



# 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.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 792

RIN 3206-A193

#### Agency Use of Appropriated Funds for Child Care Costs for Lower Income Employees

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing final regulations implementing legislation which was enacted September 29, 1999. The legislation permits agencies in the Executive branch to use appropriated funds to reduce child care costs for their lower income Federal employees. The intended effect of the law is to make child care more affordable for lower income Federal employees.

**DATES:** Effective March 14, 2000.

**FOR FURTHER INFORMATION CONTACT:** Patricia Kinney, Office of Personnel Management, 1900 E St., NW., Room 7315, Washington, DC 20415-1300; Phone: (202) 606-1313; Fax: (202) 606-2091.

**SUPPLEMENTARY INFORMATION:** Section 643 of Public Law 106-58, September 29, 1999, requires the Office of Personnel Management to regulate Federal agency use of appropriated funds for child care costs for lower income employees. The Act allows Federal agencies in the Executive branch to assist their lower income employees with their costs of child care. The Act addresses the need for affordable child care for Federal employees. Child care is a labor-intensive service that requires adequate, trained staff to provide child care services that are safe and appropriate for children and their families. An increasing number of Federal families

are finding that affordable child care is getting more difficult to find even when their own agencies sponsor on or near-site child care centers. Vacancy rates in Federally sponsored child care centers have steadily grown due to the affordability problem. Despite efforts of non-profit organizations to raise funds through charitable contributions, the affordability of child care for lower income Federal employees remains out-of-reach since child care costs can translate to up to 50 percent of a Federal family's total family income.

Reduced child care tuition, as a result of agency contributions permitted by this law, can have significant impact on employees' ability to utilize safe and reliable child care. Benefits to the agencies include better recruitment and retention of qualified personnel, lower absenteeism, and improved morale. Improved retention can result in significant recruitment and training cost savings to agencies. An added benefit for agencies that sponsor on-site child care centers at some of their locations is that they can expect to see improved Federal employee participation in their centers. For small agencies that have been unable to provide agency-sponsored on-site child care centers, this law permits them to assist their employees with a variety of other child care choices.

Sec. 643 of Public Law 106-58 authorizes the use of appropriated funds, otherwise available for salaries, to improve the affordability of child care for lower income Federal employees. This law, enacted by Congress, became effective on September 29, 1999, and remains in effect for one year. Funds can be obligated upon the promulgation of the regulations.

In summary, the rule authorizes Federal agencies to use appropriated funds, including revolving funds, that are otherwise available to the agencies for salaries, to assist their lower income Federal employees with the costs of child care in child care centers and family child care homes that are licensed. Agencies can choose from a number of models for determining employee eligibility and the amount of the tuition assistance subsidy. In light of the fact that agencies have differing needs from one location to another, the proposed rule allows for maximum flexibility so that agencies can take different approaches for making those

determinations. OPM guidance materials provide agencies with a variety of models and approaches for determining tuition assistance eligibility and other components of their tuition assistance programs.

On December 23, 1999, OPM published proposed regulations (64 FR 72037) to establish the child care subsidy program. Under the proposed regulations, OPM would be responsible for providing agencies with guidance toward implementation of the law. OPM is responsible for providing Congress with a report on the results of the implementation no later than September 1, 2000.

OPM received comments from 12 agencies, 2 labor organizations, 1 child care provider, and 2 individuals. Following is summary of the comments:

#### Flexibility for Agency Implementation

Many agencies and 2 labor organizations supported the flexibility to choose their own model in defining "lower income employee." Two agencies felt that there should be a uniform definition of "lower income employee" because of concerns that there would be inequities across agencies and that some employees would not receive the benefit. We did not choose to provide a specific definition in the regulation because many agencies expressed the view that flexibility would enable them to tailor a program that best suits their needs and they pointed out that their needs could be different from one situation to another.

#### Definition of Child

One agency suggested that we modify the definition of "child" because our definition seemed to imply that an adopted, step or foster child did not have a "regular parent-child relationship," as did a natural child. We changed the definition to incorporate the suggestion. Based on other comments, we expanded the definition of "child" to include children who are supported by legal guardians as well as disabled children through age 18.

#### Time Frame

Many of the respondents were concerned about the short time frame for implementation and urged OPM to seek immediate legislative relief from the expiration date of the law. After the proposed regulations were published,

the President, in his FY2001 budget proposal, has requested a continuation of authorization from Congress.

#### Agencies Without Appropriations

Two agencies asked for clarification on whether the law applied to them. We have clarified the issue by stating that agencies may use appropriated funds, including revolving funds, that are otherwise available to the agency for salaries.

#### Effective Date and Notice to Congress and OPM

A few respondents requested that the agencies be able to provide tuition subsidies retroactively to the date of passage of the law. It was the intent of Congress that funds could be obligated only after final regulations were published by OPM in the **Federal Register** and after notification to Congress has occurred. One agency asked for clarification about notification and suggested a change that would specify that Congress be notified of intention to initiate a program. That change has been made.

#### Types of Programs to Which the Law Applies

Two agencies asked for clarification about program eligibility and whether school-type programs were included. Programs that are licensed and/or regulated are eligible regardless of where they are housed. This has been clarified in the regulation.

#### Using OPM's Models

One agency suggested the regulations be clear that agencies are not required to use one of the models suggested by OPM and that suggestion has been incorporated.

#### Pooling Funds in Multi-Tenant Buildings

Two agencies made comments about pooling funds in a multi-tenant building. One agency provided revised language which would result in more flexibility and the language has been adopted in the final rule.

#### Restricting Funds

A few agencies made suggestions about restricting funds to one group or another. For example, one agency suggested limiting the eligibility to full-time employees. The proposed rule was written to permit maximum flexibility by the agencies and, therefore, the language was not changed. The same principle applied to suggestions there be a statutory cap on the amount of subsidies awarded. Agencies have the

flexibility to restrict funds and to choose eligibility models that meet their needs.

#### Child Care Boards of Directors

One agency suggested a section be added which would advise Government employees who sit on the board of directors of Federally sponsored child care centers. That guidance will appear, as suggested, in our guidance related to the law.

#### Executive Order 12866, Regulatory Review

The final rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

#### Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would only apply to Federal agencies and employees.

#### List of Subjects in 5 CFR Part 792

Alcohol abuse, Alcoholism, Day care, Drug abuse, Government employees, U.S. Office of Personnel Management

**Janice R. Lachance,**

*Director.*

Accordingly, OPM is amending part 792 of title 5 of the Code of Federal Regulations as follows:

#### PART 792—FEDERAL EMPLOYEES' HEALTH AND COUNSELING PROGRAMS

1. The authority citation for part 792 is revised to read as follows:

**Authority:** Sec. 201 of Pub. L. 91-616, 84 Stat. 1849, as amended and transferred to sec. 520 of the Public Health Services Act by sec. 2 (b)(13) of Pub. L. 98-24 (42 U.S.C. 290dd-1) and sec. 413 of Pub. L. 92-255, 86 Stat. 84, as amended and transferred to sec. 525 of the Public Health Service Act by sec. 2(b)(16)(A) of Pub. L. 98-24 (42 U.S. C. 290ee-1); Sec. 643, Pub. L. 106-58, 113 Stat. 477.

2. Subpart B is added to read as follows:

#### Subpart B—Agency Use of Appropriated Funds for Child Care Costs for Lower Income Employees—What Is the New Child Care Legislation and to Whom Does It Apply?

Sec.

- 792.200 To whom do "we", "you", and their variants apply?  
 792.201 What does the new law permit?  
 792.202 What is the purpose of the new law?  
 792.203 Should we notify anyone of our intention to initiate a program and when can the obligation be made?  
 792.204 Are there sample memoranda and other documents available to assist us with this process?  
 792.205 Are there additional materials necessary for the implementation of this

process and are there any special reporting and oversight requirements related to this law?

- 792.206 What are the benefits to an agency of providing such assistance to its lower income employees?  
 792.207 Which agency funds can be used for the purpose of this law?  
 792.208 Are agencies required to participate in this program?  
 792.209 How can agencies take advantage of this new law and when does this law become effective?  
 792.210 What is the definition of Executive agency?  
 792.211 What is the definition of tuition assistance program?  
 792.212 What is the definition of civilian employee?  
 792.213 What is the definition of a Federally sponsored child care center?  
 792.214 What is the definition of contractor?  
 792.215 What is the definition of a child?  
 792.216 What children are eligible for this subsidy?  
 792.217 What is a disabled child?  
 792.218 Are children enrolled in summer programs and part-time programs eligible?  
 792.219 Are part-time Federal employees eligible?  
 792.220 Does the law apply only to on-site Federal child care centers that are utilized by Federal families?  
 792.221 What is the process for helping lower income employees with child care tuition?  
 792.222 Are agencies required to negotiate with their Federal labor organizations about the provisions of this law?  
 792.223 Are there any conditions which the child care provider must meet in order to participate in this program?  
 792.224 Is there a statutory cap on the amount or the percentage of child care tuition that will be subsidized?  
 792.225 What is the definition of a lower income Federal employee and how is the amount of the tuition assistance subsidy determined?  
 792.226 Who determines if a Federal employee qualifies as a lower income employee and how is the program administered?  
 792.227 Are child care subsidies paid to the Federal employee using the child care?  
 792.228 May we disburse funds to a child care provider or to an organization that administers our program prior to the time the employee receiving tuition assistance has enrolled his or her child in the child care center or family child care home?  
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 792.231 Can these funds be used for children of Federal employees who are already enrolled in child care?

792.232 Can we place special restrictions or requirements on the use of these funds, and can we restrict the disbursement of such funds to only one type of child care or to one location?

792.233 May we use the funds to improve the physical space of the family child care homes or child care centers?

792.234 For how long is the law effective?

792.235 Who will oversee the disbursement and use of these funds?

**Subpart B—Agency Use of Appropriated Funds for Child Care Costs for Lower Income Employees—What Is the New Child Care Legislation and to Whom Does It Apply?**

**§ 792.200 To whom do “we”, “you”, and their variants apply?**

Use of pronouns, “we,” “you,” and their variants throughout this part refers to the agency. OPM is always referred to as “OPM”.

**§ 792.201 What does the new law permit?**

Public Law 106–58 (113 Stat. 477) permits agencies to use appropriated funds, including revolving funds, that are otherwise available to the agency for salaries, to improve the affordability of child care for lower income Federal employees. Employees can benefit from reduced tuition rates at Federal child care centers, non-Federal child care centers, and in family child care homes.

**§ 792.202 What is the purpose of the new law?**

The law is intended to make child care more affordable for lower income Federal employees through the use of agency appropriated funds.

**§ 792.203 Should we notify anyone of our intention to initiate a program and when can the obligation be made?**

Yes, you must provide notice to the House Subcommittee on Treasury, Postal Service and General Government and to the Senate Subcommittee on Treasury and General Government and to your appropriations subcommittees prior to the obligation of funds. This is a Congressional notification requirement. You must also notify OPM of your intention. Funds can be obligated immediately after notifications have occurred.

**§ 792.204 Are there sample memoranda and other documents available to assist us with this process?**

Yes, OPM will provide you with guidance that contains sample memoranda of understanding, sample marketing tools, sample tuition assistance applications, and models for determining tuition assistance eligibility. These materials can be found in “Guide for Implementing Child Care Legislation—Pub. L. 106–58, Sec. 643.”

The Guide is available on OPM’s website, <http://www.opm.gov/wrkfam>. You may also obtain a copy by writing to OPM at: U.S. Office of Personnel Management, Family-Friendly Workplace Advocacy Office, 1900 E Street, NW., Room 7315, Washington, DC 20415.

**§ 792.205 Are there additional materials necessary for the implementation of this process and are there any special reporting and oversight requirements related to this law?**

Yes, you are responsible for tracking the utilization of your funds and reporting the results to OPM. OPM will provide you with a mandatory reporting form. OPM is required to provide a report to the appropriations committees no later than September 1, 2000. Therefore, you are required to report your results to OPM no later than August 1, 2000. OPM will provide you with guidance on this subpart.

**§ 792.206 What are the benefits to an agency of providing such assistance to its lower income employees?**

There are several benefits for the agencies beginning with improved recruitment and retention. Cost savings in recruitment and training can be significant. In addition, absenteeism rates related to child care problems can be reduced. Providing such subsidies can also increase morale, particularly among families who cannot afford the child care located at or near a child care center that is sponsored by their agency. The use of funds for lower income families who are enrolled or wish to enroll in Federal child care centers may help to increase the Federal participation rates where there is a regulatory requirement that at least 50 percent of the children enrolled have parents or guardians who are Federal employees.

**§ 792.207 Which agency funds can be used for the purpose of this law?**

You are permitted to use appropriated funds, including revolving funds, that are otherwise available to the agency for salaries.

**§ 792.208 Are agencies required to participate in this program?**

Agencies are not required to participate in this program. The decision to participate is left to the discretion of the agency. If an agency chooses to participate, it may not use funds other than those specified in § 792.207.

**§ 792.209 How can agencies take advantage of this new law and when does this law become effective?**

The law became effective as of September 29, 1999. Agencies are permitted to obligate funds beginning on March 14, 2000. Agencies can take advantage of this new law by notifying Congress and OPM of their intent.

**§ 792.210 What is the definition of Executive agency?**

The term *Executive agency* is defined by section 105 of title 5, United States Code, but does not include the General Accounting Office.

**§ 792.211 What is the definition of tuition assistance program?**

The term *tuition assistance program*, for the purposes of this subpart, means the program that results from the expenditure of agency funds to assist lower income Federal employees with child care costs, including, but not limited to, such activities as: determining which employees receive a subsidy, and the size of the subsidy each employee receives; distributing agency funds to participating providers; and tracking and reporting to OPM information such as total cost and employee utilization of the program.

**§ 792.212 What is the definition of civilian employee?**

The term *civilian employee*, for the purposes of this subpart, means all appointive positions in an Executive agency.

**§ 792.213 What is the definition of a Federally sponsored child care center?**

The term *Federally sponsored child care center*, for the purposes of this subpart, is a child care center that is located in a building or space that is owned or leased by the Federal government.

**§ 792.214 What is the definition of contractor?**

Sec. 643 of Public Law 106–58 says that child care services provided by contract are covered by this provision. The term *contractor* applies to an organization or individual who provides child care services for which Federal families are eligible. Child care *providers* that may provide services under contract include center-based child care and family child care homes. The term *provider* is typically used to denote contractor in the child care industry. For the purposes of this subpart, the term *provider* is used to denote both center-based child care and family child care homes.

**§ 792.215 What is the definition of a child?**

For the purposes of this subpart, a *child* is considered to be:

- (a) A biological child who lives with the Federal employee;
- (b) An adopted child;
- (c) A stepchild;
- (d) A foster child;
- (e) A child for whom a judicial determination of support has been obtained; or
- (f) A child to whose support the Federal employee who is a parent or legal guardian makes regular and substantial contributions.

**§ 792.216 What children are eligible for this subsidy?**

The law covers the children of Federal employees, excluding contract employees, from birth through age 13 and disabled children through age 18.

**§ 792.217 What is a disabled child?**

For the purposes of this subpart a disabled child is defined as one who is unable to care for himself or herself based on a physical or mental incapacity as determined by a physician or licensed or certified psychologist.

**§ 792.218 Are children enrolled in summer programs and part-time programs eligible?**

Yes, Federal employees with children (birth through age 13 and disabled children through age 18) who are enrolled in summer care programs and part-time programs are eligible.

**§ 792.219 Are part-time Federal employees eligible?**

Yes, Federal employees who work part-time are eligible.

**§ 792.220 Does the law apply only to on-site Federal child care centers that are utilized by Federal families?**

No, the bill is broad in scope and includes non-Federal center-based child care as well as care in family child care homes, as long as they are licensed and/or regulated by the State and/or local regulating authorities.

**§ 792.221 What is the process for helping lower income employees with child care tuition?**

OPM guidance includes further explanation, but the process for the tuition assistance program can be summarized in 8 steps:

- (a) After completing your collective bargaining obligations, where applicable, notify the Congressional committees (see § 792.203) and OPM of your decision to use a specific amount of appropriated funds for this purpose;
- (b) Determine how you will structure the program and which tuition assistance model you will use;

- (c) Determine how you will administer the program;
- (d) Advertise the program;
- (e) Conduct the application process;
- (f) Make the tuition assistance determinations and notify the employees (parents are then charged a reduced tuition rate by the provider);
- (g) Provide the funds to the provider or to an organization that will administer the program for you; and
- (h) Report the results to OPM on the mandatory reporting form.

**§ 792.222 Are agencies required to negotiate with their Federal labor organizations about the provisions of this law?**

You are reminded of your obligation to negotiate or consult, as appropriate, with the exclusive representatives of your employees on the implementation of the regulations in this subpart under 5 U.S.C. 7117.

**§ 792.223 Are there any conditions which the child care provider must meet in order to participate in this program?**

Yes, the provider, whether center-based or family child care, must be licensed and/or regulated by the State and/or local authorities where the child care service is delivered.

**§ 792.224 Is there a statutory cap on the amount or the percentage of child care tuition that will be subsidized?**

No, the law does not specify a cap.

**§ 792.225 What is the definition of a lower income Federal employee and how is the amount of tuition assistance subsidy determined?**

Each agency makes the determination of the definition of *lower income* Federal employee. *Lower income* Federal employee can be defined by an agency in a number of ways. The process for determining both eligibility and the amount of tuition assistance subsidy for each family will usually involve consideration of total family income along with other factors such as total child care costs, depending on the tuition assistance model(s) you use. Agencies are not required to use one of the models that OPM suggests. If an agency uses a model OPM has suggested in its guidance, you may wish to change the threshold amounts, or percentages of total family income or other factors. In their guidance to this subpart, OPM will provide examples of models with detailed explanations. OPM's guidance on this subpart is a supplement to this subpart.

(a) If the model or models you select includes a total family income threshold, you can use criteria such as those from:

- (1) The Child Care Development Block Grant as defined (42 U.S.C. 9858);
  - (2) A formula based on a percentage of the State poverty level (as many States do for certain programs); or
  - (3) A set amount of total family income the agency chooses depending on the agency demographics and need to assist lower income Federal employees.
- (b) Some models do not require a threshold amount, since eligibility is determined as a function of the relationship between total family income, actual child care tuition costs, and an amount or percentage the agency is willing to pay.

(c) In order to determine the amount of tuition assistance subsidy by which tuition will be reduced for a Federal employee, a number of approaches can be taken. The size of the subsidy is dependent on different income levels. It can be based on a tuition sliding scale such as that used in the military formula (10 U.S.C. 1791-1798); a formula based on a specific percentage of total family income the family is expected to pay with the agency paying the remaining amount; or a formula based on a specific percentage of child care tuition the family is expected to pay with the agency paying the remaining amount. Each of these approaches is based on different philosophical assumptions and it will be up to the agency to determine which model or models best fits its needs. The models are described in detail in OPM's guidance.

(d) Besides total family income, you may consider extraordinary financial situations to determine eligibility and the subsidy amount.

**§ 792.226 Who determines if a Federal employee qualifies as a lower income employee and how is the program administered?**

The agency or another appropriately identified organization determines eligibility using certain income and/or tuition criteria chosen by the agency. If the agency itself does not administer the program, it must select another organization to do so, using procedures that are in accordance with the Federal Acquisition Regulations. Regardless of what organization administers the program, the model for determining both the tuition assistance eligibility and the amount of the subsidy is always determined by the Federal agency.

**§ 792.227 Are child care subsidies paid to the Federal employee using the child care?**

No, the child care subsidy is paid to the child care provider. If you choose to have an organization administer your program (see § 792.226), the subsidy is

paid to the organization and they, in turn, pay the provider. In any case, the provider will invoice the organization that administers the program.

**§ 792.228 May we disburse funds to a child care provider or to an organization that administers our program prior to the time the employee receiving tuition assistance has enrolled his or her child in the child care center or family child care home?**

Yes, you may wish to disburse one lump sum to the organization administering the tuition assistance program and they will be responsible for tracking the utilization and providing you with regular reports. An agency contract should specify that any unexpended funds shall be returned to the agency after contract completion.

**§ 792.229 How will the disbursement covered by § 792.227 work where there is a Federally sponsored child care center in a multi-tenant building?**

In a multi-tenant building, funds from the agencies could be pooled together for the benefit of the employees qualified for tuition assistance.

**§ 792.230 For how long will the tuition assistance be in effect for a Federal employee?**

The tuition assistance, in the form of a reduced tuition rate, will be in effect from the time the decision for a particular Federal employee is made and the child is enrolled in the program, until the child is no longer enrolled, but not later than September 30, 2000. These funds are not available to pay for services performed after September 30, 2000.

**§ 792.231 Can these funds be used for children of Federal employees who are already enrolled in child care?**

Yes, the funds can be used for children currently enrolled in child care as long as their families meet the tuition assistance eligibility requirements established by your agency.

**§ 792.232 Can we place special restrictions or requirements on the use of these funds, and can we restrict the disbursement of such funds to only one type of child care or to one location?**

(a) Yes, depending on your staffing needs and your employees' situations, including the local availability of child care, you may choose to place restrictions on the use of your funds in a number of ways including, but not limited to:

- (1) Fund Federal employees using family child care homes;
- (2) Fund Federal employees using your on-site child care center;
- (3) Fund Federal families using community, non-Federal child care centers; or

(4) Restrict the use of such funds to one or more locations.

(b) It is up to you to determine whether there will be any restrictions on the use of your appropriated funds for child care tuition costs.

**§ 792.233 May we use the funds to improve the physical space of the family child care homes or child care centers?**

No, the legislation specifically addresses making the child care more affordable for lower income Federal employees.

**§ 792.234 For how long is the law effective?**

The law is effective for one year, ending September 30, 2000.

**§ 792.235 Who will oversee the disbursement and use of these funds?**

You will be responsible for tracking the utilization of these funds. OPM's guidance which was issued on December 23, 1999, and which was reissued with updates on March 14, 2000, contains details about the oversight of this program and the mandatory reporting requirements. The guidance contains sample marketing materials, sample tuition assistance documents, the OPM reporting form, as well as suggestions for determining eligibility.

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## FEDERAL HOUSING FINANCE BOARD

### 12 CFR Chapter IX

[No. 2000-09]

RIN 3069-AA-96

#### Devolution of Corporate Governance Responsibilities

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Final rule.

**SUMMARY:** The Federal Housing Finance Board (Finance Board) is adopting as final, with several changes, the Interim Final Rule amending its regulations to devolve certain corporate governance responsibilities from the Finance Board to the Federal Home Loan Banks (Banks), pursuant to the requirements of the Federal Home Loan Bank System Modernization Act of 1999.

**EFFECTIVE DATE:** This final rule shall be effective on March 14, 2000.

**FOR FURTHER INFORMATION CONTACT:** James L. Bothwell, Director, (202) 408-2821, or Scott L. Smith, Deputy Director, (202) 408-2991, Office of Policy, Research and Analysis; or

Sharon B. Like, Senior Attorney-Advisor, (202) 408-2930, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

#### SUPPLEMENTARY INFORMATION:

##### I. Bank System and Finance Board Roles and Responsibilities; Regulatory Background

Under the Federal Home Loan Bank Act (Bank Act), the Finance Board is responsible for the supervision and regulation of the 12 Banks. *See* 12 U.S.C. 1422a(a)(3), 1422b(a)(1) (1994). Specifically, the Finance Board's primary duty is to ensure that the Banks operate in a financially safe and sound manner. Consistent with that primary duty, the Finance Board also is responsible for ensuring that the Banks carry out their housing finance and community lending mission, and that they remain adequately capitalized and able to raise funds in the capital markets. *See id.* § 1422a(a)(3).

Historically, the Bank Act has required the Finance Board to be involved in varying degrees in the corporate governance of the Banks, typically by requiring Finance Board approval for a host of Bank practices. However, the recently enacted Federal Home Loan Bank System Modernization Act of 1999 (Modernization Act)<sup>1</sup> repealed most of those requirements, thereby removing most of the last vestiges of governance responsibilities from the Finance Board. *See* Pub. L. No. 106-102, §§ 604(a)(6); 606(d), (f), (g) (1999). Accordingly, the Finance Board adopted the Interim Final Rule, which amended its regulations to remove the corresponding Finance Board approval requirements for such corporate governance functions, consistent with the Modernization Act. *See* 64 FR 71275 (Dec. 21, 1999). The Interim Final Rule maintained or imposed standards or requirements on the Banks where deemed necessary for reasons of safety and soundness and sound corporate governance practice. *See id.*

The Interim Final Rule provided for a 30-day comment period, which closed on January 20, 2000. The Finance Board received a total of 8 comment letters on the Interim Final Rule. Commenters included six Banks, a trade association representing 10 of the 12 Banks, and a banking institutions trade association. The provisions of the Interim Final Rule on which significant comments were received are discussed below.

<sup>1</sup> The Modernization Act is Title VI of the Gramm-Leach-Bliley Act, Pub. L. No. 106-102, 113 Stat. 1338, enacted into law on November 12, 1999.

## II. Analysis of the Final Rule

### A. Amendment of Bank Directors' Meeting and Compensation and Expenses Provisions—§§ 918.3, 918.7

#### 1. Annual Directors' Compensation Limits—§ 918.3(a)(2)

The Modernization Act amended section 7(i) of the Bank Act by imposing specific limits on annual compensation for the Chairperson, Vice Chairperson and other members of a Bank's board of directors. See Modernization Act, § 606(b). The statutory limits on directors' annual compensation were implemented in revised § 932.17(c)(1) of the Interim Final Rule,<sup>2</sup> to be effective in 2000. Commenters requested clarification on the applicability of the annual compensation limits to the payment by the Banks of deferred compensation to Bank directors.<sup>3</sup> As § 918.3(a)(2) of the final rule now states, starting in 2000, the annual compensation limits would apply to the year in which the deferred compensation was accrued or earned, and not to the year in which it is paid. Thus, amounts accrued in 2000 but paid to the director in 2001 would be subject to the annual compensation limit applicable for 2000.

#### 2. Maintenance of Effort Standard; Minimum Number of In-Person Bank Board Meetings Requirement—§ 918.7

Section 932.16(b)(1) of the Interim Final Rule (redesignated § 918.7(a)) required each Bank's board of directors to continue to maintain its level of oversight of the management of the Bank and, except as provided in paragraph (b)(2) (redesignated paragraph (b)), to hold no fewer in-person board meetings in any year than it has held on average over the immediately preceding three years. Redesignated paragraph (b) provided that a Bank may apply to the Finance Board for approval, upon a showing of good cause, to hold in any year fewer than the number of in-person board meetings required under paragraph (a).

Commenters generally opposed the minimum meetings requirement on the ground that such decisions are within the fiduciary corporate governance responsibilities of the Banks' boards and, therefore, should not be regulated

by the Finance Board. One commenter stated that the requirement was unnecessary in light of the Finance Board's recently proposed regulation setting forth the responsibilities of Bank boards as a means of ensuring that they fulfill their duties to operate the Banks in a safe and sound manner. See 65 FR 81 (January 3, 2000). Another commenter stated that the three-year averaging requirement unnecessarily reduces the flexibility of the Banks to make decisions on the number of board meetings, which normally are based on a number of subjective factors, and may not be appropriate to meet current needs of the Bank. One commenter also stated that the Finance Board can address any concerns in this area through the examination and supervision process.

As discussed in the preamble to the Interim Final Rule, the minimum meetings requirement was adopted for safety and soundness reasons. See 64 FR 71275. The reduction in compensation to be paid to directors as a result of the new annual compensation limits has raised concerns that the Banks' boards will hold fewer meetings, thus reducing their level of oversight of the management of the Banks.

The Finance Board acknowledges that decisions on the number of Bank board meetings generally should be within the purview of the corporate governance responsibilities of the Banks' boards, and general corporate governance standards are set forth in the Finance Board's proposed corporate governance rule as a means of ensuring that the Banks' boards fulfill their duties to operate the Banks in a safe and sound manner. However, the Finance Board believes that, notwithstanding the Bank boards' fiduciary duties regarding safety and soundness, the Finance Board's safety and soundness concerns with respect to the Bank boards' level of oversight of Bank management warrant a regulatory response in this area. Accordingly, the Finance Board is retaining a minimum meetings requirement in the final rule.

