for frozen blueberries is Canada, accounting for 90 percent of the total quantity exported in 1997. Japan was the second largest U.S. market, accounting for 8 percent of the total. The remaining 2 percent of U.S. exports were sent mainly to other Asian and European countries.

In 1997, the United States imported 6,950 tons of fresh blueberries worth \$10.8 million. Imports from Canada accounted for 89 percent of the total. Other major suppliers of fresh blueberries were Chile, with 9 percent of the total, and New Zealand with 2 percent.

In 1997, total imports of frozen blueberries reached 4,900 tons, valued at \$8.5 million. The bulk of U.S. frozen blueberry imports (about 96 percent) in 1997 came from Canada. U.S. imports of frozen blueberries from Chile represented 2 percent of the total, while Mexico accounted for 1 percent of the total. The rest of the 1997 import volume originated from the Netherlands, Costa Rica, and Colombia.

During the 1997 season, average annual production per U.S. producer was approximately 66.04 tons of blueberries. Blueberries produced during this growing season provided average annual gross sales of \$109,557 per blueberry producer.

The proposed Order would authorize a fixed assessment paid by producers (to be collected by first handlers) and importers (to be collected by Customs) at a rate of \$12 per ton.

Section 516(a)(1) of the Act provides authority to the Secretary to exempt from the Order any de minimis quantity of an agricultural commodity otherwise covered by the Order. The proponent has recommended that producers and

importers of less than 2,000 pounds of blueberries annually be exempt from assessment.

At the proposed rate of assessment of \$12 per ton, the USABC would collect approximately \$1.1 million annually. It is expected that the assessment would represent less than 1 percent of producers' average return. In 1997, the average price for blueberries was \$1,659 per ton.

USDA will keep all individuals informed throughout the referendum process to ensure that they are aware of and are able to participate in the referendum. USDA will publicize information regarding the referendum process so that trade associations and related industry media can be kept informed.

In addition, the blueberry industry would nominate producers and the USABC would nominate importers, exporters, first handlers, and a public member to serve as members and alternates on the USABC. The USABC would recommend the assessment rate, programs, projects, a budget, and any rules and regulations that might be necessary for the administration of the program. USDA would ensure that the nominees represent the blueberry industry in accordance with the proposed Order.

The USABC would consist of 13 members: one producer representative from each of four regions, one producer representative for each of the top five producing states, one importer, one exporter, one first handler, and one public member. The regional and state members would be nominated from within the respective regions or states by the state commissions or the NABC as applicable for initial nominations, and the importer, exporter, and first handler members would be nominated by the USABC. There would be an alternate for each member. The importer position would be filled by a person who imports fresh or processed blueberries from outside of the United States for sale in the United States. The exporter position would be filled by a representative of the foreign production area which, based on a 3-year average, produces the most blueberries that are shipped to the United States.

In order to provide the opportunity for public input into USABC deliberations, the Secretary added one public member and alternate to the proponent's proposed USABC. The public member and alternate would be nominated by the USABC.

Proposed recordkeeping and reporting requirements for the blueberry promotion, research, and information program would be designed to minimize

the burden on the blueberry industry. The blueberry promotion program would be designed to strengthen the position of blueberries in the marketplace, maintain and expand existing domestic and foreign markets, and develop new uses and markets for blueberries.

The estimated annual cost of providing the information to the USABC by an estimated 2,254 respondents (2,000 producers, 200 first handlers, 50 importers, and 4 exporters) would be \$14,570 or \$11,090 for all producers or \$5.55 per producer, \$2,020 for all first handlers or \$10.10 per first handler, \$1,440 for all importers or \$28.80 per importer, and \$20 for all exporters or \$5.00 per exporter.

With regard to alternatives to this proposed rule, the Act itself does provide for authority to tailor a program according to the individual needs of an industry. Provision is made for permissive terms in an order in Section 516 of the Act, and other sections provide for alternatives. For example, Section 514 of the Act provides for orders applicable to (1) producers, (2) first handlers and other persons in the marketing chain as appropriate, and (3) importers (if imports are subject to assessment). Section 516 authorizes an order to provide for exemption of de minimis quantities of an agricultural commodity; different payment and reporting schedules; coverage of research, promotion, and information activities to expand, improve, or make more efficient the marketing or use of an agricultural commodity in both domestic and foreign markets; provision for reserve funds; provision for credits for generic and branded activities; and assessment of imports. In addition, Section 518 of the Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within 3 years after assessments first begin under the order. An order also may provide for its approval in a referendum to be based upon (1) a majority of those persons voting; (2) persons voting for approval who represent a majority of the volume of the agricultural commodity; or (3) a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity. Section 515 of the Act provides for establishment of a board from among producers, first handlers, and others in the marketing chain as appropriate and importers, if importers are subject to assessment.

This proposal includes provisions for both domestic and foreign market expansion and improvement; reserve funds; and an initial referendum to be

conducted prior to the Order going into effect. Approval would be determined by a majority of producers and importers voting for approval who also represent a majority of the volume of blueberries represented in the referendum.

The proposed rule that was published in the **Federal Register** on July 22, 1999 [64 FR 39790] invited comments concerning the potential effects of the proposed Order. One comment from the proponent of the Order was received regarding the Regulatory Flexibility Analysis.

Based upon available information, we estimated that 1,297 producers and 120 importers would be subject to the program. The commenter estimates in its comment that 2,000 producers and 50 importers/exports would be subject to the program.

In the July 22, 1999, proposed rule, we invited information on the number of persons subject to the program. The commenter's estimate of the number of producers subject to the program is supported by data from the 1997 Census of Agriculture. Further, we accept the estimate as to importers. However, our estimate as to the number of handlers and exporters will remain unchanged based upon available information. Accordingly, we have changed all references to these estimates in both this proposed Order as well as the referendum procedures, which are published separately in this issue of the **Federal Register**.

The commenter also requested a change to a reference in the Regulatory Flexibility Analysis regarding the required forms to be submitted to the USABC. The commenter requested that producers be required to provide the USABC with an annual report at the end of the harvest season. The commenter asked that this report include the producer's production so that proper assessments can be determined and checked with USABC production figures. We believe that such a required annual report would place an unnecessary added burden on producers. The Order already requires that producers maintain records to confirm information provided by first handlers. Consequently, if needed, assessments can be checked through an audit of producers' records. Therefore, no changes are made as a result of this comment.

Regarding a reference in the Regulatory Flexibility Analysis to the nomination of the public member to the USABC, the commenter inquired whether the blueberry industry would be responsible to nominate this public member. Section 1218.41(d) states that

the nominations for the public member will be made by the USABC after it is appointed. We have revised the Regulatory Flexibility Analysis as appropriate. Another point addressed by the commenter concerned the accuracy of a reference to native North American fruits and whether crab apples should be included in the reference. The statement is correct, and no change is necessary.

#### Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulation [5 CFR part 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the information collection and recordkeeping requirements that may be imposed by this Order have been submitted to OMB for approval.

*Title:* National Research, Promotion, and Consumer Information Programs.

*OMB Number for background form (number 1 below):* 0505-0001.

*Expiration Date of Approval:* July 31, 2002.

*OMB Number for other information collections:* 0581-0093.

*Expiration Date of Approval:* November 30, 2000.

*Type of Request:* Revision of currently approved information collections for advisory committees and boards and for research and promotion programs.

*Abstract:* The information collection requirements in the request are essential to carry out the intent of the Act.

In addition, there will be the additional burden on producers and importers voting in referenda. The referendum ballot, which represents the information collection requirement relating to referenda, is addressed in a proposed rule on referendum procedures which is published separately in this issue of the **Federal Register**.

Under the proposed program, first handlers would be required to collect assessments from producers and file reports with and submit assessments to the USABC. While the proposed Order would impose certain recordkeeping requirements on first handlers, information required under the proposed Order could be compiled from records currently maintained. Such records shall be retained for at least two years beyond the marketing year of their applicability. The estimated annual cost of providing the information to the USABC by an estimated 2,254 respondents (2,000 producers, 200 first handlers, 50 importers, and 4 exporters) would be \$14,570 or \$11,090 for all producers or \$5.55 per producer, \$2,020 for all first handlers or \$10.10 per first

handler, \$1,440 for all importers or \$28.80 per importer, and \$20 for all exporters or \$5.00 per exporter.

The proposed Order's provisions have been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping costs or requirements, including efforts to utilize information already submitted under other blueberry programs administered by USDA.

The proposed forms would require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act. Such information can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the USABC. The forms would be simple, easy to understand, and place as small a burden as possible on the person required to file the information.

Collecting information yearly would coincide with normal industry business practices. Reporting other than yearly would impose an additional and unnecessary recordkeeping burden on first handlers. The timing and frequency of collecting information are intended to meet the needs of the industry while minimizing the amount of work necessary to fill out the required reports. In addition, the information to be included on these forms is not available from other sources because such information relates specifically to individual producers and first handlers who are subject to the provisions of the Act.

Therefore, there is no practical method for collecting the required information without the use of these forms.

Information collection requirements that are included in this proposal include:

(1) *A background information form.*

*Estimate of Burden:* Public reporting for this collection of information is estimated to average 0.5 hours per response for each producer.

*Respondents:* Producers, importers, exporters, and first handlers.

*Estimated number of Respondents:* 18 (52 for initial nominations to the USABC, 28 in the second year, and 24 in the fourth year).

*Estimated number of Responses per Respondent:* 1 every 3 years.

*Estimated Total Annual Burden on Respondents:* 26 hours for the initial nominations to the Council and 9 hours annually thereafter.

(2) *An annual report by each first handler of blueberries.*

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.5 hours per first handler reporting on blueberries handled.

*Respondents:* First handlers.

*Estimated number of Respondents:* 200.

*Estimated number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 100 hours.

(3) *A request for certificate of exemption.*

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.5 hours per first handler, producer, or importer reporting on blueberries handled. Upon approval of an application, producers and importers will receive exemption certification.

*Respondents:* Producers and importers.

*Estimated number of Respondents:* 200.

*Estimated number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 100 hours.

(4) *Importer application for reimbursement of assessment.*

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.5 hours per importer requesting a refund.

*Respondents:* Importers.

*Estimated number of Respondents:* 18.

*Estimated number of Responses per Respondent:* 12.

*Estimated Total Annual Burden on Respondents:* 108 hours.

(5) *A requirement to maintain records sufficient to verify reports submitted under the Order.*

*Estimate of Burden:* Public recordkeeping burden for keeping this information is estimated to average 0.5 hours per recordkeeper maintaining such records.

*Recordkeepers:* Producers, first handlers, and importers.

*Estimated number of recordkeepers:* 2,250.

*Estimated total recordkeeping hours:* 1,125 hours.

Comments were invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the Order and the USDA's oversight of the program, including whether the information will have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility,

and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The burdens have been revised, as appropriate, based upon a comment from the proponent concerning the estimated number of producers and importers. Another comment was received from a producer who opposed the proposed Order. This commenter did not want more paperwork and specifically stated that she did not want to submit an annual report. A comment from the proponent requested that an annual report be required of producers. As previously discussed, we have not included such a change in the Order provisions. Further, every attempt has been made to minimize the burden on regulated parties, including producers. Accordingly, no change is made based upon the producer's comment.

#### Background

The Act authorizes the Secretary, under a generic authority, to establish agricultural commodity research and promotion orders. The Act provides for a number of optional provisions that allow the tailoring of orders for different commodities. Section 516 of the Act provides permissive terms for orders, and other sections provide for alternatives. For example, Section 514 of the Act provides for orders applicable to (1) producers, (2) first handlers and others in the marketing chain as appropriate, and (3) importers (if importers are subject to assessment). Section 516 authorizes an order to provide for exemption of de minimis quantities of an agricultural commodity; different payment and reporting schedules; coverage of research, promotion, and information activities to expand, improve, or make more efficient the marketing or use of an agricultural commodity in both domestic and foreign markets; provision for reserve funds; provision for credits for generic and branded activities; and assessment of imports. In addition, Section 518 of the Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within 3 years after assessments first begin under the order. The order also may provide for its approval in a referendum based upon different voting patterns. Section 515 provides for establishment of a board from among producers, first handlers and others in the marketing chain as

appropriate, and importers, if imports are subject to assessment.

This proposed Order includes provisions for both domestic and foreign market expansion and improvement, reserve funds, and an initial referendum to be conducted prior to the Order going into effect. Approval would be determined by a majority of producers and importers voting for approval who also represent a majority of the volume of blueberries represented in the referendum.

The proponent has requested the establishment of a national blueberry promotion, research, and information order pursuant to the Act. The Act authorizes the establishment and operation of generic promotion programs which may include a combination of promotion, research, industry information, and consumer information activities funded by mandatory assessments. These programs are designed to maintain and expand markets and uses for agricultural commodities. This proposal would provide for the development and financing of an effective and coordinated program of research, promotion, and information for blueberries. The purpose of the program would be to strengthen the position of blueberries in domestic and foreign markets, and to develop, maintain, and expand markets for blueberries.

The program would not become effective until approved in a referendum conducted by USDA. Section 518 of the Act provides for USDA (1) to conduct an initial referendum, preceding a proposed order's effective date, among persons who would pay assessments under the program or (2) to implement a proposed order, pending the conduct of a referendum, among persons subject to assessments, within three years after assessments first begin.

In accordance with Section 518(e) of the Act, an order may provide for its approval in a referendum based upon (1) a majority of those persons voting; (2) persons voting for approval who represent a majority of the volume of the agricultural commodity; or (3) a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity.

The Secretary will conduct a referendum in which approval of the Order would be determined by a majority of producers and importers voting for approval who also represent a majority of the volume of blueberries represented in the referendum. The proponent has recommended that a referendum be conducted prior to the proposed Order going into effect.

In accordance with the Act, USDA would oversee the program's operations. In addition, the Act requires the Secretary to conduct subsequent referenda: (1) not later than 7 years after assessments first begin under the Order; or (2) at the request of the board established under the Order; or (3) at the request of 10 percent or more of the number of persons eligible to vote. The proponent group has requested that a referendum be conducted every five years to determine if producers and importers want the program to continue.

In addition to these criteria, the Act provides that the Secretary may conduct a referendum at any time to determine whether the continuation, suspension, or termination of the Order or a provision of the Order is favored by persons eligible to vote.

A national research and promotion program for blueberries would help the industry to address the many market problems it currently faces. According to the proponent, three main factors currently affecting blueberry sales, both here in the domestic market and abroad, are increasing production, aggressive competition, and changing consumer habits.

Over the years, increased blueberry production has led to depressed grower prices and increasing cold storage inventory levels. Though slightly lower production and inventory levels in 1996 and early 1997 improved grower returns to more profitable levels, record production in 1997 led once again to a build up in cold storage inventory of frozen blueberries and a downturn in grower prices in late 1997 and early 1998. The potential for continued increases in tonnage from new plantings, expected to come into full production in the future, will continue to affect the balance of supply and demand and threaten to depress grower returns.

The blueberry industry has seen tremendous growth in the Northwest and Southern states which accounted for an estimated 19.9 percent of total U.S. blueberry acreage in 1980 and an estimated 38.6 percent of acres by 1996. The growth in the Northwest is an important factor for the future of the industry, given its production potential. Over the years, yield per acre in the Northwest has been substantially above that of the major growing regions of Michigan and New Jersey. On average, from 1990 to 1996, Oregon produced 71 percent more blueberries per acre than New Jersey (3.6 tons per acre versus 2.1 tons per acre) and more than twice the yield of Michigan (3.6 tons per acre versus 1.6 tons per acre). During this same time period, Washington produced

an average of 38 percent more blueberries per acre than New Jersey (2.9 tons per acre compared to 2.1 tons per acre) and 81 percent more than Michigan (2.9 tons per acre versus 1.6 tons per acre).

The blueberry industry is facing strong competition in the marketplace from both indirect and direct competitors. Like all food products, the blueberry must compete for a share of the consumer dollar. As competition in the supermarket increases, the blueberry industry must work harder to gain its share of consumer attention at a time when the industry's direct and indirect competitors expand their promotional activities.

A recent informal survey conducted by the proponent showed that from 1991 to 1995, the blueberry industry committed an average of 0.26 percent of farm gate value to the voluntary NABC domestic marketing program, far below the average of products such as prunes, kiwifruit, figs, pears, grapes, apples, citrus, and avocados whose domestic marketing expenditures averaged 2.10 percent of crop value. Though some individual members of the blueberry industry conduct promotional efforts on their own as well as contribute to the NABC program, it is extremely difficult to compete for a share of consumer and industrial user attention when the national generic marketing expenditure is slightly more than one-tenth the average amount of competitive products.

The blueberry industry must also address direct competition with the lowbush blueberry industry which is very active in the industrial market both in the United States and abroad. The blueberry industry must also contend with artificial blueberries which are making their presence felt in a wide range of national and regional branded food products.

Changing consumer trends are also having an impact on the use of blueberries. Of great concern to the blueberry industry is the overall decline in home baking, given the fact that consumers perceive blueberries as the primary baking berry. As consumers move away from home baking of blueberry muffins and pies and decide to buy rather than bake, the industry must increase its efforts in the industrial market to be sure that manufacturers maintain and expand their use of blueberries in baked applications.

It is also necessary for the industry to expand the awareness of the versatility of blueberries and encourage new consumer and food manufacturer uses.

In 1965, the NABC was established as a voluntary association of U.S. and

Canadian lowbush (native) and cultivated (highbush) blueberry growers and marketers who collectively worked to promote blueberry awareness and consumption. Over the years, the structure of the organization changed to where the association now represents only the cultivated blueberry industry in the United States and Canada. The 31 U.S.-based NABC members account for an estimated 78 percent of the U.S. blueberry crop. These members, along with members from British Columbia and Quebec, voluntarily assess themselves at a rate of \$9 per ton to fund domestic publicity and promotion efforts directed to both the consumer and industrial user, as well as to support international market development. The NABC generates approximately \$500,000 annually.

As the only national organization funding market development efforts for cultivated (highbush) blueberries, the voluntary NABC has not been able to generate the funds necessary to support the aggressive marketing efforts needed to help expand blueberry consumption and improve the profitability of the industry. In order to deal with increased production, aggressive competition, and changing consumer habits, the proponent states that a more extensive marketing program is needed. A mandatory national program could solve this problem. In addition, a mandatory national program would place all domestic growers, first handlers, and importers on an equal playing field with each investing a fair share in promoting blueberries.

Additional funds generated through a national program would allow the blueberry industry to take advantage of a wide range of promotional opportunities. At a minimum, increased funding would allow the industry to expand its current consumer, food service, and food manufacturer promotion efforts. It would also allow for increased participation in the USDA's Market Access Program and the opportunity to develop stronger markets overseas. Increased funding would allow for a more aggressive school effort (educational films, educational booklets, Internet lesson plans, and the like) and help increase awareness and demand among children. In addition, such a program would create the opportunity to explore tie-in promotional activities with nationally branded food products which would help the blueberry industry gain advertising and in-store exposure. Further, a mandatory national program would generate the funds for the industry to support expanded varietal research activities, new product

development efforts, and nutritional and health research proposals.

Section 516(f) of the Act allows an order to authorize the levying of assessments on imports of the commodity covered by the program or on products containing that commodity, at a rate comparable to the rate determined for the domestic agricultural commodity covered by the order. The proponent has proposed to assess imports.

The assessment levied on domestically-produced and imported blueberries would be used to pay for promotion, research, and consumer and industry information as well as administration, maintenance, and functioning of the Council. Expenses incurred by the Secretary in implementing and administering the Order, including referenda costs, also would be paid from assessments.

Sections 516(e)(1) and (2) of the Act state that the Secretary may provide credits of assessments for generic and branded activities. The proponent has elected not to propose credits for generic or branded activities. Therefore, the terms "generic activities" and "branded activities" are not defined in the Order.

First handlers would be responsible for the collection of assessments from the producer and payment to the Council. First handlers would be required to maintain records for each producer for whom blueberries are handled, including blueberries produced by the first handler. In addition, first handlers would be required to file reports regarding the collection, payment, or remittance of the assessments.

Assessments on imported fresh and processed blueberries would be collected by Customs at the time of entry into the United States and remitted to the Council.

All information obtained from persons subject to this Order as a result of recordkeeping and reporting requirements would be kept confidential by all officers, employees, and agents of USDA and of the Council. This information may be disclosed only if the Secretary considers the information relevant, and the information is revealed in a judicial proceeding or administrative hearing brought at the direction or on the request of the Secretary or to which the Secretary or any officer of USDA is a party. Other exceptions for disclosure of confidential information would include the issuance of general statements based on reports or on information relating to a number of persons subject to an order if the statements do not identify the

information furnished by any person or the publication, by direction of the Secretary of the name of any person violating the Order and a statement of the particular provisions of the Order violated by the person.

The proposed Order provides for USDA to conduct an initial referendum preceding the proposed Order's effective date. Therefore, the proposed Order must be approved by producers and importers voting in the referendum. Approval would be determined by a majority of producers and importers voting for approval who also represent a majority of the volume of blueberries represented in the referendum. The proposed Order also provides for subsequent referenda to be conducted (1) every 5 years after the program is in effect, (2) at the request of the Board established under the Order, or (3) when requested by 10 percent or more of blueberry producers and importers subject to the Order. In addition, the Secretary may conduct a referendum at any time.

The Act requires that such a proposed order provide for the establishment of a board to administer the program under USDA supervision. The proponent's proposal provided for a 12-member U.S.A. Blueberry Council to which the Secretary would add a public member, as stated earlier.

To ensure fair and equitable representation of the blueberry industry on the USABC, the Act requires membership on the USABC to reflect the geographical distribution of the production of blueberries and the quantity or value of imports. To that end, the proposed Order divides the production area into four relatively equal regions which would each have one member on the USABC. Regions are based on the most recent three-year average of blueberries produced in each region. The proposed Order also provides for a representative from each of the top five blueberry producing states based on the most recent 3-year average of blueberries produced in each state. In addition, the proposed Order provides for one importer, a first handler, and an exporter position to be filled by a representative of the foreign production area which, based on a 3-year average, produces the most blueberries that are shipped to the United States. Each member would have an alternate.

Upon implementation of the Order and pursuant to the Act, the USABC would at least once in each five-year period, but not more frequently than once in each three-year period, review the geographical distribution of blueberry production in the United

States and the quantity of fresh and processed blueberries imported into the United States and make a recommendation to the Secretary after considering the results of its review and other information it deems relevant regarding the reapportionment of the USABC.

Members and alternates would serve for three-year terms, except that the members and alternates appointed to the initial USABC would serve proportionately for two, three, and four years. No member or alternate would serve more than two consecutive three-year terms.

A proposal was submitted by the North American Blueberry Council, Inc. (proponent or NABC). Prior to publication, the Department modified the proponent's proposal to make it consistent with the Act and other similar national research and promotion programs; for consistency throughout the text; and for clarity.

In the definitions, "commodity covered" was changed to "blueberries," "consumer information" and "producer information" were combined into a definition of "information" to conform with the Act. Additionally, the definition of "research," and "importer" were altered to conform with the Act.

In the definitions and throughout the proposed Order, "grower/producer" was changed to "producer," "handler" was changed to "first handler," the term "board" was eliminated, and "council" was changed to "U.S.A. Blueberry Council" or "USABC." The terms "plans, projects, and programs" were deleted because they were deemed unnecessary, and a definition for "processed blueberries" and "part and subpart" were added. Throughout the proposed Order, the term "blueberry products" was changed to "fresh and processed blueberries," and, for clarity, time periods were changed to match definitions.

The following terms were removed from the definitions: "association," "buyer," "broker," "distributor," "packer," "processor," and "shipper." These terms were removed because they are not necessary for the administration of the proposed program.

In § 1218.40 *Establishment and membership*, the two exporter/importer positions on the proposed USABC were changed to an importer position and an exporter position. The industry's proposal made importer representation optional. However, Section 515(b)(2)(B) of the Act requires importers to have representation on boards when imports are assessed under a program. It is estimated that imports will represent approximately 12 percent of the

assessments under this proposed program. One of the optional importer/exporter positions was changed to provide for an importer position, and the other position was changed to provide for an exporter position. The exporter position would be filled by a representative of the foreign production area which, based on a three-year average, produces the most fresh and processed blueberries that are shipped to the United States. In addition, to provide the opportunity for public input into USABC deliberations, the Secretary added a public member and alternate to the proponent's proposed USABC. The public member and alternate would be nominated by the USABC. In this same section, a statement indicating that the addition of importer members and alternates would be accomplished by notice and rulemaking, was deleted as unnecessary.

In § 1218.43 *Vacancies*, additional information was added to specify that alternate members would assume the position of member if the member position becomes vacant during a term of office. In § 1218.44, a new paragraph (g) was added to clarify that proxy voting is not authorized. In addition, a new paragraph (h) was added to allow the chairperson to have a vote during the USABC meetings.

In § 1218.60, the date all reports are due was changed from November 30 of the crop year to 30 days after the end of the crop year. This phrase was changed for clarity.

In § 1218.61, the length of time records must be maintained by first handlers, producers, and importers was changed from seven years to two years beyond the fiscal period to be consistent with other research and promotion programs. Also, the following sections were added to the proponent's proposal: § 1218.73 *Proceedings after termination*; § 1218.74 *Effect of termination or amendment*; and § 1218.76 *Separability*.

Other minor changes which did not materially affect the text were made for consistency and clarity.

A proposed rule seeking comments on the national research and promotion program for blueberries was published on July 22, 1999, in the **Federal Register** [64 FR 39790]. Comments were invited on the entire proposal with the deadline for comments on September 20, 1999. Eight comments were received from seven commenters by that deadline. Of the eight comments, three were supportive of the proposed program, one expressed opposition, two addressed specific concerns, and two were generally not applicable to the proposed Order. The commenters were a blueberry producer association, a state

department of agriculture, four producers, and a blueberry cooperative. Two additional comments (one of which was sent twice) were received after the close of the comment period. The late comments reflected to a large extent the comments that were timely received. One of the late comments had questions about regulation of U-pick operations which are covered by the proposed Order.

A comment was received requesting that, throughout the proposal and in the Council's title, the term "blueberry" be changed to "cultivated blueberry." The commenter stated that the generic use of the term "blueberry" was misleading as to the specific type of blueberry and industry segment represented by the proposed Council. The commenter noted that the wild blueberry industry promotes its product as unique from the cultivated blueberry. While the commenter brings forth differences between the two types of blueberries, the Order and Council name were proposed by the proponent organization which represents approximately 70 percent of domestic production of all blueberries. Wild blueberry production is very localized and represents less than 30 percent of total domestic blueberry production. Generally, most consumers do not differentiate between wild and cultivated blueberries. *Webster's Ninth New Collegiate Dictionary* (1984) defines a blueberry as "the edible blue or blackish berry of any of several plants (genus *Vaccinium*) of the heath family; a low or tall shrub producing these berries." This definition includes both wild (lowbush) and cultivated (highbush) varieties.

Even if this proposed program is implemented, the wild blueberry industry can still create a separate image and niche market to identify its product.

It is not uncommon in other national research and promotion programs that a generic term is used for a commodity that is defined with further specificity. For example, the Fluid Milk Promotion Order uses the term "milk" and defines it as any class of cow's milk produced in the United States. Neither this definition of milk nor the title of the Fluid Milk Promotion Order addresses goats' milk or other speciality milks. As with fluid milk, "blueberry" is a generic term. Further, cultivated blueberries represent the majority of production. Therefore, no change will be made as a result of this comment, and we will leave the proposed Order provisions and Council title as recommended by the proponent.

Comments were received concerning the accuracy and clarity of wording in the background section of the proposed

Order. These comments included a notation that the NABC is not the only national organization funding blueberry market development and asked for clarification of how the proposed Order would be approved in a referendum. We have addressed these comments and revised the background section, as appropriate.

Comments regarding the regulatory text included a comment concerning § 1218.2 which defines blueberries. The commenter requested that the definition of blueberries be clarified by including lowbush/highbush crosses (known as "half-high" blueberries). The definition of blueberries submitted by the proponent only excludes the lowbush (wild) blueberry. Therefore, simply clarifying that hybrids are included will not significantly change the definition of blueberry. Further, any blueberry that is not a pure lowbush is generally considered cultivated (highbush).

A comment was submitted on § 1218.07 which defines a first handler. The commenter felt a need to specify that a producer who markets his or her own product be considered a first handler. Including such producers in the definition of first handlers is consistent with other similar national research and promotion programs. Therefore, we accept the commenter's suggestion to include blueberry producers who market their own product in the definition of first handlers and have added this to the definition.

A comment was received concerning § 1218.41 which addresses nominations and appointments to the USABC. The commenter requested the inclusion of a statement indicating that no one group should have a majority position on the USABC. The commenter specifically requested that no one state and/or organization have representatives filling more than 6 out of the 13 USABC positions. The commenter addresses a valid concern regarding representation of states and organizations on the USABC. However, according to § 1218.40, which describes the establishment of membership, it would not be possible for any state or organization to have a majority of the positions on the Council. Only two members could come from the same state as, of the nine producer positions, four regions are represented along with the top five blueberry producing states. Concerning majority representation of organizations, with 9 of the 13 positions being filled by producers, an organization could not obtain a majority position. Therefore, no change is necessary as a result of this comment.

One comment was submitted regarding § 1218.45 which outlines USABC procedures. The commenter requested that "industry experts" be included on USABC committees and that these individuals be able to vote on committee actions. Similar national research and promotion programs allow for nonmembers to serve on Board committees and vote on committee actions but not on Board actions. We have accepted this comment and added the following language to § 1218.45(e): Committees may also consist of individuals other than USABC members and such members may vote in committee meetings.

A comment was received regarding § 1218.47 which outlines the powers and duties of the proposed USABC. The commenter requested that the USABC have the power to pay all necessary expenses and fees for committee members who are not USABC members. As mentioned in the previous paragraph, precedent exists for allowing individuals to serve on USABC committees who are not USABC members. The Act states that members and alternates will serve without compensation except that they may be reimbursed for travel expenses. Therefore, we accept the comment that non-USABC members who serve on committees be compensated for travel expenses but deny the request that the USABC pay fees for such committee members. This comment is addressed in § 1218.45(e), where a reference to travel expenses for such committee members has been added.

One comment was received regarding § 1218.50 which addresses budget and expenses. The commenter requested a statement in this section that would allow the USABC to establish an operating monetary reserve and carry over excess funds to subsequent fiscal periods provided that the funds in the reserve do not exceed one fiscal period's budget. The Act authorizes orders to contain authority to reserve funds from assessments provided that the amount of funds reserved does not exceed the greatest aggregate amount of the anticipated disbursements specified in budgets approved by the Secretary for any two fiscal years. We therefore accept the commenter's request and have added § 1218.50(j) which authorizes an operating monetary reserve, not to exceed one fiscal period's budget.

One comment was received in regard to § 1218.51 which deals with financial statements. The commenter requested clarification on how often financial statements would be required of the USABC. As a general rule, research and

promotion boards submit financial statements on a monthly basis. Section 1218.51(a) provides that the USABC shall prepare and submit financial statements to the Secretary as requested by the Secretary. Therefore, along with the annual financial statement, the Secretary may request a financial statement at any time. Consequently, no change to the Order provision is needed as a result of this comment.

Comments were received concerning § 1218.52 which deals with assessments. Some of the comments questioned whether the USABC could charge a penalty on late assessments in addition to interest charges. A commenter suggested that the Council set the penalty amount and interest charge upon approval by the Secretary. The Act and other similar national research and promotion programs allow for late-payment charges. Therefore, we have revised § 1218.52(e) to include a late payment charge, in addition to interest, that may be charged to late assessments. However, it should be noted that the USABC would be required to use the rates specified in official debt collection regulations. These regulations authorize a one-time late payment charge of 6 percent per year of the unpaid balance once the payment of assessments is 90 days past due. In addition, from the first day any assessments are late, a rate of 15 percent interest is applied on the unpaid balance.

Another comment requested that § 1218.52(d)(1) be clarified by indicating that the assessment rate for imported fresh and processed blueberries be the same or equivalent to the rate for fresh and processed blueberries produced in the United States. The commenter's request that "and processed" be added to the description of blueberries produced in the United States, which would be assessed, is not made because among domestic blueberries only fresh blueberries would be assessed under the Order.

Another comment was submitted addressing § 1218.52(c). The commenter felt that the method of assessment should be changed from an amount per unit of sale (\$12 per ton) to a percent of farm gate value. This commenter stated that an assessment rate based on a percent of farm gate value is more equitable. The proponent, which represents the majority of domestic blueberry producers and is comprised of importers as well as producers, recommended that only a flat assessment rate of \$12 per ton be used. The Act provides authority to tailor a program according to the individual needs of an industry. Further, the proposed flat assessment conforms to

many other national research and promotion programs. The industry is familiar with this method of assessment, and it would enhance administrative simplicity and cost effectiveness. Accordingly, no change to the Order provisions is made as a result of this comment.