However, based on the comments received, the Finance Board believes that the required minimum number of meetings per year should be reduced. Historically, the Banks held monthly board meetings. In recent years, the trend has been to operate with fewer board meetings at many of the Banks. For 2000, statistics indicate that the three-year averaging requirement in the Interim Final Rule would result in at least: (i) 12 in-person meetings for one Bank; (ii) 11 in-person meetings for one Bank, which has applied for Finance Board approval to hold 9 in-person meetings; (iii) 9 in-person meetings for

4 Banks; (iv) 8 in-person meetings for 1 Bank, which has applied for Finance Board approval to hold 6 in-person meetings; (v) 7 in-person meetings for 4 Banks; and (vi) 6 in-person meetings for 1 Bank. The Finance Board recognizes that a pure averaging requirement incorporates the vagaries of timing into the calculation of the minimum meetings requirement for a particular Bank. For example, in 2000, 2 Banks would be required to hold more than 9 in-person board meetings per year, while the other 10 Banks would be allowed to hold 9 or fewer such meetings. While the Finance Board still believes it is important to maintain a minimum meeting standard for all of the reasons discussed in the preamble to the Interim Final Rule, it is persuaded that it would be fair and reasonable to reduce the minimum meetings requirement to reflect the operational reality at the Banks. Accordingly, the final rule amends the Interim Final Rule to provide that a Bank's board of directors shall hold a minimum number of meetings per year equal to the lesser of: (i) The three-year averaging requirement for the Bank; or (ii) 9. See § 918.7(a).

In response to a request from one commenter, the final rule also revises the Interim Final Rule to clarify that if the three-year averaging number is a fraction, the Bank may, in its discretion, round down the number to the nearest whole number. See § 918.7(a)(2).

Several commenters urged that teleconference and videoconference meetings be allowed to count towards the minimum meetings requirement. The Finance Board believes that calling in-person board meetings is necessary to enable the directors to fulfill their responsibilities to operate the Banks in a safe and sound manner, and this requirement is maintained in the final rule. The final rule does not prohibit an individual director from participating in a meeting called as an in-person meeting by teleconferencing or videoconferencing.

The final rule also revises the Interim Final Rule to clarify that a Bank may apply to the Finance Board for a waiver of the minimum meetings requirement in paragraph (a) pursuant to the waiver procedures set forth in part 907 of the Finance Board's regulations. See 12 CFR part 907.

#### 3. Prohibition on Payment of Retainer Fees—§ 918.3(b)

The Interim Final Rule revised § 932.17(c)(2) (redesignated § 918.3(b)) to provide that, starting in 2000, the total compensation received by each director in a year shall reflect the

<sup>2</sup> The Finance Board recently reorganized and redesignated all of its regulations. See 65 FR 8253 (Feb. 18, 2000). Section 932.17(c)(1) of the Interim Final Rule was redesignated as § 918.3(a). See 65 FR 8253, 8260 (to be codified at 12 CFR 918.3(a)).

<sup>3</sup> The Finance Board has no regulation or policy prohibiting the Banks from adopting deferred compensation plans for Bank directors, and neither the Interim Final Rule nor this final rule prohibits the Banks from adopting such plans.

amount of time spent on official Bank business, such that greater or lesser attendance at board and committee meetings during a given year will be reflected in the compensation received by the director for that year. This section also provided that a Bank shall not pay fees to a director, such as retainer fees, that do not reflect the director's performance of official Bank business.

As discussed in the preamble to the Interim Final Rule, these provisions were intended to ensure that, consistent with Congressional intent, directors be compensated only for the performance of official Bank business and not simply for holding office. *See* 64 FR 71275. The preamble stated that a director who regularly fails to attend board or committee meetings may not be paid at all, and the Finance Board would consider such failure a dereliction of the director's fiduciary duties that would constitute cause for removal of the director, pursuant to section 2B(a)(2) of the Bank Act. *See id.*; 12 U.S.C. 1422b(a)(2) (1994).

Commenters objected to these provisions in the Interim Final Rule, apparently interpreting them as prohibiting the Banks from paying directors for official Bank business conducted by the directors outside of board or committee meetings, such as the time and effort expended in preparing for board and committee meetings, monitoring ongoing activities of the Bank, and staying informed on financial and other business developments relevant to the Bank. The revisions in the Interim Final Rule were not intended by the Finance Board to prohibit the Banks from paying directors for the performance of such official Bank business in between board or committee meetings, as long as the director also continues to regularly attend board or committee meetings and the fees are paid to the director after he or she has conducted the official Bank business. Accordingly, the final rule revises the language in the Interim Final Rule to clarify the Finance Board's intent in this regard. *See* § 918.3(b).

#### *B. Clarification of Date of Applicability of Removal of Requirements Regarding Compensation of Bank Officers and Employees—§ 918.9*

The Modernization Act amended section 12(a) of the Bank Act by removing the requirement for Finance Board approval in connection with the compensation of Bank officers and employees. *See* Modernization Act, § 606(d)(1)(B). In order to implement this provision, the Interim Final Rule removed § 932.19 of the Finance Board's

regulations. Section 932.19 of the Finance Board's regulations had set forth requirements for the payment of compensation to Bank officers and employees. *See* 12 CFR 932.19 (1999). A number of Banks have raised questions regarding the effect of the Interim Final Rule on their ability to pay compensation to officers or employees for 1999 in excess of that which would have been allowed under § 932.19 of the Finance Board's regulations and the Banks' policies adopted thereunder. These questions actually translate into a question regarding the date of applicability of the removal of the compensation regulation. For the reasons discussed below, notwithstanding the December 21, 1999 overall effective date of the Interim Final Rule, the Finance Board believes that the removal of the requirements relating to compensation of Bank officers and employees in 12 CFR 932.19 (1999) should be applicable only to compensation years starting after December 21, 1999. Accordingly, a new § 918.9 is being added in the final rule to clarify this result.

The compensation regulation in effect in 1999 provided that the maximum incentive payment to a Bank president could not exceed the difference between that president's annual base salary approved by the Bank's board and 125 percent of a base salary cap established by the Finance Board. *Id.* § 932.19(c)(2)(i) (1999). The regulation further provided that, by January 31 of each year, the board of each Bank that intended to make any incentive payment to its president for such year was required to adopt a resolution establishing the performance measures and targets on which such incentive payment would be based. The Banks have operated, and the Bank presidents have performed, pursuant to the provisions of their incentive compensation plans and the Finance Board's compensation regulation for the entire 1999 year.

The Modernization Act, while deleting the requirement in section 12(a) of the Bank Act for Finance Board approval of Bank officer and employee compensation, did not affect in any way the ability of the Finance Board to continue to regulate Bank officer and employee compensation, nor did the enactment of the Modernization Act have the effect of suspending the Finance Board's existing compensation regulation.

Therefore, the controlling statutory, regulatory and corporate governance framework for Bank officer and employee compensation in 1999 should be that which was in place when, on

January 31, each Bank established the base salary for its president, when each Bank adopted its incentive compensation plan for that year, and when, by January 31, each Bank's board established the performance measures and targets on which incentive payments to that Bank's president would be based. This view is consistent with that taken in § 932.17 of the Interim Final Rule (redesignated part 918), and finalized in this final rule, that the annual director compensation limits established in the Modernization Act apply only to compensation to be paid for services performed in 2000 and in subsequent years.

Thus, all compensation, both base salary and incentive compensation, to be paid to a president or other officer of a Bank for services performed during 1999 (or prior compensation years) must comply with the provisions of the 1999 compensation (or the compensation regulation in effect for that compensation year). *See* 12 CFR 932.19 (1999).

The Finance Board is aware that a number of Banks had a practice of adopting incentive compensation plans that permitted the Banks' presidents to earn incentive compensation in excess of the limits established in the compensation regulation, although to the Finance Board's knowledge, no Bank's plan provided for the payment of those excess amounts. Because the removal of the compensation requirements in 12 CFR 932.19 (1999) is applicable only to compensation years starting after December 21, 1999, Banks that had adopted such plans in 1999 and before may not pay incentive compensation earned under such plans in excess of the limits established by the Finance Board in the 1999 compensation regulation (or prior compensation regulations). *See id.* § 932.19(c)(2) (1999).

### **III. Regulatory Flexibility Act**

Because no notice of proposed rulemaking is required for this final rule, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, do not apply. Moreover, the final rule applies only to the Banks, which do not come within the meaning of "small entities," as defined in the Regulatory Flexibility Act. *See id.* § 601(6).

### **IV. Paperwork Reduction Act**

This final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.* Therefore, the Finance Board has not submitted any information to the Office of Management and Budget for review.

**List of Subjects 12 CFR Parts 917, 918 and 950**

Community development, Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

Accordingly, the Interim Final Rule amending 12 CFR chapter IX, which was published at 64 FR 71275 (Dec. 21, 1999), and amended at 65 FR 8253 (Feb. 18, 2000), is adopted as final with the following changes:

**PART 918—BANK COMPENSATION, EXPENSES AND MEETINGS**

1. The authority citation for part 918 continues to read as follows:

**Authority:** 12 U.S.C. 1422b(a), and 1427.

2. Revise the heading of § 918.2 to read as follows:

**§ 918.2 Annual directors' compensation policy.**

\* \* \* \* \*

3. Amend § 918.3 by:  
 a. Revising the heading;  
 b. Redesignating paragraph (a) as paragraph (a)(1);  
 c. Adding paragraph (a)(2); and  
 d. Revising paragraph (b), to read as follows:

**§ 918.3 Directors' compensation policy requirements.**

\* \* \* \* \*

(a) \* \* \*  
 (1) \* \* \*

(2) Starting in 2000, the annual compensation limits set forth in paragraph (a)(1) of this section shall apply to the year in which any deferred compensation was accrued or earned by a director, and not to the year in which it is paid to the director.

(b) *Compensation permitted only for performance of official Bank business.* The total compensation received by each director in a year shall reflect the amount of time spent on official Bank business, and greater or lesser attendance at board and committee meetings during a given year shall be reflected in the compensation received by the director for that year. A Bank shall not pay a director who regularly fails to attend board or committee meetings. A Bank shall not pay fees to a director, such as retainer fees, that do not reflect the director's performance of official Bank business conducted prior to the payment of such fees.

4. Revise the heading of § 918.4 to read as follows:

**§ 918.4 Directors' expenses.**

\* \* \* \* \*

5. Revise § 918.7 to read as follows:

**§ 918.7 Maintenance of effort.**

(a) *General.* Notwithstanding the limits on annual directors' compensation established by section 7(i) of the Act, as amended, the board of directors of each Bank shall continue to maintain its level of oversight of the management of the Bank, and, except as provided in paragraph (b) of this section, the board of directors shall hold a minimum number of in-person meetings in any year equal to the lesser of:

(1) 9; or

(2) The number of in-person board of directors meetings held by the Bank on average over the immediately preceding three years (which number, if a fraction, may be rounded down to the nearest whole number, in the Bank's discretion).

(b) *Waiver of minimum meetings requirement.* A Bank may apply to the Finance Board for a waiver of paragraph (a) of this section pursuant to the procedures set forth in part 907 of this chapter.

6. Add § 918.9 to read as follows:

**§ 918.9 Date of applicability of removal of requirements regarding compensation of bank officers and employees.**

The removal of the requirements relating to compensation of Bank officers and employees in 12 CFR 932.19 (in the Code of Federal Regulations revised as of January 1, 1999), is applicable for all Bank officer and employee compensation years starting after December 21, 1999.

By the Board of Directors of the Federal Housing Finance Board.

Dated: February 23, 2000.

**Bruce A. Morrison,**  
*Chairman.*

[FR Doc. 00-6201 Filed 3-13-00; 8:45 am]

**BILLING CODE 6725-01-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 25**

**[Docket No. NM169; Special Conditions No. 25-157-SC]**

**Special Conditions: Boeing Model 727-200 and 727-200F Series Airplanes; as Modified by Rockwell Collins; High-Intensity Radiated Fields (HIRF)**

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

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for Boeing Model 727-200 and

727-200F series airplanes modified by Rockwell Collins. These modified airplanes will have a novel or unusual design feature associated with the Rockwell Collins Multi-Mode Receiver (MMR) System. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is March 6, 2000.

Comments must be received on or before April 13, 2000.

**ADDRESSES:** Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM-114), Docket No. NM169, 1601 Lind Avenue SW., Renton, Washington 98055-4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM169. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:**

Mark Quam, FAA, Standardization Branch, ANM-113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (425) 227-2145; facsimile (425) 227-1149.

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

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The proposals described in this notice may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to these special conditions must include with those

comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM169." The postcard will be date stamped and returned to the commenter.

**Background**

On September 10, 1999, Rockwell Collins, Business and Regional Systems, 400 Collins Road NE., Cedar Rapids, Iowa, 52498, made application to the FAA for a Supplemental Type Certificate (STC) for the Boeing Model 727-200 and 727-200F series airplanes. These airplanes are low-wing, pressurized transport category airplanes with three fuselage-mounted jet engines. They are capable of seating between 170 and 189 passengers, depending upon the model and configuration (727-200F is not certificated to carry passengers). The proposed configuration of these modified airplanes will incorporate a Multi-Mode Receiver (MMR) system manufactured by Rockwell Collins. The affected aircraft are scheduled for delivery to the first customers in April 2000.

The Rockwell Collins MMR is a single integrated unit that enables approaches using instrument landing systems, microwave landing systems, and global navigation satellite system functions. These functions can be susceptible to disruption of both command and response signals as a result of electrical and magnetic interference caused by high-intensity radiated fields (HIRF) external to the airplane. This disruption of signals could result in loss of critical flight displays and annunciations, or could present misleading information to the pilot.

**Type Certification Basis**

Under the provisions of 14 CFR 21.101, Rockwell Collins must show that the Boeing Model 727-200 and 727-200F series airplanes, as modified to include the MMR installation, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A3WE or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The specific regulations included in the certification basis for the Boeing Model 727-200 and 727-200F series airplanes include Civil Air Regulations (CAR) 4b, as amended by amendment 4b-1 through 4b-11.

If the Administrator finds that the applicable airworthiness regulations (i.e., CAR 4b, as amended) do not

contain adequate or appropriate safety standards for the Boeing Model 727-200 and 727-200F series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, are issued in accordance with § 11.49, as required by §§ 11.28 and 11.29, and become part of the airplane's type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should Rockwell Collins apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

**Novel or Unusual Design Features**

The modified Boeing Model 727-200 and 727-200F series airplanes will incorporate the Rockwell Collins MMR system, which performs critical functions. The MMR system contains electronic equipment for which the current airworthiness standards (14 CFR part 25) do not contain adequate or appropriate safety standards that address protecting this equipment from the adverse effects of HIRF. This system may be vulnerable to high-intensity radiated fields external to the airplane. Accordingly, this system is considered to be a "novel or unusual design feature."

**Discussion**

There is no specific regulation that addresses requirements for protection of electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved that is equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Boeing Model 727-200 and 727-200F series airplanes modified to include the Rockwell Collins MMR system. These special conditions will require that this system, which performs critical functions, must be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

**High-Intensity Radiated Fields (HIRF)**

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 OR 2 below:

1. A minimum threat of 100 volts rms per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated. Both peak and average field strength components from the Table are to be demonstrated.

Frequency	Field Strength (volts per meter)	
	Peak	Average
10 kHz-100 kHz .....	50	50
100 kHz-500 kHz .....	50	50
500 kHz-2 MHz .....	50	50
2 MHz-30 MHz .....	100	100
30 MHz-70 MHz .....	50	50
70 MHz-100 MHz .....	50	50
100 MHz-200 MHz .....	100	100
200 MHz-400 MHz .....	100	100
400 MHz-700 MHz .....	700	50
700 MHz-1 GHz .....	700	100
1 GHz-2 GHz .....	2000	200
2 GHz-4 GHz .....	3000	200
4 GHz-6 GHz .....	3000	200
6 GHz-8 GHz .....	1000	200
8 GHz-12 GHz .....	3000	300
12 GHz-18 GHz .....	2000	200
18 GHz-40 GHz .....	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the computer modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization

Working Group of the Aviation Rulemaking Advisory Committee.

### Applicability

As discussed above, these special conditions are applicable to the Boeing Model 727-200 and 727-200F series airplanes modified by Rockwell Collins to include the MMR system. Should Rockwell Collins apply at a later date for a design change approval to modify any other model included on Type Certificate A3WE to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

### Conclusion

This action affects only certain design features on the Boeing Model 727-200 and 727-200F series airplanes modified by Rockwell Collins to include the Rockwell Collins MMR system installation. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplanes.

The substance of the special conditions for these airplanes has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

### List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

### The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for

the Boeing Model 727-200 and 727-200F series airplanes as modified by Rockwell Collins.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF)*. Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions*: Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on March 6, 2000.

**Vi L. Lipski,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM-100.*

[FR Doc. 00-6125 Filed 3-13-00; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 99-NM-319-AD; Amendment 39-11630; AD 2000-05-20]

RIN 2120-AA64

#### **Airworthiness Directives; Dassault Model Fan Jet Falcon Series Airplanes; Model Mystere-Falcon 20, 50, 200, and 900 Series Airplanes; and Model Falcon 10, 900EX, and 2000 Series Airplanes**

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Dassault Model Fan Jet Falcon series airplanes; Model Mystere-Falcon 20, 50, 200, and 900 series airplanes; and Model Falcon 10, 900EX, and 2000 series airplanes, that requires a functional test of the passenger oxygen masks, determination of the part number of the installed oxygen mask bags; and corrective action, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to ensure that proper plastic

bags of the passenger oxygen masks are installed, and that the masks are functioning properly. Improper plastic bags that have cracks or improperly functioning masks could result in insufficient oxygen to passengers in the event of rapid depressurization of the airplane.

**EFFECTIVE DATE:** April 18, 2000.

**ADDRESSES:** Information pertaining to this amendment may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 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:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dassault Model Fan Jet Falcon series airplanes; Model Mystere-Falcon 20, 50, 200, and 900 series airplanes; and Model Falcon 10, 900EX, and 2000 series airplanes was published in the **Federal Register** on December 9, 1999 (64 FR 68963). That action proposed to require a functional test of the passenger oxygen masks, determination of the part number of the installed oxygen mask bags; and corrective action, if necessary.

#### **Comments**

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to this AD or the FAA's determination of the cost to the public.

#### **Conclusion**

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

#### **Cost Impact**

The FAA estimates that as many as 767 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required test and determination, and that the average labor rate is \$60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be \$184,080, or \$240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator will accomplish those

actions in the future if this AD were not adopted.

### Regulatory Impact

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, Safety.

### Adoption of the Amendment

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

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

**2000-05-20 Dassault Aviation** [Formerly Avions Marcel Dassault-Breguet Aviation (AMD/BA)]: Amendment 39-11630. Docket 99-NM-319-AD.

**Applicability:** Model Fan Jet Falcon airplanes, Model Mystere-Falcon 20, 50, 200, and 900 series airplanes, and Model Falcon 10, 900EX, and 2000 series airplanes; equipped with EROS passenger oxygen masks, part number (P/N) MW 37-09, MW 37-11, MW 37-14, MW 37-18, MW 37-28, MW 37-31, or MW 37-36; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 ensure that proper plastic bags of the passenger oxygen masks are installed, and that the masks are functioning properly, accomplish the following:

(a) Within 10 flights after the effective date of this AD, perform a functional test of the passenger oxygen masks in accordance with Chapter 5 (ATA Code 35) of the airplane maintenance manual (AMM) for the affected airplanes, as applicable; and determine the P/N of the installed oxygen mask bags.

### Corrective Actions

(b) If any Scott oxygen mask bag, P/N 289-801-235, is installed, prior to further flight, accomplish either paragraph (b)(1) or (b)(2) of this AD.

(1) Replace the bag with a new bag, P/N 289-601-235, in accordance with Chapter 5 (ATA Code 35) of the AMM for the affected airplanes, as applicable.

(2) Render any affected seat inoperative, and within 30 days after rendering the affected seat inoperative, accomplish the action specified in paragraph (b)(1) of this AD.

(c) If any discrepancy is detected during the functional test required by paragraph (a) of this AD, prior to further flight, repair the discrepancy in accordance with Chapter 5 (ATA Code 35) of the AMM for the affected airplanes, as applicable.

### Spares

(d) As of the effective date of this AD, no person shall install a SCOTT oxygen mask bag, P/N 289-801-235, on any airplane.

### Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM-116, 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 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

### Special Flight Permits

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

**Note 3:** The subject of this AD is addressed in French airworthiness directives 1999-270-025(B), dated June 30, 1999 (for Model Jet Falcon series airplanes, and Model Mystere-Falcon 20 and 200 series airplanes); 1999-271-026(B), dated June 30, 1999 (for Model Mystere-Falcon 50 and 900 series airplanes, and Model Falcon 900EX series airplanes); 1999-267-010(B), dated June 30, 1999 (for Model Falcon 2000 series airplanes); and 1999-269-024(B), dated June 30, 1999 (for Model Falcon 10 series airplanes).

(g) This amendment becomes effective on April 18, 2000.

Issued in Renton, Washington, on March 8, 2000.

**Donald L. Riggins,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*  
[FR Doc. 00-6156 Filed 3-13-00; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 97

[Docket No. 29947; Amdt. No. 1980]

### Standard Instrument Approach Procedures; Miscellaneous Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAP's) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of change occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination*—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

*For Purchase*—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription*—Copies of all SIAP's mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:**

Donald P. Pate, Flight Procedure Standards Branch (AMCAFS-420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954-4164.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAP's. The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 14 CFR 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAP's, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by

publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

**The Rule**

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAP's contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with a Global Positioning System (GPS) and or Flight Management System (FMS) equipment. In consideration of the above, the applicable SIAP's will be altered to include "or GPS or FMS" in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS or FMS procedure is developed, the procedure title will be altered to remove "or GPS or FMS" from these non-localizer, non-precision instrument approach procedure titles.)

The FAA has determined through extensive analysis that current SIAP's intended for use by Area Navigation (RNAV) equipped aircraft can be flown by aircraft utilizing various other types of navigational equipment. In consideration of the above, those SIAP's currently designated as "RNAV" will be redesignated as "VOR/DME RNAV" without otherwise reviewing or modifying the SIAP's.

Because of the close and immediate relationship between these SIAP's and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

**Conclusion**

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally

current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) Does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 97**

Air Traffic Control, Airports, Navigation (Air)

Issued in Washington, DC on March 3, 2000.

**L. Nicholas Lacey,**

*Director, Flight Standards Service.*

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended as follows:

**PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES**

1. The authority citation for part 97 continues to read:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113-40114, 40120, 44502, 44514, 44701, 44719, 44721-44722.

2. Amend 97.23, 97.27, 97.33 and 97.35, as appropriate, by adding, revising, or removing the following SIAP's, effective at 0901 UTC on the dates specified:

**§ 97.23, 97.27, 97.33, 97.35 [Amended]**

*. . . Effective April 20, 2000*

The following entries on the 3rd docket of TL 00-06 are hereby rescinded:

Concord, CA, Buchanan Field, NDB or GPS RWY 19R, Amdt Orig-A, CANCELLED  
Concord, CA, Buchanan Field, NDB RWY 19R, Amdt Orig-A

*. . . Effective April 20, 2000*

Denver, CO, Centennial, VOR/DME RNAV or GPS RWY 28, Orig, CANCELLED  
Denver, CO, Centennial, VOR/DME RNAV RWY 28, Orig  
Denver, CO, Centennial, NDB or GPS RWY 35R, Amdt 9, CANCELLED  
Denver, CO, Centennial, NDB RWY 35R, Amdt 9  
Westfield, MA, Barnes Muni, VOR or TACAN or GPS RWY 2, Amdt 3, CANCELLED  
Westfield, MA, Barnes Muni, VOR or TACAN RWY 2, Amdt 3  
Westfield, MA, Barnes Muni, VOR or GPS RWY 20, Amdt 19, CANCELLED  
Westfield, MA, Barnes Muni, VOR RWY 20, Amdt 19

Coldwater, MI, Branch County Memorial, VOR or GPS RWY 6, Amdt 4A, CANCELLED

Coldwater, MI, Branch County Memorial, VOR RWY 6, Amdt 4A

Bemidji, MN, Bemidji-Beltrami County, VOR/DME or TACAN or GPS RWY 31, Amdt 12A, CANCELLED

Bemidji, MN, Bemidji-Beltrami County, VOR/DME or TACAN RWY 31, Amdt 12A

Sidney, NY, Sidney Muni, VOR or GPS RWY 25, Amdt 2, CANCELLED

Sidney, NY, Sidney Muni, VOR RWY 25, Amdt 2

[FR Doc. 00-6130 Filed 3-13-00; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 97

[Docket No. 29946; Amdt. No. 1979]

#### Standard Instrument Approach Procedures; Miscellaneous Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matter incorporated by reference in the amendment is as follows:

*For Examination*—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

*For Purchase*—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription*—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

#### FOR FURTHER INFORMATION CONTACT:

Donald P. Pate, Flight Procedure Standards Branch (AMCAFS-420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954-4164.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

#### The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends,

or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments require making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

#### Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC on March 3, 2000.