A comment was submitted regarding § 1218.75 which addresses personal liability. The commenter believed that USABC staff should be covered under this liability statement. Taking this comment into account, we have changed § 1218.75, as appropriate.

One comment was received that was opposed to the overall Order. The commenter noted that the program was not voluntary, that it would increase expenses and paperwork, and that the current promotion of blueberries was very good. We disagree with this comment. The proposed program is authorized and consistent with the provisions of the Act and, if implemented, would benefit the overall industry. Further, every effort has been made to minimize the burden of this program on the affected parties. Further, we would also note that, if this proposed Order is approved in a referendum, the terms of office for the initial Council will be established according to the provisions of § 1218.42, with appropriate rounding to maintain a calendar year basis.

In summary, § 1218.02, § 1218.07, § 1218.45(e), § 1218.50, § 1218.52(e), § 1218.75, and the background section have been revised as a result of comments received that were deemed to have merit. Changes to the Regulatory Flexibility Analysis were discussed previously. In addition to making several changes to the proposed Order based on the comments received, two additional changes to the proposed rule made by AMS are noted and discussed below.

The Department has revised the referendum requirements. The proponent had recommended that the Order be implemented if approved by producers and importers representing a majority of the volume of blueberries represented in the referendum. The Department will keep this requirement but add a second requirement. In order to be implemented, the Order must also be approved by a majority of the voters in the referendum. The majority of the persons to be covered by the proposed program are small producers. This change was made in order to ensure that these small producers have fair input into the outcome of the referendum. In addition, this change would further the goals of the Secretary's Small Farm

Initiative without harming the interests of the larger growers.

In addition, in § 1218.52 *Assessments*, a statement was added indicating that, along with assessments, the USABC may use donations and other funds available to cover its expenses. This was added because the USABC may be eligible to receive funds from sources such as the Department's Foreign Agricultural Service.

The Order is summarized as follows: Sections 1218.01 through 1218.23 of the proposed Order define certain terms, such as blueberries, producer, and importer, which are used in the proposed Order.

Sections 1218.40 through 1216.48 include provisions relating to the USABC. These provisions cover establishment and membership, nominations and appointments, term of office, vacancies, alternate members, procedures for conducting USABC business, compensation and reimbursement, and powers and duties of the USABC, and prohibited activities. The USABC is the governing body authorized to administer the Order through the implementation of programs, plans, projects, budgets, and contracts to promote and disseminate information about blueberries, subject to oversight of the Secretary.

Sections 1218.50 through 1218.56 cover budget review and approval; financial statements; authorize the collection of assessments; specify how assessments would be used, including reimbursement of necessary expenses incurred by the USABC for the performance of its duties and expenses incurred for USDA's oversight responsibilities; specify who pays the assessment and how; authorize the imposition of a late-payment charge on past-due assessments; outline exemption procedures; address programs, plans, and projects; require the USABC to periodically conduct an independent review of its overall program; and address patents, copyrights, trademarks, information, publications, and product formulations developed through the use of assessment funds.

The proposed assessment rate is \$12 per ton for domestic blueberries and imported fresh and processed blueberries. The assessment rate may be raised or lowered after the initial continuance referendum which would be conducted after the program has been in operation five years. A referendum on a higher or lower new assessment rate is not required.

The federal debt collection procedures referenced above and in § 1218.52(e) include those set forth in 7

CFR 3.1 through 3.36 for all research and promotion programs administered by AMS [60 FR 12533, March 7, 1995].

Sections 1218.60 through 1218.62 concern reporting and recordkeeping requirements for persons subject to the Order and protect the confidentiality of information from such books, records, or reports.

Sections 1218.70 through 1218.78 describe the rights of the Secretary; address referenda; authorize the Secretary to suspend or terminate the Order when deemed appropriate; prescribe proceedings after termination; address personal liability, separability, and amendments; and provide OMB control numbers.

The Department has determined that this Order is consistent with and will effectuate the purposes of the Act.

For the Order to become effective, the Order must be approved by a majority of producers and importers voting for approval who also represent a majority of the volume of blueberries represented in the referendum.

#### Referendum Order

It is hereby directed that a referendum be conducted among eligible blueberry producers and importers to determine whether they favor implementation of the Blueberry Promotion, Research, and Information Order.

The referendum shall be conducted from March 13 through 24, 2000. Ballots will be mailed to all known blueberry producers and importers on or before March 13, 2000. Eligible voters who do not receive a ballot by mail should call the following toll-free telephone number to receive a ballot: 1 (888) 720-9917. All ballots will be subject to verification. Ballots must be received by the referendum agents no later than March 24, 2000, to be counted.

Oliver L. Flake and Martha B. Ransom, Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2535-S, Stop 0244, Washington, DC 20250-0244, are designated as the referendum agents of the Secretary of Agriculture to conduct the referendum. The Procedure for the Conduct of Referenda in Connection with the Blueberry Promotion, Research, and Information Order, 7 CFR 1218.100-1218.107, which is being published separately in this issue of the **Federal Register**, shall be used to conduct the referendum.

#### List of Subjects in 7 CFR Part 1218

Administrative practice and procedure, Advertising, Blueberries, Consumer information, Marketing agreements, Blueberry promotion,

Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Title 7 of Chapter XI of the Code of Federal Regulations be amended as follows:

#### PART 1218—BLUEBERRY PROMOTION, RESEARCH, AND INFORMATION ORDER

1. The authority citation for part 1218 continues to read as follows:

**Authority:** 7 U.S.C. 7401-7425.

2. Subpart A is added to part 1218 to read as follows:

#### Subpart A—Blueberry Promotion, Research, and Information Order

##### Definitions

Sec.

- 1218.1 Act.
- 1218.2 Blueberries.
- 1218.3 Conflict of interest.
- 1218.4 Crop year.
- 1218.5 Department.
- 1218.6 Exporter.
- 1218.7 First handler.
- 1218.8 Fiscal period.
- 1218.9 Importer.
- 1218.10 Information.
- 1218.11 Market or marketing.
- 1218.12 Order.
- 1218.13 Part and subpart.
- 1218.14 Person.
- 1218.15 Processed blueberries.
- 1218.16 Producer.
- 1218.17 Promotion.
- 1218.18 Research.
- 1218.19 Secretary.
- 1218.20 Suspend.
- 1218.21 Terminate.
- 1218.22 United States.
- 1218.23 USABC.

##### U.S.A. Blueberry Council

- 1218.40 Establishment and membership.
- 1218.41 Nominations and appointments.
- 1218.42 Term of office.
- 1218.43 Vacancies.
- 1218.44 Alternate members.
- 1218.45 Procedure.
- 1218.46 Compensation and reimbursement.
- 1218.47 Powers and duties.
- 1218.48 Prohibited activities.

##### Expenses and Assessments

- 1218.50 Budget and expenses.
- 1218.51 Financial statements.
- 1218.52 Assessments.
- 1218.53 Exemption procedures.
- 1218.54 Programs, plans, and projects.
- 1218.55 Independent evaluation.
- 1218.56 Patents, copyrights, trademarks, information, publications, and product formulations.

##### Reports, Books, and Records

- 1218.60 Reports.
- 1218.61 Books and records.
- 1218.62 Confidential treatment.

##### Miscellaneous

- 1218.70 Right of the Secretary.

- 1218.71 Referenda.
- 1218.72 Suspension and termination.
- 1218.73 Proceedings after termination.
- 1218.74 Effect of termination or amendment.
- 1218.75 Personal liability.
- 1218.76 Separability.
- 1218.77 Amendments.
- 1218.78 OMB control numbers.

#### Subpart A—Blueberry Promotion, Research, and Information Order

##### Definitions

##### § 1218.1 Act.

*Act* means the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7401-7425; Pup. L. 104-127; 110 Stat. 1029), or any amendments thereto.

##### § 1218.2 Blueberries.

*Blueberries* means cultivated blueberries grown in or imported into the United States of the genus *Vaccinium* *Corymbosum* and *Ashei*, including the northern highbush, southern highbush, rabbit eye varieties, and any hybrid, and excluding the lowbush (native) blueberry *Vaccinium Angustifolium*.

##### § 1218.3 Conflict of interest.

*Conflict of interest* means a situation in which a member or employee of the U.S.A. Blueberry Council has a direct or indirect financial interest in a person who performs a service for, or enters into a contract with, the USABC for anything of economic value.

##### § 1218.4 Crop year.

*Crop year* means the 12-month period from November 1 through October 31 of the following year or such other period approved by the Secretary.

##### § 1218.5 Department.

Department means the U.S. Department of Agriculture.

##### § 1218.6 Exporter.

*Exporter* means a person involved in exporting blueberries from another country to the United States.

##### § 1218.7 First handler.

*First handler* means any person, (excluding a common or contract carrier), receiving blueberries from producers and who as owner, agent, or otherwise ships or causes blueberries to be shipped as specified in the Order. This definition includes those engaged in the business of buying, selling and/ or offering for sale; receiving; packing; grading; marketing; or distributing blueberries in commercial quantities. This definition includes a retailer, except a retailer who purchases or acquires from, or handles on behalf of

any producer, blueberries. The term first handler includes a producer who handles or markets blueberries of the producer's own production.

**§ 1218.8 Fiscal period.**

*Fiscal period* means a calendar year from January 1 through December 31, or such other period as approved by the Secretary.

**§ 1218.9 Importer.**

*Importer* means any person who imports fresh or processed blueberries into the United States as a principal or as an agent, broker, or consignee of any person who produces or handles fresh or processed blueberries outside of the United States for sale in the United States, and who is listed in the import records as the importer of record for such blueberries.

**§ 1218.10 Information.**

*Information* means information and programs that are designed to increase efficiency in processing and to develop new markets, marketing strategies, increase market efficiency, and activities that are designed to enhance the image of blueberries on a national or international basis. These include:

(a) *Consumer information*, which means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, nutritional attributes, and care of blueberries; and

(b) *Industry information*, which means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the blueberry industry, and activities to enhance the image of the blueberry industry.

**§ 1218.11 Market or marketing.**

(a) *Marketing* means the sale or other disposition of blueberries in any channel of commerce.

(b) To *market* means to sell or otherwise dispose of blueberries in interstate, foreign, or intrastate commerce.

**§ 1218.12 Order.**

*Order* means an order issued by the Secretary under section 514 of the Act that provides for a program of generic promotion, research, and information regarding agricultural commodities authorized under the Act.

**§ 1218.13 Part and subpart.**

*Part* means the Blueberry Promotion, Research, and Information Order and all rules, regulations, and supplemental orders issued pursuant to the Act and

the Order. The Order shall be a *subpart* of such part.

**§ 1218.14 Person.**

*Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

**§ 1218.15 Processed blueberries.**

*Processed blueberries* means blueberries which have been frozen, dried, pureed, or made into juice.

**§ 1218.16 Producer.**

*Producer* means any person who grows blueberries in the United States for sale in commerce, or a person who is engaged in the business of producing, or causing to be produced for any market, blueberries beyond the person's own family use and having value at first point of sale.

**§ 1218.17 Promotion.**

*Promotion* means any action taken to present a favorable image of blueberries to the general public and the food industry for the purpose of improving the competitive position of blueberries both in the United States and abroad and stimulating the sale of blueberries. This includes paid advertising and public relations.

**§ 1218.18 Research.**

*Research* means any type of test, study, or analysis designed to advance the image, desirability, use, marketability, production, product development, or quality of blueberries, including research relating to nutritional value, cost of production, new product development, varietal development, nutritional value, health research, and marketing of blueberries.

**§ 1218.19 Secretary.**

*Secretary* means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

**§ 1218.20 Suspend.**

*Suspend* means to issue a rule under section 553 of title 5, U.S.C., to temporarily prevent the operation of an order or part thereof during a particular period of time specified in the rule.

**§ 1218.21 Terminate.**

*Terminate* means to issue a rule under section 553 of title 5, U.S.C., to cancel permanently the operation of an order or part thereof beginning on a certain date specified in the rule.

**§ 1218.22 United States.**

*United States* means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

**§ 1218.23 USABC.**

*USABC*, or U.S.A. Blueberry Council, means the administrative body established pursuant to § 1218.40.

**U.S.A. Blueberry Council**

**§ 1218.40 Establishment and membership.**

(a) Establishment of the U.S.A. Blueberry Council. There is hereby established a U.S.A. Blueberry Council, hereinafter called the USABC, composed of no more than 13 members and alternates, appointed by the Secretary from the nominations as follows:

(1) One producer member and alternate from each of the following regions:

(i) Region #1 Western Region (all states from the Pacific east to the Rockies): Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

(ii) Region #2 Midwest Region (all states east of the Rockies to the Great Lakes and south to the Kansas/Missouri/Kentucky state line): Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.

(iii) Region #3 Northeast Region (all states east of the Great Lakes and North of the North Carolina/Tennessee state line): Connecticut, Delaware, New York, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Pennsylvania, Rhode Island, Virginia, Vermont, Washington, D.C., and West Virginia.

(iv) Region #4 Southern Region (all states south of the Virginia/Kentucky/Missouri/Kansas state line and east of the Rockies): Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee and Texas.

(2) One producer member and alternate from each of the top five blueberry producing states, based upon the average of the total tons produced over the previous three years. Average tonnage will be based upon North American Blueberry Council production figures for the initial election and production and assessment figures generated by the USABC thereafter.

(3) One importer and alternate.

(4) One exporter and alternate shall be filled by foreign blueberry producers currently shipping blueberries into the

United States from the largest foreign blueberry production area, based on a three-year average.

(5) One first handler member and alternate shall be filled by a United States based independent or cooperative organization which is a producer/shipper of domestic blueberries.

(6) One public member and alternate.

(b) Adjustment of membership. At least once every five years, the USABC will review the geographical distribution of United States production of blueberries and the quantity of imports. The review will be conducted through an audit of state crop production figures and USABC assessment receipts. If warranted, the USABC will recommend to the Secretary that membership on the USABC be altered to reflect any changes in geographical distribution of domestic blueberry production and the quantity of imports. If the level of imports increases, importer members and alternates may be added to the USABC.

#### **§ 1218.41 Nominations and appointments.**

(a) Voting for regional and state representatives will be made by mail ballot.

(b) In a case where a state has a state blueberry commission or marketing order in place, the state commission or committee will nominate members and alternates to serve on the USABC. At least two nominees shall be submitted to the Secretary for each member and each alternate.

(c) Nomination and election of regional, and state representatives where no commission or order is in place will be handled by the USABC, provided that the initial nominations will be handled by the North American Blueberry Council. The USABC will seek nominations for members and alternates from the specific states and/or regions. Nominations will be returned to the USABC and placed on a ballot which will then be sent to producers in the state and/or region for vote. The final nominee for member will have received the highest number of votes cast. The person with the second highest number of votes cast will be the final nominee for alternate. The persons with the third and fourth place highest number of votes cast will be designated as additional nominees for consideration by the Secretary.

(d) Nominations for the importer, exporter, first handler, and public member positions will be made by the USABC. Two nominees for each member and alternate position will be submitted to the Secretary for consideration.

(e) From the nominations, the Secretary shall select the members of the USABC and alternates for each position on the USABC.

#### **§ 1218.42 Term of office.**

USABC members and alternates will serve for a term of three years and be able to serve a maximum of two consecutive terms. A USABC member may serve as an alternate during the years the member is ineligible for a member position. When the USABC is first established, the state representatives, first handler member, and their respected alternates will be assigned initial terms of three years. Regional representatives, the importer member, the exporter member, public member, and their alternates will serve an initial term of two years. Thereafter, each of these positions will carry a full three-year term. USABC nominations and appointments will take place in two out of every three years. Each term of office will end on December 31, with new terms of office beginning on January 1.

#### **§ 1218.43 Vacancies.**

(a) In the event any member of the USABC ceases to be a member of the category of members from which the member was appointed to the USABC, such position shall automatically become vacant.

(b) If a member of the USABC consistently refuses to perform the duties of a member of the USABC, or if a member of the USABC engages in acts of dishonesty or willful misconduct, the USABC may recommend to the Secretary that the member be removed from office. If the Secretary finds the recommendation of the USABC shows adequate cause, the Secretary shall remove such member from office.

(c) Should any member position become vacant, the alternate of that member shall automatically assume the position of said member. Should the positions of both a member and such member's alternate become vacant, successors for the unexpired terms of such member and alternate shall be appointed in the manner specified in § 1218.40 and § 1218.41, except that said nomination and replacement shall not be required if said unexpired terms are less than six months.

#### **§ 1218.44 Alternate members.**

An alternate member of the USABC, during the absence of the member for whom the person is the alternate, shall act in the place and stead of such member and perform such duties as assigned. In the event of death, removal, resignation, or disqualification of any

member, the alternate for that member shall automatically assume the position of said member. In the event that both a producer member of the USABC and the alternate are unable to attend a meeting, the USABC may not designate any other alternate to serve in such member's or alternate's place and stead for such a meeting.

#### **§ 1218.45 Procedure.**

(a) At a USABC meeting, it will be considered a quorum when a minimum of seven members, or their alternates serving in the absence, are present.

(b) At the start of each fiscal period, the USABC will select a chairperson and vice chairperson who will conduct meetings throughout that period.

(c) All USABC members and alternates will receive a minimum of 10 days advance notice of all USABC and committee meetings.

(d) Each member of the USABC will be entitled to one vote on any matter put to the USABC, and the motion will carry if supported by one vote more than 50 percent of the total votes represented by the USABC members present.

(e) It will be considered a quorum at a committee meeting when at least one more than half of those assigned to the committee are present. Alternates may also be assigned to committees as necessary. Committees may also consist of individuals other than USABC members and such individuals may vote in committee meetings. These committee members shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the USABC.

(f) In lieu of voting at a properly convened meeting and, when in the opinion of the chairperson of the USABC such action is considered necessary, the USABC may take action if supported by one vote more than 50 percent of the members by mail, telephone, electronic mail, facsimile, or any other means of communication, and all telephone votes shall be confirmed promptly in writing. In that event, all members must be notified and provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the USABC. All votes shall be recorded in USABC minutes.

(g) There shall be no voting by proxy.

(h) The chairperson shall be a voting member.

(i) The organization of the USABC and the procedures for the conducting of meetings of the USABC shall be in accordance with its bylaws, which shall be established by the USABC and approved by the Secretary.

**§ 1218.46 Compensation and reimbursement.**

The members of the USABC, and alternates when acting as members, shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the USABC, incurred by them in the performance of their duties as USABC members.

**§ 1218.47 Powers and duties.**

The USABC shall have the following powers and duties:

- (a) To administer the Order in accordance with its terms and conditions and to collect assessments;
- (b) To develop and recommend to the Secretary for approval such bylaws as may be necessary for the functioning of the USABC, and such rules as may be necessary to administer the Order, including activities authorized to be carried out under the Order;
- (c) To meet, organize, and select from among the members of the USABC a chairperson, other officers, committees, and subcommittees, as the USABC determines to be appropriate;
- (d) To employ persons, other than the members, as the USABC considers necessary to assist the USABC in carrying out its duties and to determine the compensation and specify the duties of such persons;
- (e) To develop programs and projects, and enter into contracts or agreements, which must be approved by the Secretary before becoming effective, for the development and carrying out of programs or projects of research, information, or promotion, and the payment of costs thereof with funds collected pursuant to this subpart. Each contract or agreement shall provide that any person who enters into a contract or agreement with the USABC shall develop and submit to the USABC a proposed activity; keep accurate records of all of its transactions relating to the contract or agreement; account for funds received and expended in connection with the contract or agreement; make periodic reports to the USABC of activities conducted under the contract or agreement; and make such other reports available as the USABC or the Secretary considers relevant. Any contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the USABC a program, plan, or project together with a budget or budgets that shall show the estimated cost to be incurred for such program, plan, or project;

(2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the USABC of activities conducted, submit accounting for funds received

and expended, and make such other reports as the Secretary or the USABC may require;

(3) The Secretary may audit the records of the contracting or agreeing party periodically; and

(4) Any subcontractor who enters into a contract with a USABC contractor and who receives or otherwise uses funds allocated by the USABC shall be subject to the same provisions as the contractor.

(f) To prepare and submit for approval of the Secretary fiscal year budgets in accordance with § 1218.50;

(g) To maintain such records and books and prepare and submit such reports and records from time to time to the Secretary as the Secretary may prescribe; to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records that accurately reflect the actions and transactions of the USABC;

(h) To cause its books to be audited by a competent auditor at the end of each fiscal year and at such other times as the Secretary may request, and to submit a report of the audit directly to the Secretary;

(i) To give the Secretary the same notice of meetings of the USABC as is given to members in order that the Secretary's representative(s) may attend such meetings, and to keep and report minutes of each meeting of the USABC to the Secretary;

(j) To act as intermediary between the Secretary and any producer, first handler, importer, or exporter;

(k) To furnish to the Secretary any information or records that the Secretary may request;

(l) To receive, investigate, and report to the Secretary complaints of violations of the Order;

(m) To recommend to the Secretary such amendments to the Order as the USABC considers appropriate; and

(n) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, evaluation, and industry information designed to strengthen the blueberry industry's position in the marketplace; maintain and expand existing markets and uses for blueberries; and to carry out programs, plans, and projects designed to provide maximum benefits to the blueberry industry.

**§ 1218.48 Prohibited activities.**

The USABC may not engage in, and shall prohibit the employees and agents of the USABC from engaging in:

(a) Any action that would be a conflict of interest; and

(b) Using funds collected by the USABC under the Order to undertake

any action for the purpose of influencing legislation or governmental action or policy, by local, state, national, and foreign governments, other than recommending to the Secretary amendments to the Order.

**Expenses and Assessments****§ 1218.50 Budget and expenses.**

(a) At least 60 days prior to the beginning of each fiscal year, and as may be necessary thereafter, the USABC shall prepare and submit to the Secretary a budget for the fiscal year covering its anticipated expenses and disbursements in administering this subpart. Each such budget shall include:

(1) A statement of objectives and strategy for each program, plan, or project;

(2) A summary of anticipated revenue, with comparative data or at least one preceding year (except for the initial budget);

(3) A summary of proposed expenditures for each program, plan, or project; and

(4) Staff and administrative expense breakdowns, with comparative data for at least one preceding year (except for the initial budget).

(b) Each budget shall provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in this subpart.

(c) Subject to this section, any amendment or addition to an approved budget must be approved by the Secretary, including shifting funds from one program, plan, or project to another. Shifts of funds which do not cause an increase in the USABC's approved budget and which are consistent with governing bylaws need not have prior approval by the Secretary.

(d) The USABC is authorized to incur such expenses, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be incurred by the USABC for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the USABC.

(e) With approval of the Secretary, the USABC may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the USABC. Any funds borrowed by the USABC shall be expended only for startup costs and capital outlays and are limited to the first year of operation of the USABC.

(f) The USABC may accept voluntary contributions, but these shall only be

used to pay expenses incurred in the conduct of programs, plans, and projects. Such contributions shall be free from any encumbrance by the donor and the USABC shall retain complete control of their use.

(g) The USABC may also receive funds provided through the Department's Foreign Agricultural Service or from other sources, with the approval of the Secretary, for authorized activities.

(h) The USABC shall reimburse the Secretary for all expenses incurred by the Secretary in the implementation, administration, and supervision of the Order, including all referendum costs in connection with the Order.

(i) The USABC may not expend for administration, maintenance, and functioning of the USABC in any fiscal year an amount that exceeds 15 percent of the assessments and other income received by the USABC for that fiscal year. Reimbursements to the Secretary required under paragraph (h) are excluded from this limitation on spending.

(j) The USABC may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established: *Provided* that the funds in the reserve do not exceed one fiscal period's budget. Subject to approval by the Secretary, such reserve funds may be used to defray any expenses authorized under this part.

#### **§ 1218.51 Financial statements.**

(a) As requested by the Secretary, the USABC shall prepare and submit financial statements to the Secretary on a periodic basis. Each such financial statement shall include, but not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show expenditures during the time period covered by the report, year-to-date expenditures, and the unexpended budget.

(b) Each financial statement shall be submitted to the Secretary within 30 days after the end of the time period to which it applies.

(c) The USABC shall submit annually to the Secretary an annual financial statement within 90 days after the end of the fiscal year to which it applies.

#### **§ 1218.52 Assessments.**

(a) The funds to cover the Council's expenses shall be paid from assessments on producers and importers, donations from any person not subject to assessments under this Order, and other funds available to the Board including those collected pursuant to § 1218.56

and subject to the limitations contained therein.

(b) The collection of assessments on domestic blueberries will be the responsibility of the first handler receiving the blueberries. In the case of the producer acting as its own first handler, the producer will be required to collect and remit its individual assessments.

(c) Such assessments shall be levied at a rate of \$12 per ton on all blueberries. The assessment rate will be reviewed, and may be modified with the approval of the Secretary, after the first referendum is conducted as stated in § 1218.71(b).

(d) Each importer of fresh and processed blueberries shall pay an assessment to the USABC on blueberries imported for marketing in the United States, through the U.S. Customs Service.

(1) The assessment rate for imported fresh and processed blueberries shall be the same or equivalent to the rate for fresh blueberries produced in the United States.

(2) The import assessment shall be uniformly applied to imported fresh and frozen blueberries that are identified by the numbers 0810.40.0028 and 0811.90.2028, respectively, in the Harmonized Tariff Schedule of the United States or any other numbers used to identify fresh and frozen blueberries. Assessments on other types of imported processed blueberries, such as dried blueberries, puree, and juice, may be added at the recommendation of the USABC with the approval of the Secretary.

(3) The assessments due on imported fresh and processed blueberries shall be paid when they enter or are withdrawn for consumption in the United States.

(e) All assessment payments and reports will be submitted to the office of the USABC. All final payments for a crop year are to be received no later than November 30 of that year. A late payment charge shall be imposed on any handler who fails to remit to the USABC, the total amount for which any such handler is liable on or before the due date established by the USABC. In addition to the late payment charge, an interest charge shall be imposed on the outstanding amount for which the handler is liable. The rate of interest shall be prescribed in regulations issued by the Secretary.

(f) Persons failing to remit total assessments due in a timely manner may also be subject to actions under federal debt collection procedures.

(g) The USABC may authorize other organizations to collect assessments on

its behalf with the approval of the Secretary.

#### **§ 1218.53 Exemption procedures.**

(a) Any producer who produces less than 2,000 pounds of blueberries annually who desires to claim an exemption from assessments during a fiscal year as provided in § 1218.52 shall apply to the USABC, on a form provided by the USABC, for a certificate of exemption. Such producer shall certify that the producer's production of blueberries shall be less than 2,000 pounds for the fiscal year for which the exemption is claimed. Any importer who imports less than 2,000 pounds of fresh and processed blueberries annually who desires to claim an exemption from assessments during a fiscal year as provided in § 1218.52 shall apply to the USABC, on a form provided by the USABC, for a certificate of exemption. Such importer shall certify that the importer's importation of fresh and processed blueberries shall not exceed 2,000 pounds, for the fiscal year for which the exemption is claimed.

(b) On receipt of an application, the USABC shall determine whether an exemption may be granted. The USABC then will issue, if deemed appropriate, a certificate of exemption to each person who is eligible to receive one. Each producer who is exempt from assessment must provide an exemption number to the first handler in order to be exempt from the collection of an assessment on blueberries. First handlers and importers, except as otherwise authorized by the USABC, shall maintain records showing the exemptee's name and address along with the exemption number assigned by the USABC.

(c) Importers who are exempt from assessment shall be eligible for reimbursement of assessments collected by the U.S. Customs Service and shall apply to the USABC for reimbursement of such assessments paid. No interest will be paid on assessments collected by the U.S. Customs Service. Requests for reimbursement shall be submitted to the USABC within 90 days of the last day of the year the blueberries were actually imported.

(d) Any person who desires an exemption from assessments for a subsequent fiscal year shall reapply to the USABC, on a form provided by the USABC, for a certificate of exemption.

(e) The USABC may require persons receiving an exemption from assessments to provide to the USABC reports on the disposition of exempt blueberries and, in the case of importers, proof of payment of assessments.

**§ 1218.54 Programs, plans, and projects.**

(a) The USABC shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any program, plan, or project authorized under this subpart. Such programs, plans, or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs for promotion, research, and information, including producer and consumer information, with respect to fresh and processed blueberries; and

(2) The establishment and conduct of research with respect to the use, nutritional value, sale, distribution, and marketing of fresh and processed blueberries, and the creation of new products thereof, to the end that the marketing and use of blueberries may be encouraged, expanded, improved, or made more acceptable and to advance the image, desirability, or quality of fresh and processed blueberries.

(b) No program, plan, or project shall be implemented prior to its approval by the Secretary. Once a program, plan, or project is so approved, the USABC shall take appropriate steps to implement it.

(c) Each program, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by the USABC to ensure that it contributes to an effective program of promotion, research, or information. If it is found by the USABC that any such program, plan, or project does not contribute to an effective program of promotion, research, or information, then the USABC shall terminate such program, plan, or project.

(d) No program, plan, or project including advertising shall be false or misleading or disparaging another agricultural commodity. Blueberries of all origins shall be treated equally.

**§ 1218.55 Independent evaluation.**

The USABC shall, not less often than every five years, authorize and fund, from funds otherwise available to the USABC, an independent evaluation of the effectiveness of the Order and other programs conducted by the USABC pursuant to the Act. The USABC shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under this paragraph.

**§ 1218.56 Patents, copyrights, trademarks, information, publications, and product formulations.**

Patents, copyrights, trademarks, information, publications, and product formulations developed through the use of funds received by the USABC under

this subpart shall be the property of the U.S. Government as represented by the USABC and shall, along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, information, publications, or product formulations, inure to the benefit of the USABC; shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the USABC; and may be licensed subject to approval by the Secretary. Upon termination of this subpart, § 1218.73 shall apply to determine disposition of all such property.

**Reports, Books, and Records****§ 1218.60 Reports.**

(a) Each first handler subject to this subpart may be required to provide to the USABC periodically such information as may be required by the USABC, with the approval of the Secretary, which may include but not be limited to the following:

(1) Number of pounds handled;

(2) Number of pounds on which an assessment was collected;

(3) Name and address of person from whom the first handler has collected the assessments on each pound handled; and

(4) Date collection was made on each pound handled. All reports are due to the USABC 30 days after the end of the crop year.

(b) Each producer and importer subject to this subpart may be required to provide to the USABC periodically such information as may be required by the USABC, with the approval of the Secretary, which may include but not be limited to the following:

(1) Number of pounds produced;

(2) Number of pounds on which an assessment was paid;

(3) Name and address of the producer;

(4) Date collection was made on each pound produced.

All reports are due to the USABC 30 days after the end of the crop year.

**§ 1218.61 Books and records.**

Each first handler, producer, and importer subject to this subpart shall maintain and make available for inspection by the Secretary such books and records as are necessary to carry out the provisions of this subpart and the regulations issued thereunder, including such records as are necessary to verify any reports required. Such records shall be retained for at least 2 years beyond the fiscal period of their applicability.

**§ 1218.62 Confidential treatment.**

All information obtained from books, records, or reports under the Act, this subpart, and the regulations issued thereunder shall be kept confidential by all persons, including all employees and former employees of the USABC, all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to USABC members, producers, importers, exporters, or first handlers. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a judicial proceeding or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of this subpart violated by such person.

**Miscellaneous****§ 1218.70 Right of the Secretary.**

All fiscal matters, programs, plans, or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the USABC shall be submitted to the Secretary for approval.

**§ 1218.71 Referenda.**

(a) *Initial Referendum.* The Order shall not become effective unless:

(1) The Secretary determines that the Order is consistent with and will effectuate the purposes of the Act; and

(2) The Order is approved by a majority of producers and importers voting for approval who also represent a majority of the volume of blueberries represented in the referendum who, during a representative period determined by the Secretary, have been engaged in the production or importation of blueberries.

(b) *Subsequent referenda.* Every five years, the Secretary shall hold a

referendum to determine whether blueberry producers and importers favor the continuation of the Order. The Order shall continue if it is favored by a majority of producers and importers voting for approval who also represent a majority of the volume of blueberries represented in the referendum who, during a representative period determined by the Secretary, have been engaged in the production or importation of blueberries. The Secretary will also conduct a referendum if 10 percent or more of all eligible blueberry producers and importers request the Secretary to hold a referendum. In addition, the Secretary may hold a referendum at any time.

**§ 1218.72 Suspension and termination.**

(a) The Secretary shall suspend or terminate this part or subpart or a provision thereof if the Secretary finds that the subpart or a provision thereof obstructs or does not tend to effectuate the purposes of the Act, or if the Secretary determines that this subpart or a provision thereof is not favored by persons voting in a referendum conducted pursuant to the Act.