L. Nicholas Lacey,  
Director, Flight Standards Service.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach

Procedures, effective at 0901 UTC on the dates specified, as follows:

**PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES**

1. The authority citation for part 97 is revised to read as follows:

**Authority:** 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

**§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]**

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

*Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
02/98/00	GA	EASTMAN	HEART OF GEORGIA REGIONAL	FDC 0/1268	VOR/DME RNAV OR GPS RWY 2, AMDT 2 REPLACES TL-06
02/08/00	GA	EASTMAN	HEART OF GEORGIA REGIONAL	FDC 0/1268	VOR/DME RNAV OR GPS RWY 2, AMDT 2 REPLACES TL-06
02/15/00	CA	BURBANK	BURBANK-GLENDALE-PASADENA	FDC 0/1534	VOR OR GPS RWY 8 AMDT 10 THIS CORRECTS 0/1534 in TL 00-06
02/16/00	VA	NORFOLK	NORFOLK INTL	FDC 0/1560	NDB RWY 5 ORIG-A THIS CORRECTS FDC 01/1126 IN TL 00-06
02/17/00	FL	TALLAHASSEE	TALLAHASSEE REGIONAL	FDC 0/1615	NDB OR GPS RWY 36, AMDT 18A
02/17/00	FL	TALLAHASSEE	TALLAHASSEE REGIONAL	FDC 0/1617	ILS RWY 36, AMDT 22A
02/18/00	MN	FAIRMONT	FAIRMONT MUNI	FDC 0/1631	ILS RWY 31, ORIG
02/18/00	OH	WILMINGTON	AIRBORNE AIRPARK	FDC 0/1636	NDB RWY 22R, AMDT 7B
02/22/00	NM	HOBBS	LEA COUNTY/HOBBS	FDC 0/1685	GPS RWY 30, ORIG THIS REPLACES FDC 01/1046
02/22/00	NM	RUIDOSO	SIERRA BLANCA REGIONAL	FDC 0/1683	GPS RWY 24, ORIG THIS REPLACES FDC 01/1094
02/23/00	AK	FORT YUKON	FORT YUKON	FDC 0/1725	VOR/DME OR TACAN RWY 3, AMDT 1A
02/23/00	AK	FORT YUKON	FORT YUKON	FDC 0/1726	VOR/DME OR TACAN RWY 21, AMDT 1A
02/23/00	AK	FORT YUKON	FORT YUKON	FDC 0/1729	NDB RWY 21, AMDT 7A
02/23/00	AK	FORT YUKON	FORT YUKON	FDC 0/1730	VOR RWY 3, AMDT 4A
02/23/00	AK	FORT YUKON	FORT YUKON	FDC 0/1731	VOR RWY 21, AMDT 4A
02/23/00	CA	TORRANCE	ZAMPERINI FIELD	FDC 0/1705	VOR OR GPS RWY 11L AMDT 14
02/23/00	NE	OMAHA	MILLARD	FDC 0/1732	GPS RWY 12, ORIG-A
02/23/00	NE	OMAHA	MILLARD	FDC 0/1733	NDB RWY 12, AMDT 10A
02/23/00	NE	PLATTSMOUTH	PLATTSMOUTH MUNI	FDC 0/1734	NDB RWY 34, AMDT 4
02/23/00	NE	PLATTSMOUTH	PLATTSMOUTH MUNI	FDC 0/1735	GPS RWY 16, ORIG
02/23/00	NE	PLATTSMOUTH	PLATTSMOUTH MUNI	FDC 0/1736	GPS RWY 34, ORIG
02/23/00	NE	WAHOO	WAHOO MUNI	FDC 0/1706	NDB RWY 20, ORIG
02/23/00	NE	WAHOO	WAHOO MUNI	FDC 0/1711	GPS RWY 20, ORIG
02/23/00	RI	PROVIDENCE	THEODORE FRANCIS GREEN STATE	FDC 0/1717	NDB RWY 5R AMDT 15
02/23/00	RI	PROVIDENCE	THEODORE FRANCIS GREEN STATE	FDC 0/1718	VOR RWY 5R AMDT 13A
02/23/00	RI	PROVIDENCE	THEODORE FRANCIS GREEN STATE	FDC 0/1719	ILS RWY 5R (CAT I, II) AMDT 16A
02/23/00	TX	ALPINE	ALPINE-CASPARIS MUNI	FDC 0/1742	NDB RWY 19, AMDT 5A
02/23/00	TX	HOUSTON	GEORGE BUSH INTERCONTINENTAL AIRPORT HOUSTON.	FDC 0/1713	ILS RWY 15, AMDT 11A
02/23/00	TX	HOUSTON	GEORGE BUSH INTERCONTINENTAL AIRPORT HOUSTON.	FDC 0/1723	VOR/DME RWY 15L, AMDT 15C
02/24/00	AZ	CHANDLER	STELLAR AIRPARK	FDC 0/1819	VOR OR GPS-A AMDT 1
02/24/00	CA	VICTORVILLE	SOUTHERN CALIFORNIA LOGISTICS	FDC 0/1835	ILS RWY 17 AMDT 1
02/24/00	DE	GEORGETOWN	SUSSEX COUNTY	FDC 0/1778	RNAV RWY 4 ORIG
02/24/00	DE	GEORGETOWN	SUSSEX COUNTY	FDC 0/1779	RNAV RWY 22 ORIG
02/24/00	GA	VIDALIA	VIDALIA MUNI	FDC 0/1825	LOC RWY 24 AMDT 2B
02/24/00	GA	VIDALIA	VIDALIA MUNI	FDC 0/1827	NDB OR GPS RWY 24 AMDT 2A
02/24/00	IL	BELLEVILLE	SCOTT AFB/MIDAMERICA	FDC 0/1765	ILS RWY 32L, ORIG
02/24/00	KS.	HUTCHINSON	HUTCHINSON MUNI	FDC 0/1758	VOR RWY 3, AMDT 19
02/24/00	KS	HUTCHINSON	HUTCHINSON MUNI	FDC 0/1759	LOC BC RWY 31, AMDT 14
02/24/00	MD	OCEAN CITY	OCEAN CITY MUNI	FDC 0/1777	RNAV RWY 14 ORIG
02/24/00	MN	MARSHALL	MARSHALL MUNI-RYAN FIELD	FDC 0/1847	ILS RWY 12, AMDT 1

FDC date	State	City	Airport	FDC No.	SIAP
02/24/00	NE	OMAHA	EPPLEY AIRFIELD	FDC 0/1841	NDB RWY 32L, AMDT 1
02/24/00	NE	OMAHA	EPPLEY AIRFIELD	FDC 0/1842	NDB OR GPS RWY 14R, AMDT 24
02/24/00	NE	OMAHA	EPPLEY AIRFIELD	FDC 0/1843	VOR RWY 32L, AMDT 10
02/24/00	NE	OMAHA	EPPLEY AIRFIELD	FDC 0/1844	ILS RWY 32L, ORIG
02/24/00	NE	OMAHA	EPPLEY AIRFIELD	FDC 0/1845	ILS RWY 14R, AMDT 2
02/24/00	NE	OMAHA	EPPLEY AIRFIELD	FDC 0/1846	ILS RWY 18, AMDT 6B
02/24/00	SC	COLUMBIA	COLUMBIA METROPOLITAN	FDC 0/1769	ILS RWY 5, AMDT 1
02/24/00	VA	WALLOPS ISLAND	WALLOPS FLIGHT FACILITY	FDC 0/1786	VOR OR TACAN OR GPS RWY 17 AMDT 6
02/24/00	VT	RUTLAND	RUTLAND STATE	FDC 0/1782	LOC RWY 19 ORIG
02/25/00	AZ	PARKER	AVI SUQUILLA	FDC 0/1884	VOR/DME OR GPS-A AMDT 2A
02/25/00	CO	GUNNISON	GUNNISON COUNTY	FDC 0/1861	ILS RWY 6 AMDT 3A
02/25/00	MO	MARSHALL	MARSHALL MEML MUNI	FDC 0/1886	NDB RWY 36, AMDT 1
02/25/00	NE	OMAHA	EPPLEY AIRFIELD	FDC 0/1875	GPS RWY 32L, ORIG
02/28/00	IN	RICHMOND	RICHMOND MUNI	FDC 0/1946	ILS RWY 24, ORIG
02/28/00	MO	SPRINGFIELD	SPRINGFIELD-BRANSON REGIONAL	FDC 0/1957	VOR/DME RNAV OR GPS RWY 14, AMDT 4
02/28/00	ND	MOHALL	MOHALL MUNI	FDC 0/1952	VOR/DME OR GPS RWY 31, AMDT 2A
02/29/00	CA	FRESNO	FRESNO YOSEMITE INTL	FDC 0/2000	VOR OR TACAN OR GPS RWY 11L AMDT 11
02/29/00	CA	FRESNO	FRESNO YOSEMITE INTL	FDC 0/2003	LOC BC RWY 11L AMDT 8
02/29/00	CO	MONTROSE	MONTROSE REGIONAL	FDC 0/2032	VOR/DME RWY 13 AMDT 8B
02/29/00	CO	MONTROSE	MONTROSE REGIONAL	FDC 0/2034	GPS RWY 35 ORIG
02/29/00	CO	TELLURIDE	TELLURIDE REGIONAL	FDC 0/2028	GPS RWY 9 AMDT 1
02/29/00	CO	TELLURIDE	TELLURIDE REGIONAL	FDC 0/2036	LOC/DME RWY 9 ORIG-A
02/29/00	IN	FORT WAYNE	FORT WAYNE INTL	FDC 0/1983	ILS RWY 5, AMDT 14 (CAT I AND II)
02/29/00	MA	BOSTON	GENERAL EDWARD LAWRENCE LOGAN INTL.	FDC 0/2006	RNAV RWY 4R ORIG
02/29/00	MO	MARSHALL	MARSHALL MEML MUNI	FDC 0/1990	RNAV RWY 36, ORIG
02/29/00	MO	MARSHALL	MARSHALL MEML MUNI	FDC 0/1991	RNAV RWY 18, ORIG
02/29/00	NJ	ATLANTIC CITY	ATLANTIC CITY INTL	FDC 0/2004	RNAV RWY 13 ORIG
02/29/00	NV	ELY	ELY AIRPORT-YELLAND FIELD	FDC 0/1982	GPS RWY 18 ORIG
02/29/00	OR	SALEM	MCNARY FIELD	FDC 0/1986	NDB OR GPS RWY 31 AMDT 18A
02/29/00	VA	CHARLOTTESVILLE	CHARLOTTESVILLE-ALBEMARLE	FDC 0/2001	RNAV RWY 3 ORIG
02/29/00	WA	YAKIMA	YAKIMA AIR TERMINAL	FDC 0/1980	ILS RWY 27 AMDT 26A
03/01/00	CA	MONTEREY	MONTEREY PENINSULA	FDC 0/2076	NDB RWY 10R AMDT 12A
03/01/00	CA	MONTEREY	MONTEREY PENINSULA	FDC 0/2079	GPS RWY 28R ORIG
03/01/00	CA	MONTEREY	MONTEREY PENINSULA	FDC 0/2080	GPS RWY 28L ORIG
03/01/00	CA	MONTEREY	MONTEREY PENINSULA	FDC 0/2082	GPS RWY 10L AMDT 1
03/01/00	MD	SALISBURY	SALISBURY-OCEAN CITY WICOMICO REGIONAL.	FDC 0/2103	VOR RWY 5 AMDT 9
03/01/00	MD	SALISBURY	SALISBURY-OCEAN CITY WICOMICO REGIONAL.	FDC 0/2104	VOR RWY 32 AMDT 9
03/01/00	MD	SALISBURY	SALISBURY-OCEAN CITY WICOMICO REGIONAL.	FDC 0/2105	VOR RWY 23 AMDT 9
03/01/00	PA	ERIE	ERIE INTL	FDC 0/2111	NDB RWY 6 ORIG
03/01/00	PA	MOUNT JOY/MARIETTA	DONEGAL SPRINGS AIRPARK	FDC 0/2083	VOR/DME OR GPS RWY 27 ORIG
03/01/00	WV	MORGANTOWN	MORGANTOWN MUNI-WALTER L BILL HART FIELD.	FDC 0/2109	RNAV RWY 18 ORIG

[FR Doc. 00-6129 Filed 3-13-00; 8:45 am]

BILLING CODE 4910-13-M

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 97****[Docket No. 29945; Amdt. No. 1978]****Standard Instrument Approach  
Procedures; Miscellaneous  
Amendments****AGENCY:** Federal Aviation  
Administration (FAA), DOT.**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to

promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination*—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

*For Purchase*—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription*—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:**

Donald P. Pate, Flight Procedures Standards Branch (AMCAFS-420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73125) telephone: (405) 954-4164.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further,

airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

**The Rule**

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

**Conclusion**

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a “significant regulatory action” under Executive Order 12866; (2) Is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) Does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial

number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 97**

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on March 3, 2000.

**L. Nicholas Lacey,**

*Director, Flight Standards Service.*

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

**PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES**

1. The authority citation for part 97 is revised to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

**§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]**

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

... Effective April 20, 2000

Nome, AK, Nome, ILS Z RWY 27, Amdt 1  
 Nome, AK, Nome, ILS Y RWY 27, Amdt 1  
 Russian Mission, AK, Russian Mission, GPS RWY 17, Orig  
 Russian Mission, AK, Russian Mission, GPS RWY 35, Orig  
 Big Bear City, CA, Big Bear City, GPS RWY 26, Orig  
 Denver, CO, Centennial, GPS RWY 28, Orig  
 Denver, CO, Centennial, GPS RWY 35R, Orig  
 Apalachicola, FL, Apalachicola Muni, GPS RWY 13, Orig, CANCELLED  
 Apalachicola, FL, Apalachicola Muni, GPS RWY 31, Orig, CANCELLED  
 Apalachicola, FL, Apalachicola Muni, RNAV RWY 13, Orig  
 Apalachicola, FL, Apalachicola Muni, RNAV RWY 31, Orig  
 Lake City, FL, Lake City Muni, GPS RWY 10, Orig, CANCELLED  
 Lake City, FL, Lake City Muni, GPS RWY 28, Orig, CANCELLED  
 Lake City, FL, Lake City Muni, RNAV RWY 10, Orig  
 Lake City, FL, Lake City Muni, RNAV RWY 28, Orig  
 Lakeland, FL, Lakeland Linder Regional, GPS RWY 23, Orig

Orlando, FL, Orlando Sanford, ILS RWY 9L, Amdt 1

Orlando, FL, Orlando Sanford, VOR/DME RNAV OR GPS RWY 9L, Orig, CANCELLED

Orlando, FL, Orlando Sanford, GPS RWY 27R, Orig, CANCELLED

Orlando, FL, Orlando Sanford, NDB RWY 9L, Amdt 1

Orlando, FL, Orlando Sanford, NDB RWY 27R, Amdt 1

Orlando, FL, Orlando Sanford, RNAV RWY 9L, Orig

Orlando, FL, Orlando Sanford, RNAV RWY 27R, Orig

St. Petersburg-Clearwater, FL, St. Petersburg-Clearwater Intl, LOC BC RWY 35R, Amdt 5

Belleville, IL, Scott AFB/Midamerica, RNAV RWY 14R, Orig

Belleville, IL, Scott AFB/Midamerica, RNAV RWY 32L, Orig

Nantucket, MA, Nantucket Memorial, LOC BC RWY 6, Amdt 10

Westfield, MA, Barnes Muni, GPS RWY 2, Orig

Westfield, MA, Barnes Muni, GPS RWY 20, Orig

Coldwater, MI, Branch County Memorial, RNAV RWY 6, Orig

Bemidji, MN, Bemidji-Beltrami County, RNAV RWY 31, Orig

Sidney, NY, Sidney Muni, RNAV RWY 25, Orig

Gastonia, NC, Gastonia Muni, GPS RWY 3, Orig, CANCELLED

Gastonia, NC, Gastonia Muni, RNAV RWY 3, Orig

Gastonia, NC, Gastonia Muni, VOR/DME OR GPS-A, Amdt 4

Gastonia, NC, Gastonia Muni, NDB RWY 3, Amdt 9

Bismarck, ND, Bismarck Muni, RNAV RWY 3, Orig

Bismarck, ND, Bismarck Muni, RNAV RWY 21, Orig

North Bend, OR, North Bend Muni, ILS RWY 4, Amdt 6

Pittsburgh, PA, Allegheny County, VOR RWY 5, Amdt 10

Pittsburgh, PA, Allegheny County, NDB RWY 28, Amdt 23

Pittsburgh, PA, Allegheny County, ILS RWY 10, Amdt 4

Pittsburgh, PA, Allegheny County, ILS RWY 28, Amdt 28

Pittsburgh, PA, Allegheny County, RNAV RWY 5, Orig

Pittsburgh, PA, Allegheny County, RNAV RWY 10, Orig

Pittsburgh, PA, Allegheny County, RNAV RWY 28, Orig

Pittsburgh, PA, Allegheny County, VOR/DME RNAV OR GPS RWY 10, Amdt 6, CANCELLED

Pittsburgh, PA, Pittsburgh Intl, ILS RWY 10R, Amdt 9

Pittsburgh, PA, Pittsburgh Intl, ILS RWY 10L, Amdt 24

Pittsburgh, PA, Pittsburgh Intl, ILS RWY 28R, Amdt 7

Pittsburgh, PA, Pittsburgh Intl, Converging ILS RWY 28R, Amdt 2

Pittsburgh, PA, Pittsburgh Intl, ILS RWY 28L, Amdt 7-

Pittsburgh, PA, Pittsburgh Intl, ILS RWY 32, Amdt 10

Pittsburgh, PA, Pittsburgh Intl, Converging ILS RWY 32 Amdt 3

Pittsburgh, PA, Pittsburgh Intl, VOR/DME RWY 14, Amdt 2

Pittsburgh, PA, Pittsburgh Intl, VOR OR GPS RWY 28L/C, Amdt 5, CANCELLED

Pittsburgh, PA, Pittsburgh Intl, RNAV RWY 10R, Orig

Pittsburgh, PA, Pittsburgh Intl, RNAV RWY 10L, Orig

Pittsburgh, PA, Pittsburgh Intl, RNAV RWY 10C, Orig

Pittsburgh, PA, Pittsburgh Intl, RNAV RWY 14, Orig

Pittsburgh, PA, Pittsburgh Intl, RNAV RWY 28R, Orig

Pittsburgh, PA, Pittsburgh Intl, RNAV RWY 28L, Orig

Pittsburgh, PA, Pittsburgh Intl, RNAV RWY 28C, Orig

Pittsburgh, PA, Pittsburgh Intl, RNAV RWY 32, Orig

Green Bay, WI, Austin Straubel Intl, ILS RWY 6, Amdt 21

... Effective June 15, 2000

Destin, FL, Destin-Fort Walton Beach, NDB RWY 32, Amdt 1

The FAA published an Amendment in Docket No. 29926, Amdt. No. 1975 to Part 97 of the Federal Aviation Regulations (Vol 65 FR No. 38 Page 10006; dated February 25, 2000) under section 97.33 effective April 20, 2000, which is hereby amended as follows: Saipan Island, MO, Saipan Intl, GPS RWY 25, Amdt 1, should read Saipan Island, MP, Saipan Intl, GPS RWY 25, Amdt 1

The FAA published an amendment in Docket No. 29928, Amdt. No. 1977 to Part 97 of the Federal Aviation Regulations (Vol 65 FR No. 38 Page 10001; dated Friday, February 25, 2000) under sections 97.27 and 97.33 effective April 20, 2000, which is hereby rescinded:

Concord, CA, Buchanan Field, NDB RWY 19R, Amdt 1

Concord, CA, Buchanan Field, GPS RWY 19R, Orig

The FAA published an amendment in Docket No. 29927, Amdt. 1976 to Part 97 of the Federal Aviation Regulations (Vol 65 FR No. 38 Page 10005; dated Friday, February 25, 2000) under section 97.33 effective April 20, 2000, which is hereby rescinded:

Payson, AZ, Payson, GPS-A, Orig.

[FR Doc. 00-6128 Filed 3-13-00; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 176

[Docket No. 95F-0065]

#### Indirect Food Additives: Paper and Paperboard Components

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

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of polyamidoamine-ethyleneimine-epichlorohydrin resin for use as a retention aid in the manufacture of paper and paperboard intended for use in contact with aqueous and fatty food. This action is in response to a petition filed by BASF Corp.

**DATES:** This rule is effective March 14, 2000. Submit written objections and requests for a hearing by April 13, 2000.

**ADDRESSES:** Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:**

Vivian M. Gilliam, Center for Food Safety and Applied Nutrition (HFS-215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3094.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

In a notice published in the **Federal Register** of April 13, 1995 (60 FR 18845), FDA announced that a food additive petition (FAP 5B4452) had been filed by BASF Corp., 1609 Biddle Ave., Wyandotte, MI 48192. The petition proposed to amend the food additive regulations in § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) to provide for the safe use of a polyamide-ethyleneimine-epichlorohydrin resin as a component of paper and paperboard in contact with aqueous and fatty food.

Subsequent to the filing of the petition, the petitioner obtained a new Chemical Abstracts Service (CAS) Registry number for the additive under the following name: Polyamidoamine-ethyleneimine-epichlorohydrin resin prepared by reacting hexanedioic acid, N-(2-aminoethyl)-1,2-ethanediamine, (chloromethyl)oxirane, ethyleneimine (aziridine), and polyethylene glycol, partly neutralized with sulfuric acid, CAS Reg. No. 167678-45-7. In this document, polyamidoamine-ethyleneimine-epichlorohydrin resin will be referred to as the additive.

In its evaluation of the safety of this additive, FDA has reviewed the safety of the additive itself and the chemical impurities that may be present in the additive resulting from its manufacturing process. Although the additive itself has not been shown to cause cancer, it has been found to contain minute amounts of unreacted ethylene oxide, 1,4-dioxane,

epichlorohydrin, and ethyleneimine, which are carcinogenic impurities resulting from the manufacture of the additive. Residual amounts of reactants and manufacturing aids, such as ethylene oxide, 1,4-dioxane, epichlorohydrin, and ethyleneimine are commonly found as contaminants in chemical products, including food additives.

## II. Determination of Safety

Under the general safety standard of section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as "a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use."

The food additives anticancer, or Delaney, clause of section (409(c)(3)(A)) of the act provides that no food additive shall be deemed safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety standard using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the intended use of the additive. (*Scott v. FDA*, 728 F.2d 322 (6th Cir. 1984).)

## III. Safety of Petitioned Use of the Additive

FDA estimates that the petitioned use of the additive, polyamidoamine-ethyleneimine-epichlorohydrin resin, will result in exposure to no greater than 650 parts per billion (ppb) of the additive in the daily diet (3 kilograms (kg)) or an estimated daily intake (EDI) of 2.0 milligrams per person per day (mg/p/d) (Ref. 1).

FDA does not ordinarily consider chronic toxicological studies to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Ref. 2), and the agency has not required such testing here. However, the agency has reviewed the available toxicological data on the additive and concludes that the estimated small dietary exposure resulting from the petitioned use of the additive is safe.

FDA has evaluated the safety of this additive under the general safety standard, considering all available data and using risk assessment procedures to estimate the upper-bound limit of lifetime human risk presented by ethylene oxide, 1,4-dioxane, epichlorohydrin, and ethyleneimine, the carcinogenic chemicals that may be present as impurities in the additive. The risk evaluation of ethylene oxide, 1,4-dioxane, epichlorohydrin, and ethyleneimine has two aspects: (1) Assessment of the exposure to the impurities from the petitioned use of the additive; and (2) extrapolation of the risk observed in the animal bioassay to the conditions of exposure to humans.

### A. Ethylene oxide

FDA has estimated the exposure to ethylene oxide from the petitioned use of the additive as a component of paper and paperboard to be no more than 0.7 parts per trillion (ppt) of the daily diet (3 kg), or 2 nanograms (ng)/p/d (Ref. 1). The agency used data from a carcinogenesis bioassay, in female rats, on ethylene oxide conducted by the Institute of Hygiene, University of Mainz, Germany (Ref. 3), to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the petitioned use of the additive. The authors reported that the test material caused significantly increased incidence of squamous cell carcinomas of the forestomach and carcinomas in situ of the glandular stomach.

Based on the agency's estimate that exposure to ethylene oxide will not exceed 2 ng/p/d, FDA estimates that the upper-bound limit of lifetime human risk from the petitioned use of the subject additive is  $3.7 \times 10^{-9}$ , or 3.7 in a billion (Ref. 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to ethylene oxide is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to ethylene oxide would result from the petitioned use of the additive.

### B. 1,4-Dioxane

FDA has estimated the exposure to 1,4-dioxane from the petitioned use of the additive as a component of paper and paperboard to be no more than 31 ppt of the daily diet (3 kg), or 94 ng/p/d (Ref. 1). The agency used data from a carcinogenesis bioassay, in mice and

rats, on 1,4-dioxane, conducted by the National Cancer Institute (Ref. 5), to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the petitioned use of the additive. The authors reported that the test material induced squamous cell carcinomas of the nasal turbinates in male and female rats, hepatocellular adenomas in female rats, and hepatocellular carcinomas in male and female mice.

Based on the agency's estimate that exposure to 1,4-dioxane will not exceed 94 ng/p/d, FDA estimates that the upper-bound limit of lifetime human risk from the petitioned use of the subject additive is  $3.4 \times 10^{-9}$ , or 3.4 in a billion (Ref. 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to 1,4-dioxane is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to 1,4-dioxane would result from the petitioned use of the additive.

### C. Epichlorohydrin

FDA has estimated the exposure to epichlorohydrin from the petitioned use of the additive as a component of paper and paperboard to be no more than 1.3 ppt of the daily diet (3 kg), or 4 ng/p/d (Ref. 1). The agency used data from a carcinogenesis bioassay, in male rats, on epichlorohydrin conducted by Konishi et al. (Ref. 6), to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the petitioned use of the additive. The authors reported that the test material caused increased incidences of forestomach hyperplasia, papillomas, and carcinomas in the rats.

Based on the agency's estimate that exposure to epichlorohydrin will not exceed 4 ng/p/d, FDA estimates that the upper-bound limit of lifetime human risk from the petitioned use of the subject additive is  $1.9 \times 10^{-10}$ , or 1.9 in 10 billion (Ref. 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to epichlorohydrin is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to

epichlorohydrin would result from the petitioned use of the additive.

#### D. Ethyleneimine

FDA has estimated the exposure to ethyleneimine from the petitioned use of the additive as a component of paper and paperboard to be no more than 0.03 pptr of the daily diet (3 kg), or 0.1 ng/p/d (Ref. 1). The agency used data from a carcinogenesis bioassay, in mice, on ethyleneimine conducted by Innes et al. (Ref. 7), to estimate the upper-bound limit of lifetime human risk from exposure to ethyleneimine resulting from the petitioned use of the additive. The authors reported that the test material caused significantly increased incidence of lung and liver tumors in both male and female mice.

Based on the agency's estimate that exposure to ethyleneimine will not exceed 0.1 ng/p/d, FDA estimates that the upper-bound limit of lifetime human risk from the petitioned use of the subject additive is  $3.2 \times 10^{-8}$ , or 32 in a billion (Ref. 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to ethyleneimine is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to ethyleneimine would result from the petitioned use of the additive.

#### E. Need for Specifications

The agency also has considered whether specifications are necessary to control the amount of ethylene oxide, 1,4-dioxane, epichlorohydrin, and ethyleneimine as impurities in the polyamidoamine-ethyleneimine-epichlorohydrin resin. The agency finds that specifications are not necessary for the following reasons: (1) Because of the low level at which ethylene oxide, 1,4-dioxane, epichlorohydrin, and ethyleneimine may be expected to remain as impurities following production of the additive, the agency would not expect the impurities to become components of food at other than extremely low levels; and (2) the upper-bound limits of lifetime human risk from exposure to ethylene oxide, 1,4-dioxane, epichlorohydrin, and ethyleneimine are very low, 3.7 in a billion, 3.4 in a billion, 1.9 in 10 billion, and 32 in a billion, respectively.

#### IV. Conclusion

FDA has evaluated data in the petition and other relevant material.

Based on this information, the agency concludes that the petitioned use of the additive as a retention aid in the manufacture of paper and paperboard intended for use in contact with aqueous and fatty food is safe, and that the additive will achieve its intended technical effect. Therefore, the agency concludes that the regulations in § 176.170 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

#### V. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

#### VI. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

#### VII. Objections

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by April 13, 2000. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in

support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

#### VIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum from the Chemistry Review Team (HFS-246) to the Division of Petition Control (HFS-215) entitled "FAP 5B4452, BASF Corp. Polyamide-ethyleneimine-epichlorohydrin resin, Polymin SKA, as a retention agent in the production of paper. Memorandum of correction," dated October 22, 1997.
2. Kokoski, C. J., "Regulatory Food Additive Toxicology," in *Chemical Safety Regulation and Compliance*, edited by F. Homburger, J. K. Marquis, and published by S. Karger, New York, NY, pp. 24-33, 1985.
3. Dunkelberg, H., "Carcinogenicity of Ethylene Oxide and 1,2-Propylene Oxide Upon Intragastric Administration to Rats," *British Journal of Cancer*, 46: pp. 924-933, 1982.
4. Memorandum from the Division of Petition Control (HFS-215) to the Executive Secretary, Quantitative Risk Assessment Committee (QRAC) (HFS-308) entitled "Estimation of upper-bound limit of lifetime risk from ethyleneimine (EI), epichlorohydrin (ECH), ethylene oxide (EO), and 1,4-dioxane (DX), FAP 5B4452 (BASF Corp.)," dated October 5, 1999.
5. "Bioassay of 1,4-Dioxane for Possible Carcinogenicity," National Cancer Institute, NCI-CG-TR-80, 1978.
6. Konishi, Y. et al., "Forestomach Tumors Induced by Orally Administered Epichlorohydrin in Male Wistar Rats," *Gann* 71:922-923, 1980.
7. Innes, J. R. M. et al., "Bioassay of Pesticide and Industrial Chemicals for Tumorigenicity in Mice: A Preliminary Note," *Journal of the National Cancer Institute*, 42, No. 6, 1101-14, 1969.