(b) The Secretary shall suspend or terminate this subpart at the end of the marketing year whenever the Secretary determines that its suspension or termination is approved or favored by a majority of producers and importers voting for approval who also represent a majority of the volume of blueberries represented in the referendum who, during a representative period determined by the Secretary, have been engaged in the production or importation of blueberries.

(c) If, as a result of a referendum the Secretary determines that this subpart is not approved, the Secretary shall:

(1) Not later than 180 days after making the determination, suspend or terminate, as the case may be, collection of assessments under this subpart; and

(2) As soon as practical, suspend or terminate, as the case may be, activities under this subpart in an orderly manner.

**§ 1218.73 Proceedings after termination.**

(a) Upon the termination of this subpart, the USABC shall recommend

not more than three of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the USABC. Such persons, upon designation by the Secretary, shall become trustees of all of the funds and property then in the possession or under control of the USABC, including claims for any funds unpaid or property not delivered, or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the USABC under any contracts or agreements entered into pursuant to the Order;

(3) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the USABC and the trustees, to such person or persons as the Secretary may direct; and

(4) Upon request of the Secretary execute such assignments or other instruments necessary and appropriate to vest in such persons title and right to all funds, property and claims vested in the USABC or the trustees pursuant to the Order.

(c) Any person to whom funds, property or claims have been transferred or delivered pursuant to the Order shall be subject to the same obligations imposed upon the USABC and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be disposed of, to the extent practical, to the blueberry producer organizations in the interest of continuing blueberry promotion, research, and information programs.

**§ 1218.74 Effect of termination or amendment.**

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation or liability which shall have arisen or which may thereafter arise in connection with any provision of this

subpart or any regulation issued thereunder; or

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary or of any other persons, with respect to any such violation.

**§ 1218.75 Personal liability.**

No member, alternate member, or employee of the USABC shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, or employee, except for acts of dishonesty or willful misconduct.

**§ 1218.76 Separability.**

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

**§ 1218.77 Amendments.**

Amendments to this subpart may be proposed from time to time by the USABC or by any interested person affected by the provisions of the Act, including the Secretary.

**§ 1218.78 OMB control numbers.**

The control number assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, is OMB control number 0581-0093, except for the USABC nominee background statement form which is assigned OMB control number 0505-001.

Dated: February 9, 2000.

**Kathleen A. Merrigan,**  
*Administrator, Agricultural Marketing Service.*

[FR Doc. 00-3405 Filed 2-14-00; 8:45 am]

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# Federal Register

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**Tuesday,  
February 15, 2000**

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## **Part IV**

# **Department of Education**

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**34 CFR Part 637  
Minority Science and Engineering  
Improvement Program; Final Rule and  
Notice**

## DEPARTMENT OF EDUCATION

## 34 CFR Part 637

## Minority Science and Engineering Improvement Program

AGENCY: Department of Education.

ACTION: Final regulations.

**SUMMARY:** We amend the regulations governing the Minority Science and Engineering Improvement Program (MSEIP) to conform them to statutory changes made to this program by the Higher Education Amendments of 1998 (1998 Amendments). These revisions make the regulations consistent with the applicable statutory provisions.

**EFFECTIVE DATES:** These regulations are effective March 16, 2000.

**FOR FURTHER INFORMATION CONTACT:** Deborah Newkirk, U.S. Department of Education, 1990 K Street, NW, 6th Floor, Washington, DC 20006-8512. Telephone: (202) 502-7591 or e-mail address [deborah\\_newkirk@ed.gov](mailto:deborah_newkirk@ed.gov). If you use a telecommunication device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audio tape or computer diskette) on request to the contact person listed in the preceding paragraph.

**SUPPLEMENTARY INFORMATION:** The MSEIP is now authorized under Title III, Part E of the Higher Education Act of 1965, as amended (HEA). However, prior to the 1998 Amendments (Pub. L. 105-244), it was authorized under Title X of the HEA.

The 1998 Amendments made several other changes to the HEA with regard to MSEIP that require conforming changes to the program regulations. These statutory amendments incorporated in the regulations in part 637 include:

- Requiring two-year minority institutions to partner with four-year institutions;
- Expanding the definition eligible institutions; and
- Including behavioral sciences in the definition of science programs.

**Waiver of Proposed Rulemaking**

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations in accordance with the Administrative Procedure Act (5 U.S.C. 553). However, since these changes merely incorporate statutory amendments into the regulations and do not implement substantive policy, public comment could have no effect. Therefore, the

Secretary has determined pursuant to 5 U.S.C. 553(b)(B) that public comment on the regulations is unnecessary and contrary to the public interest.

**Regulatory Flexibility Act Certification**

The Secretary certifies that these regulations would not have a significant economic impact on a substantial number of small entities. The small entities affected would be small minority institutions of higher education. These regulations would not have a significant economic impact on any of the institutions affected because they do not make any substantive changes to the existing regulations but only conform them to current statutory provisions.

**Paperwork Reduction Act of 1995**

These regulations do not contain any information collection requirements.

**Intergovernmental Review**

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local government for coordination and review of proposed Federal financial assistance.

In accordance with the order, we intend this document to provide early notification of the Department's specific plans and actions for this program.

**Assessment of Education Impact**

Based on our own review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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of Federal Regulations is available on GPO Access at: <http://www.access.gpo.gov/nara/index.html>.

(Catalog of Federal Domestic Assistance Number 84.120A)

**List of Subjects in 34 CFR Part 637**

Colleges and universities, Grant programs-education, Reporting and recordkeeping requirements.

Dated: February 8, 2000.

**A. Lee Fritschler,**

*Assistant Secretary for Postsecondary Education.*

For the reasons discussed in the preamble, the Secretary amends Title 34 of the Code of Federal Regulations by revising part 637 as follows:

1. The title of Part 637 is revised to read as follows:

**PART 637—MINORITY SCIENCE AND ENGINEERING IMPROVEMENT PROGRAM**

2. The authority citation for part 637 is revised to read as follows:

**Authority:** 20 U.S.C. 1067-1067c, 1067g-1067k, 1068, and 1068b, unless otherwise noted.

3. Section 637.1 is revised to read as follows:

**§ 637.1 What is the Minority Science and Engineering Improvement Program (MSEIP)?**

The Minority Science and Engineering Improvement Program (MSEIP) is designed to effect long-range improvement in science and engineering education at predominantly minority institutions, and to increase the flow of underrepresented ethnic minorities, particularly minority women, into scientific and technological careers.

(Authority: 20 U.S.C. 1067-1067c, 1067g-1067k, 1068, and 1068b, unless otherwise noted)

4. Section 637.2 is revised to read as follows:

**§ 637.2 Who is eligible to receive a grant?**

The following are eligible to receive a grant under this part:

- (a) Public and private nonprofit institutions of higher education that—
  - (1) Award baccalaureate degrees; and
  - (2) Qualify as minority institutions as defined in § 637.4.
- (b) Public or private nonprofit institutions of higher education that—
  - (1) Award associate degrees;
  - (2) Qualify as minority institutions as defined in § 637.4;
  - (3) Have a curriculum that includes science or engineering subjects; and
  - (4) Enter into a partnership with public or private nonprofit institutions

of higher education that award baccalaureate degrees in science and engineering.

(c) Nonprofit science-oriented organizations, professional scientific societies, and institutions of higher education that award baccalaureate degrees that—

(1) Provide a needed service to a group of minority institutions; or

(2) Provide in-service training to project directors, scientists, and engineers from minority institutions; or

(d) A consortia of organizations, that provide needed services to one or more minority institutions. The consortia membership may include—

(1) Institutions of higher education which have a curriculum in science or engineering;

(2) Institutions of higher education that have a graduate or professional program in science or engineering;

(3) Research laboratories of, or under the contract with, the Department of Energy;

(4) Private organizations that have science or engineering facilities; or

(5) Quasi-governmental entities that have a significant scientific or engineering mission.

(Authority: 20 U.S.C. 1067g)

5. Section 637.3 is amended by revising the authority citation to read as set forth below; and by adding “and Engineering” after the word “Science” in the heading and undesignated introductory text.

**§ 637.3 What regulations apply to the Minority Science and Engineering Improvement Program?**

\* \* \* \* \*

(Authority: 20 U.S.C. 1067–1067c, 1067g–1067k, 1068, and 1068b, unless otherwise noted)

6. Section 637.4 is amended by revising the authority citation to read as

set forth below; by adding “and Engineering” after the word “Science” in the heading; and by adding the word “behavioral” after “physical,” in the definition of the term “Science” in paragraph (b).

**§ 637.4 What definitions apply to the Minority Science and Engineering Improvement Program?**

\* \* \* \* \*

(Authority: 20 U.S.C. 1067–1067c, 1067g–1067k, 1068, and 1068b, unless otherwise noted)

**§§ 637.11–637.15, 637.31, 637.32, 637.41 [Amended]**

7. The authority citations for §§ 637.11–637.15, 637.31, 637.32, and 637.41 are amended to read as follows:

(Authority: 20 U.S.C. 1067–1067c, 1067g–1067k, 1068, and 1068b, unless otherwise noted)

[FR Doc. 00–3329 Filed 2–14–00; 8:45 am]

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## DEPARTMENT OF EDUCATION

[CFDA No. 84.120A]

**Office of Postsecondary Education,  
U.S. Department of Education Minority  
Science and Engineering Improvement  
Program; Notice Inviting Applications  
for New Awards for Fiscal Year (FY)  
2000 Under the Minority Science and  
Engineering Improvement Program**

*Purpose of Program:* The Minority Science and Engineering Improvement Program (MSEIP) is designed to effect long-range improvement in science and engineering education at predominantly minority institutions and to increase the flow of underrepresented ethnic minorities, particularly minority women, into scientific careers.

*Eligibility for Grants:* Under Section 361 of Title III of the Higher Education Act (HEA), as amended, the following entities are eligible to receive a grant under the MSEIP:

(1) Public and private nonprofit institutions of higher education that:

(A) Award baccalaureate degrees; and

(B) Are minority institutions;

(2) Public or private nonprofit institutions of higher education that:

(A) Award associate degrees; and (B) Are minority institutions that:

(i) Have a curriculum that includes science or engineering subjects; and

(ii) Enter into a partnership with public or private nonprofit institutions of higher education that award baccalaureate degrees in science and engineering;

(3) Nonprofit science-oriented organizations, professional scientific societies, and institutions of higher education that award baccalaureate degrees, that:

(A) Provide a needed service to a group of minority institutions; or

(B) Provide in-service training for project directors, scientists, and engineers from minority institutions; or

(4) Consortia of organizations that provide needed services to one or more minority institutions, the membership of which may include:

(A) Institutions of higher education that have a curriculum in science and engineering;

(B) Institutions of higher education that have a graduate or professional program in science or engineering;

(C) Research laboratories of, or under contract with, the Department of Energy;

(D) Private organizations that have science or engineering facilities; or

(E) Quasi-governmental entities that have a significant scientific or engineering mission.

*Deadline for Application Transmittal:* March 27, 2000.

*Applications Available:* February 15, 2000.

*Deadline for Intergovernmental Review:* May 26, 2000.

*Eligible Applicants:* (a) For institutional, design, and special projects described respectively in 34 CFR 637.14 (a), (b), and (c)—public and nonprofit private minority institutions as defined in section 361 (1) and (2) of the HEA.

(b) For special projects described in 34 CFR 637.14 (b) and (c)—nonprofit organizations, institutions, and consortia as defined in section 361 (3) and (4) of the HEA.

(c) For cooperative projects described in 34 CFR 637.15—groups of nonprofit accredited colleges and universities whose primary fiscal agent is an eligible minority institution as defined in 34 CFR 637.4(b).

**Notes:** 1. A minority institution is defined in 34 CFR 637.4(b) as an accredited college or university whose enrollment of a single minority group or combination of minority groups, as defined in 34 CFR 637.4(b), exceeds 50 percent of the total enrollment.

2. Section 365(4) of the HEA now defines the term "science" to include "behavior science."

*Estimated Range and Average Size of Awards:* The amounts referenced below are advisory and represent the Department's best estimate at this time. The average size of an award is the estimate for a single-year project or for the first budget period of a multi-year project.

*Institutional*

Estimated Range of Awards:

\$100,000–\$200,000

Estimated Average Size of Awards:

\$120,000

Estimated Number of Awards: 21

*Design*

Estimated Range of Awards: \$15,000–\$20,000

Estimated Average Size of Awards:

\$19,000

Estimated Number of Awards: 3

*Special*

Estimated Range of Awards: \$20,000–\$150,000

Estimated Average Size of Awards:

\$26,300

Estimated Number of Awards: 10

*Cooperative*

Estimated Range of Awards:

\$100,000–\$500,000

Estimated Average Size of Awards:

\$280,000

Estimated Number of Awards: 3

*Applicable Regulations:* Regulations applicable to this program are (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 83, 86, 97,

98, and 99; and (b) The regulations in 34 CFR part 637.

**Note:** The regulations in 34 CFR part 86 apply to institutions of higher education only.

*Project Period:* Up to 36 months.

*For Information Contact:* Mr. Kenneth Waters or Ms. Deborah Newkirk, Institutional Development and Undergraduate Education Service, U.S. Department of Education, 1990 K Street, NW, 6th Floor, Washington, DC 20006–8517 Telephone: 202/502–7591 or by Internet to [deborah\\_newkirk@ed.gov](mailto:deborah_newkirk@ed.gov). The government encourages applicants to FAX requests for applications to (202) 502–7861. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

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<http://ocfo.ed.gov/fedreg/htm>

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**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:** Sections 301 (a), (b), and 307 of the Higher Education Amendments of 1998, Public Law 105–244, 112 Stat. 1581.

Dated: February 8, 2000.

**A. Lee Fritschler,**

*Assistant Secretary, Office of Postsecondary Education.*

[FR Doc. 00–3330 Filed 2–14–00; 8:45 am]

BILLING CODE 4000–01–P



# Federal Register

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**Tuesday,  
February 15, 2000**

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**Part V**

## **Department of Education**

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**Rehabilitation Short-Term Training;  
Inviting Applications for New Awards for  
Fiscal Year (FY) 2000; Notices**

## DEPARTMENT OF EDUCATION

### Rehabilitation Short-Term Training

**AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Notice of final priority for fiscal year (FY) 2000 and subsequent fiscal years.

**SUMMARY:** The Secretary announces a final funding priority for FY 2000 and subsequent fiscal years under the Rehabilitation Short-Term Training program. The Secretary takes this action to support special seminars, institutes, workshops, and other short-term courses in technical matters relating to the vocational, medical, social, and psychological rehabilitation programs, independent living services programs, and client assistance programs.

**EFFECTIVE DATE:** This priority is effective on March 16, 2000.

**FOR FURTHER INFORMATION CONTACT:**

Beverly Steburg, U.S. Department of Education, 61 Forsyth Street, SW, Room 18T91, Atlanta, Georgia 30303.

Telephone: (404) 562-6336. If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (404) 562-6347. Internet address: Beverly—Steurg@ed.gov

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

**SUPPLEMENTARY INFORMATION:** This notice contains a final priority under the Rehabilitation Short-Term Training program. The Short-Term Training program is authorized under section 302(a) of the Rehabilitation Act of 1973, as amended.

On October 22, 1999 the Secretary published a notice of proposed priority for this program in the **Federal Register** (64 FR 57352).

**Note:** This notice of final priority does not solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the **Federal Register**.

### Public Comment

In response to the Secretary's invitation in the notice of proposed priority, seven parties submitted comments. All seven commenters supported the priority, and several provided examples of how similar training has been of benefit in the past. One commenter suggested 16 specific training topics, all of which could be addressed under the priority as written. Technical and other minor changes—

and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

The Secretary has made no changes in this priority since publication of the notice of proposed priority.

### Priority

Under 34 CFR 75.105(c)(3), 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:

- A project must—
  - Provide training to Client Assistance Program (CAP) personnel on an as-needed basis, including—
    - (1) Management training on skills needed for strategic and operational planning and direction of CAP services;
    - (2) Advocacy training on skills and knowledge needed by CAP staff to assist persons with disabilities to gain access to and to use the services and benefits available under the Rehabilitation Act of 1973, as amended, with particular emphasis on new statutory and regulatory requirements;
    - (3) Systemic advocacy training on skills and knowledge needed by CAP staff to address programmatic issues of concern;
    - (4) Training and technical assistance on CAP best practices; and
    - (5) Training on skills and knowledge needed by CAP staff to perform additional responsibilities required by the Workforce Investment Act of 1998, as amended.
  - Coordinate training efforts with other training supported by the Rehabilitation Services Administration, as well as with the training supported by the Center for Mental Health Services and the Administration on Developmental Disabilities on common areas such as protection and advocacy, financial management, and trial advocacy.
  - Include both national and regional training seminars in each project year.

### Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

This final priority addresses the National Education Goal that every adult American will be literate and will

possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The final priority furthers the objectives of this Goal by focusing available funds on projects that improve the skills of Client Assistance Program personnel, which will improve the responsiveness of the vocational rehabilitation system to adults with disabilities and their vocational pursuits.

### Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

*Applicable Program Regulations:* 34 CFR parts 385 and 390.

*Program Authority:* 29 U.S.C. 721 (b) and (e) and 796(e).

*Electronic Access to This Document:* You 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:

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(Catalog of Federal Domestic Assistance Number 84.246K. Rehabilitation Short-Term Training)

Dated: February 9, 2000.

**Judith E. Heumann,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 00-3442 Filed 2-14-00; 8:45 am]

BILLING CODE 4000-01-U

**DEPARTMENT OF EDUCATION**

[CFDA No.: 84.246K]

**Rehabilitation Short-Term Training; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000**

*Purpose of Program:* The Short-Term Training program supports special seminars, institutes, workshops, and other short-term courses in technical matters relating to the vocational, medical, social, and psychological rehabilitation programs, independent living services programs, and client assistance programs.

For FY 2000 the competition for new awards focuses on projects designed to meet the priority that we describe in the PRIORITY section of this application notice.

*Eligible Applicants:* State agencies and public or nonprofit agencies and organizations, including Indian tribes and institutions of higher education, are eligible for assistance under the Rehabilitation Short-Term Training program.

*Deadline for Transmittal of Applications:* April 3, 2000.

*Deadline for Intergovernmental Review:* June 2, 2000.

*Applications Available:* February 16, 2000.

*Available Funds:* \$200,000.

*Estimated Range of Award:* \$175,000 to \$200,000.

*Estimated Average Size of Award:* \$200,000.

*Estimated Number of Awards:* 1.

**Note:** The Department is not bound by any estimates in this notice.

*Maximum Award:* In no case does the Secretary make an award greater than \$200,000 for a single budget period of 12 months. The Secretary rejects and does not consider an application that proposes a budget exceeding this maximum amount.

*Project Period:* Up to 60 months.

*Page Limit:* Part III of the application, the application narrative, is where you, the applicant, address the selection criteria used by reviewers in evaluating the application. You must limit Part III to the equivalent of no more than 35 pages, using the following standards:

(1) A page is 8.5" x 11", on one side only with 1" margins at the top, bottom, and both sides.

(2) You must 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.

If you use a proportional computer font, you may not use a font smaller than 12-point font or an average character density greater than 18 characters per inch. If you use a nonproportional font or a typewriter, you may not use more than 12 characters per inch.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

If, in order to meet the page limit, you use print size, spacing, or margins smaller than the standards specified in this notice, we will not consider your application for funding.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 385 and 390.

**Priority**

This competition focuses on projects designed to meet the absolute priority in the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

Under 34 CFR 75.105(c)(3), we consider only applications that meet the absolute priority.

*Selection Criteria:* In evaluating an application for a new grant under this competition, the Secretary uses selection criteria chosen from the general selection criteria in 34 CFR 75.210 of EDGAR. The selection criteria to be used for this competition will be provided in the application package for this competition.

*For Applications Contact:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794-1398. Telephone (toll free): 1-877-433-7827. FAX: (301) 470-1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1-877-576-7734. You may also contact ED Pubs via its Web site (<http://www.ed.gov/pubs/edpubs.html>) or its E-mail address ([edpubs@inet.ed.gov](mailto:edpubs@inet.ed.gov)). If you request an application from Ed Pubs, be sure to identify this competition as follows: CFDA number 84.246K.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202-2550. Telephone: (202) 205-8351. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

For Further Information Contact:

Beverly Steburg, U.S. Department of Education, 61 Forsyth Street, S.W., Room 18T91, Atlanta, Georgia 30303. Telephone: (404) 562-6336. If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (404) 562-6347. Internet address: [Beverly\\_Stebug@ed.gov](mailto:Beverly_Stebug@ed.gov).

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**Program Authority:** 29 U.S.C. 774.

Dated: February 9, 2000.

**Judith E. Heumann,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 00-3443 Filed 2-14-00; 8:45 am]

BILLING CODE 4000-01-U



# Federal Register

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**Tuesday,  
February 15, 2000**

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**Part VI**

## **Department of Education**

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**Comprehensive Local Reform Assistance;  
Notice Inviting Applications From Local  
Educational Agencies (LEAs) in Montana  
and Oklahoma for New Awards With  
Fiscal Year (FY) 1999 and FY 2000 Funds  
Under the Goals 2000; Educate America  
Act**

## DEPARTMENT OF EDUCATION

[CFDA No.: 84.317]

**Comprehensive Local Reform Assistance; Notice Inviting Applications From Local Educational Agencies (LEAs) in Montana and Oklahoma for New Awards With Fiscal Year (FY) 1999 and FY 2000 Funds Under the Goals 2000: Educate America Act**

*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), the notice contains all of the information, application requirements, and instructions needed to apply for a grant under this competition.

*Purpose of Program:* To assist local educational agencies (LEAs) in the development and implementation of comprehensive local improvement plans directed at enabling all children to reach challenging academic standards.

*Eligible Applicants:* LEAs in Oklahoma and Montana are eligible to apply for grants. The Secretary is especially interested in receiving applications from consortia of LEAs in each State.

LEAs or consortia of LEAs in Oklahoma and Montana that have previously received Goals 2000 funds are eligible to apply for funds under this competition. However, in order that other needy districts may benefit from Goals 2000 support, the Secretary is particularly interested in receiving applications from LEAs or consortia that have not previously received Goals 2000 funding.

**Note:** This competition, authorized by section 304(e) of the Goals 2000: Educate America Act, is only for LEAs in Oklahoma and Montana. LEAs in other States apply to their respective State educational agency for funds under Title III of Goals 2000.

*Applications Available:* February 15, 2000.

*Deadline for Transmittal of Applications:* March 15, 2000.

*Deadline for Intergovernmental Review:* May 14, 2000.

*Available Funds:* For LEAs in Oklahoma: \$5,410,428 in FY 1999; \$5,376,407 (estimated) in FY 2000; For LEAs in Montana: \$1,890,358 in FY 1999; \$1,878,472 (estimated) in FY 2000.

In the event that there are an insufficient number of funded applications to use all of either State's allotment, the Secretary may reallocate the remaining funds consistent with the Act.

The Secretary does not intend to conduct competitions for FY 2000 funds. Instead, pursuant to 34 CFR 75.253, the Secretary intends to make continuation awards from the FY 2000 allotments to each grantee that has made substantial progress toward meeting the objectives in its approved application.

*Project Period:* Up to 24 months.

*Estimated Range of Awards:* \$30,000–\$750,000 annually.

The sizes of the awards requested should be governed by the size of the LEA or consortium and the scope of the proposed project. The Secretary will consider each applicant's request and the needs of all successful applicants in determining the amount of each grant award. The Department of Education is not bound by the estimates in this notice.

*Estimated Average Size of FY 1999 and FY 2000 Awards:* \$109,000 annually.

*Estimated Numbers of Awards:* 40 in Oklahoma; 20 in Montana.

**Note:** Consistent with section 309(c) of the Goals 2000 Act, the Secretary will award at least 50 percent of each State's available allotment to LEAs that have a greater percentage or number of disadvantaged children than the statewide average percentages or numbers for all LEAs in each respective State. The Department may waive this provision if it does not receive a sufficient number of applications from such districts.

*Applicable Regulations:* The Education Department General Administrative Regulations (EDGAR) as follows:

- (1) 34 CFR part 75 (Direct Grant Programs).
- (2) 34 CFR part 77 (Definitions that Apply to Department Regulations).
- (3) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).
- (4) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).
- (5) 34 CFR part 81 (General Education Provisions Act—Enforcement).
- (6) 34 CFR part 82 (New Restrictions on Lobbying).
- (7) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

*GEPA Section 427 Requirements:* In preparing applications, LEAs should pay particular attention to the requirements in section 427 of the General Education Provisions Act (GEPA), as detailed later in this notice. Applicants must address the requirements in section 427 in order to

receive funding under this competition. Section 427 requires each applicant to describe the steps it proposes to take to address one or more barriers (i.e., gender, race, national origin, color, disability, or age) that can impede equitable access to, or participation in, the program. A restatement of compliance with civil rights requirements is not sufficient to meet the GEPA 427 requirements.

**SUPPLEMENTARY INFORMATION:****(a) Background**

Section 304(e) of the Goals 2000: Educate America Act (Pub. L. 103–227) (20 U.S.C. 5801 *et seq.*) (the Act) authorizes the Secretary to award direct grants to LEAs in States that were not participating in Goals 2000 as of October 20, 1995, if the applicable SEA approves the LEAs' participation in the program. Oklahoma and Montana were not participating in Goals 2000 as of that date, and the Oklahoma and Montana SEAs have approved LEA participation in this direct grant program.

The Secretary has determined that grants awarded under section 304(e) will be used to support the development and implementation of comprehensive local improvement plans designed to help all children reach challenging academic standards. In particular, the Secretary encourages LEAs to address in their applications how their reform strategies might include enhanced preservice teacher education and professional development activities of educators that are directly connected to challenging standards.

Applicants that have already developed comprehensive improvement plans may propose activities funded through the grant that are aligned with and carry out parts of this plan. Where appropriate, LEAs should use funds awarded under this notice to build upon comprehensive reform strategies that have already been initiated with federal and other resources.

**Application Requirements**

The authorizing statute—section 304(e) of the Act—permits the Secretary to fund LEA applications that are consistent with the provisions of Goals 2000. Grants under this competition will support the development and implementation of comprehensive local improvement plans to help *all* students reach challenging academic standards. Local improvement plans that are developed or implemented with funds awarded under section 304(e) must be consistent with the requirements in sections 309(a)(3) (B) through (E) of the Act. Adapted to this direct grant

program, these requirements specify that local plans—

(1) Describe a process of broad-based community participation in the development, implementation, and evaluation of the local improvement plan;

(2) Address districtwide education improvement, directed at enabling all students to meet the State content standards and State student performance standards, including specific goals and benchmarks; reflect the priority of the State improvement plan (if there is a comprehensive State improvement plan) and include a strategy for—

(a) Improving teaching and learning, with strategies such as enhanced professional development and preservice education activities aligned to the standards;

(b) Improving governance, management, and accountability for performance; and

(c) Generating, maintaining, and strengthening parental and community involvement;

(3) Promote the flexibility of local schools in developing plans that address the particular needs of their school and community and are consistent with the local improvement plan; and

(4) Describe how the LEA will encourage and assist schools to develop and implement comprehensive school improvement plans that focus on helping all students reach State content standards and student performance standards.

An LEA that applies for funds under this program should indicate whether funds are being requested to (a) develop and implement a plan in accordance with the requirements of sections 309(a)(3) (B) through (E) of the Act; or (b) implement an existing comprehensive improvement plan that meets the requirements of sections 309(a)(3) (B) through (E) of the Act. (An applicant that received FY 1995 and 1996 funding or FY 1997 and 1998 funding under the previous two competitions must have completed the development of a plan that meets the stated requirements in order to be eligible for funding under this competition.)

An LEA seeking funds to both develop and implement a comprehensive plan must demonstrate evidence of a clear process that will result in a plan that meets the stated plan requirements. This evidence may include a description of how stakeholders will be involved in plan development and specific steps and timelines for developing the plan. Successful applicants will only be

eligible to receive FY 2000 continuation funding if they have completed development of a plan that meets the plan requirements stated above.

An LEA that has already developed a comprehensive improvement plan may seek FY 1999 and 2000 funds to implement the plan. The applicant must demonstrate that its existing plan meets the plan requirements listed above. The applicant may do this, for example, by providing a description of how its plan addresses these requirements and the progress the applicant has made in implementing its plan. In addition, the applicant may demonstrate the comprehensiveness of the plan by providing evidence that the plan is coordinated with other LEA plans that, collectively, provide a framework for how federal and other funds are used to achieve the goals and objectives of the district.

An applicant should clearly explain the strategies that will be funded under this award and how these strategies are aligned with the comprehensive plan.

The Secretary recommends that applicants reserve in their budgets approximately \$2,000 each year for activities that will be designed by the Secretary, in conjunction with grantees, to facilitate the sharing among grantees of information on successful comprehensive reform strategies.

#### Selection Criteria

The Secretary will use the following selection criteria and factors from 34 CFR 75.210 to evaluate applications under this competition.

The maximum score for all of the criteria is 100 points. The maximum score for each criterion is indicated in parenthesis with the criterion. The criteria and factors are as follows:

(1) *Need for the project.* (20 points)

(a) The Secretary considers the need for the proposed project.

(b) In determining the need for the proposed project, the Secretary considers the following factors:

(i) The extent to which the proposed project will provide services to or otherwise address the needs of students at risk of educational failure.

(ii) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(2) *Quality of the project design.* (33 points)

(a) The Secretary considers the quality of the design of the proposed project.

(b) In determining the quality of the design of the proposed project, the

Secretary considers the following factors:

(i) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(ii) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

(iii) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(iv) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(3) *Quality of project services.* (15 points)

(a) The Secretary considers the quality of the services to be provided by the proposed project.

(b) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(c) In addition, the Secretary considers the following factors:

(i) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students as measured against rigorous academic standards.

(ii) The extent to which the services to be provided by the proposed project are focused on those with greatest needs.

(iii) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice.

(4) *Quality of project personnel.* (5 points)

(a) The Secretary considers the quality of the personnel who will carry out the proposed project.

(b) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(c) In addition, the Secretary considers the qualifications, including relevant training and experience, of key project personnel.

(5) Adequacy of resources. (5 points)

(a) The Secretary considers the adequacy of resources for the proposed project.

(b) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(ii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(iii) The potential for the incorporation of project purposes, activities, or benefits into the ongoing program of the agency or organization at the end of Federal funding.

(6) *Quality of the management plan.* (7 points)

(a) The Secretary considers the quality of the management plan for the proposed project.

(b) In considering 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 adequacy of mechanisms for ensuring high-quality products and services from the proposed project.

(iii) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

(7) *Quality of the project evaluation.* (15 points)

(a) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(b) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(ii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(Note: In designing their evaluation plans, applicants are encouraged to consider the sample performance measures included in this package)

#### **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 processes and on State, areawide, regional, and local coordination for review of proposed Federal financial assistance.

Neither Oklahoma nor Montana has adopted State intergovernmental review processes. Therefore, State, areawide, regional, and local entities may submit comments directly to the Department.

Any comments submitted pursuant to the executive order must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.317, U.S. Department of Education, Room 7E200, 400 Maryland Avenue, SW, 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. (EST) 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 Transmittal of Applications**

(a) If an applicant wants to apply for a grant, the applicant must—

(1) Mail the original and three copies of the application on or before the deadline date to: U. S. Department of Education, Application Control Center, Attention: (CFDA # 84.317), Washington, DC 20202-4725

or

(2) Hand deliver the original and three copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # 84.317), Room #3633, Regional Office Building #3, 7th and D Streets, SW, Washington, DC.

(b) An applicant 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.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does 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.

**Notes:** (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(1) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708-9494.

(2) The applicant *must* indicate on the envelope and in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number of the competition under which the application is being submitted (CFDA# 84.317).

#### **Application Instructions and Forms**

The appendix to this application is divided into three parts, plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4-88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 524) and instructions.

Part III: Application Narrative.

#### **Additional Materials**

Estimated Public Reporting Burden. Assurances—Non-Construction Programs (Standard Form 424B).

Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80-0013).

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80-0014, 9/90) and instructions.

(Note: ED 80-0014 is intended for the use of grantees and should not be transmitted to the Department)

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions.

GEPA Section 427 Notice to All Applicants.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

**FOR FURTHER INFORMATION CONTACT:**

Marcia J. Kingman, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202-6400, Telephone: (202) 401-0039, FAX: (202) 205-5870. This contact may also be reached via e-mail at [marcia\\_kingman@ed.gov](mailto:marcia_kingman@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.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

**Electronic Access To This Document**

You 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 previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), 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:** Section 304(e) of the Goals 2000: Educate America Act, 20 USC 5884(b).

Dated: February 9, 2000.

**Michael Cohen,**

*Assistant Secretary for Elementary and Secondary Education.*

**BILLING CODE 4000-01-U**

# 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 Organizational Unit  
 Legal Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ County \_\_\_\_\_ ZIP Code + 4 \_\_\_\_\_

2. Applicant's D-U-N-S Number

3. Applicant's T-I-N   -

4. Catalog of Federal Domestic Assistance #:           → Title: Comprehensive Local Reform Assistance Program

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  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: \_\_\_\_/\_\_\_\_/\_\_\_\_

## 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/Protec-**

**tion 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 15e, 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 cir-

cumstances 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 pub-*

*lic 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>.*

 <b>U.S. DEPARTMENT OF EDUCATION</b> <b>BUDGET INFORMATION</b> <b>NON-CONSTRUCTION PROGRAMS</b>		OMB Control Number: (Draft Form)				
Name of Institution/Organization		Expiration Date: TBA				
SECTION A - BUDGET SUMMARY U.S. DEPARTMENT OF EDUCATION FUNDS		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.				
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)						

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.					
<b>SECTION B - BUDGET SUMMARY NON-FEDERAL FUNDS</b>							
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)							
<b>SECTION C - OTHER BUDGET INFORMATION (see instructions)</b>							

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.

## 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 the 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 (Clear Air) Implementation Plans under Section 176(c) of the Clear 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. §1721 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, AAudits 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

**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.

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

**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.

**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 A 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

**Disclosure of Lobbying Activities**

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

(See reverse for public burden disclosure)

<b>1. Type of Federal Action:</b> a. contract _____ b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	<b>2. Status of Federal Action:</b> a. bid/offer/application _____ b. initial award c. post-award	<b>3. Report Type:</b> a. initial filing _____ b. material change  <b>For material change only:</b> Year _____ quarter _____ Date of last report _____
<b>4. Name and Address of Reporting Entity:</b> _____ Prime _____ Subawardee Tier _____, if Known:  <b>Congressional District, if known:</b>	<b>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b>  <b>Congressional District, if known:</b>	
<b>6. Federal Department/Agency:</b>	<b>7. Federal Program Name/Description:</b>  CFDA Number, if applicable: _____	
<b>8. Federal Action Number, if known:</b>	<b>9. Award Amount, if known:</b>  \$	
<b>10. a. Name and Address of Lobbying Registrant (if individual, last name, first name, MI):</b>	<b>b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):</b>	
<b>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 than \$10,000 and not more than \$100,000 for each such failure.</b>	<b>Signature:</b> _____ <b>Print Name:</b> _____ <b>Title:</b> _____ <b>Telephone No.:</b> _____ <b>Date:</b> _____	
<b>Federal Use Only</b>	<b>Authorized for Local Reproduction Standard Form - LLL (Rev. 7-97)</b>	

BILLING CODE 4000-01-C

**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; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included 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 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.

#### 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 estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202-4651.

#### **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 1810-0594. The time required to complete this information collection is estimated to average 30 hours (or 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 time estimate(s) 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: Goals 2000, U.S. Department of Education, 400 Maryland

Avenue, SW, FOB-6 Room 3E213, Washington, DC 20202-6400.

#### **Instructions for Part III: Application Narrative**

Before preparing the Application Narrative, an applicant should read carefully the description of the program, the background of the program, application requirements, and the selection criteria the Secretary will use to evaluate these applications.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract that summarizes the proposed project;
2. Describe the proposed project in light of the application requirements and each of the selection criteria in the order in which the criteria are listed in the application; and
3. Include any other pertinent information that might assist the Secretary in reviewing the application.

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 20 pages (double-spaced, typed on one-side only, using font no smaller than 11 point). The Department has found that successful applications for similar programs generally meet this page limit. In addition to the Application Narrative, the applicant must include the cover form (SF-424), budget forms and budget narrative, assurances, and a statement regarding how the application meets the requirements of GEPA 427. Any supplemental attachments should be limited to those that are crucial to supporting the integrity of the applicant's project and how it has met application requirements.

#### **Performance Measures**

The Government Performance and Results Act (GPRA) of 1993 places new management expectations and requirements on Federal departments and agencies by creating a framework for more effective planning, budgeting, program evaluation, and fiscal accountability for Federal programs. The intent of the Act is to improve public confidence by holding departments and agencies accountable for achieving program results. Departments must set program goals and objectives and measure and report on

their achievements. One important source of program information on successes and lessons learned is the project evaluation and other information collected under individual grants.

The U.S. Department of Education supports the GPRA initiative that all agencies be held accountable for program success and is committed to forging a partnership with grantees that will ensure accountability in the use of Goals 2000 funds. To assist grantees in the process of creating an instrument for evaluating program goals and achievements, the form titled "Performance Measures Template" is included in the application package. The Template identifies the key components for measuring performance (Performance Objective, Baseline, Source of Data, Outcome) and gives an example of each component. Applicants are encouraged to incorporate the components of the objectives described in their performance plans into the template; applicants may also use another similar format. It is important, however, that all applications are not only developed to achieve successful project outcomes, but that they also include a process to measure progress toward attaining those outcomes.

The performance measures will be used during the life of the grant to ensure that project outcomes are achieved. Progress will be assessed via regularly scheduled communication, which may include telephone calls, letters, and site visits, between Department staff and the project director. Where sufficient progress is not being achieved, the Department and the grantee will work together to identify strategies and resources to overcome challenges and resolve problems. When necessary, the Department and the grantee may modify the performance measures.

#### **Performance Measures Template Comprehensive Local Reform Assistance Grant (Goals 2000: Educate America Act, Title III)**

State:  
District:  
PR#: S317A980  
Consortium members (if applicable):  
I1-2  
I1-2  
I1-2

Performance objective	Source of data	Baseline	Outcome
Teacher Training: As a result of providing training to all teachers regarding the use of test data to make instructional decisions, by the conclusion of the 1999–2000 school year, 75% of teachers in the district in the elementary grades will be proficient in using test data to inform instruction.	A survey of teachers will be made to assess teacher proficiency in using test data to inform decisions about instruction; teachers' lesson plans will be examined for evidence of test data driven instruction; and school administrators will observe the implementation of such instruction in the classroom.	25% of district elementary teachers surveyed in 1998 reported that they were proficient in using test data to inform instructional decision making.	At least 75% of teachers will provide instruction, as indicated in their lesson plans, that has been differentiated according to student proficiency revealed in the test data.

## Goals 2000 Comprehensive Local Reform Assistance Q & A

### Introduction

The following questions and answers have been prepared to assist local educational agencies (LEAs) as they apply for and use funds available under Goals 2000, and as they develop and implement their local comprehensive improvement plans. This guidance should be read as a supplement to the Application Notice, and does not replace any of the information contained in the Notice. Please read the Notice carefully to ensure that your application addresses all requirements.

In 1994, the Goals 2000: Educate America Act was signed into law. The purpose of the Act is "to improve the quality of education for all students by improving student learning through a long-term, broad-based effort to promote coherent and coordinated improvements in the system of education throughout the Nation at the State and local levels." Through Title III of this Act, states receive funding to develop and implement comprehensive plans for improving education and provide subgrants to districts to develop and implement plans that are coordinated with the state plan. In 1995, the states of Montana and Oklahoma elected to not participate in Goals 2000.

On April 26, 1996, the President signed into law the Omnibus Consolidated Rescissions and Appropriations Act of 1996, which amended portions of Titles II and III of the Goals 2000: Educate America Act. Under the Goals 2000 amendments, LEAs in a state that was not participating in Goals 2000 as of October 25, 1995 may apply directly to the Department for a portion of their state's Goals 2000 allotment, if the state educational agency (SEA) approves participation of its LEAs in the program. The Montana and Oklahoma SEAs have allowed their LEAs to participate in the competition for funding. The grants will be made for a two-year period.

### Application Facts

- Who is eligible to apply for funding?

Eligible applicants are LEAs as defined in Section 14101(18) of the Elementary and Secondary Education Act of 1965. In general, if an agency is defined as an LEA for funding purposes, it meets the requirement of eligibility for this federal grant competition.

- How do eligible LEAs apply for funding?

The Secretary has published a notice in the **Federal Register** inviting applications from LEAs in Montana and Oklahoma. The application deadline for the grant awards is as announced in the **Federal Register**. The grant selection criteria and application requirements are detailed in the notice. Funds will be awarded on a competitive basis for the development and implementation of comprehensive local improvement plans, or implementation of existing plans, designed to enable all children to reach challenging academic standards.

- How much funding is available for awards?

For LEAs in Oklahoma, the amounts available from the State's FY 1999 and 2000 allotments are \$5,410,428 and \$5,376,407 (estimated), respectively. For LEAs in Montana, the amounts are \$1,890,358 and \$1,878,472 (estimated).

- How much funding can applicants request?

Included in the notice is an estimate of how many awards could be made with an estimated average award amount. These are only estimates.

The funding range provided is based on the allocations made to Montana and Oklahoma Goals 2000 grantees in the most recent competition (1998). The amount of funding an applicant requests should be related to factors such as the number of students in the district(s), the number of students in poverty or otherwise educationally disadvantaged in the district(s), the needs and proposed activities of the district in terms of implementing comprehensive standards-based reform, the expected results of such activities, and other factors that create a higher need for

funds, such as high mobility of the student population and extreme isolation from other resources. Please understand that the funding provided is not for the purpose of implementing a district's entire comprehensive improvement plan. Rather, the funding is coordinated with other Federal, State, and local resources to enable the district to implement an aligned, standards-based reform plan that is designed to raise the achievement levels of all students and simultaneously narrow the gap in achievement levels by different populations within the district.

- How long should the application be?

As stated in the notice, the application narrative should not exceed 20 pages in length. Attachments, other than those that are required, should be kept to only those that are essential.

- How long will it take for the Department to review the application? Who will review the applications and how will they be reviewed? When will the awards be made?

The deadline for applications is the date announced in the **Federal Register**. A period of approximately two months is then needed to process the applications, conduct a peer review, and make funding decisions. The applications will be reviewed by individuals from states and districts that are familiar with the purpose of Goals 2000 grants. They will score the applications based on the seven selection criteria described in the application notice. It is anticipated that awards will be made in early June.

- What are the reporting requirements? What are the future oversight activities by the federal government for successful applicants?

LEAs are required to submit an annual report each year describing their activities and accomplishments. This information must demonstrate that the LEA is making substantial progress towards achieving its goals and objectives in order to receive second year funding. Applicants that needed to complete development of a local comprehensive improvement plan in

order to meet the requirements (as noted in the application) for such plan must have a plan that meets the requirements before receiving second year funds.

In addition to report requirements, Department staff may call, visit, and/or convene multiple grantees to facilitate the use of best practices, learn what strategies are working and aren't working, and verify that the grant is being implemented according to the application. The applicant is subject to a financial audit, as is the case with any grant of federal funds.

- Will new applicants be given a competitive preference over applicants that previously received Goals 2000 funding?

No. However, the Secretary is particularly interested in receiving applications from LEAs that have not previously received Goals 2000 funding. An applicant may not receive funding to develop a local comprehensive plan for more than one year. Therefore, applicants that have previously received Goals 2000 funds must have developed the required local comprehensive plan in order to be eligible for funding in this competition. Other applicants can be funded to develop and then implement plans that meet the plan requirements.

#### Writing the Application

- In the application notice, there is the requirement that local comprehensive plans "address districtwide education improvement, directed at enabling all students to meet the State content standards and State student performance standards, including specific goals and benchmarks; reflect the priority of the State improvement plan (if there is a comprehensive State improvement plan)." What does this requirement mean within the particular contexts of Montana and Oklahoma?

#### Montana

The Office of Public Instruction (OPI) is implementing a statewide initiative for school improvement in Montana. This initiative lays out a framework for how the SEA will support districts and schools as they further student learning. The plan consists of five elements: Standards, Accreditation, Assessment, Education Profile, and Professional Development/Teacher Certification. Applicants should be aware of and align with the efforts that the State is taking within each of these project components, where appropriate. The State has informed us that as part of the standards work, the Montana Board of Public Education and OPI, in partnership with various educational organizations, has developed content

and performance standards in Reading, Mathematics, World Language, Technology, Science, Writing, Health Enhancement, Speaking and Listening, Media Literacy, and Literature. The Board of Education is currently revising and preparing content and performance standards in Social Science, Workplace Competencies, and Library.

Pursuant to the application requirement that districts address districtwide improvements to meet these standards and Rule 10.55.603 of the Montana Standards of Accreditation, OPI plans to provide guidance to districts to incorporate the new content and performance standards into the curriculum, establish curriculum and assessment development processes, and meet the other requirements of the State accreditation standards. In the comprehensive improvement plan required through Goals 2000, an applicant should include other strategies to implement the standards, such as through professional development activities that are aligned to the standards (see the application notice for the specific types of strategies that must be addressed in the plan). Strategies such as professional development are critical to helping teachers develop instructional approaches to assist students meet the standards, demonstrate exemplary performance that meets the standards, and use data to determine what instructional approaches are working. The funding available through Goals 2000 can assist districts to take these critical steps to implement the state standards.

#### Oklahoma

The State of Oklahoma requires all districts to develop a Comprehensive Local Education Plan (CLEP) to address school improvement. In their plans, districts review implementation of the state-mandated content standards, Priority Academic Student Skills (PASS), and state performance standards as measured through the Oklahoma School Testing Program (OSTP).

Districts should address school reform identified in their CLEP in the goals 2000 application and focus on implementation of district reform. While the CLEP forms the basis of a school improvement plan, it may not fully meet the application requirements contained in the notice. (See Application Requirements section.) For example, a plan developed under Goals 2000 by a school district would include strategies for improving governance and management. Additional materials would need to be provided by the

applicant to address those elements not included in the CLEP.

- How should the local comprehensive plan be related to planning requirements for all programs, federal, state, or local?

The comprehensive plan Goals 2000 supports should be the sole comprehensive plan for the district. It is not a plan for use of Goals 2000 funds; rather, it describes how the district intends to improve its schools, using all resources it has available. It is the district's framework for reform.

Other plans the district may have should fit in under the general comprehensive plan. For instance, most districts will have consolidated plans describing how they will use Federal funds provided by the programs included in the consolidation (or individual plans for each of the programs). These plans should describe how Federal funds will be used to support the comprehensive plan—the Federal contribution. Likewise, technology plans could describe, in greater detail, the role of technology in the comprehensive plan.

- How should Goals 2000 funds be used in relation to other funding sources to support the comprehensive plan?

The local comprehensive plan should provide direction for how the district uses all resources available to it. Goals 2000 resources should be focused on plan development and on implementation activities for which other funds are not available. Other resources that are targeted to a particular strategy should be accounted for first. The district can then determine the best use of the limited Goals 2000 funds. For instance, Title III funds, Technology Literacy Challenge Funds (TLCF), are for the purpose of improving the use of technology in the classroom. TLCF money could be used to provide professional development in teaching standards through the use of instructional technology. Goals 2000 funds could be used to help align curriculum with the new standards. The alignment of funds creates the potential for a greater systemic impact. Districts should consider the best use of Goals 2000 funds in the context of the local comprehensive plan, State plan/initiatives, and available resources. For instance, in Montana, other possible uses of Goals 2000 funds could be to aggregate standardized test data at the district level, disaggregate data by gender, race, socioeconomic status, etc., and thereby help districts develop a means for being eligible for Performance-Based Accreditation.

- The application requires that an applicant have a comprehensive

improvement plan in place in order to implement it. Does this mean that no implementation activities can be carried out until a plan is completely developed? Do these requirements imply that a plan, once developed, is to remain unchanged while it is being implemented? What if an LEA has an existing plan that meets some, but not all, of the elements required in the legislation?

If an applicant does not have a comprehensive improvement plan that meets all of the plan requirements, its primary focus in the first year should be to develop the additional components of its plan to make it complete. In addition to these plan development activities, the applicant may use funds to implement some of the completed portions of its plan that will not be greatly affected by the other portions being developed. For instance, a district that has completed development of its standards and assessments (or uses those the state has developed) may wish to begin professional development of staff in relation to the standards while the parent involvement component of its plan is being developed.