#### List of Subjects in 21 CFR Part 176

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 176 is amended as follows:

**PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS**

1. The authority citation for 21 CFR part 176 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 346, 348, 379e.  
 2. Section 176.170 is amended in the table in paragraph (a)(5) by alphabetically adding an entry under the headings “List of Substances” and “Limitations” to read as follows:

**§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.**

\* \* \* \* \*  
 (a) \* \* \*  
 (5) \* \* \*

List of Substances	Limitations
* * * * *	* * * * *
Polyamidoamine-ethyleneimine-epichlorohydrin resin prepared by reacting hexanedioic acid, <i>N</i> -(2-aminoethyl)-1,2-ethanediamine, (chloromethyl)oxirane, ethyleneimine (aziridine), and polyethylene glycol, partly neutralized with sulfuric acid (CAS Reg. No. 167678–45–7).	For use only as a retention aid employed prior to the sheet-forming operation in the manufacture of paper and paperboard at a level not to exceed 0.12 percent resin by weight of the finished dry paper or paperboard.
* * * * *	* * * * *

\* \* \* \* \*  
 Dated: March 3, 2000.  
**Margaret M. Dotzel,**  
*Acting Associate Commissioner for Policy.*  
 [FR Doc. 00–6116 Filed 3–13–00; 8:45 am]  
**BILLING CODE 4160–01–F**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 640**

[Docket No. 98N–0608]

**Revision of Requirements Applicable to Albumin (Human), Plasma Protein Fraction (Human), and Immune Globulin (Human); Confirmation in Part and Technical Amendment**

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

**ACTION:** Direct final rule; confirmation in part and technical amendment.

**SUMMARY:** The Food and Drug Administration (FDA) is confirming in

part the direct final rule that appeared in the **Federal Register** of May 14, 1999 (64 FR 26282). The direct final rule amends the biologics regulations by removing, revising, or updating specific regulations applicable to blood derivative products to be more consistent with current practices and to remove unnecessary or outdated requirements. FDA is confirming the provisions for which no significant adverse comments were received. The agency received significant adverse comments on certain provisions and is hereby amending Title 21 Code of Federal Regulations to reinstate the former provisions. In addition, FDA is correcting the precision of the value for protein concentration that was inadvertently omitted from the codified section of the direct final rule.  
**DATES:** The effective date for the amendments to the sections published in the **Federal Register** of May 14, 1999 (64 FR 26282), and listed in table 1 of this document, is confirmed as September 27, 1999. The amendments to §§ 640.81(e) and (f), 640.92(a), and 640.102(e) are effective March 14, 2000.

**FOR FURTHER INFORMATION CONTACT:**  
 Nathaniel L. Geary, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

**SUPPLEMENTARY INFORMATION:** FDA solicited comments concerning the direct final rule for a 75-day period ending July 28, 1999. FDA stated that the effective date of the direct final rule would be September 27, 1999, 60 days after the end of the comment period, unless any significant adverse comment was submitted to FDA during the comment period. FDA also stated that if a significant adverse comment applies to an amendment, paragraph, or section of the rule and that provision can be severed from the remainder of the rule, FDA may adopt as final those provisions of the rule that are not subjects of significant adverse comments.

Thus, FDA is confirming in part the direct final rule (sections listed in table 1 of this document) effective September 27, 1999.

TABLE 1

21 CFR	Action
640.80(a) and (b)	Revised
640.81(c)	Revised
640.82(a) and (c)	Revised heading
640.82(d) and (e)	Revised
640.84	Revised introductory paragraph
640.84(a)	Removed introductory text
640.84(b)	Removed
640.84(a)(1) through (a)(4)	Redesignated as paragraphs (a) through (d)
640.84 new paragraphs (a) and (d)	Revised
640.90(a) and (b)	Revised
640.91(b)(2), (c), (e), and (f)	Revised
640.92(a)	Revised
640.92(c)	Revised heading
640.92(d) and (e)	Revised

TABLE 1—Continued

21 CFR	Action
640.94(a) 640.100(a), (b), and (c) 640.101(b) 640.101(e)(3), (e)(4), and (f) 640.103(b) 640.104(b)(2), (b)(3), (c)(1), and (c)(2)	Revised Revised Revised heading Removed Revised Revised

Secondly, FDA received significant adverse comments on three provisions of the rule, 21 CFR 640.81(e) and (f) and 640.102(e). Therefore, the agency is amending these sections to reinstate the former provisions. Comments received by the agency regarding the reinstated portions of the rule will be applied to the corresponding portion of the companion proposed rule (64 FR 26344, May 14, 1999), and will be considered in developing a final rule using the usual Administrative Procedure Act notice-and-comment procedures.

Finally, FDA is amending § 640.92(a) to include a revision of range for protein concentration. This change was discussed in the preamble to the Direct final rule (section III.G (64 FR 26282 at 26284)), but was inadvertently omitted from the codified section of the document.

**List of Subjects in 21 CFR Part 640**

Blood, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, the direct final rule published on May 14, 1999 (64 FR 26282), is confirmed in part and 21 CFR part 640 is amended as follows:

**PART 640—ADDITIONAL STANDARDS FOR HUMAN BLOOD AND BLOOD PRODUCTS**

1. The authority citation for 21 CFR part 640 continues to read as follows:

**Authority:** 21 U.S.C. 321, 351, 352, 353, 355, 360, 371; 42 U.S.C. 216, 262, 263, 263a, 264.

2. Section 640.81 is amended by revising the last sentence in paragraph (e) and paragraph (f) to read as follows:

**§ 640.81 Processing.**

\* \* \* \* \*

(e) \* \* \* Heat treatment shall be conducted so that the solution is heated for not less than 10 or more than 11 hours at an attained temperature of 60;deg;±0.5 °C.

(f) *Stabilizer.* Either 0.16 millimole sodium acetyltryptophanate, or 0.08 millimole sodium acetyltryptophanate

and 0.08 millimole sodium caprylate shall be added per gram of albumin as a stabilizer.

\* \* \* \* \*

**§ 640.92 [Amended]**

3. Section 640.92 *Tests on final product* is amended in paragraph (a) by removing “5.0±0.3” and adding in its place “5.0±0.30”.

4. Section 640.102 is amended by revising the last sentence of paragraph (e) to read as follows:

**§ 640.102 Manufacture of Immune Globulin (Human).**

\* \* \* \* \*

(e) \* \* \* At no time during processing shall the product be exposed to temperatures above 45 °C and after sterilization the product shall not be exposed to temperatures above 30 to 32 °C for more than 72 hours.

Dated: March 8, 2000.

**Margaret M. Dotzel,**

*Acting Associate Commissioner for Policy.*

[FR Doc. 00-6170 Filed 3-13-00; 8:45 am]

**BILLING CODE 4160-01-F**

**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**23 CFR Part 1340**

[Docket No. NHTSA-98-4280]

**RIN 2127-AH46**

**Uniform Criteria for State Observational Surveys of Seat Belt Use**

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

**ACTION:** Final rule.

**SUMMARY:** This document adopts uniform criteria for State seat belt use surveys, previously published as an interim final rule, with one clarifying change in response to a comment. The criteria are used by the States to determine their seat belt use rates under a new Federal grant program, which directs the Secretary of Transportation to allocate funds to States whose seat

belt use rates meet certain requirements, based on measurement criteria established by the Secretary.

**EFFECTIVE DATE:** April 13, 2000.

**FOR FURTHER INFORMATION CONTACT:** The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, D.C. 20590: For program issues, John F. Oates, Jr., State and Community Services, NSC-01, (202) 366-2121; For legal issues, John Donaldson, Office of the Chief Counsel, NCC-30, (202) 366-1834.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

Section 1403 of the Transportation Equity Act for the 21st Century (Pub. L.105-178) added a new Section 157 to Title 23 of the United States Code (replacing a predecessor Section 157 ). The new provision (hereafter, Section 157) authorizes a State seat belt incentive grant program covering fiscal years 1999 through 2003. Under this program, the Secretary of Transportation is directed to allocate funds to the States, beginning in fiscal year 1999, based on their seat belt use rates. Specifically, Section 157 requires the Secretary to allocate funds to States that achieve a seat belt use rate in the preceding two years that is higher than the national average use rate or, failing that, a seat belt use rate that is higher than the highest seat belt use rate achieved by the State during specified previous calendar years. (Section 157 contains another provision for allocation of grant funds, based on innovative projects, but that provision is not addressed in this rule.)

Beginning with calendar year 1998, Section 157 requires States to measure seat belt use rates following criteria established by the Secretary, to ensure that the measurements are “accurate and representative.” In accordance with that mandate, NHTSA published an interim final rule on September 1, 1998, the Uniform Criteria for State Observational Surveys of Seat Belt Use, setting forth criteria for States to follow in determining their seat belt use rates under this program.

## B. The Interim Final Rule

The interim final rule required States to conduct surveys of seat belt use each calendar year, starting with calendar year 1998, in order to be eligible for an allocation of funds under Section 157. The surveys were to meet certain minimum requirements, many of which are identical to those required under a predecessor document, the Guidelines for State Observational Surveys of Safety Belt and Motorcycle Helmet Use (57 FR 28899, June 29, 1992, now rescinded), in connection with the grant program authorized under 23 U.S.C. 153. For example, the interim final rule continued the requirement that surveys have a probability-based design; that data be collected from direct observation of seat belt use; that the relative error of the seat belt use estimate not exceed five percent; that counties or other primary sampling units totaling at least 85 percent of the State's population be eligible for inclusion in the sample; and that all daylight hours for all days of the week be eligible for inclusion in the sample. The interim final rule also continued the requirement that all sample design, data collection, and estimation procedures be well documented.

In addition to the survey requirements retained from the Section 153 grant program, the interim final rule imposed new requirements to ensure consistency with the statutory provisions of Section 157. For example, Section 157 requires the determination of seat belt use rate to be based on "passenger motor vehicles," a category that includes passenger cars, pickup trucks, vans, minivans, and sport utility vehicles. Consequently, the interim final rule required that measurements include the seat belt use rate of occupants of all of these types of vehicles. In addition, because Section 157 does not include child restraint devices within the definition of seat belts, the interim final rule excluded child restraints from the survey observation requirement. Finally, because Section 157 requires that measurements of seat belt use rates be "accurate and representative," the interim final rule imposed or clarified certain other requirements. For example, the interim final rule made clear that the surveys must include observation of both drivers and front seat outboard passengers, and that measurements of seat belt use must be taken completely within the calendar year for which the seat belt use rate is reported. Beginning with surveys conducted during calendar year 1999, the interim final rule required that both in-state and out-of-state vehicles be

counted. This latter requirement was phased in to provide the States flexibility, in view of time constraints associated with the late enactment of TEA-21. The agency explained that each of these requirements was intended to ensure consistency and fairness in the allocation of funds. The first seat belt use surveys conducted in accordance with the procedures of the interim final rule took place in calendar year 1998.

On January 28, 1999, the agency held a meeting in Arlington, Texas, attended by State highway safety officials. The purpose of the meeting was to discuss day-to-day concerns related to State highway safety programs, including issues related to the seat belt use surveys the States had recently conducted under Section 157. During that meeting, States raised a variety of issues or concerns about the requirements and implementation of the seat belt survey criteria. For example, some States expressed concern that, in the course of implementing the survey criteria, the agency might limit survey observations to moving traffic, thereby impeding the States' ability to gather demographic information for successful problem identification. Other States were concerned that the agency might limit observations to stationary or slow-moving vehicles at controlled intersections, forcing some States to redesign survey sampling frames. Many States said that it would be desirable to include all roadway types in the survey sampling frame, but other States pointed out that some States might need considerable technical assistance to select an appropriate sample of local roads and properly weight the observations made on those roads. There was general support for allowing the exclusion of counties or other sampling units that comprise up to 15 percent of the State's population, but a few States preferred to include all geographic subdivisions in their sampling frames. All States were concerned about "fairness" in implementing the survey requirements and "comparability" of survey results among States, with some recommending a single uniform survey design or identical software for data analysis and others suggesting that absolute uniformity was too rigid, and that preserving State flexibility was important.

The public comment period for the interim final rule was due to expire on January 29, 1999, one day after the Texas meeting. However, in view of the discussions that arose during that meeting, the agency announced at the meeting that it would extend the

comment period to allow States to express these concerns in writing. Thereafter, the agency extended the comment period until March 1, 1999 (64 FR 8714, February 23, 1999).

Today's final rule is limited in scope to the methodological requirements for State observational surveys. In a separate interim final rule published jointly by NHTSA and the Federal Highway Administration on October 29, 1998 (63 FR 57904), the agencies provided details concerning the procedures that would be followed in evaluating seat belt use rate information, determining the national average seat belt use rate, and allocating funds. We will address any comments to that interim final rule in a separate action, and publish a final rule in the near future.

## C. Comments

The interim final rule solicited comments from interested parties, and noted that the agency would respond to all comments and, if appropriate, amend the provisions of the rule. The agency received comments from State agencies in Oregon, New York, Minnesota, and Michigan and from Advocates for Highway and Auto Safety.

### 1. In General

Commenters were already familiar and comfortable with many of the survey provisions, because they were continued from the old Section 153 grant program. Commenters were also generally supportive of the new survey provisions introduced as a result of the Section 157 program. These new survey provisions include the requirement to observe all passenger vehicles (including cars, pickup trucks, vans, and sport utility vehicles), count both the driver and the front seat outboard passenger, include out-of-state vehicles (beginning in 1999); conduct all survey observations within the calendar year; and count only seat belt use (not child seat use). Commenters differed most on the desirability of strict uniformity in designing and conducting the surveys and on sampling methods, issues that had arisen at the Texas meeting. Specific comments are addressed below.

### 2. Single Survey Design

Two commenters believed that uniformity of the surveys was of critical importance, to ensure comparability among States. The Michigan Department of State Police (Michigan) suggested that NHTSA contract to develop and administer a single survey design for use by all the States, adding that comparability would best be assured if the survey included all elements needed

by States for problem identification. Michigan also thought that a national contract for data collection would address the need for consistent training of the data collection observers. However, Michigan stopped short of endorsing the "suggestion" (presumably the suggestion advanced by some States at the Texas meeting) for all States to use the same software for data analysis, reasoning that the complexities of the analysis should be left to the discretion of the analysts. The Minnesota Department of Public Safety (Minnesota) recommended that NHTSA designate a single company or organization as the only entity approved to design a survey, to ensure exact uniformity. Minnesota further suggested that NHTSA or a contractor conduct all the State surveys. Alternatively, if the approach of a single entity were not adopted, Minnesota recommended that NHTSA expand the survey criteria to include the "specifics discussed at the Texas meeting" (presumably a reference to discussions about road-type sampling frames, geographic considerations, and the like), reasoning that the more "specific" and "detailed" the criteria, the more uniform the surveys would be.

In contrast, the New York Department of Motor Vehicles (New York) believed that the survey criteria were appropriate without change, affording the States the flexibility to accommodate differences in information systems and geography. New York stated that, just as there was no single "true or accurate" seat belt use rate, due to the dynamic nature of the highway system, there was also no "perfect or singular" statistical method to arrive at an estimate, and that survey methodologies should be determined based on whether they were appropriate for the situation and consistent with core guidelines, rather than part of a "one size fits all" philosophy. In New York's view, "any further attempts to 'level the playing field' were misguided," as "[n]ational consistency and comparability will come with time, regardless of further design changes."

The agency agrees with Michigan and Minnesota that it would be desirable for seat belt use surveys to be uniformly designed and conducted. However, we decline to adopt the suggestion for a NHTSA contractor to conduct the surveys, or for a single survey design for use by all the States. Section 157 requires seat belt use rates to be measured and submitted by the states, following published criteria to ensure that the measurements are accurate and representative. This statutory requirement is inconsistent with centralized Federal operation of the survey process, but recognizes the

importance of providing guiding criteria to the States to improve the value of survey results. With the publication of the interim final rule, the agency sought to balance the need for reliable survey data with the need to afford States flexibility in the conduct of the surveys, in view of the significant geographic and demographic differences they face. The agency continues to believe that this careful balancing of reliable survey data and flexibility is important. Consequently, we have made no change to the rule. (Further discussion of the issue of survey uniformity appears under Sections C.3 and C.4 below.)

### 3. Major and Local Roads

Three commenters thought that a mix of major and local roads should be sampled in the State surveys. Advocates for Highway and Auto Safety (Advocates) recommended that the survey criteria specifically require a minimum number of observations to be conducted in rural, suburban, and urban areas, to ensure a representative sample based on geographic differences. Minnesota recommended requiring observations on both major and local roads, with the probability of selection based on vehicle miles traveled. Michigan noted that an accurate estimate of seat belt use on all roads in a State depends on sampling probabilities consistent with the distribution of road types, but interstate comparability of data depends on use by all States of the same criteria for selecting road segments for observation (rather than on the relative proportion of road miles or vehicle miles traveled on major and local roads).

NHTSA does not believe that requiring a specified minimum number of observations to be conducted in rural, suburban, and urban areas would result in a more "representative" sample, as Advocates suggests, as it would not take into account the actual distribution of these road types in a State. However, the alternative of basing sampling probabilities on the distribution of road types (or on vehicle miles traveled on different road types), as Minnesota and Michigan suggest, is problematic. Many States do not possess complete inventories of all roads or of vehicle miles traveled on residential streets or other local non-arterial roads, a point that was confirmed by participants at the January 28 meeting in Texas. In order to pursue a survey approach based on distribution of road types, States would need to develop such inventories, at significant cost, introducing another layer of procedures in an already complex process. Moreover, state-to-state variations in

inventory methodologies could further detract from the goal of uniformity. In NHTSA's view, requiring specified road types to be included in the surveys would not substantially affect the final State estimate of seat belt use, and the added burden to the States is not justified. Therefore, we decline to modify the criteria to impose a requirement to specify the inclusion of road types. However, States may elect to conduct surveys that include a mix of road types under the existing procedures, as long as they adhere to the principles of random sampling required in the survey criteria.

### 4. Moving Traffic and Controlled Intersections

Michigan supported the observation of seat belt use at controlled intersections, to allow the collection of demographic data. Minnesota recommended that the criteria allow observation of moving traffic, and explained that if only controlled intersections were allowed, the majority of its rural roadway miles would not be eligible for observation. However, Minnesota also stated that it did not want its observers to guess the age-group, sex, or other demographic characteristics of vehicle occupants. (Presumably, although unstated in its comments, Minnesota was referring to the difficulty of making accurate demographic observations in moving vehicles, a subject of discussion at the Texas meeting. The agency concludes, from the totality of Minnesota's comments, that the State favors survey criteria that allow for observation of both moving traffic and stopped traffic at controlled intersections.)

The agency is aware that some States collect demographic data during their seat belt use surveys, to track the progress of state-wide traffic safety efforts. Procedures vary by State. Some States conduct their seat belt use surveys at randomly selected locations that include both controlled intersections and non-intersection segments, and collect limited demographic data during these surveys or obtain such data through a separate survey of intersection locations only. Other States conduct their surveys at randomly selected controlled intersections, and obtain seat belt use and demographic data from the same survey. While Section 157 does not require the States to collect or report demographic data, the agency was aware of this State practice when it published the interim final rule. Consequently, the interim final rule did not specify a mix of observation sites within road segments (i.e., moving and

stopped traffic sites) or otherwise restrict States from selecting the mix of observation sites that best accommodates State objectives. The agency does not believe that specification or restriction of observation sites would materially affect the observed seat belt use rate, assuming States follow proper random sampling techniques in selecting these sites. For this reason, and to accommodate the States' collection of demographic information without undue restrictions, the agency declines to amend the survey criteria to restrict or specify observation sites for the seat belt use surveys.

##### 5. Nighttime Observation

Advocates recommended that the survey criteria include a requirement for nighttime observation of seat belt use. Advocates reasoned that a protocol that included only daylight observations would overestimate actual use rates if seat belt use drops at night. Advocates acknowledged that it had no direct evidence of day-night variability in seat belt use rates, but stated that such variability had been documented in other areas of driver and occupant behavior. Advocates recognized that nighttime observation is more difficult, and suggested that such observations could be made at well-lighted intersections or in shopping districts. Advocates further acknowledged that this might not provide a truly random sample, but suggested that this be balanced against the need to include some statistical representation of nighttime observations.

The agency believes that extending sampling requirements to include nighttime observations is impracticable. Successful nighttime observations would necessarily be limited to well-lighted areas and, as Advocates recognizes, a random sample would be impossible to obtain under such circumstances. Advocates suggests that the inability to obtain a "truly random sample" be balanced against the need to include some statistical representation of nighttime seat belt use. However, the extreme reduction in suitable observation sites would, in NHTSA's view, render any data from nighttime observations of negligible statistical validity. Under these circumstances, and in light of the increased danger to personnel that would be involved in nighttime observation, the agency has not adopted the recommendation to include nighttime observation.

##### 6. Miscellaneous

The Oregon Department of Transportation (Oregon) suggested that motorhomes be included among the

vehicles surveyed for seat belt use, in addition to the vehicles identified in the interim final rule. Oregon stated that it experiences a significant amount of motorhome travel during the summer months and along coastal corridors.

The agency appreciates Oregon's concern that motorhomes have a significant presence in the State. However, NHTSA did not include motorhomes in the interim final rule as among the categories of vehicles for observation for two reasons. First, motorhomes vary substantially in size, capacity, and construction and, as a result, not all of these vehicles fall within the statutory definition of "passenger motor vehicle" contained in Section 157. Without careful observation and specialized knowledge, it is difficult to distinguish those motorhomes that are covered by Section 157 from those that are not, and it would be impracticable to make the proper distinction when conducting the surveys. Second, due to the typically large size of these vehicles and the positioning of occupants well above road level, successful observation would present significant difficulties. Consequently, for reasons of practicability, we decline to adopt Oregon's suggestion.

New York requested that the interim final rule be modified to explicitly extend previous survey design approvals granted under the Section 153 grant program. New York stated that its survey design incorporated many elements promoted by NHTSA, and that it would be unable to compare results and measure progress from earlier years if it were not allowed to retain the same design.

New York's comment falls outside the scope of this rule, which is limited to describing new criteria governing surveys conducted under the Section 157 program, beginning with surveys conducted in 1998. A companion interim final rule, Safety Incentive Grants for Use of Seat Belts—Allocations Based on State Seat Belt Use Rates (October 29, 1998, 63 FR 57904), describes the circumstances under which surveys submitted by States will be approved or disapproved (including surveys whose designs were approved under the Section 153 program). We recommend that New York review that interim final rule, in particular section 1240.12(c) (23 CFR 1240.12(c)), for current guidance. The agency expects to publish a final rule for the companion interim final rule in the near future, and will specifically address New York's comment at that time.

Michigan expressed concern that the agency might interpret the Section 157

survey criteria more narrowly than the Section 153 guidelines. Michigan noted that its pseudorandom method for assigning day-of-week and time-of-day observations provided for "essentially equal probability of selection" for all days of the week and daylight hours, whereas the interim final rule requires that observation sites be "randomly assigned to the selected day-of-week/time-of-day time slots." Michigan requested that a method of appeal be established if its procedure were not acceptable under the new criteria.

In addition to the random selection provision cited by Michigan, above, the interim final rule requires that "[a]ll daylight hours for all days of the week must be eligible for inclusion in the sample." Taken together, these requirements were intended to ensure not only that observations are collected during all daylight hours and all days of the week, but also that a site is not scheduled for a specific day or time period based on a judgment bias (e.g., because of a belief that more observations were possible or that observed use would be different). However, the agency recognizes that a completely random allocation of sites to day-of-week/time-of-day slots would require the deployment of an inordinate amount of resources, and that a certain amount of "grouping" of sites is necessary for an efficient use of data collection resources. In the interim final rule, NHTSA did not intend to preclude the grouping of sites for administrative convenience (e.g., for efficient deployment of observers, reduction of personnel travel expenses, etc.), provided such grouping is accomplished without the introduction of a judgment bias. In response to Michigan's concern, the agency has added appropriate language to Section 1340.4(c) for clarification.

##### Regulatory Analyses and Notices

*Executive Order 13132 (Federalism):* We have analyzed this action in accordance with the principles and criteria contained in Executive Order 13132, and have determined that it does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. While it concerns a new State grant program, this action does not impose any major new requirements on the States. Rather, it makes minor changes to survey procedures that have already been used by many States in a previously authorized grant program and for other purposes.

*Executive Order 12778 (Civil Justice Reform):* This rule does not have any preemptive or retroactive effect. It

merely revises existing requirements imposed on States to reflect the statutory requirements of a new grant program. The enabling legislation does not establish a procedure for judicial review of final rules promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

*Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures:* We have determined that this action is "significant" under Executive Order 12866 and under the Department of Transportation Regulatory Policies and Procedures because it is likely to result in significant economic impacts. A Final Economic Assessment (FEA) was prepared for the interim final rule and for a companion interim final rule that established the procedures for allocating funds under the grant program authorized by 23 U.S.C. 157. A copy of the FEA, describing the economic effects in detail, was placed in the docket for public inspection.

Following is a summary of the cost and benefit information for this rule. The total annual cost of conducting surveys following the procedures of this rule (if each State conducted one) is estimated to be \$1.9 million. However, since many States have regularly conducted surveys prior to the promulgation of this rule, the actual survey costs attributable to this rule are estimated to be significantly less (consult the FEA for more detail). A State may be eligible for an allocation of funds during each of fiscal years 2000 through 2003 if it conducts a survey of seat belt use during each of calendar years 1998 through 2001, in accordance with the procedures under this rule. Allocations available to the States total \$92,000,000 for fiscal year 2000, \$102,000,000 for fiscal year 2001, and \$112,000,000 for each of fiscal years 2002 and 2003. An allocation totaling \$82,000,000 is available for fiscal year 1999, but that allocation is dependent on criteria other than the survey procedures required under this rule. Depending on the results of State surveys, some funds may remain unallocated, and will be allocated under other procedures that are unrelated to this action.

*Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks):* This rule is not subject to Executive Order 13045 because it does not concern an environmental, health, or safety risk that may have a disproportionate effect on children.

*Regulatory Flexibility Act:* In compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we have evaluated the effects of this action on small entities. We hereby certify that this action will not have a significant economic impact on a substantial number of small entities. States are the recipients of any funds awarded under the Section 157 program, and they are not small entities.

*Paperwork Reduction Act:* This action, which describes surveys that States must conduct and submit to the agency in order to be considered for an allocation of funds under 23 U.S.C. 157, is considered to be an information collection requirement, as that term is defined by OMB. This information collection requirement has been submitted to and approved by OMB, pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The requirement has been approved through February 2, 2002; OMB Control No. 2127-0597.

*National Environmental Policy Act:* We have reviewed this action for the purpose of compliance with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and have determined that it will not have a significant effect on the human environment.

*Unfunded Mandates Reform Act:* The Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually. This action does not meet the definition of a Federal mandate, because the resulting annual expenditures will not exceed the \$100 million threshold.

#### List of Subjects in 23 CFR Part 1340

Grant programs—transportation, Highway safety, Intergovernmental relations, Reporting and recordkeeping requirements.

Accordingly, the interim final rule adding 23 CFR part 1340, which was published at 63 FR 46389 on September 1, 1998, is adopted as a final rule with the following changes:

1. The authority citation for part 1340 continues to read as follows:

**Authority:** 23 U.S.C. 157; delegation of authority at 49 CFR 1.50.

2. In section 1340.4, paragraph (c) is revised to read as follows:

#### § 1340.4 Population, demographic, and time/day requirements.

\* \* \* \* \*

(c) Time of day and day of week. All daylight hours for all days of the week must be eligible for inclusion in the sample. Observation sites must be randomly assigned to the selected day-of-week/time-of-day time slots. If observation sites are grouped to reduce data collection burdens, a random process must be used to make the first assignment of a site within a group to an observational time period. Thereafter, assignment of other sites within the group to time periods may be made in a manner that promotes administrative efficiency and timely completion of the survey.

Issued on: March 8, 2000.