Plan development and plan implementation are not intended to be entirely distinct activities. Once a plan has been developed that meets the plan requirements of Goals 2000, continual revision of this plan should be seen as a natural part of implementing the plan. Revisions should be informed by data collected on student performance and the effectiveness of various strategies. It is anticipated that districts may already have plans that address at least some of the requirements of Goals 2000. These plans that are already in place should serve as a starting point for continued plan development; a district need not start from scratch in developing a plan to meet the requirements. When applying for Goals 2000 funds, a district should clearly identify the status of its plans in relation to the plan requirements and the steps it will take to complete its comprehensive plan.

- What should applicants consider in determining whether to apply as a member of a consortium of districts rather than as a single district?

By working together with other districts as a consortium, a district can make better use of limited resources, improve continuity of services for students, or broaden the expertise that contributes to developing and implementing a particular set of strategies. A small district that does not have a broad base of resources could form a consortium with several other districts to create a single plan or implement a common component of

individual district plans, such as professional development activities designed to help teachers create and use classroom assessments aligned to the standards. Another potentially strong consortium is one between districts that share the same students, such as an elementary district that feeds into a high school district or two K-12 district where students frequently move back and forth between the districts.

Applying in consortium provides participating districts with an opportunity to present a stronger need for funding, have higher quality strategies, and have a stronger case to meet other selection criteria for this competition. However, the purposes for a consortium, its benefit to the districts, and the commitment by participating districts should be clear. In order to meet the application requirements, a consortium application should state whether a single plan is being developed and implemented or whether a common strategy is being implemented across plans being developed and implemented within the individual districts participating in the consortium. For consortia wishing to implement existing plans, each district in a consortium should demonstrate that it has a plan to meet the plan requirements of Goals law.

- How should an applicant use the Performance Measures Template included in the application package?

Applicants should have clear and appropriate performance objectives related to the specific activities proposed in the grant. A process for measuring progress towards attaining these objectives should also be identified as well as a means for stating outcomes. Applicants are encouraged to incorporate the components of the performance measures into the template, but they may also use another, similar format. (Refer to Performance Measures and Performance Measures Template in application package.)

- Are applicants for Goals 2000 funds allowed to use grant funds to pay a consultant for writing a grant application?

No. According to a provision in the Education Department General Administrative Regulation (EDGAR, 75.515), grantees are prohibited from utilizing grant funds to pay a consultant for writing a grant application. Consultants may be used when there is a need in the approved project for services that cannot be met by an employee; however, paying a consultant to write a grant application does not meet this criterion.

- May local funds (other than federal grant funds) be used to hire a consultant to develop a grant proposal?

Yes; however, the local district should be aware that occasionally consultants use boilerplate applications. Such applications are inconsistent with the aim of Goals 2000 grants which is to support local school reform built on assessment, planning, and improvement efforts that are tied to individual districts.

#### Resources For Assistance

U.S. Department of Education: Goals 2000 office

For assistance with application requirements: Marcia J. Kingman, Goals 2000/TLCF, U.S. Department of Education, Phone: (202) 401-3900, Fax: (202) 205-5870, e-mail: [marcia\\_kingman@ed.gov](mailto:marcia_kingman@ed.gov).

#### Districts in Oklahoma

For assistance with state initiatives: Dr. Katie Dunlap, Assistant State Superintendent, Oklahoma State Department of Education, Phone: (405) 521-4513, Fax: (405) 521-2971, [Katie\\_Dunlap@mail.sde.state.ok.us](mailto:Katie_Dunlap@mail.sde.state.ok.us).

#### Districts in Montana

Nancy Coopersmith, Administrator, Department of Curriculum Services, Montana Office of Public Instruction, Phone: (406) 444-5541, Fax: (406) 444-1373, e-mail: [ncoopersmith@state.mt.us](mailto:ncoopersmith@state.mt.us).

For assistance with standards-based reform: Dr. Belinda Biscoe, Director, Region VII Comprehensive Center, University of Oklahoma, College of Continuing Education, Phone: (405) 325-1729, Fax: (405) 325-1824, e-mail: [bbiscoe123@aol.com](mailto:bbiscoe123@aol.com); Rita Hale, Training Associate, Northwest Regional Assistance, Phone: (800) 547-6339, Fax: (503) 275-9625, e-mail: [hale@nwrel.org](mailto:hale@nwrel.org).

For assistance with integrating technology with standards-based reform: Dr. Jerry Chafin, Director, South Central Regional Technology In Education Consortium, Phone: (785) 864-0699, Fax: (785) 864-0704, e-mail: [info@scrtec.org](mailto:info@scrtec.org); Seymour Hanfling, Director, Northwest Educational Technology Consortium, Phone: (503) 275-0658, (800) 211-9435 (voice mail), Fax: (503) 275-0449, e-mail: [netc@nwrel.org](mailto:netc@nwrel.org).

For assistance with understanding and linking to other federal resources: <http://www.ed.gov>.

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# Federal Register

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**Tuesday,  
February 15, 2000**

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**Part VII**

## **Department of the Interior**

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**Office of Surface Mining Reclamation and  
Enforcement**

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**30 CFR Part 870  
Abandoned Mine Land (AML) Fee  
Collection and Coal Production Reporting  
On the OSM-1 Form; Proposed Rule**

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 870

RIN 1029-AB95

## Abandoned Mine Land (AML) Fee Collection and Coal Production Reporting on the OSM-1 Form

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM) propose to amend our regulations governing Abandoned Mine Land (AML) reclamation fee reporting to allow for the electronic filing of the information required on the OSM-1 Form.

**DATES:** Written comments: We will accept written comments on the proposed rule until 5 p.m., Eastern time, on April 17, 2000.

**Public hearings:** Upon request, we will hold a public hearing on the proposed rule at a date, time and location to be announced in the **Federal Register** prior to the hearing. We will accept requests for public hearings until 5 p.m., Eastern time, on March 17, 2000.

**ADDRESSES:** If you wish to comment, you may submit your comments by any one of the following methods. You may mail or hand-deliver comments to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101, 1951 Constitution Avenue, NW, Washington, D.C. 20240. You may also submit comments to OSM via the Internet at: [osmrules@osmre.gov](mailto:osmrules@osmre.gov).

You may submit a request for a public hearing orally or in writing to the person and address specified under **FOR FURTHER INFORMATION CONTACT**. The address, date and time for any public hearing held will be announced prior to the hearing. Any disabled individual who requires special accommodation to attend a public hearing should also contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**FOR FURTHER INFORMATION CONTACT:** Mr. Sean Spillane, Office of Surface Mining Reclamation and Enforcement, Denver Federal Center, Building 20, Room B-2005, Denver, Colorado 80225; Telephone 303-236-0330, Ext 278. E-mail: [sspillan@osmre.gov](mailto:sspillan@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

I. Background Information.

II. What Would this Rule Do?

III. How Do I Submit Comments on the Proposed Rule?

IV. Procedural Matters and Certifications.

**I. Background Information.****What Is the Abandoned Mine Land (AML) Reclamation Program?**

Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) created the Abandoned Mine Reclamation Fund (fund) in response to concern over extensive environmental damage caused by past coal mining activities. Money from the fund is used to reclaim abandoned and inadequately reclaimed mining areas where there is no continuing reclamation responsibility by any person under state or federal law. The fund is financed by a reclamation fee assessed on every ton of coal sold, used, or transferred at the rate of 35 cents per ton of surface mined coal, 15 cents per ton of underground mined coal, and 10 cents per ton for lignite. The reclamation fee must be paid to OSM once every calendar quarter.

The authority to collect the reclamation fee at the above rate is due to expire in 2004. After that date, the fee will be established and collected at a rate sufficient to allow the Secretary to transfer from the fund to the United Mine Workers of America Combined Benefit Fund the sum necessary to fulfill the responsibilities under section 402(h) of SMCRA.

OSM administers the AML program and fund. Reclamation is accomplished through grants to approved state and tribal AML reclamation programs. These AML reclamation programs are implemented through regulations in 30 CFR subchapter R and through implementing guidelines published in the **Federal Register** on March 6, 1980 (45 FR 27123), and revised on December 30, 1996 (45 FR 68777). Currently, 23 states and 3 Indian tribes have approved AML reclamation programs.

**How Is the AML Fee Reported Under the Current Regulations?**

Section 402(b) of SMCRA, 30 U.S.C. 1232(b), requires companies to pay a reclamation fee on coal sold, used, or transferred no later than 30 days after the end of each calendar quarter. SMCRA and the implementing regulations also require all operators of coal mining operations to submit a statement identifying:

- (1) The permittee;
- (2) The operator in addition to the permittee;
- (3) The owner of the coal;
- (4) The person purchasing the coal;
- (5) The amount of coal sold, used, or transferred during the calendar quarter;
- (6) The type of coal;
- (7) The method of coal removal;

(8) The preparation plant, tippie, or loading point for the coal;

(9) The permit number required under section 506 of SMCRA; and

(10) The Mine Safety and Health Administration identification number.

Each quarterly report must also contain a notification of any changes in the information required by section 402(c) of SMCRA since the date of the preceding quarterly report. The accuracy of the report must be sworn to by the operator and notarized. The operator is responsible for the information provided and subject to the sanctions provided for in section 402(d)(1) of SMCRA. See 30 U.S.C. 1232(c) and 30 CFR 870.15.

**II. What Would This Rule Change?**

Currently, our regulations at 30 CFR 870.15(b) require that the operator use the OSM-1 Form to report the required information when paying the AML fee. A paper copy of the OSM-1 Form must be used and submitted. There is no provision for filing the OSM-1 Form electronically. By this rulemaking, we propose to accept future quarterly filings of the OSM-1 Form by approved electronic transmission in place of paper filings. Under current procedures, OSM uses information technology to reduce the reporting burden on those filing the OSM-1 Form. When the OSM-1 Form is mailed to a respondent, the majority of the information on the OSM-1 Form (i.e., company name, address, contact person, telephone number, permit number, MSHA ID, etc.) is already pre-printed on the OSM-1 before it is mailed to the respondent, thus reducing the time to complete the form. We expect to develop a computer-based electronic form that will also contain the company information. The respondent would only need to update changes, add the missing information, and send the electronic version of the OSM-1 Form back to OSM.

The electronic filing of the OSM-1 Form would be an option available to the reporting entity. However, because of the notary requirement in SMCRA, and because we are not aware of any means by which a document may be electronically notarized and transmitted, the operator (or entity reporting for the operator) would be required to print out and maintain on file, a properly notarized paper copy of the OSM-1 Form for review by OSM's Fee Compliance auditors.

We believe that the option of electronically transmitting data may result in some savings to those in industry who choose to use it and to the government. We hope that as electronic commerce becomes more sophisticated

the electronic notarization and transmission of documents will become possible. This would allow us to dispense with the requirement that the operator or reporting entity keep a notarized paper copy of the quarterly OSM-1 Form on file. We specifically request comments on any technology currently available which would allow the electronic notarization and transmission of documents so that we may dispense with the requirement in this proposed rule that the operator filing electronically also maintain a notarized paper copy of the OSM-1 Form.

We are proposing this rule under the authority of section 413(a) of SMCRA which gives the Secretary authority to do all things necessary or expedient, including the promulgation of rules, to implement and administer the provisions of Title IV of SMCRA.

### III. How Do I Submit Comments on the Proposed Rule?

**Written Comments:** If you submit written or electronic comments on the proposed rule during the 60-day comment period, they should be specific, should be confined to issues pertinent to the notice, and should explain the reason for any recommended change(s). Where practical, you should submit three copies of your comments. We may not be able to consider or include in the Administrative Record comments delivered to an address other than those listed above (see **ADDRESSES**).

**Electronic Comments:** Please submit Internet comments as an ASCII or WordPerfect file avoiding the use of special characters and any form of encryption. Please also include "Attn: RIN 1029-AB95" 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 202-208-2847.

**Availability of Comments:** Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours at the OSM Administrative Record Room (see **ADDRESSES**). Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which 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 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.

**Public hearings:** We will hold a public hearing on the proposed rule upon request only. The time, date, and address for any hearing will be announced in the **Federal Register** at least 7 days prior to the hearing.

Any person interested in participating at a hearing should inform Mr. Sean Spillane (see **FOR FURTHER INFORMATION CONTACT**), either orally or in writing by 5:00 p.m., Eastern time, on March 7, 2000. If no one has contacted Mr. Spillane to express an interest in participating in a hearing by that date, a hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held, with the results included in the Administrative Record.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard. To assist the transcriber and ensure an accurate record, we ask that you give us a written copy of your testimony.

### IV. Procedural Matters

#### 1. Executive Order 12866—Regulatory Planning and Review

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

a. This rule will not have an effect of \$100 million or more on the economy. It 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.

Approximately 1,021 respondents submit the OSM-1 Form covering more than 3,900 permits 4 times a year. The proposed rule would give respondents the option of submitting the reports electronically. Because electronic filing under the proposed rule is optional and because the requirement to file the information already exists, any increase in costs that may result would be negligible.

b. This rule will not create a serious inconsistency or otherwise interfere

with an action taken or planned by another agency. The rule merely provides the option of transmitting the required information electronically.

c. This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

d. This rule does not raise novel legal or policy issues.

#### 2. Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This determination is based on the findings that the additions to the rule will not significantly change costs to industry and will not affect state or local governments. Furthermore, the rule produces no adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets. Use of the electronic filing method for the OSM-1 Form would be an option for industry and it is expected that as technology improves its use may reduce the cost of reporting.

#### 3. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of \$100 million or more for the reasons stated above.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions because the rule does not impose major new requirements on the coal mining industry or consumers.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises for the reason stated above.

#### 4. Unfunded Mandates

This rule does not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on state, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates

Reform Act (2 U.S.C. 1531, *et seq.*) is not required.

5. *Executive Order 12630—Takings*

In accordance with Executive Order 12630, the rule does not have takings implications. This determination is based on the fact that the rule will not have an impact on the use or value of private property and so, does not result in significant costs to the government.

6. *Executive Order 13132—Federalism*

This proposed rule does not have Federalism implications. It would not have “substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.” As previously stated, the proposed rule would provide coal operators with the option of electronically filing reports which they are currently required to file in paper form with OSM. States are not involved in the process.

7. *Executive Order 12988—Civil Justice Reform*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

8. *Paperwork Reduction Act*

The information collection authority for this rulemaking has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029-0063.

9. *National Environmental Policy Act*

OSM has reviewed this proposed rule and determined that it is categorically excluded from the National Environmental Policy Act process in accordance with the Departmental Manual 516 DM 2, Appendix 1.10.

10. *Clarity of this Regulation*

Executive Order 12866 requires each agency to write regulations 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 proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with its 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) Would the rule be easier to understand if it 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, § 773.15). (5) Is the description of the proposed rule in the SUPPLEMENTARY INFORMATION section of this preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240. You may also e-mail the comments to this address: exsec@ios.doi.gov .

List of Subjects in 30 CFR Part 870

Incorporation by reference, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Dated: January 22, 2000.

Sylvia V. Baca,

Acting Assistant Secretary for Land and Minerals Management.

Accordingly, 30 CFR part 870 is proposed to be amended as set forth below.

PART 870—ABANDONED MINE RECLAMATION FUND—FEE COLLECTION AND COAL PRODUCTION REPORTING.

1. The authority citation for part 870 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 870.15 is amended as follows:

a. In paragraph (b), remove the first sentence and add three new sentences in its place; and

b. Revise paragraph (d)(1)(iv) to read as follows:

§ 870.15 Reclamation fee payments.

\* \* \* \* \*

(b) Each operator must use mine report Form OSM-1 (or any approved successor form) to report the tonnage of coal sold, used, or transferred. The report must also include the name and address of any person or entity who, in a given quarter, is the owner of 10 percent or more of the mineral estate for a given permit, and any entity or individual who, in a given quarter, purchases ten percent or more of the production from a given permit during the applicable quarter. The operator can file a report under this section either in paper format or in electronic format as specified in § 870.17. \* \* \*

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(iv) Use OSM’s approved form or approved electronic form to report coal tonnage sold, used, or for which ownership was transferred, to the address indicated in the Instructions for Completing the OSM-1 Form.

\* \* \* \* \*

3. Section 870.17 is added to read as follows:

§ 870.17 Filing the OSM-1 Form electronically.

You, the operator, may submit a quarterly electronic OSM-1 Form in place of a quarterly paper OSM-1 Form. Submitting the OSM-1 Form electronically is optional. If you submit your form electronically, you must:

(a) Use a methodology and medium approved by OSM; and

(b) Maintain a properly notarized paper copy of the identical OSM-1 Form for review and approval by OSM’s Fee Compliance auditors. (This is needed to comply with the notary requirement in the Act.)

[FR Doc. 00-3519 Filed 2-14-00; 8:45 am]

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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**