**Rosalyn G. Millman,**

*Acting Administrator, National Highway Traffic Safety Administration.*

[FR Doc. 00-6134 Filed 3-13-00; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### 31 CFR Part 103

RIN 1506-AA20

#### Financial Crimes Enforcement Network; Amendments to the Bank Secrecy Act Regulations—Requirement that Money Transmitters and Money Order and Traveler's Check Issuers, Sellers, and Redeemers Report Suspicious Transactions

**AGENCY:** Financial Crimes Enforcement Network ("FinCEN"), Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document contains amendments to the regulations implementing the statute generally referred to as the Bank Secrecy Act. The amendments require money transmitters and issuers, sellers, and redeemers of money orders and traveler's checks to report suspicious transactions to the Department of the Treasury. The amendments constitute a further step in the creation of a comprehensive system (to which banks are already subject) for the reporting of suspicious transactions by financial institutions. Such a system is a core component of the counter-money laundering strategy of the Department of the Treasury.

**DATES:** *Effective Date:* April 13, 2000.

*Applicability Date:* See § 103.20(f) of the final rule contained in this document.

#### FOR FURTHER INFORMATION CONTACT:

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(703) 905-3930; Eileen C. Mayer, Special Assistant to the Director and MSB Project Manager, FinCEN, (202) 354-6400; Stephen R. Kroll, Chief Counsel, Cynthia L. Clark, Deputy Chief Counsel, and Albert R. Zarate and Christine L. Schuetz, Attorney-Advisors, Office of Chief Counsel, FinCEN, (703) 905-3590.

#### SUPPLEMENTARY INFORMATION:

##### I. Money Services Businesses Under the Bank Secrecy Act

The issuance of the final rule completes the second rulemaking, begun on May 21, 1997, relating to the application of the Bank Secrecy Act to money services businesses. See generally 62 FR 27890-27909 (the "MSB Rulemakings"). In conducting the MSB Rulemakings, FinCEN and the Department of the Treasury have followed the mandate of Congress in the Money Laundering Suppression Act, Title IV of the Reigle Community Development and Regulatory Improvement Act of 1994, Public Law 103-325, and the Annunzio-Wylie Anti-Money Laundering Act, Title XV of the Housing and Community Development Act of 1992, Public Law 102-550, and have more generally responded to the need to update and more carefully to tailor the application of the Bank Secrecy Act to a significant part of the financial sector in the United States.<sup>1</sup>

The term "money services business" refers to five distinct types of financial services providers: currency dealers or exchangers; check cashers; issuers of traveler's checks, money orders, or stored value; sellers or redeemers of traveler's checks, money orders, or stored value; and money transmitters. (The five types of financial services are complementary and are often provided together at a common location.) These businesses are quite numerous; based on a 1997 study performed for FinCEN by Coopers & Lybrand LLP (now a part of PriceWaterhouseCoopers LLP), they comprised at the date of the study approximately 158,000<sup>2</sup> outlets or selling locations, and provided financial services involving approximately \$200 billion annually. To some significant extent, the customer base for such

businesses lies in that part of the population that does not use traditional financial institutions, primarily banks.

Money services businesses, like banks, can be large or small. It is estimated that fewer than ten business enterprises account for the bulk of money services business financial products (that is, money transmissions, money orders, traveler's checks, and check cashing and currency exchange availability) sold within the United States, and also account, through systems of agents, for the bulk of locations at which these financial products are sold. Members of this first group include large firms, with significant capitalization, that are publicly traded on major securities exchanges.<sup>3</sup>

A far larger group of (on average) far smaller enterprises competes with the large firms in the first group, in a highly bifurcated market for money services. In some cases, these small enterprises are based in one location with two to four employees. Moreover, the members of this second group may provide both financial services and unrelated products or services to the same sets of customers.<sup>4</sup>

Money services businesses primarily serve individuals and have grown to provide a set of financial products that others look to banks to provide. For example, a money services business customer who receives a paycheck can take his or her check to a check casher to have it converted to cash. He or she can then purchase money orders to pay his or her bills. Finally, he or she may choose to send funds to relatives abroad, using the services of a money transmitter.

The publication of this final rule, concerning the reporting of suspicious transactions by money transmitters and issuers, sellers, and redeemers of money orders and traveler's checks, follows the publication, on August 20, 1999, of a final rule, 64 FR 45438-45453, that (i)

<sup>3</sup> For example, according to the Coopers & Lybrand study, at the time of that study two money transmitters and two traveler's check issuers made up approximately 97 per cent of their respective known markets for non-bank money services. Three enterprises made up approximately 88 per cent of the \$100 billion in money orders sold annually (through approximately 146,000 locations). The retail foreign currency exchange sector was found by Coopers & Lybrand to be somewhat less concentrated, with the top two non-bank market participants accounting for 40 per cent of a known market that then accounted for \$10 billion. Check cashing was the least concentrated of the business sectors; the two largest non-bank check cashing businesses made up approximately 20 per cent of the market, with a large number of competitors.

<sup>4</sup> Members of the second group may include, for example, travel agencies, courier services, convenience stores, and grocery or liquor stores.

contained a set of revised definitions of various financial services businesses (and, in the case of stored value, added a new definition of a product whose issuers, sellers, or redeemers would be so treated) and grouped those definitions under the heading "money services businesses" as part of the Bank Secrecy Act regulatory definition of "financial institutions," (see new 31 CFR 103.11(c)(7), (n)(3), (uu), and (vv)), and (ii) adopted rules to implement the Bank Secrecy Act mandate, 31 U.S.C. 5330, that certain money services businesses register with the Department of the Treasury (see new 31 CFR 103.41).

Against this background, the reporting of suspicious transactions forms a second part of a coordinated approach to deal with abuse of money services businesses by criminals and to strengthen the application of general Bank Secrecy Act rules to this part of the nation's payments system. Thus, it may be helpful to recap briefly the terms of the final rule relating to the definition and registration of money services businesses under the Bank Secrecy Act, before turning specifically to suspicious transaction reporting under the terms of the final rule contained in this document.

A money services business includes, for purposes of the Bank Secrecy Act regulations, each agent, agency, branch, or office within the United States of any person (except a bank or person registered with, and regulated or examined by, the Securities and Exchange Commission or the Commodity Futures Trading Commission) doing business in one or more of the following capacities:

- Currency dealer or exchanger;
- Check casher;
- Issuer of traveler's checks, money orders, or stored value;
- Seller or redeemer of traveler's checks, money orders, or stored value;
- Money transmitter;<sup>5</sup> and
- The United States Postal Service (except with regard to the sale of postage or philatelic products).<sup>6</sup>

Generally, each money services business (other than the U.S. Postal

<sup>5</sup> As set forth at 31 CFR 103.11(uu)(5), the acceptance and transmission of funds as an integral part of the execution and settlement of a transaction other than the funds transmission itself (for example, in connection with the bona fide sale of securities) will generally not cause a person to be a money transmitter for purposes of the Bank Secrecy Act and its implementing regulations.

<sup>6</sup> Under the rule, persons who do not exchange currency, cash checks, or issue, sell, or redeem traveler's checks, money orders, or stored value in an amount greater than \$1,000 to any person on any day in one or more transactions are not money services businesses for purposes of the Bank Secrecy Act.

<sup>1</sup> The Congress has long recognized the need generally to address problems of abuse by money launderers of "non-bank" financial institutions. See, e.g., Permanent Subcommittee on Investigations, Senate Comm. on Governmental Affairs, Current Trends in Money Laundering, S. Rep. No. 123, 102d Cong., 2d Sess. (1992).

<sup>2</sup> The number does not include Post Offices (which sell money orders and other money services business financial products), participants in stored value product trials, or sellers of various stored value or smart cards in use in, for example, public transportation systems.

Service, a federal, state, or local government agency, an issuer, seller, or redeemer of stored value, or a person that is a money services business solely because it is an agent of another money services business) must register with the Department of the Treasury by December 31, 2001, and maintain a current list of its agents for examination beginning January 1, 2002.<sup>7</sup> As indicated, agents of money services businesses generally are not required separately to register or keep a list of their own (sub) agents, to the extent that they engage in money services business activities solely as agents of others.

Thus, the registration requirements are to be implemented over an almost two and one half year period, beginning on August 20, 1999. The suspicious transaction reporting obligations created by this rule do not become effective, as noted below, until the initial registration period is complete, that is, on January 1, 2002.

## II. Importance of Suspicious Transaction Reporting in the Treasury's Counter-Money Laundering Program

The Congressional authorization of the reporting of suspicious transactions by financial institutions recognizes two basic points that are central to Treasury's counter-money laundering and anti-financial crime programs. First, it is to financial institutions that money launderers must go, either initially or eventually. Second, the officials of those institutions are more likely than government officials to have a sense as to which transactions appear to lack commercial justification or otherwise cannot be explained as falling within the usual methods of legitimate commerce. Moreover, because money laundering transactions are designed to appear legitimate in order to avoid detection, the creation of a meaningful system for detection and prevention of money laundering is impossible without the cooperation of financial institutions. Indeed, many non-banks have already recognized the increased pressure that money launderers have come to place upon their operations and the need for innovative programs of training and monitoring necessary to counter that pressure.

The National Money Laundering Strategy for 1999 (the "1999 Strategy")<sup>8</sup>

<sup>7</sup> The information to be included in the agent list is set forth in 31 CFR 103.41(d)(2).

<sup>8</sup> The 1999 Strategy is the first in a series of five annual reports called for by the Money Laundering and Financial Crimes Strategy Act of 1998, Pub. L. 105-310 (October 30, 1998), codified at 31 U.S.C. 5340 *et seq.* Each annual report is to be submitted to Congress by the President, working through the Secretary of the Treasury in consultation with the Attorney General.

commits the Department of the Treasury to "assur[ing] that all types of financial institutions are subject to effective Bank Secrecy Act requirements," and, to that end, to extending the requirement to report suspicious transactions to money services businesses.<sup>9</sup> (Related action items are (i) the issuance by the Department of the Treasury of a final rule for the reporting of suspicious activity by casinos, and (ii) work by the Department of the Treasury with the Securities and Exchange Commission to propose rules for the reporting of suspicious activity by brokers and dealers in securities.)<sup>10</sup> As explained in the Strategy:

The attention given to the prevention of money laundering through banks reflects the central role of banking institutions in the global payments system and the global economy. But non-bank financial institutions require attention as well. Money launderers will move their operations to institutions in which their chances of successful evasion of enforcement and regulatory efforts is the highest. Moreover, it is unfair to impose costs arising from counter-money laundering requirements only on some institutions competing to service customers' financial needs.<sup>11</sup>

The reporting of suspicious transactions is also recognized as essential to an effective counter-money laundering program in the international consensus on the prevention of money laundering. One of the central recommendations of the Financial Action Task Force Against Money Laundering ("FATF") is that:

If financial institutions suspect that funds stem from a criminal activity, they should be required to report promptly their suspicions to the competent authorities.

*Financial Action Task Force Annual Report* (June 28, 1996),<sup>12</sup> Annex 1 (Recommendation 15).<sup>13</sup> The

<sup>9</sup> 1999 Strategy, Goal 2 ("Enhancing Regulatory and Cooperative Public-Private Efforts to Prevent Money Laundering"), Objective 2, at 35.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 35-36.

<sup>12</sup> The FATF is an inter-governmental body whose purpose is development and promotion of policies to combat money laundering. Originally created by the G-7 nations, its membership now includes Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Italy, Japan, Luxembourg, the Kingdom of the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States, as well as the European Commission and the Gulf Cooperation Council. In addition, Argentina, Brazil, and Mexico have been admitted this year as FATF Observer Members.

<sup>13</sup> The language adopted in 1996 revised FATF Recommendation 15 which, as adopted in 1990, had stated that financial institutions should be either "permitted or required" to make such reports. (Emphasis supplied.)

recommendation applies equally to money services businesses as to banks.

Similarly, the European Community's *Directive on Prevention of the Use of the Financial System for the Purpose of Money Laundering* calls for member states to

ensure that credit and financial institutions and their directors and employees cooperate fully with the authorities responsible for combating money laundering \* \* \* by [in part] informing those authorities, on their own initiative, of any fact which might be an indication of money laundering.

*EC Directive*, O.J. Eur. Comm. (No. L 166) 77 (1991), Article 6. *Accord, the Model Regulations Concerning Laundering Offenses Connected to Illicit Drug Trafficking and Related Offenses of the Organization of American States*, OEA/Ser. P. AG/Doc. 2916/92 rev. 1 (May 23, 1992), Article 13, section 2.<sup>14</sup> All of these documents also recognize the importance of extending the counter-money laundering controls to "non-traditional" financial institutions, not simply to banks, both to ensure fair competition in the marketplace and to recognize that non-bank providers of financial services, as well as depository institutions, are an attractive mechanism for, and are threatened by, money launderers. *See, e.g., Financial Action Task Force Annual Report, supra*, Annex 1 (Recommendation 8).

## III. Statutory Provisions

The Bank Secrecy Act, Titles I and II of Public Law 91-508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5330, authorizes the Secretary of the Treasury, *inter alia*, to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, and to implement counter-money laundering programs and compliance procedures. Regulations implementing Title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311-5330), appear at 31 CFR Part 103. The authority of the Secretary to administer Title II of the Bank Secrecy Act has been delegated to the Director of FinCEN.

The provisions of 31 U.S.C. 5318(g)<sup>15</sup> deal with the reporting of suspicious

<sup>14</sup> The OAS reporting requirement is linked to the provision of the Model Regulations that institutions "shall pay special attention to all complex, unusual or large transactions, whether completed or not, and to all unusual patterns of transactions, and to insignificant but periodic transactions, which have no apparent economic or lawful purpose." OAS Model Regulation, Article 13, section 1.

<sup>15</sup> That subsection was added to the Bank Secrecy Act by section 1517 of the Annunzio-Wylie Anti-

transactions by financial institutions subject to the Bank Secrecy Act and with the protection from liability to customers of persons who make such reports. Subsection (g)(1) states generally:

The Secretary may require any financial institution, and any director, officer, employee, or agent of any financial institution, to report any suspicious transaction relevant to a possible violation of law or regulation.

Subsection (g)(2) provides further:

A financial institution, and a director, officer, employee, or agent of any financial institution, who voluntarily reports a suspicious transaction, or that reports a suspicious transaction pursuant to this section or any other authority, may not notify any person involved in the transaction that the transaction has been reported.

Subsection (g)(3) provides that neither a financial institution, nor any director, officer, employee, or agent

that makes a disclosure of any possible violation of law or regulation or a disclosure pursuant to this subsection or any other authority \* \* \* shall \* \* \* be liable to any person under any law or regulation of the United States or any constitution, law, or regulation of any State or political subdivision thereof, for such disclosure or for any failure to notify the person involved in the transaction or any other person of such disclosure.

Finally, subsection (g)(4) requires the Secretary of the Treasury, "to the extent practicable and appropriate," to designate "a single officer or agency of the United States to whom such reports shall be made."<sup>16</sup> The designated agency is in turn responsible for referring any report of a suspicious transaction to "any appropriate law enforcement or supervisory agency." *Id.*, at subsection (g)(4)(B).

#### IV. Notice of Proposed Rulemaking

As indicated above, the final rule contained in this document is based on the notice of proposed rulemaking published, at 62 FR 27900—27909 (May 21, 1997) (the "Notice"), as the second of the MSB Rulemakings. The Notice proposed to require money services businesses including money transmitters, businesses issuing, selling, or redeeming money orders, and businesses issuing, selling, or redeeming

Money Laundering Act; it was expanded by section 403 of the Money Laundering Suppression Act, to require designation of a single government recipient for reports of suspicious transactions.

<sup>16</sup> FinCEN is the designated agency. This designation is not to preclude the authority of supervisory agencies to require financial institutions to submit other reports to the same agency or another agency "pursuant to any other applicable provision of law." 31 U.S.C. 5318(g)(4)(C).

traveler's checks, to report suspicious transactions to the Department of the Treasury.

FinCEN held five public meetings in the summer of 1997 to provide interested parties with the opportunity to present their views with respect to the potential effects of the MSB Rulemakings, as well as to provide FinCEN with additional information and feedback useful in preparing final rules based on the MSB Rulemakings.<sup>17</sup> Transcripts of these meetings were then made available by FinCEN to requesting parties.

The comment period for the three MSB Rulemakings was originally due to end on August 19, 1997. The comment period was extended to September 30, 1997, by a notice, 62 FR 40779, published on July 30, 1997.

FinCEN received a total of 82 comment letters on the three notices of proposed rulemaking; 34 dealt in whole or in part with issues raised by the Notice. Of these, 12 were submitted by money services businesses and their affiliates, 5 by banks or bank holding companies, 8 by financial institution trade associations, 4 by law firms, 3 by agencies of the United States government, 1 by a credit union, and 1 by a private individual.

#### V. Summary of Comments and Revisions

##### A. Introduction

The format of the final rule is generally consistent with the format of the rule proposed in the Notice. The terms of the final rule, however, differ from the terms of the Notice in the following significant respects:

- The dollar threshold for reporting suspicious transactions has generally been raised from \$500 to \$2,000;
- The dollar threshold for reporting has been raised from \$500 to \$5,000 for issuers of money orders or traveler's checks to the extent that the identification of transactions required to be reported is derived from a review of clearance records or other similar records of money orders or traveler's checks that have been previously sold or processed;
- The examples of particular potentially suspicious transactions have been removed from the text of the rule,

<sup>17</sup> The public meetings were held in Vienna, Virginia, on July 22, 1997; New York, New York, on July 28, 1997; San Jose, California, on August 1, 1997; Chicago, Illinois, on August 15, 1997; and Vienna, Virginia, on September 3, 1997. Discussion at the New York and Chicago meetings focused particularly on issues, including suspicious transaction reporting, relating to money transmitters and issuers, sellers, and redeemers of traveler's checks and money orders.

and a discussion of examples of potentially suspicious transactions will be contained in a "Guidance Document" relating to suspicious transaction reporting by money transmitters and issuers, sellers, and redeemers of money orders and traveler's checks that will be published in the near future;

- The language relating to the allocation of responsibility for reporting among various persons involved in the sale and completion of a money transmission or the sale and collection of a money order or traveler's check, has been revised; and

- Language has been added to clarify that only one report should be filed with respect to a reportable transaction, in order to avoid double reporting on the same transaction. It should be noted that filing of multiple reports by an issuer and its agent may be necessary if different facts are contained in the two reports.

#### B. Comments on the Notice—Overview and General Issues

Comments on the Notice concentrated on five matters: (i) the rationale for extending the suspicious activity reporting regime to money services businesses; (ii) the proposed \$500 threshold for reporting suspicious transactions; (iii) the inclusion in the text of the rule of examples of potentially reportable transactions; (iv) the allocation of responsibility for reporting—and liability for non-reporting—among various persons involved in the sale and completion of a money transmission or the sale and collection of a money order or traveler's check; and (v) the exemption of certain businesses from the requirement to report suspicious transactions.

##### 1. Application of Suspicious Transaction Reporting Requirement to Money Services Businesses

At least one commenter argued that requiring money services businesses to report suspicious transactions would be unduly burdensome to those businesses and would unjustifiably infringe upon the privacy interests of those persons conducting transactions with such businesses. A number of other commenters, although not challenging the need for suspicious activity reporting *per se*, asked FinCEN to consider carefully the appropriate scope of such reporting.

The importance of suspicious transaction reporting and its extension to all relevant financial institutions are generally discussed above. Money services businesses and other non-bank financial institutions have not in the past been given the same sort of

attention in the administration of the Bank Secrecy Act as banks.<sup>18</sup> The concentrated attention given to banks, combined with the cooperation that banks have given to law enforcement agencies and banking regulators to root out money laundering, have made it far more difficult than in the past to pass large amounts of cash directly into the nation's banks unnoticed. As it has become increasingly difficult to launder large amounts of cash through banks, criminals have turned to non-bank financial institutions, including money services businesses, in attempts to launder funds.<sup>19</sup> Some of their efforts have unfortunately been successful.<sup>20</sup>

At the same time, as indicated in the Notice, the implementation of a comprehensive counter-money laundering strategy for money services businesses raises significant issues not present in devising counter-money laundering strategies for banks. These issues arise largely because of unique structural factors affecting money services businesses. First, most money services businesses operate through the medium of independent enterprises that agree to serve as agents for the businesses' products or services; thus

<sup>18</sup>This document uses the term "bank" rather than "depository institution." As defined in 31 CFR 103.11(c), the term "bank" includes both commercial banks and other classes of depository institutions.

<sup>19</sup>In crafting the Annunzio-Wylie Anti-Money Laundering and Money Laundering Suppression Acts to provide the Department of the Treasury with additional enforcement tools, the Congress expressed its view that such businesses are "largely unregulated"—at least with respect to counter-money laundering issues—and are frequently used in sophisticated schemes to transfer large amounts of money that are the proceeds of unlawful activity. See section 408(a) of the Money Laundering Suppression Act (findings concerning "registration of money transmitting businesses to promote effective law enforcement").

<sup>20</sup>The Notice was issued against the back-drop of continuing enforcement operations directed at money transmitters in the New York City metropolitan area, based in part on geographic targeting orders ("GTOs"), issued under the Bank Secrecy Act. The GTOs required enhanced reporting and recordkeeping affecting remittances to Colombia and, later, the Dominican Republic. (The Dominican Republic GTO applied to money transmitters in Puerto Rico as well as to those in the New York metropolitan area). Those targeting orders and subsequent criminal enforcement activity have resulted in three of the covered remitters surrendering their licenses to the New York State Banking Department. One of these three remitters has been indicted for Title 31 violations. Two other remitters have ceased remitting funds to Colombia altogether. Another remitter has had its license revoked by the New York State Banking Department after pleading guilty to money laundering charges. Several years earlier, a Postal Inspection Service investigation of money orders in the late 1980s and early 1990s revealed a widespread money laundering scheme that resulted in the 1992 guilty plea of two individuals, and the 1993 forfeiture of approximately \$2.1 million. See 62 FR 27903.

the public often does not deal directly with the businesses that issue or back the instruments, or actually perform the services, purchased. Second, and as a corollary, money services businesses permit performance of a specific function—the conversion of money into a money order or traveler's check, or the sending of money to a distant location—but generally, at present, neither offer nor are capable of maintaining continuing account relationships to the same extent as banks. Third, money services businesses are not subject generally to federal regulation and are regulated, in differing degrees, by some, but not all, states. Finally, and perhaps most important, the rules of the Bank Secrecy Act have not previously been tailored to reflect the particular operating realities, problems, and potential for abuse of money services businesses. For all of these reasons, the assumptions that underlay design of a suspicious transaction reporting system for banks do not apply with equal force to the money services businesses with which this final rule deals.

There can be little doubt that a properly framed suspicious transaction reporting system will produce, as the Bank Secrecy Act requires, reports that possess a "high degree of usefulness in criminal, tax, or regulatory investigations or proceedings." But Treasury recognizes that the compliance difficulties, and in some cases criminality, encountered in dealing with certain businesses in New York and elsewhere<sup>21</sup> cannot uncritically be taken as indicative of conditions throughout the industry. Balancing the costs and benefits of suspicious transaction reporting requires a realistic assessment of the condition of the industry as a whole and the risks of abuse of the products and services offered by the industry. The significant upward revision in the reporting thresholds contained in this rule, as well as other changes made to this rule and the rule relating to the definition and registration of MSBs published in August 1999 (discussed above) in response to comments on the MSB Rulemakings reflect the Department of the Treasury's judgment as to an appropriate balance.

The balance of the usefulness of reported information against the appropriate privacy interests of customers of money services businesses raises a second set of important concerns. The Treasury is keenly aware of the need to balance legitimate privacy concerns against the government's responsibility to combat aggressively the

laundering of the proceeds of serious criminal activity. Several facts are noteworthy in this regard. First, both the statute authorizing the suspicious transaction reporting rule, and the rule itself (like its counterpart for banks), make clear that reported information is to be held and used by law enforcement and regulatory officials solely for permitted investigative and supervisory purposes and may not be shared with any person for any other reason. The levels of security and protection given to reported information and the secure computer systems in which it is held should serve to reassure the public. It is also relevant that the transaction reporting levels of \$2,000 and \$5,000 (up from a uniform \$500 in the Notice) should exclude a substantial (if not overwhelming) majority of legitimate money services business transactions from the scope of suspicious transaction reporting altogether.

## 2. Dollar Threshold for Reporting

FinCEN received several comments concerning the establishment of the proper dollar threshold for reporting suspicious transactions. While at least one commenter suggested that FinCEN not establish any dollar threshold (assumedly to convey the message to the regulated industry that a transaction should be reported if it is at all indicative of a violation of law, regardless of the dollar amount involved), the majority of the commenters on this subject argued that the proposed \$500 threshold was too low and urged that it be raised substantially. Several commenters argued that setting the threshold for reporting suspicious transactions at \$500 would unduly burden the industry given the volume of perfectly legal transactions conducted at or near this dollar amount and would necessarily—given the volume of transactions involved—produce over-reporting. For example, some commenters pointed out that many people, particularly those in large metropolitan areas, frequently purchase money orders, well in excess of \$500 on the same day, so that they can pay their monthly rent and utility bills.

In response to these comments, the final rule generally increases the dollar threshold for reporting suspicious transactions to \$2,000. The increase in the reporting threshold to an amount four times the amount originally proposed should help alleviate the concern that the proposed \$500 threshold would cause far too many legitimate transactions to be reported. The \$2,000 threshold is set below the existing \$3,000 identification and

<sup>21</sup> See n. 20, *supra*.

recordkeeping requirements with respect to the purchase of money orders and traveler's checks, as well as the existing \$3,000 recordkeeping requirement with respect to funds transfers conducted through money transmitters;<sup>22</sup> consequently, the \$2,000 threshold brings within the scope of the reporting obligation those transactions that may appear to be structured to evade these other Bank Secrecy Act requirements.

Other commenters suggested that FinCEN establish a higher threshold for reporting suspicious transactions cleared or processed by issuers of traveler's checks or money orders. According to these commenters, the work, for example, of sorting and identifying sequential purchases is extensive and tedious, and compliance staffs would be faced with a burdensome obligation to comb records for small scale activity of this nature.

In response to these comments, the final rule establishes a \$5,000 reporting threshold for issuers of money orders or traveler's checks to the extent that the identification of transactions required to be reported is derived from a review of clearance records or other similar records of money orders or traveler's checks that have been previously sold or processed. Thus, for example, an issuer of money orders would be subject to a \$5,000 reporting threshold with respect to transactions required to be reported that are identified at the clearance or processing stage. The \$5,000 threshold is the same that applies to the nation's banks.

The final rule does not include a similar threshold increase for money transmissions. There are several reasons. First, money transmissions flow directly from selling agent to the offeror of the transmission service, and information about the transaction reaches the offeror before the transmission is completed; by way of contrast, patterns in which a particular money order or traveler's check may be involved will often not become apparent until after negotiation is completed (on the basis, for example, of negotiation information or clearance symbols). Second, law enforcement experience with certain segments of the money transmission industry indicates a potential for serious abuse at levels below \$3,000 per transaction (in which,

unfortunately, certain (relatively) smaller transmitters have been directly involved); given the relationship between transmitters and their agents, and the nature of the product involved, the \$2,000 threshold is justified, and appropriate, at this time, for the money transmitter's central facilities, as well as its agents. (Of course, the lower threshold does not alter the fact that no reporting is required until the particular money services business in question "knows, suspects, or has reason to suspect" that the conditions for reporting are satisfied.)

### 3. Examples of Reportable Activity

The text of the Notice contained specific illustrations of the types of transactions that might require special attention and inquiry under the suspicious activity reporting obligations proposed by that document. FinCEN received a number of comments with respect to inclusion of examples of reportable activity in the final rule. Some commenters asked that FinCEN provide more specific examples and guidance in order to help money services businesses identify those transactions of interest to Treasury and avoid liability for failure to file a report in situations in which it is unclear whether a report is warranted. Other commenters argued that the inclusion of examples in the text of the rule itself could be misconstrued by the industry and misapplied by auditors and examiners. To balance the competing interests expressed by the comments—the need for guidance on the one hand and the need to avoid a rigid, automatic approach on the other—the examples do not appear in the text of the final rule, but FinCEN is working with interested parties, separately from the rulemaking itself, to prepare written guidance about particular patterns of suspicious activity of which money services businesses should be aware. As mentioned above, that guidance will be published in the near future.

### 4. Allocation of Liability for Non-reporting

A money services instrument (a money order or traveler's check) or service (a money transmission) is often offered to the public by a person other than the issuer of the instrument or the person providing the financial service. (The instrument or service may also be offered at branches of the issuer or service provider.) A recurrent theme raised by the comments is the allocation of liability between (or among) the two or more businesses generally involved in completing a money services business transaction.

Generally both the instrument issuer or service provider and the person offering the instrument or service for sale on behalf of such issuer or service provider will be treated as financial institutions for purposes of the Bank Secrecy Act. It has long been clear that an agent of a financial institution is itself a financial institution for purposes of the Bank Secrecy Act, *see* 31 CFR 103.11(n).

Two principles govern the allocation of liability for failure to satisfy the suspicious transaction reporting obligation created by the final rule with respect to a particular transaction or pattern of transactions. The first principle is that each money services business involved is responsible for filing a report with respect to a transaction based on the information reasonably available to it about the transactions it conducts and the customers with whom it deals. In the case of persons dealing directly with the public at the point of sale, that information may be different than that available to central issuer or processing facilities. At the same time, the relevant information, especially on the part of the issuer or processor, involves not only particular transactions but patterns (including overall volume) of transactions at particular points of sale.

The second principle is that the liability of an issuer or service provider for acts of persons at the point of sale of its financial products is based upon general legal principles governing allocation of liability as between principal and agent. As indicated in the final rule published in the **Federal Register** on August 20, 1999, relating to the definition and registration of money services businesses, FinCEN believes that the relationship between issuers or service providers and persons at the point of sale for particular products is governed by the law of agency, and that in most (if not all) cases the businesses at which these products or services are sold to the public are non-servant agents of the issuers or service providers involved. Congress' use of the term "agent" in 31 U.S.C. 5330, indicates a similar understanding on its part.<sup>23</sup> (Of

<sup>22</sup> See 31 CFR 103.29 (requiring that financial institutions keep records and verify the identity of purchasers with respect to the cash sale of bank checks or drafts, cashiers checks, money orders, and traveler's checks in amounts between \$3,000 and \$10,000 inclusive); and 31 CFR 103.33(e) and (f) (requiring financial institutions to maintain records with respect to funds transfers in excess of \$3,000).

<sup>23</sup> Section 5330 contains two provisions directed explicitly at "agents" of money services businesses. First, a money services business must maintain a list containing the names and addresses of its agents and such other information about the agents as the Secretary may require, and the list must be made available upon request to any appropriate law enforcement agency. *See* 31 U.S.C. 5330(c)(1). Second, the Secretary is to establish by regulation, on the basis of such criteria as the Secretary deems appropriate, a threshold point for treating an agent of a money services business as itself a money services business for purposes of section 5330. *See* 31 U.S.C. 5330(c)(2).

course, in cases in which the products or services are offered at branches of the issuers or providers, the individuals involved are likely servants, rather than non-servant agents, of the issuers or providers.) This understanding, which is embodied in revised paragraph (a)(4) of the final rule, is based on the present state of the law of agency as well as FinCEN's determination that Congress believed that agency principles were the proper starting point for analysis of legal relationships in this area. See 31 U.S.C. 5318(g) (including "agents" of financial institutions as persons required to report suspicious transactions); cf. 31 U.S.C. 5330.

#### 5. Exemption From Obligation To File Suspicious Transaction Reports

At least one commenter suggested that the suspicious transaction reporting requirement contained in the final rule should not apply to money services businesses that are affiliates or subsidiaries of banks or bank holding companies because such businesses are already subject to the suspicious transaction reporting requirements imposed by the Federal Reserve Board on banks and their non-bank affiliates or subsidiaries.<sup>24</sup> See 12 CFR 208.62 and 12 CFR 225.4(f).

FinCEN believes that to the extent that non-bank affiliates or subsidiaries of banks or bank holding companies offer the same kinds of services offered by reporting money services businesses, those non-bank affiliates or subsidiaries should be subject to the same suspicious transaction reporting requirement as other money services businesses. Not applying the suspicious transaction reporting regime contained in the final rule to those non-bank affiliates or subsidiaries of banks would ignore the significant differences between banks and money services businesses. See *supra*, discussion at Part V.B.1.<sup>25</sup> The reporting threshold applicable to "back-office" functions of issuers of traveler's checks and money orders has been increased from \$500 to \$5,000, the same

reporting threshold as that for depository institutions.

### VI. Section-by-Section Analysis

#### A. 103.11(ii)—Transaction

The final rule amends the definition of "transaction" in the Bank Secrecy Act regulations, 31 CFR 103.11(ii), explicitly to include the purchase of any money order and the payment or order for any money remittance or transfer. No similar amendment is necessary in the case of traveler's checks, which are already defined clearly as monetary instruments in that definition.

#### B. 103.15—Determination by the Secretary

As stated in the Notice, § 103.20 is redesignated as § 103.15 in order to make room in part 103 for the rule and to create space for future changes to the Bank Secrecy Act regulations.

#### C. 103.18—Reports by Banks of Suspicious Transactions

As stated in the Notice, § 103.21 is redesignated as § 103.18 to make room in subpart B, "Reports Required to be Made," for the suspicious transaction reporting requirement in this final rule.

#### D. 103.20(a)—General

##### 1. Reporting Money Services Businesses

Paragraph 103.20(a)(1) obligates issuers of traveler's checks or money orders, sellers or redeemers (for monetary value) of traveler's checks or money orders, money transmitters, and the U.S. Postal Service to report suspicious transactions as required by § 103.20. The paragraph also permits, but does not require, the voluntary filing of a report by a money services business, in situations in which mandatory reporting is not required.<sup>26</sup>

##### 2. Standard for Mandatory Reporting

The final rule continues to designate three classes of transactions as requiring

<sup>26</sup> Check cashers and currency exchangers are not generally subject to the suspicious transaction reporting requirement contained in this document. Because the operations of those businesses generally involve disbursement rather than receipt of funds, the appropriate definition of suspicious activity involves issues not present to the same degree in the case of money transmitters and money order and traveler's check services. However, check cashing and currency exchange services are subject to the suspicious activity rules to the extent they redeem either money orders or traveler's checks for currency (U.S. or other) or other monetary or negotiable instruments and hence qualify as redeemers of money orders or traveler's checks, or to the extent that check cashers or currency exchangers also offer money transmission, money orders, or traveler's check products. FinCEN will continue to examine issues relating to the appropriate extension of suspicious transaction reporting to the full range of financial institutions subject to the Bank Secrecy Act.

reporting. The first class, described in paragraph (a)(2)(i), includes transactions involving funds derived from illegal activity or intended or conducted in order to hide or disguise funds or assets derived from illegal activity. The second class, described in paragraph (a)(2)(ii), involves transactions designed, whether through structuring or other means, to evade the requirements of the Bank Secrecy Act. The third class, described in paragraph (a)(2)(iii), involves transactions that appear to serve no business or apparent lawful purpose, and for which the money services business knows of no reasonable explanation after examining the available facts relating thereto.

Specific examples of reportable suspicious activity have been removed from the text of the rule. However it remains important that each money services business—whether it issues an instrument or performs a transmission function as principal, or whether it is an agent selling an instrument or service on behalf of another—be able to recognize the sorts of transactions that may require additional scrutiny and at the same time understand that not all such transactions are reportable if a reasonable explanation for the circumstances of a particular transaction arises upon such examination. It is a signal characteristic of money launderers that they seek to do for illegitimate purposes what others do for legitimate purposes.

Of course, determinations as to whether a report is required must be based on all the facts and circumstances relating to the transactions or pattern of transactions in question. Different fact patterns will require different types of judgments. In some cases, the circumstances of the transaction or pattern of transactions may clearly indicate the need to report. For example, an individual's seeking regularly to purchase or redeem instruments in bulk, or to purchase transmissions to multiple overseas locations, all to the same named beneficiary should, in the absence of specific qualifying circumstances, place the money services business on notice that a suspicious transaction is underway. Similarly, the fact that a customer (i) refuses to provide information necessary for the money services business to make reports or keep records required by 31 CFR 103 or other regulations, (ii) provides information that a money services business determines to be false, or (iii) seeks to change or cancel the transaction after such person is informed of currency transaction reporting or information verification or

<sup>24</sup> FinCEN also received comments requesting that the requirement to report suspicious transactions not apply to clearing houses with respect to funds transfers and futures commodities merchants. Those businesses have, for the most part, been carved out from the definition of a money services business, see 31 CFR 103.11(uu) and 64 FR 45438 at 45451, and are therefore not generally subject to the reporting requirement described in the final rule contained in this document.

<sup>25</sup> See also 64 FR 45446 (May 21, 1997), which explains that entities in an affiliated group must be analyzed separately to determine whether each such entity separately falls within the definition of money services business based upon that entity's operation.

recordkeeping requirements relevant to the transaction or of the money services business' intent to file a currency transaction report with respect to the transaction, would all indicate that a suspicious activity report should be filed. (Of course, as the rule makes clear, it is unlawful for the money services business to notify the customer that it intends to file or has filed a suspicious transaction report with respect to the customer's activity.)

At least one commenter questioned whether a customer's suspected status as an undocumented foreign national in the United States would, by itself, require the filing of a suspicious activity report. Paragraph (a)(2)(i) of the rule requires a suspicious activity report to be filed where the reporting money services business suspects or has reason to suspect that the customer's funds are "derived from illegal activity." In light of this language, the commenter requested that FinCEN clarify whether the funds with which a suspected undocumented foreign national conducts a transaction should be deemed as having been derived from illegal activity (*i.e.*, illegal employment in the United States).

If a reporting money services business suspects that one of its customers is an undocumented foreign national, it would be inappropriate to infer, without any additional facts, that any funds possessed by that customer necessarily derive from illegal employment in the United States. For example, the customer may have obtained the funds as a gift. Moreover, even if the money services business knows or suspects that the customer's funds were generated from the customer's employment, employment in the United States as an undocumented foreign national is not necessarily a violation of law.

For these reasons, FinCEN believes that a money services business would not have an obligation to file a suspicious activity report simply because a customer is an undocumented foreign national. This conclusion is consistent with the discussions FinCEN's Office of Chief Counsel has had regarding this matter with its counterpart at the Immigration and Naturalization Service of the U.S. Department of Justice.

### 3. Dollar Threshold for Reporting

Paragraphs 103.20(a)(2) and (3) establish the applicable dollar thresholds for reporting suspicious transactions. In the Notice, FinCEN proposed a single \$500 dollar threshold for reporting suspicious transactions. The final rule adopts two different

dollar thresholds, both markedly higher than the proposed \$500 threshold.

The first threshold, of \$2,000, as set forth in paragraph 103.20(a)(2), would apply generally to each transaction (other than one described in paragraph 103.20(a)(3)) conducted or attempted by, at, or through a money services business or its agent. The second threshold, of \$5,000, would apply to transactions identified by issuers of money orders or traveler's checks from a review of clearance records or other similar records of money orders or traveler's checks that have been sold or processed.

### 4. Obligation to Report Suspicious Transactions

31 U.S.C. 5318(g)(1) authorizes Treasury to require suspicious transaction reporting not only by financial institutions but by "any director, officer, employee, or agent of any financial institution." The authorization parallels the definition of financial institution itself in 31 U.S.C. 5312(a)(2) and (b), and 31 CFR 103.11(n). The operating realities of money services businesses place special importance on the relationships between the operators of the money services businesses involved and the otherwise unrelated businesses that, in many cases, serve as agents of the former to sell the financial products involved, in the case of money orders or traveler's checks, or that serve, in the case of money remissions, as receivers of the funds to be transmitted. One of those operating realities is that the information of a money services business that deals directly with a customer may differ from that information directly available to an issuer or service provider.

Paragraph (a)(4) places responsibility for reporting a suspicious transaction on each money services business involved in the transaction. As noted above, it is important to recognize that an agent of a money services business is itself a money services business for this purpose (whether or not it is required to register). Thus, an agent of a money transmitter may (indeed, usually will) itself be a money services business for purposes of the reporting rule (although not necessarily for purposes of the registration rule).

At least one commenter asked that FinCEN clarify that multiple suspicious transaction reports need not be filed by both a money services business and its agent with respect to the same reportable transaction. It should be noted that, with respect to reportable transactions conducted by the agent of a money services business, the final rule continues to place a dual obligation to

file a suspicious transaction report on both a money services business and its agent as contemplated by 31 U.S.C. 5318(g)(1). However, only one report should be filed with FinCEN to avoid double-reporting on the same transaction. This notion is expressed by new language added to paragraph (a)(4) emphasizing that the dual obligation imposed does not mandate dual filing of reports with respect to the same transaction or pattern of transactions (although the filing of multiple reports may be necessary if different facts are contained in the two reports).

### 5. Exclusion of Stored Value

As noted in the preamble to the final rule on registration of money services businesses, Treasury believes that a business that issues or facilitates the digital transfer of electronically-stored value<sup>27</sup> is a money services business covered by the Bank Secrecy Act.<sup>28</sup> However, it is not appropriate, given the infancy of the use of stored value products in the United States, to finalize a rule specifically dealing with suspicious transaction reporting by non-banks with respect to stored value products at this time. Thus, paragraph (a)(5) continues to exempt transactions solely involving such products from the operation of the rule at present. Many commenters expressed their agreement with this approach.

#### E. 103.20(b)—Filing Procedures

Paragraph (b) continues to set forth the filing procedures to be followed by money services businesses making reports of suspicious transactions. Within 30 days after a money services business becomes aware of a suspicious transaction, the business must report the transaction by completing a Suspicious Activity Report-MSB<sup>29</sup> ("SAR-MSB") and filing it in a central location, to be determined by FinCEN. The SAR-MSB will resemble the suspicious activity reporting form now used by banks to report suspicious transactions; a draft

<sup>27</sup> See 31 CFR 103.11(vv), which defines stored value.

<sup>28</sup> It should be clearly understood that the treatment of stored value and similar products for purposes of the operation of 31 U.S.C. 5330 and the final rule relating to the registration of money services businesses is solely a matter of federal law and cannot be taken as the expression of any view by the Department of the Treasury on the issue whether particular money services businesses are (or, indeed, should be) within the scope of state laws requiring the registration of money transmitters, check cashers, currency exchange businesses, or issuers, sellers, or redeemers of money orders or traveler's checks.

<sup>29</sup> The term "MSB" is an abbreviation for "money services businesses" and is used to distinguish the form from forms for reporting by other non-bank financial institutions.

form will be made available for comment when ready.

Supporting documentation relating to each SAR-MSB is to be collected and maintained separately by the money services business and made available to law enforcement and regulatory agencies upon request. Special provision is made for situations requiring immediate attention, in which case money services businesses are to telephone the appropriate law enforcement authority in addition to filing a SAR-MSB.

Reports filed under the terms of the rule will be lodged in a central data base (on the model of the data base used to process, analyze, and retrieve bank suspicious activity reports). Information will be made available electronically to federal and state law enforcement and regulatory agencies, to enhance the ability of those agencies to carry out their mandates to fight financial crime.

#### *F. 103.20(c)—Retention of Records*

Paragraph (c) continues to provide that money services businesses must maintain copies of the SAR-MSBs they file and the original related documentation (or business record equivalent) for a period of five years from the date of filing. As indicated above, supporting documentation is to be made available to FinCEN and appropriate law enforcement authorities on request.

#### *G. 103.20(d)—Confidentiality of Reports; Limitation of Liability*

Paragraph 103.20(d) continues to incorporate the terms of 31 U.S.C. 5318(g)(2) and (g)(3). Thus, this paragraph specifically prohibits persons filing reports in compliance with the final rule from disclosing, except to law enforcement and regulatory agencies, that a report has been filed or providing any information that would disclose that a report has been prepared or filed. The paragraph also restates the broad protection from liability for making reports of suspicious transactions (whether such reports are required by the final rule or made voluntarily), and for failure to disclose the fact of such reporting, contained in the statute. The regulatory provisions do not extend the scope of either the statutory prohibition or the statutory protection; however, because Treasury recognizes the importance of these statutory provisions to the overall effort to encourage meaningful reports of suspicious transactions and to protect the legitimate privacy expectations of those who may be named in such reports, they are repeated in the rule to remind compliance officers and others of their

existence. FinCEN received no substantive comments concerning this paragraph.

#### *H. 103.20(e)—Compliance*

Paragraph (e) continues to note that compliance with the obligation to report suspicious transactions will be audited, and provides that failure to comply with the rule may constitute a violation of the Bank Secrecy Act and the Bank Secrecy Act regulations, which may subject non-complying money services businesses to enforcement action under the Bank Secrecy Act.

#### *I. 103.20(f)—Effective Date*

At least one commenter asked that FinCEN postpone the effective date to allow the industry the necessary time to develop and implement adequate compliance programs. In response, the final rule provides that the new suspicious activity reporting rules are effective for transactions occurring after December 31, 2001.

### **VII. Executive Order 12866**

The Department of the Treasury has determined that this rulemaking is not a significant regulatory action under Executive Order 12866.

### **VIII. Unfunded Mandates Act of 1995 Statement**

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104-4 (Unfunded Mandates Act), March 22, 1995, requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under section 202 and has concluded that on balance this rule provides the most cost-effective and least burdensome alternative to achieve the objectives of the rule.

### **IX. Regulatory Flexibility Act**

FinCEN certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The average money order sold is approximately \$102, and the average money transmission is approximately \$240 within the United States and approximately \$320 outside the United States. Both of these amounts are

substantially below the general \$2,000 threshold that triggers reporting under the rule. Thus, FinCEN believes that the threshold has been set at a level that will avoid a significant economic burden on small entities.

### **X. Paperwork Reduction Act Notices**

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget ("OMB") in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(d)) under control number 1506-0015. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collection of information in this final rule is in 31 CFR 103.20(c). This information is required to be provided pursuant to 31 U.S.C. 5318(g) and 31 CFR 103.20. This information will be used by law enforcement agencies in the enforcement of criminal and regulatory laws and to prevent money services businesses from engaging in illegal activities. The collection of information is mandatory. The likely recordkeepers are businesses.

The estimated average recordkeeping burden associated with the collection of information in this final rule is 20 minutes per recordkeeper (based on the filing an estimated 10,000 forms with an average recordkeeping burden of 20 minutes with respect to each form).

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Financial Crimes Enforcement Network, Department of the Treasury, 2070 Chain Bridge Road, Suite 200, Vienna, VA 22182, and to OMB, Attention: Desk Officer for the Department of Treasury, FinCEN, Office of Information and Regulatory Affairs, Washington, DC 20503.

### **List of Subjects in 31 CFR Part 103**

Authority delegations (Government agencies), Banks and banking, Currency, Investigations, Law enforcement, Reporting and recordkeeping requirements.

### **Amendments to the Regulations**

For the reasons set forth above in the preamble, 31 CFR part 103 is amended as follows:

**PART 103—FINANCIAL  
RECORDKEEPING AND REPORTING  
OF CURRENCY AND FOREIGN  
TRANSACTIONS**

1. The authority citation for part 103 continues to read as follows:

**Authority:** 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

2. Section 103.11(ii)(1) is revised to read as follows:

**§ 103.11 Meaning of terms.**

\* \* \* \* \*

(ii) *Transaction.* (1) Except as provided in paragraph (ii)(2) of this section, transaction means a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument or investment security, purchase or redemption of any money order, payment or order for any money remittance or transfer, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

\* \* \* \* \*

3. In Subpart B, redesignate §§ 103.20 and 103.21 as §§ 103.15 and 103.18, respectively, and add new § 103.20 to read as follows:

**§ 103.20 Reports by money services businesses of suspicious transactions.**

(a) *General.* (1) Every money services business, described in § 103.11(uu) (3), (4), (5), or (6), shall file with the Treasury Department, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. Any money services business may also file with the Treasury Department, by using the form specified in paragraph (b)(1) of this section, or otherwise, a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section.

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through a money services business, involves or aggregates funds or other assets of at least \$2,000 (except as provided in paragraph (a)(3) of this section), and the money services business knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this part or of any other regulations promulgated under the Bank Secrecy Act, Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330; or

(iii) Serves no business or apparent lawful purpose, and the reporting money services business knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

(3) To the extent that the identification of transactions required to be reported is derived from a review of clearance records or other similar records of money orders or traveler's checks that have been sold or processed, an issuer of money orders or traveler's checks shall only be required to report a transaction or pattern of transactions that involves or aggregates funds or other assets of at least \$5,000.

(4) The obligation to identify and properly and timely to report a suspicious transaction rests with each money services business involved in the transaction, provided that no more than one report is required to be filed by the money services businesses involved in a particular transaction (so long as the report filed contains all relevant facts). Whether, in addition to any liability on its own for failure to report, a money services business that issues the instrument or provides the funds transfer service involved in the transaction may be liable for the failure of another money services business involved in the transaction to report that transaction depends upon the nature of the contractual or other relationship between the businesses, and the legal effect of the facts and circumstances of the relationship and transaction involved, under general principles of the law of agency.

(5) Notwithstanding the provisions of this section, a transaction that involves solely the issuance, or facilitation of the transfer of stored value, or the issuance, sale, or redemption of stored value, shall not be subject to reporting under this paragraph (a), until the

promulgation of rules specifically relating to such reporting.

(b) *Filing procedures—(1) What to file.* A suspicious transaction shall be reported by completing a Suspicious Activity Report-MSB (“SAR-MSB”), and collecting and maintaining supporting documentation as required by paragraph (c) of this section.

(2) *Where to file.* The SAR-MSB shall be filed in a central location to be determined by FinCEN, as indicated in the instructions to the SAR-MSB.

(3) *When to file.* A money services business subject to this section is required to file each SAR-MSB no later than 30 calendar days after the date of the initial detection by the money services business of facts that may constitute a basis for filing a SAR-MSB under this section. In situations involving violations that require immediate attention, such as ongoing money laundering schemes, the money services business shall immediately notify by telephone an appropriate law enforcement authority in addition to filing a SAR-MSB.

(c) *Retention of records.* A money services business shall maintain a copy of any SAR-MSB filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SAR-MSB. Supporting documentation shall be identified as such and maintained by the money services business, and shall be deemed to have been filed with the SAR-MSB. A money services business shall make all supporting documentation available to FinCEN and any other appropriate law enforcement agencies or supervisory agencies upon request.

(d) *Confidentiality of reports; limitation of liability.* No financial institution, and no director, officer, employee, or agent of any financial institution, who reports a suspicious transaction under this part, may notify any person involved in the transaction that the transaction has been reported. Thus, any person subpoenaed or otherwise requested to disclose a SAR-MSB or the information contained in a SAR-MSB, except where such disclosure is requested by FinCEN or an appropriate law enforcement or supervisory agency, shall decline to produce the SAR-MSB or to provide any information that would disclose that a SAR-MSB has been prepared or filed, citing this paragraph (d) and 31 U.S.C. 5318(g)(2), and shall notify FinCEN of any such request and its response thereto. A reporting money services business, and any director, officer, employee, or agent of such reporting money services business, that

makes a report pursuant to this section (whether such report is required by this section or made voluntarily) shall be protected from liability for any disclosure contained in, or for failure to disclose the fact of, such report, or both, to the extent provided by 31 U.S.C. 5318(g)(3).

(e) *Compliance.* Compliance with this section shall be audited by the Department of the Treasury, through FinCEN or its delegees under the terms of the Bank Secrecy Act. Failure to satisfy the requirements of this section may constitute a violation of the reporting rules of the Bank Secrecy Act and of this part.

(f) *Effective date.* This section applies to transactions occurring after December 31, 2001.

Dated: March 7, 2000.

**James F. Sloan,**

*Director, Financial Crimes Enforcement Network.*

[FR Doc. 00-5919 Filed 3-8-00; 3:25 pm]

BILLING CODE 4820-03-P

## DEPARTMENT OF DEFENSE DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 21

RIN 2900-AJ87

#### Veterans Education: Increased Allowances for the Educational Assistance Test Program

**AGENCIES:** Department of Defense and Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The law provides that rates of subsistence allowance and educational assistance payable under the Educational Assistance Test Program shall be adjusted annually by the Secretary of Defense based upon the average actual cost of attendance at public institutions of higher education in the twelve-month period since the rates were last adjusted. After consultation with the Department of Education, the Department of Defense has concluded that the rates for the 1999-2000 academic year should be increased by 4% over the rates payable for the 1998-99 academic year. The regulations dealing with these rates are amended accordingly.

**DATES:** *Effective Date:* This rule is effective March 14, 2000.

**FOR FURTHER INFORMATION CONTACT:** William G. Susling, Jr., Education Advisor, Education Service, Veterans Benefits Administration, Department of Veterans Affairs (202) 273-7187.

**SUPPLEMENTARY INFORMATION:** The law (10 U.S.C. 2145) provides that the Secretary of Defense shall adjust the amount of educational assistance which may be provided in any academic year under the Educational Assistance Test Program, and the amount of subsistence allowance authorized under that program. The adjustment is to be based upon the twelve-month increase in the average actual cost of attendance at public institutions of higher education. As required by law, the Department of Defense has consulted with the Department of Education. The Department of Defense has concluded that these costs increased by 4% in the 1998-99 academic year. Accordingly, this final rule changes 38 CFR 21.5820 and 21.5822 to reflect a 4% increase in the rates payable in the 1999-2000 academic year. The changes to § 21.5820 include adding provisions for adjustments to compensate for rounding, which were not applicable last year because last year the resulting numerical values did not involve rounding. This final rule also makes nonsubstantive changes for the purpose of clarification.

#### Administrative Procedure Act

The rates of subsistence allowance and educational assistance payable under the Educational Assistance Test Program are determined based on a statutory formula and, in essence, the calculation of rates merely constitutes a non-discretionary ministerial act. The other changes made by this document are merely nonsubstantive changes for the purpose of clarification. Accordingly, there is a basis for dispensing with notice-and-comment and a delayed effective date under 5 U.S.C. 552 and 553.

#### Regulatory Flexibility Act

The Secretary of Veterans Affairs and the Secretary of Defense hereby certify 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 directly affects only individuals. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

There is no Catalog of Federal Domestic Assistance number for the program affected by this final rule.

#### List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities,

Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health programs, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: November 18, 1999.

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

*Secretary of Veterans Affairs.*

Approved: March 1, 2000.

**Curtis B. Taylor,**

*Colonel, U.S. Army, Principle Director, (Military Personnel Policy) Department of Defense.*

For the reasons set out above, 38 CFR part 21 (subpart H) is amended as set forth below:

## PART 21—VOCATIONAL REHABILITATION AND EDUCATION

### Subpart H—Educational Assistance Test Program

1. The authority citation for part 21, subpart H is revised to read as follows:

**Authority:** 10 U.S.C. ch. 107; 38 U.S.C. 501(a), 3695, 5101, 5113, 5303A; 42 U.S.C. 2000; sec. 901, Pub. L. 96-342, 94 Stat. 1111-1114, unless otherwise noted.

2. Section 21.5820 is amended by:

A. In paragraph (b)(1), removing “1998-99” and adding, in its place, “1999-2000”; and by removing “\$3,258” and adding, in its place, “\$3,388”.

B. In the introductory text of paragraph (b)(2)(ii), removing “1998-99” and adding, in its place, “1999-2000”.

C. In paragraph (b)(2)(ii)(A), removing “\$362” and adding, in its place, “\$376.44”; and by removing “\$181” and adding, in its place, “\$188.22”.

D. In paragraph (b)(2)(ii)(B), removing “\$12.07” and adding, in its place, “\$12.55”; and by removing “\$6.03” and adding, in its place, “\$6.27”.

E. In the introductory text of paragraph (b)(3)(ii), removing “1998-99” and adding, in its place, “1999-2000”.

F. In paragraph (b)(3)(ii)(A), removing “\$362” and adding, in its place, “\$376.44”; and by removing “\$181” and adding, in its place, “\$188.22”.

G. In paragraph (b)(3)(ii)(B), removing “\$12.07” and adding, in its place, “\$12.55”; and by removing “\$6.03” and adding, in its place, “\$6.27”.

H. Revising paragraphs (b)(2)(ii)(C) and (b)(3)(ii)(C).

I. Adding an authority citation at the end of paragraph (b).

The revisions and addition read as follows:

**§ 21.5820 Educational assistance.**

\* \* \* \* \*

- (b) \* \* \*  
(2) \* \* \*  
(ii) \* \* \*

(C) Adding the two results. If the enrollment period is as long as or longer than a standard academic year, this amount will be increased by 4 for a full-time student and increased by 2 for a part-time student.

- (3) \* \* \*  
(ii) \* \* \*

(C) Adding the two results. If the enrollment period is as long as or longer than a standard academic year, this amount will be increased by 4¢ for a full-time student and increased by 2¢ for a part-time student; and

\* \* \* \* \*

(Authority: 10 U.S.C. 2143, 2145)

\* \* \* \* \*

3. Section 21.5822 is amended by:

A. In paragraph (b)(1)(i), removing "\$812" and adding, in its place, "\$844"; and by removing "1998-99" and adding, in its place, "1999-2000".

B. In paragraph (b)(1)(ii), removing "\$406" and adding, in its place, "\$422"; and by removing "1998-99" and adding, in its place, "1999-2000".

C. In paragraph (b)(2)(i), removing "1998-99" and adding, in its place, "1999-2000"; and by removing "\$812" and adding, in its place, "\$844".

D. In paragraph (b)(2)(ii), removing "1998-99" and adding, in its place, "1999-2000"; and by removing "\$406" and adding, in its place, "\$422".

E. Removing the authority citation at the end of paragraph (b)(1)(ii).

F. Revising the authority citation at the end of paragraph (b)(2)(ii).

The revision reads as follows:

**§ 21.5822 Subsistence allowance.**

\* \* \* \* \*

(Authority: 10 U.S.C. 2144, 2145)

\* \* \* \* \*

[FR Doc. 00-6216 Filed 3-13-00; 8:45 am]

BILLING CODE 8320-01-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[CA 200-0217; FRL-6550-4]

**Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; South Coast Air Quality Management District**

AGENCY: Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the California State Implementation Plan (SIP). The revisions concern rules from the South Coast Air Quality Management District (SCAQMD). These revisions concern the New Source Review requirements and the methodology for calculating facility allocations for oxides of nitrogen (NO<sub>x</sub>) and oxides of sulfur (SO<sub>x</sub>) for sources subject to the Regional Clean Air Incentives Market (RECLAIM) program in the SCAQMD. This approval action will incorporate these rules into the Federally approved SIP. The intended effect of approving these rules is to regulate the construction and modification of stationary sources and the calculation of RECLAIM facility allocations in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for permitting in nonattainment areas.

**DATES:** This rule is effective on April 28, 2000 without further notice, unless EPA receives adverse comments by March 29, 2000. If EPA receives such comment, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Written comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rule revisions and of EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105;

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW, Washington, DC 20460;

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812;

South Coast Air Quality Management District 21865 E. Copley Drive Diamond Bar, CA 91765-4182.

**FOR FURTHER INFORMATION CONTACT:** Thomas C. Canaday, Rulemaking Office (AIR-4), Air Division, U.S.

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, Telephone: (415) 744-1202.

**SUPPLEMENTARY INFORMATION:**

**I. Applicability**

The rules being approved into the California SIP include: South Coast Air Quality Management District (SCAQMD) Rule 2002—Allocations for Oxides of Nitrogen (NO<sub>x</sub>) and Oxides of Sulfur (SO<sub>x</sub>), and Rule 2005—New Source Review for RECLAIM. These rules were submitted by the California Air Resources Board (CARB) to EPA on August 22, 1997, and July 23, 1999, respectively. Rule 2002 establishes the methodology for calculating initial facility allocations for NO<sub>x</sub> and SO<sub>x</sub> sources subject to the requirements of the RECLAIM program. Rule 2005 sets forth the preconstruction review requirements for new facilities subject to the requirements of the RECLAIM program, for modifications to RECLAIM facilities, and for facilities that increase their allocations to a level greater than their starting allocation plus non-tradable credits.

**II. Background**

Rule 2002 was initially adopted by the South Coast Air Quality Management District Board on October 15, 1993 and approved by EPA into the California SIP on November 8, 1996 (61 FR 57775). The SCAQMD Board amended Rule 2002 on December 7, 1995; July 12, 1996 and February 14, 1997. All of the above versions of Rule 2002 have been submitted to EPA for SIP approval. On June 15, 1998, EPA approved the December 7, 1995 version of Rule 2002 into the California SIP (63 FR 32621). Today EPA is taking action on the February 14, 1997 version of Rule 2002.

Rule 2005 was also initially adopted by the South Coast Air Quality Management District Board on October 15, 1993 and approved by EPA into the California SIP on November 8, 1996 (61 FR 57775). The SCAQMD Board adopted revisions to Rule 2005 on December 7, 1995; May 10, 1996; July 12, 1996; February 14, 1997 and most recently, April 9, 1999. All of the above versions of Rule 2005 have been submitted to EPA for SIP approval, except the December 7, 1995 version. On June 15, 1998, EPA approved the May 10, 1996 version of Rule 2005 into the California SIP (63 FR 32621). Today EPA is taking action on the April 9, 1999 version of Rule 2005.

We evaluated Rules 2002 and 2005 for consistency with the CAA, EPA regulations, and EPA policy. We have

found that the revisions made to Rules 2002 and 2005 meet the applicable EPA requirements.

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA or the Act) were enacted. Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. The air quality planning requirements for the reduction of NO<sub>x</sub> emissions through reasonably available control technology (RACT) are set out in section 182(f) of the CAA. On November 25, 1992, EPA published a proposed rule entitled "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO<sub>x</sub> Supplement) which describes the requirements of section 182(f). The NO<sub>x</sub> supplement should be referred to for further information on the NO<sub>x</sub> requirements and is incorporated into this document by reference.

Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO<sub>x</sub> ("major" as defined in section 302 and section 182(c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs), in moderate or above ozone nonattainment areas. The South Coast Air Quality Management District is classified as extreme;<sup>1</sup> therefore this area was subject to the RACT requirements of section 182(b)(2), cited below, and the November 15, 1992 deadline.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC (and NO<sub>x</sub>) emissions (not covered by a pre-enactment control techniques guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO<sub>x</sub> CTGs issued before enactment and EPA has not issued a CTG document for any NO<sub>x</sub> sources since enactment of the CAA. The RACT rules covering NO<sub>x</sub> sources and submitted as SIP revisions are expected to require final installation of the actual NO<sub>x</sub> controls as expeditiously as practicable, but no later than May 31, 1995.

NO<sub>x</sub> emissions contribute to the production of ground level ozone and smog. The subject rules were adopted as part of SCAQMD's efforts to achieve the National Ambient Air Quality Standards (NAAQS) for ozone and in response to the CAA requirements cited above. The

following is EPA's evaluation and final action for these rules.

### III. EPA Evaluation and Action

On June 15, 1998, EPA approved into the SIP a version of Rule 2002—Allocations for Oxides of Nitrogen (NO<sub>x</sub>) and Oxides of Sulfur (SO<sub>x</sub>) that had been adopted by SCAQMD on December 7, 1995. Revisions to this rule were subsequently adopted by SCAQMD on July 12, 1996 and February 14, 1997 and submitted to EPA. While EPA can only act on the most recently submitted version, EPA reviewed relevant materials associated with superseded versions.

SCAQMD submitted Rule 2002—Allocations for Oxides of Nitrogen (NO<sub>x</sub>) and Oxides of Sulfur (SO<sub>x</sub>) was revised to clarify that the SCAQMD is not required to print out the entire Facility Permit when the Facility Permit is reissued to reflect necessary updates. Only updated sections of the reissued Facility Permit need be printed out at the beginning of each compliance year. Language has also been added to Rule 2002 that stipulates that the annually reissued permit shall list a facility's initial starting allocation, starting Non-Tradable Credits (NTC), and the facility's allocations as well as any RECLAIM Trading Credits (RTCs) obtained pursuant to SCAQMD Rule 2007 for the next fifteen years. Rule 2002 language has also been modified to replace incorrect emissions factors or to add emissions factors for some source categories. These source categories include fluid catalytic cracking units (FCCUs), delacquering furnaces, pot furnaces, new and/or modified boilers, and exempted internal combustion engines (ICEs). Unnecessary emissions factors have been removed from Rule 2002 for the following categories: ICE Large Bore Engines, Reported Value, Waste Gas Flare, Facility Surveyed Emissions Inventory, Petroleum Refining, and Petroleum Refining Blowdown Systems. Finally, language has been added to Rule 2002 so that the year 2003 allocation level will continue for years subsequent to 2010. A more detailed discussion of these modifications to Rule 2002 can be found in the Technical Support Document (TSD) for Rule 2002 dated January 10, 2000.

On June 15, 1998, EPA approved into the SIP a version of Rule 2005—New Source Review for RECLAIM that had been adopted by SCAQMD on May 10, 1996. Revisions to this rule were subsequently adopted by the SCAQMD Board on July 12, 1996, February 14, 1997, and April 9, 1999 and submitted to EPA. While EPA can only act on the

most recently submitted version, EPA reviewed relevant materials associated with superseded versions.

SCAQMD submitted Rule 2005—New Source Review for RECLAIM was revised to clarify New Source Review requirements for a change of operator, and to clarify that the current requirements for modifications to existing facilities include modifications to facilities that received all permits to construct after January 1, 1994. A more detailed discussion of these modifications to Rule 2005 can be found in the Technical Support Document (TSD) for Rule 2005 dated January 10, 2000.

In determining the approvability of a NO<sub>x</sub> rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for this action, appears in various EPA policy guidance documents.<sup>2</sup> Among these provisions is the requirement that a NO<sub>x</sub> rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO<sub>x</sub> emissions.

For the purposes of assisting State and local agencies in developing NO<sub>x</sub> RACT rules, EPA prepared the NO<sub>x</sub> Supplement to the General Preamble, cited above (57 FR 55620). In the NO<sub>x</sub> Supplement, EPA provides guidance on how RACT will be determined for stationary sources of NO<sub>x</sub> emissions. While most of the guidance issued by EPA on what constitutes RACT for stationary sources has been directed towards application for VOC sources, much of the guidance is also applicable to RACT for stationary sources of NO<sub>x</sub> (see section 4.5 of the NO<sub>x</sub> Supplement). In addition, pursuant to section 183(c), EPA is issuing alternative control technique documents (ACTs), that identify alternative controls for categories of stationary sources of NO<sub>x</sub>. The ACT documents will provide information on control technology for stationary sources that emit or have the potential to emit 25 tons per year or more of NO<sub>x</sub>. However, the ACTs will not establish a presumptive norm for what is considered RACT for stationary

<sup>1</sup> The South Coast Air Quality Management District retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

<sup>2</sup> Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to appendix D of November 24, 1987 Federal Register document" (Blue Book) (notice of availability was published in the Federal Register on May 25, 1988).

sources of NO<sub>x</sub>. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted NO<sub>x</sub> RACT rules meet Federal RACT requirements and are fully enforceable and strengthen or maintain the SIP.

EPA has evaluated the submitted rules and has determined that the revisions made to these rules are consistent with the CAA, EPA regulations and EPA policy. Therefore, South Coast Air Quality Management District's Rules 2002 and 2005 are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a), section 182(b)(2), section 182(f) and the NO<sub>x</sub> Supplement to the General Preamble.

EPA is publishing these rules without prior proposal because the Agency views this as a noncontroversial amendment 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 revisions should adverse comments be filed. These rules will be effective April 28, 2000 without further notice unless the Agency receives adverse comments by March 29, 2000.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rules commented on will not take effect. All public comments received will then be addressed in subsequent final rules based on the proposed rules. The EPA will not institute a second comment period on these rules. Any parties interested in commenting on these rules should do so at this time. If no such comments are received, the public is advised that these rules will be effective on April 28, 2000 and no further action will be taken on the proposed rules.

#### IV. Administrative Requirements

##### A. Executive Order 12866

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

##### B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or

EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 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 is does not involve decisions intended to mitigate environmental health or safety risks.

##### D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of

Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of 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 a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

##### F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to

State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

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

#### G. Submission to Congress and the Comptroller General

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

#### H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 28, 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, Hydrocarbons, Incorporation by reference,

Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Dated: January 21, 2000.

**Laura Yoshii,**

*Deputy Regional Administrator, Region IX.*

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

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

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

#### Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(268) and (271) to read as follows:

##### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(268) New and amended regulations for the following agencies were submitted on July 23, 1999, by the Governor's designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District.

(1) Rule 2005 adopted on April 9, 1999.

\* \* \* \* \*

(271) New and amended regulations for the following agencies were submitted on August 22, 1997, by the Governor's designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District.

(1) Rule 2002 adopted on February 14, 1997.

\* \* \* \* \*

[FR Doc. 00-6094 Filed 3-13-00; 8:45 am]

**BILLING CODE 6560-50-P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 300

[FRL-6560-3]

#### National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List Update

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of deletion of the Jacksonville Municipal Landfill Superfund Site from the National Priorities List.

**SUMMARY:** The United States Environmental Protection Agency (EPA)

Region 6 announces the deletion of the Jacksonville Municipal Landfill Superfund Site ("the Site") from the National Priorities List (NPL). The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which the EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. The EPA and the State of Arkansas Department of Environmental Quality (ADEQ), have determined that the remedial action for the Site has been successfully completed and that no further action is warranted.

**EFFECTIVE DATE:** March 14, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kathleen Aisling, Remedial Project Manager, U.S. EPA (6SF-LT), 1445 Ross Avenue, Dallas, Texas 75202-2733, (214) 665-8509 or 1-800-533-3508, aisling.kathleen@epa.gov.

**SUPPLEMENTARY INFORMATION:** The site to be deleted from the NPL is: Jacksonville Municipal Landfill Site, Jacksonville, Arkansas.

A Notice of Intent to Delete for this site was published in the **Federal Register** on November 9, 1999 (60 FR 15737). The closing date for comments on the Notice of Intent to Delete was January 9, 2000. EPA received no comments.

The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed remedial actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

#### List of Subjects 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: February 28, 2000.

**Jerry Clifford,**

*Deputy Regional Administrator, Region 6.*

For the reasons set out in the Preamble, 40 CFR part 300 is amended as follows:

**PART 300—[AMENDED]**

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

**Authority:** 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

**Appendix B—[Amended]**

2. Table 1 of Appendix B to part 300 is amended under Arkansas (“AR”) by removing the site name “Jacksonville Municipal Landfill, Jacksonville, AR”. [FR Doc. 00–6218 Filed 3–13–00; 8:45 am]

**BILLING CODE** 6560–50–P

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 000211039–0039–01; I.D. 030800A]

**Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Fisheries by Vessels using Hook-and-Line Gear in the Gulf of Alaska**

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

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for groundfish by vessels using hook-and-line gear in the Gulf of Alaska (GOA), except for sablefish or demersal shelf rockfish. This action is necessary because the first seasonal bycatch mortality allowance of Pacific halibut apportioned to hook-and-line gear targeting groundfish other than sablefish or demersal shelf rockfish in the GOA has been caught.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), March 9, 2000, until 1200 hrs, A.l.t., May 18, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mary Furuness, 907–586–7228

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (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 Pacific halibut bycatch mortality allowance for groundfish included in

the other hook-and-line fishery, which is defined at § 679.21(d)(4)(iii)(C), was established by the Final 2000 Harvest Specifications of Groundfish for the GOA (65 FR 8298, February 18, 2000) for the first season, the period January 1, 2000, through May 17, 2000, as 250 metric tons. The other hook-and-line fishery includes all groundfish except sablefish or demersal shelf rockfish.

In accordance with § 679.21(d)(7)(ii), the Administrator, Alaska Region, NMFS, has determined that the first seasonal apportionment of the 2000 Pacific halibut bycatch mortality allowance specified for the hook-and-line groundfish fisheries other than sablefish or demersal shelf rockfish in the GOA has been caught. Consequently, NMFS is prohibiting directed fishing for groundfish other than sablefish or demersal shelf rockfish by vessels using hook-and-line gear in the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

**Classification**

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent exceeding the first seasonal apportionment of the 2000 Pacific halibut bycatch mortality allowance specified for the groundfish fisheries other than sablefish or demersal shelf rockfish by vessels using hook-and-line gear in the GOA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest, which would disrupt the FMP’s objective of apportioning Pacific halibut bycatch allowances throughout the year. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.21 and is exempt from review under E.O. 12866.

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

Dated: March 9, 2000.

**Gary C. Matlock,**

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

[FR Doc. 00–6194 Filed 3–9–00; 2:34 pm]

**BILLING CODE** 3510–22–F

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 000211040–0040–01; I.D. 030700B]

**Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Using Hook-and-line or Pot Gear in the Bering Sea and Aleutian Islands**

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

**ACTION:** Closure.

**SUMMARY:** NMFS is closing directed fishing for Pacific cod by vessels using hook-and-line or pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the first seasonal allowance of the 2000 total allowable catch (TAC) of Pacific cod allocated for vessels using hook-and-line or pot gear in this area.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), March 10, 2000, until 1200 hrs, A.l.t., September 1, 2000.

**FOR FURTHER INFORMATION CONTACT:**

Mary Furuness, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI 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 first seasonal allowance of the TAC of Pacific cod allocated to vessels using hook-and-line or pot gear in the BSAI during the time period January 1 to April 30 was established by the Final 2000 Harvest Specifications of Groundfish for the BSAI (65 FR 8282, February 18, 2000) as 65,000 metric tons (mt). The second seasonal allowance for the time period May 1 to August 31 was established as 0 mt. See § 679.20(c)(3)(iii) and § 679.20(a)(7)(i)(A).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the first seasonal allowance of the TAC of Pacific cod

allocated to vessels using hook-and-line or pot gear in the BSAI will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 64,900 mt, and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is closing directed fishing for Pacific cod for vessels using hook-and-line or pot gear in the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

#### Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent overharvesting the first seasonal allowance of the 2000 TAC of Pacific cod allocated to vessels using hook-and-line or pot gear in the BSAI. A delay in the effective date is impracticable and contrary to the public interest. The Pacific cod directed fishing first seasonal allowance established for vessels using hook-and-line or pot gear will soon be reached. Further delay would only result in overharvest, which would disrupt the FMP's objective of providing sufficient Pacific cod to

support bycatch needs in other anticipated groundfish fisheries throughout the year. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

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

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

Dated: March 8, 2000.

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

[FR Doc. 00-6193 Filed 3-9-00; 2:33 pm]

**BILLING CODE 3510-22-F**

# Proposed Rules

Federal Register

Vol. 65, No. 50

Tuesday, March 14, 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.

## NORTHEAST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE COMMISSION

### 10 CFR Chapter XVIII

#### Northeast Low-Level Radioactive Waste Compact Proposed Rule for Declaration of Party State Eligibility

**AGENCY:** Northeast Interstate Low-Level Radioactive Waste Commission

**ACTION:** Notice of proposed rulemaking and invitation for comments

**SUMMARY:** The Northeast Interstate Low-level Radioactive Waste Commission (the "Commission") provides this notice of proposed rulemaking to establish the conditions under which a state not a party to the Northeast Interstate Low-Level Radioactive Waste Management Compact (the "Compact") may be declared eligible to become a party state. The Commission must declare a state eligible before it may become a party state to the Compact. The conditions established by the Commission through this rule are intended to protect the integrity of the Compact and the interests of both the existing party states and the state petitioning for a declaration of eligibility.

**DATES:** Written comments to the proposed rule may be submitted until April 13, 2000. Public hearings will be held on April 17 and 18, 2000.

**ADDRESSES:** Written comments should be submitted to Kevin McCarthy, Chairman, Northeast Interstate Low-Level Radioactive Waste Commission, 703 Hebron Avenue, Glastonbury, Connecticut 06033. Public hearings will be held at 1:00 p.m. on April 17, 2000, at 44 S. Clinton Avenue, Station Plaza III, Trenton, New Jersey, and at 1:00 p.m. on April 18, 2000, at 10 Middle Street, 1st Floor, Bridgeport, Connecticut. Requests to testify at the public hearing should be submitted to Mr. McCarthy.

**FOR FURTHER INFORMATION CONTACT:** Kevin McCarthy, Chairman, Northeast Interstate Low-Level Radioactive Waste

Commission, 703 Hebron Avenue, Glastonbury, CT 06033, (860) 633-2060.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Compact was established by "The Omnibus Low-Level Radioactive Waste Compact Consent Act of 1985," Public Law 99-240, Title II (the "Act"). The Act gave Congress' consent to agreements between and among states that were designed to facilitate the regional disposal of low-level radioactive waste ("waste"), thereby promoting the health and safety of the region. Connecticut and New Jersey are current members of the Compact. The Act also established the Commission and gave it authority, *inter alia*, to promulgate rules, conduct hearings, receive and act on applications to become eligible states, develop regional plans to ensure safe and effective management of waste within the region, designate a host state for siting of a regional disposal facility, enter agreements for the importation of waste into the region and export of waste from the region, impose sanctions, and establish criteria for disposal fees. The Commission consists of one voting member from Connecticut and one voting member from New Jersey.

Since the establishment of the Compact, there has been no regional disposal facility to receive waste generated within the Compact states. Nevertheless, at various times, regional generators have been able to dispose of their waste at other facilities (e.g., at facilities located in Clive, Utah, and Barnwell, South Carolina). Those facilities have not always been available for disposal of all of the waste generated within the region, however, and the Commission has sought to make available more reliable access to waste disposal facilities. Current regional generators anticipate that they will need assured access to waste disposal facilities for the next 50 years until all of the currently licensed nuclear power stations are fully decommissioned and all spent nuclear fuel has been removed from the sites. With these needs in mind, the Commission seeks to ensure the long-term availability of approximately 800,000 cubic feet of disposal space to accommodate all classes of low-level waste. The Commission also seeks to stabilize fees for waste disposal.

The Commission has determined that it may be in the interests of the Compact states to declare another state eligible for membership in the Compact if (a) that state is willing to become the voluntary host state and (b) membership in the Compact would achieve important objectives for both the current member states and any petitioning state. Article VII.e. of the Compact permits the Commission to "establish such conditions as it deems necessary and appropriate to be met by a state requesting eligibility as a party state to this compact." The Commission has further determined that the identification and implementation of reasonable conditions to be applied when evaluating a petition for new party state eligibility are essential to the long-term health and safety of the region.

This rule is intended to establish the conditions for party state eligibility contemplated by Article VII.e. of the Compact and the criteria for fee and surcharge systems contemplated by Article IV.i.(15) of the Compact. The rule specifies the procedures that the Commission will follow for receiving petitions for party state eligibility. It then describes the essential conditions for declaring a state eligible for membership in the Compact. Those conditions include agreements (a) to be the sole host state until all currently licensed nuclear power stations in the region have been decommissioned, (b) to warrant the availability of 800,000 cubic feet of disposal capacity for Connecticut and New Jersey generators, (c) to assure stable, predictable disposal fees that are no greater than generators in Connecticut and New Jersey paid at the end of 1999, (d) to give flexibility for generators to dispose of waste elsewhere at their discretion, (e) to indemnify the existing party states for any potential environmental liability caused by their membership in the Compact and by operation of the regional disposal facility, and (f) to ensure an equitable schedule for return of a portion of any incentive payment made by the existing party states if the regional disposal facility ceases to be available for any reason.

The Commission believes that this rule will further promote health and safety within the region. It will provide a mechanism to consider a long-term resolution for disposal of low-level

radioactive waste generated within the region. It will establish the essential conditions that must be satisfied before declaring a state eligible for membership in the Compact. The rules are consistent with and will further the purposes of the Compact and the Low-Level Radioactive Waste Policy Act, as amended (Pub. L. 96-573; Pub. L. 99-240, Title I).

The Commission solicits comments on the proposed rule from any interested party. After the close of the comments period, the Commission will hold hearings to consider the comments and any other appropriate evidence. Upon adoption of final rules, the Commission will use those rules to evaluate any petition for eligibility to become a party state.

#### Statutory Authority

Authority for this rulemaking is provided to the Commission by The Omnibus Low-level Radioactive Waste Compact Consent Act of 1985, Public Law 99-240, section 227, Art. IV(i)(7), Art. VII(e), 99 Stat. 1842, 1914, 1921-22.

#### Public Participation in Rulemaking Proceedings

The Commission seeks and encourages oral and written testimony and comments from all interested persons regarding this proposed rule. The Commission recognizes the benefit of the valuable insights and active participation of all segments of the affected community including consumers, utility and other generators, and governments in the development and administration of this rule.

Requests to provide oral testimony at the public hearing should be submitted to Kevin McCarthy, Chairman, Northeast Interstate Low-Level Radioactive Waste Commission, 703 Hebron Avenue, Glastonbury, CT 06033, and must be received by April 13, 2000, for the requestor to be placed on the speaker's list. The Commission may limit the time allotted to individual speakers as it deems necessary and appropriate. Persons who have not submitted requests in advance will be accommodated, time permitting, at the discretion of the Commission.

#### Request for Comments

Any person may participate in the rulemaking proceeding independent of the hearing process by submitting written comments to the Commission. Comments may be submitted at any time before April 13, 2000. Written comments received after this date (including at the hearings) will be considered if it is practical to do so.

**Please note:** Comments will be made part of the record of the rulemaking proceeding only if they identify the author's name, address, and occupation, and if they include a statement describing the factual basis for the comments.

#### List of Subjects in 10 CFR Part 1800

Administrative practice and procedure, Hazardous waste, Radioactive material.

#### Kevin McCarthy,

*Chairman, Northeast Low-Level Radioactive Waste Commission.*

For the reasons set out in the preamble, the Commission proposes to establish chapter XVIII, consisting of part 1800, in title 10 of the Code of Federal Regulations to read as follows:

#### CHAPTER XVIII—NORTHEAST LOW-LEVEL RADIOACTIVE WASTE COMMISSION

#### PART 1800—DECLARATION OF PARTY STATE ELIGIBILITY FOR NORTHEAST LOW-LEVEL RADIOACTIVE WASTE COMPACT

Sec.

1800.10 Purpose and scope.

1800.11 Definitions.

1800.12 Procedures for declaring a state eligible for membership in the Compact.

1800.13 Conditions for becoming an eligible party state.

1800.14 Modification to and enforcement of the rule in this part.

**Authority:** Sec. 227, Art. IV(i)(7), Art. VII(e), Pub. L. 99-240, 99 Stat. 1842, 1914, 1921-1922.

#### § 1800.10 Purpose and scope.

Pursuant to Articles IV.i.(1), (7), (15), and VII.e. of the Northeast Low-Level Radioactive Waste Compact (enacted by the "Omnibus Low-Level Radioactive Waste Compact Consent Act of 1985," Public Law 99-240, 99 Stat. 1842, Title I) (the "Compact"), the Northeast Low-Level Waste Policy Commission (the "Commission") establishes through this part the conditions that it deems necessary and appropriate to be met by a state requesting eligibility to become a party state to this Compact. The Commission shall apply these conditions to evaluate the petition of any state seeking to be eligible to become a party state pursuant to Article VII of the Compact.

#### § 1800.11 Definitions.

The definitions contained in Article II of the Compact and Article I.B. of the Commission's By Laws shall apply throughout this part. For the purposes of this part, additional terms are defined as follows:

(a) *By Laws* refers to the Commission's By Laws as adopted and amended by

the Commission pursuant to Article IV.c. and Article IV.i.(7) of the Compact, most recently amended on December 10, 1998, and dated July 1999;

(b) *Person* means an individual, corporation, business enterprise or other legal entity, either public or private, and expressly includes states;

(c) *Nuclear power station* means any facility holding a license from the U.S. Nuclear Regulatory Commission under 10 CFR part 50.

(d) *Existing party states* means Connecticut and New Jersey collectively.

#### § 1800.12 Procedures for declaring a state eligible for membership in the Compact.

(a) Any state seeking to become an eligible state under the Compact shall submit to the Chairman of the Commission six copies of a petition to become an eligible state. The petition shall discuss each of the conditions specified in § 1800.13 and shall:

(1) Affirm that the petitioning state fully satisfies each condition; or

(2) Explain why the petitioning state does not or cannot fully satisfy any particular condition.

(b) Upon receipt of a petition from any state seeking to become an eligible state under the Compact, the Commission shall publish a notice in accordance with Article I.F.1. of the By Laws and shall initiate an adjudicatory proceeding to act on the petition. Any person may submit written comments on a petition, and all such comments must be received by the Commission within 30 days of notice that a petition has been submitted.

(c) The Commission shall evaluate the petition against the conditions for declaration of an eligible state specified in § 1800.13. As part of the proceeding to evaluate a petition to become an eligible state, the Commission may, in its discretion, conduct a hearing pursuant to Article IV.i.(6) of the Compact and Article V.F.1. of the Commission's By-Laws. For good cause shown, the Commission may issue an order shortening the notice period for hearings provided in Article I.F.1. of the By Laws to a period of not less than ten days.

(d) After review of the petition and after any hearing, if held, the Commission shall issue an order accepting or rejecting the petition or accepting the petition with conditions. If the Commission accepts the petition without conditions, the petitioning state shall be declared an eligible state and shall become a new party state upon passage of the Compact by its state legislature, repeal of all statutes or statutory provisions that pose

unreasonable impediments to the capability of the state to satisfy the conditions for eligibility (as determined by the Commission) and payment of (or arrangement to pay) the fee specified in Article IV.j.(1). If the Commission accepts the petition with conditions, the petitioning state may become an eligible state by satisfying all of the conditions in the Commission's order and providing an amended petition incorporating its compliance with all of the conditions in this subpart and in the Commission's order. The Commission will consider the amended petition as part of the original adjudicatory proceeding and will issue a new order accepting or rejecting the amended petition.

(e) A state that submits a petition for declaration as an eligible state that is rejected by the Commission may submit a new petition at any time. The Commission will consider the new petition without reference to the prior petition but may use evidence obtained in any prior proceeding to evaluate the new petition.

(f) The Commission's consideration of a petition for declaration of an eligible state shall be governed by the Compact, the Commission's By Laws, and this part.

**§ 1800.13 Conditions for becoming an eligible party state.**

The Commission shall evaluate a petition to become an eligible party state on the basis of the following conditions and criteria:

(a) To be eligible for Compact membership, a state must agree that it will be the voluntary host state upon admission to the Compact and will continue to be the voluntary host state for a least that period of time until all currently licensed nuclear power stations within the region have been fully decommissioned and their licenses (including any licenses for storage of spent nuclear fuel under 10 CFR part 72) have been terminated.

(b) To be eligible for Compact membership, a state must agree that, so long as the petitioning state remains within the Compact, it will be the sole host state.

(c) To be eligible for Compact membership, a state must warrant the availability of a regional disposal facility that will accommodate 800,000 cubic feet of waste from generators located within the borders of the existing party states.

(d) To be eligible for Compact membership, a state must agree to establish a uniform fee schedule for waste disposal at the regional disposal facility that shall apply to all generators

within the region. That uniform fee schedule, including all surcharges (except new surcharges imposed pursuant to Article V.f.3. of the Compact), shall not exceed the average fees that generators within the existing party states paid for disposal at the Barnwell, South Carolina, facility at the end of calendar year 1999, adjusted annually based on an acceptable inflation index.

(e) To be eligible for Compact membership, a state must agree with the existing states that regional generators shall be permitted to process or dispose of waste at sites outside the Compact boundaries based solely on the judgment and discretion of each regional generator.

(f) To be eligible for Compact membership, a state must agree with the existing states that the Commission may authorize importation of waste from non-regional generators for the purpose of disposal only if the host state approves and such importation does not jeopardize the warranted availability of 800,000 cubic feet of disposal capacity for waste produced by generators within the existing party states. A new party state must agree that regional generators shall not pay higher fees than non-regional generators and that all books and records related to the establishment or collection of fees shall be available for Commission review.

(g) To be eligible for Compact membership, in addition to the express limitations on non-host state and Commission liability provided in the Compact, a state must agree to indemnify the Commission or the existing party states for any damages incurred solely because of the new state's membership in the Compact and for any damages associated with any injury to persons or property during the institutional control period as a result of the radioactive waste and waste management operations of any regional facility. The petitioning state must agree that this indemnification obligation will survive the termination of the petitioning state's membership in the Compact.

(h) To be eligible for Compact membership, a state must agree that any incentive payments made by the existing party states as an inducement for a state to join the Compact will be returned to the existing party states, with interest, on a pro rata basis if, for any reason, the regional disposal facility ceases to be available to generators in the existing party states for a period of more than six months (other than periods that have been expressly approved and authorized by the Commission) or is unavailable for

disposal of 800,000 cubic feet of waste from generators within the borders of the existing states. In the event of such unavailability, the new party state must agree to return the incentive payments based on the following schedule:

(1) 75% of the incentive payment if the regional facility becomes unavailable prior to December 31, 2001;

(2) 50% of the incentive payment if the regional facility becomes unavailable on or after January 1, 2002, and prior to December 31, 2003;

(3) 30% of the incentive payment if the regional facility becomes unavailable on or after January 1, 2003, and prior to December 31, 2005;

(4) 20% of the incentive payment if the regional facility becomes unavailable on or after January 1, 2006, and prior to December 31, 2008;

(5) 10% of the incentive payment if the regional facility becomes unavailable on or after January 1, 2009, and prior to the time when all currently licensed nuclear power stations within the region have been fully decommissioned and their licenses (including any licenses for storage of spent nuclear fuel under 10 CFR part 72) have been terminated.

(i) To be eligible for Compact membership, a state must agree with the existing states that once a new party state has been admitted to membership in the Compact pursuant to these rules, declaration of any other state as an eligible party state will require the unanimous consent of all members of the Commission.

**§ 1800.14 Modification to and enforcement of the rule in this part.**

(a) Because of the importance of the conditions for declaration of an eligible state under the Compact, the rule in this part may only be modified, amended, or rescinded after a public hearing held pursuant to Article IV.i.(6) of the Compact and Article V.F.1. of the Commission's By Laws and by a unanimous vote of all members of the Commission.

(b) Any party state may enforce the rules in this part by bringing an action against or on behalf of the Commission in the United States District Court for the District of Columbia pursuant to Article IV.n. of the Compact.

(c) If, for any reason, any portion of the rules in this part shall be declared invalid or unenforceable, the remainder of the rules in this part shall remain in full force and effect.

[FR Doc. 00-6228 Filed 3-13-00; 8:45 am]

BILLING CODE 7595-01-U

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 25**

[Docket No. NM170; Notice No. 25-00-01-SC]

**Special Conditions: Raytheon Aircraft Company Model 4000; High Intensity Radiated Fields (HIRF)****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice of proposed special conditions.

**SUMMARY:** This notice proposes special conditions for the Raytheon Aircraft Company Model 4000 airplane. This airplane will utilize new avionics/electronics and electrical systems that will perform critical functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

**DATES:** Comments must be received on or before April 13, 2000.

**ADDRESSES:** Comments on these proposed special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM-114), Docket No. NM170, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM170. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Mark Quam, FAA, Standardization Branch, ANM-113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; telephone (425) 227-2145; facsimile (425) 227-1149.

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

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above.

All communications received on or before the closing date for comments will be considered by the Administrator. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM170." The postcard will be date stamped and returned to the commenter.

**Background**

On May 3, 1996, Raytheon Aircraft Company, PO Box 85, Wichita, Kansas 67201-0085, submitted an application for a new type certificate for the Raytheon Model 4000. The significant aircraft design features include an 84 inch diameter graphite composite fuselage, new metal wing and a graphite composite skin on aluminum substructure empennage. The Model 4000 is 69 feet, 2 inches in length and 61 feet, 9 inches in width. It has a Primus Epic flightdeck, and two aft mounted PW308A engines. There are 12 forward-facing seats and a forward observer seat. The significant systems features include a new state of the art integrated avionics/electronics and electrical systems suite. The avionics/electronics and electrical systems installed in this airplane have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

**Type Certification Basis**

Under the provisions of 14 CFR 21.17, Raytheon Aircraft Company must show that the Model 4000 meets the applicable provisions of part 25, as amended by Amendment 25-1 through Amendment 25-87 thereto.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for the Raytheon Aircraft Company Model 4000 airplane because of novel or unusual design features, special conditions are prescribed under the provisions of 14 CFR 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model 4000 must comply with the part 25 fuel vent and exhaust emission requirements of 14

CFR part 34 and the part 25 noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 92-574, the "Noise Control Act of 1972."

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

**Novel or Unusual Design Features**

The Raytheon Aircraft Company Model 4000 airplanes will utilize new avionics/electronics and electrical systems that will perform critical functions. These systems may be vulnerable to HIRF external to the airplane. The significant systems features include a new state of the art integrated avionics/electronics and electrical systems suite. The avionics/electronics and electrical systems installed in this aircraft have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

**Discussion**

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Raytheon Aircraft Company Model 4000, which require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

**High-Intensity Radiated Fields (HIRF)**

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications coupled with electronic command and control of

the airplane, and the use of composite material in the airplane structure, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF.

Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1, OR 2 below:

1. A minimum threat of 100 volts rms per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe for both of the following field strengths for the frequency ranges indicated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz .....	50	50
100 kHz–500 kHz .....	50	50
500 kHz–2 MHz .....	50	50
2 MHz–30 MHz .....	100	100
30 MHz–70 MHz .....	50	50
70 MHz–100 MHz .....	50	50
100 MHz–200 MHz .....	100	100
200 MHz–400 MHz .....	100	100
400 MHz–700 MHz .....	700	50
700 MHz–1 GHz .....	700	100
1 GHz–2 GHz .....	2000	200
2 GHz–4 GHz .....	3000	200
4 GHz–6 GHz .....	3000	200
6 GHz–8 GHz .....	1000	200
8 GHz–12 GHz .....	3000	300
12 GHz–18 GHz .....	2000	200
18 GHz–40 GHz .....	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the computer modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

**Applicability**

As discussed above, these special conditions are applicable to the Model 4000 airplane. Should Raytheon Aircraft Company apply at a later date for a

change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

**Conclusion**

This action affects only certain design features on the Raytheon Aircraft Company Model 4000 airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

**List of Subjects in 14 CFR Part 25**

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

**PART 25—[AMENDED]**

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

**The Proposed Special Conditions**

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Raytheon Aircraft Company Model 4000 airplanes.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields.

2. For the purpose of this special condition, the following definition applies:

*Critical Functions.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on March 6, 2000.

**Vi L. Lipski**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM-100.*

[FR Doc. 00-6127 Filed 3-10-00; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

[Airspace Docket No. 00-AGL-06]

**Proposed modification of Class E Airspace; Holland, MI**

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to modify Class E airspace at Holland, MI. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 26 has been developed for Tulip City Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing this approach. This action would increase the radius of the existing Class E airspace for Tulip City Airport.

**DATES:** Comments must be received on or before May 1, 2000.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL-7, Rules Docket No. 00-AGL-06, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

**FOR FURTHER INFORMATION CONTACT:** Denis C. Burke, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decision on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposals. Communications should identify the airspace docket number and be

submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 00-AGL-06." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

#### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267-3484.

Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedures.

#### The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Holland, MI, by increasing the radius of the existing Class E airspace for Tulip City Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an

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

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

Airspace, Incorporation by reference, Navigation (air).

#### The Proposed Amendment

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

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

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

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

#### §71.1 [AMENDED]

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

\* \* \* \* \*

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

#### AGL MI E5 Holland, MI [Revised]

Holland, Park Township Airport, MI  
(Lat. 42° 47' 45" N., long. 86° 09' 43" W.)  
Holland, Tulip City Airport, MI  
(Lat. 42° 44' 35" N., long. 86° 06' 18" W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Park Township Airport, and within 2.7 miles each side of the 037° bearing from Park Township Airport, extending from the 6.3-mile radius to 7.4 miles northeast of

the airport, and within a 7.9-mile radius of the Tulip City Airport.

\* \* \* \* \*

Issued in Des Plaines, Illinois on March 1, 2000.

**Christopher R. Blum,**

*Manager, Air Traffic Division*

[FR Doc. 00-6221 Filed 3-13-00; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Airspace Docket No. 99-ANE-91]

RIN 2120-AA66

#### Proposed Modification of the East Coast Low Airspace Area

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to amend the East Coast Low Airspace Area. Specifically, this action proposes to modify the East Coast Low airspace area by extending the boundaries further east, south, and southwest of the Nantucket Airport, MA, and lowering the controlled airspace floor in this new area to 2,000 feet mean sea level (MSL). The FAA is proposing this action to provide additional controlled airspace for aircraft operations arriving and departing the Nantucket Airport.

**DATES:** Comments must be received on or before April 24, 2000.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANE-500, Docket No. 99-ANE-91, Federal Aviation Administration, New England Region Headquarters, 12 New England Executive Park, Burlington, MA 01803. The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, ANE-500, Federal Aviation Administration, New England Regional Headquarters, 12 New England Executive Park, Burlington, MA 01803.

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

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

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments providing supporting facts for the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99-ANE-91." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking also will be filed in the docket.

**Availability of NPRM's**

An electronic copy of this document may be downloaded, using a modem and suitable software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703-321-3339) or the **Federal Register's** electronic bulletin board service (telephone: 202-512-1661). Internet users may reach the **Federal Register's** web page at <http://www.access.gpo.gov/nara> for access to recently published rulemaking documents.

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA-400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-8783. Communications must identify the notice or docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of

Rulemaking, (202) 267-9677, for a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**The Proposal**

The FAA is proposing to amend 14 CFR part 71 to modify the East Coast Low airspace area by extending the present airspace boundaries further east, south, and southwest of the Nantucket Airport and lowering the controlled floor in this area to 2,000 feet MSL. This proposed modification would provide additional airspace to allow for more efficient control of Nantucket Airport arrivals and departures.

Offshore Airspace Area designations are published in paragraph 6007 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The offshore airspace area designation listed in this document would be published subsequently in the Order.

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

**ICAO Considerations**

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in accordance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

The application of International Standards and Recommended Practices by the FAA, Office of Air Traffic Airspace Management, in areas outside U.S. domestic airspace, is governed by the Convention on International Civil Aviation. Specifically, the FAA is governed by Article 12 and Annex 11, which pertain to the establishment of necessary air navigational facilities and

services to promote the safe, orderly, and expeditious flow of civil air traffic. The purpose of Article 12 and Annex 11 is to ensure that civil aircraft operations on international air routes are performed under uniform conditions.

The International Standards and Recommended Practices in Annex 11 apply to airspace under the jurisdiction of a contracting state, derived from ICAO. Annex 11 provisions apply when air traffic services are provided and a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting this responsibility may apply the International Standards and Recommended Practices that are consistent with standards and practices utilized in its domestic jurisdiction.

In accordance with Article 3 of the Convention, state-owned aircraft are exempt from the Standards and Recommended Practices of Annex 11. The United States is a contracting state to the Convention.

Article 3(d) of the Convention provides that participating state aircraft will be operated in international airspace with due regard for the safety of civil aircraft. Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

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

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

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

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

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

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

**§ 71.1 [Amended]**

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

September 16, 1999, is amended as follows:

*Paragraph 6007 Offshore Airspace Areas*

\* \* \* \* \*

**East Coast Low [Revised]**

That airspace extending upward from 2,000 feet MSL bounded on the west and north by a line 12 miles from and parallel to the U.S. shoreline and on the south and east by a line beginning at lat. 39°25'46" N., long. 74°02'34" W.; to lat. 39°02'05" N., long. 73°39'30" W.; to lat. 40°04'20" N., long. 72°30'00" W.; to lat. 40°37'14" N., long. 72°30'00" W.; and that airspace bounded on the west and north by a line 12 miles from and parallel to the U.S. shoreline and on the south and east by a line beginning at lat. 40°41'00" N., long. 72°17'00" W., thence along the northern boundary of Warning Areas W-106B and W-105A to lat. 40°58'33" N., long. 70°59'00" W.; to lat. 40°48'30" N., long. 70°30'00" W.; to lat. 40°59'00" N., long. 69°40'00" W.; to lat. 41°30'00" N., long. 69°10'00" W.; to lat. 42°05'00" N., long. 69°30'00" W.; to lat. 42°17'00" N., long. 69°49'30" W.; to lat. 42°17'00" N., long. 70°00'00" W.; to lat. 43°17'00" N., long. 70°00'00" W.; to lat. 43°33'56" N., long. 69°29'12" W.

\* \* \* \* \*

Issued in Washington, DC, on March 2, 2000.

**Reginald C. Matthews,**

*Manager, Airspace and Rules Division.*

[FR Doc. 00-6123 Filed 3-13-00; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

[Airspace Docket No. 97-ASO-19]

**RIN 2120-AA66**

**Proposed Modification of Jet Route J-41; FL**

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

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** This action withdraws the notice of proposed rulemaking (NPRM) published in the **Federal Register** on August 8, 1998. The FAA proposed to modify Jet Route J-41 (J-41) by altering J-41 between the Lee County, FL, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) and the Seminole, FL, VORTAC. Since the issuance of the NPRM, the FAA has taken other actions to enhance the management of aircraft operations in the west/central Florida area. Based on this latter action, the FAA is withdrawing the notice to modify J-41.

**DATE:** This withdrawal is made on March 14, 2000.

**FOR FURTHER INFORMATION CONTACT:**

Terry Brown, Airspace and Rules Division, ATA-400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8783.

**SUPPLEMENTARY INFORMATION:** On August 8, 1998, an NPRM was published in the **Federal Register** proposing to amend 14 CFR part 71 to modify J-41 (63 FR 41485). Interested parties were invited to participate in the rulemaking process by submitting written data, views, or arguments regarding the proposal. No comments were received on the proposal.

The FAA originally proposed to modify J-41 to improve the management of aircraft operating in the west/central area of Florida and eliminate congestion in the area around the St. Petersburg VORTAC. Since the issuance of this NPRM, the FAA has expanded the service volume of the Seminole VORTAC which has eliminated congestion over the St. Petersburg VORTAC by allowing dual flows of aircraft into the west/central Florida area. In light of this recent improvement, the FAA has decided to withdraw its proposal to modify J-41 at this time.

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

Airspace, Incorporation by reference, Navigation (air).

**The Withdrawal**

In consideration of the foregoing, the Notice of Proposed Rulemaking, Airspace Docket No. 97-ASO-19, as published in the **Federal Register** on August 8, 1998 (63 FR 41485), is hereby withdrawn.

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

Issued in Washington, DC, on March 3, 2000.

**Reginald C. Matthews,**

*Manager, Airspace and Rules Division.*

[FR Doc. 00-6124 Filed 3-13-00; 8:45 am]

**BILLING CODE 4910-13-P**

**POSTAL SERVICE**

**39 CFR Part 952**

**Rules of Practice in Proceedings Relative to False Representation and Lottery Orders**

**AGENCY:** Postal Service.

**ACTION:** Proposed rule.

**SUMMARY:** The Postal Service proposes to amend the Rules of Practice in Proceedings Relative to False Representation and Lottery Orders to establish administrative procedures for issuing subpoenas and imposing the statutorily authorized civil penalties in proceedings conducted under 39 U.S.C. 3005(a).

**DATES:** Comments must be received on or before April 13, 2000.

**ADDRESSES:** Written comments should be mailed to Diane M. Mego, Staff Counsel, Judicial Officer Department, 2101 Wilson Blvd., Suite 600, Arlington, VA 22201-3078. Copies of all written comments will be available for inspection and photocopying between 8:15 a.m. and 4:45 p.m., Monday through Friday, at the above address.

**FOR FURTHER INFORMATION CONTACT:** Diane M. Mego, Esq. 703-812-1905.

**SUPPLEMENTARY INFORMATION:** The Deceptive Mail Prevention and Enforcement Act, Pub. L. No. 106-168, 113 Stat. 1806, enacted on December 12, 1999, generally provides for the amendment of chapter 30 of title 39, United States Code, to provide for the nonmailability of certain deceptive matter relating to sweepstakes, skill contests, and facsimile checks as well as amending provisions relating to administrative procedures and orders and adding civil penalties relating to such matters.

The Act grants the Judicial Officer authority to issue subpoenas requiring the attendance and testimony of witnesses and the production of any records (including books, papers, documents, and other tangible things which constitute or contain evidence) which the Judicial Officer considers relevant or material in any statutory proceeding conducted under 39 U.S.C. 3005(a). The Act also authorizes new administrative civil penalties.

The Postal Service is proposing to make the following amendments to 39 CFR Part 952 to authorize the Judicial Officer to issue subpoenas under 39 U.S.C. 3005(a) and impose civil penalties for purposes of the Deceptive Mail Prevention and Enforcement Act.

**List of Subjects in 39 CFR Part 952**

Administrative practice and procedure, Fraud, False Representations, Lotteries, Penalties, Postal Service.

**PART 952—[AMENDED]**

1. The authority citation for part 952 is revised to read as follows:

**Authority:** 39 U.S.C. 204, 401, 3005, 3012, 3016.

**§ 952.5 [Amended]**

2. Section 952.5 is amended by adding “and/or the assessment of civil penalties” to the end of the first sentence.

**§ 952.7 [Amended]**

3. Section 952.7(b) is amended by:

A. Adding “and/or the assessment of civil penalties authorized by 39 U.S.C. 3012” to the end of the first sentence; and

B. Inserting “tentatively assess such civil penalties as he considers appropriate under applicable law;” after the phrase “release of mail unrelated to the matter complained of;” in the third sentence.

**§ 952.11 [Amended]**

4. Section 952.11 is amended by:

A. Adding “and/or assess civil penalties” after “orders” in the second sentence of paragraph (a); and

B. Adding “and/or assess civil penalties” after “orders” in paragraph (b).

**§ 952.17 [Amended]**

5. Section 952.17(b)(10) is amended by adding “§ 952.19 and” before “§ 952.21”.

6. Section 952.19 is revised to read as follows:

**§ 952.19 Subpoenas.**

(a) *General.* Upon written request of either party filed with the Recorder or on his own initiative, the presiding officer may issue a subpoena requiring:

(1) Testimony at a deposition. The deposing of a witness in the city or county where the witness resides or is employed or transacts business in person, or at another location convenient for the witness that is specifically determined by the presiding officer;

(2) Testimony at a hearing. The attendance of a witness for the purpose of taking testimony at a hearing; and

(3) Production of records. In addition to paragraphs (a)(1) and (a)(2) of this section, the production by the witness at the deposition or hearing of records designated in the subpoena.

(b) *Voluntary cooperation.* Each party is expected:

(1) To cooperate and make available witnesses and evidence under its control as requested by the other party, without issuance of a subpoena, and

(2) To secure voluntary production of desired third-party records whenever possible.

(c) *Requests for subpoenas.* (1) A request for a subpoena shall to the extent practical be filed:

(i) At the same time a request for deposition is filed; or

(ii) 15 days before a scheduled hearing where the attendance of a witness at a hearing is sought.

(2) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any records sought.

(3) The presiding officer, in his discretion, may honor requests for subpoenas not made within the time limitations specified in this paragraph.

(d) *Requests to quash or modify.* Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the presiding officer may:

(1) Quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or

(2) Require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed records. Where circumstances require, the presiding officer may act upon such a request at any time after a copy has been served upon the opposing party.

(e) *Form; issuance.* (1) Every subpoena shall state the title of the proceeding, shall cite 39 U.S.C. 3016(a)(2) as the authority under which it is issued, and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified records at a time and place therein specified. In issuing a subpoena to a requesting party, the presiding officer shall sign the subpoena and may, in his discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the presiding officer as sufficient ground for striking the testimony of the witness and the evidence the witness has produced.

(f) *Service.* (1) The party requesting issuance of a subpoena shall arrange for service.

(2) *Service within the United States.* A subpoena issued under this section may be served by a person designated under 18 U.S.C. 3061 or by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age at any place within the territorial jurisdiction of any court of the United States.

(3) *Foreign Service.* Any such subpoena may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States, in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign country. To the extent that the courts of the United States may assert jurisdiction over such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by such person that such court would have if such person were personally within the jurisdiction of such court.

(4) *Service on Business Persons.* Service of any such subpoena may be made upon a partnership, corporation, association, or other legal entity by:

(i) Delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

(ii) Delivering a duly executed copy thereof to the principal office or place of business of the partnership, corporation, association, or entity; or

(iii) Depositing such copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such partnership, corporation, association, or entity at its principal office or place of business.

(5) *Service on Natural Persons.* Service of any subpoena may be made upon any natural person by:

(i) Delivering a duly executed copy to the person to be served; or

(ii) Depositing such copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such person at his residence or principal office or place of business.

(6) *Verified Return.* A verified return by the individual serving any such subpoena setting forth the manner of such service shall be proof of service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such subpoena.

(g) *Contumacy or refusal to obey a subpoena.* In the case of contumacy or refusal to obey a subpoena, the Judicial Officer may request the Attorney General to petition the district court for any district in which the person receiving the subpoena resides, is found, or conducts business (or in the case of a person outside the territorial jurisdiction of any district court, the district court for the District of

Columbia) to issue an appropriate order for the enforcement of such subpoena. Any failure to obey such order of the court may be punishable as contempt.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 00-6093 Filed 3-13-00; 8:45 am]

BILLING CODE 7710-12-P

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[CA 200-0217; FRL-6550-5]

#### Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing revisions to the California State Implementation Plan (SIP). The revisions concern rules from the South Coast Air Quality Management District (SCAQMD). These revisions concern the New Source Review requirements and the methodology for calculating facility allocations for oxides of nitrogen (NO<sub>x</sub>) and oxides of sulfur (SO<sub>x</sub>) for sources subject to the Regional Clean Air Incentives Market (RECLAIM) program in the SCAQMD. This proposed action will, if finalized, incorporate these rules into the Federally approved SIP. The intended effect of approving these rules is to regulate the construction and modification of stationary sources and

the calculation of RECLAIM facility allocations in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act).

The intended effect of this action is to regulate emissions of NO<sub>x</sub> and SO<sub>x</sub> in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules section of this **Federal Register**, the EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, 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. Any parties interested in commenting should do so at this time.

**DATES:** Written comments must be received by March 29, 2000.

**ADDRESSES:** Comments should be addressed to: Andrew Steckel, Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105;

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW, Washington, DC 20460;

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812;

South Coast Air Quality Management District 21865 E. Copley Drive Diamond Bar, CA 91765-4182.

**FOR FURTHER INFORMATION CONTACT:**

Thomas C. Canaday, Rulemaking Office (AIR-4), Air Division, U.S.

Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105-3901, Telephone: (415) 744-1202.

**SUPPLEMENTARY INFORMATION:** This document concerns South Coast Air Quality Management District (SCAQMD) Rule 2002—Allocations for Oxides of Nitrogen (NO<sub>x</sub>) and Oxides of Sulfur (SO<sub>x</sub>), and Rule 2005—New Source Review for RECLAIM. These rules were submitted by the California Air Resources Board (CARB) to EPA on August 22, 1997, and July 23, 1999, respectively. For further information, please see the information provided in the direct final action that is located in the rules section of this **Federal Register**.

Dated: January 21, 2000.

**Laura Yoshii,**

*Deputy Regional Administrator, Region IX.*

[FR Doc. 00-6095 Filed 3-13-00; 8:45 am]

BILLING CODE 6560-50-P

# Notices

Federal Register

Vol. 65, No. 50

Tuesday, March 14, 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

### Office of the Under Secretary, Research, Education, and Economics; Notice of the Advisory Committee on Agricultural Biotechnology Meeting

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

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces a meeting of the Advisory Committee on Agricultural Biotechnology (ACAB).

**SUPPLEMENTARY INFORMATION:** The ACAB has scheduled its first meeting on March 29–30, 2000. The ACAB consists of 38 members representing the biotechnology industry, conventional, sustainable, and organic farmers, food manufacturers, commodity processors and shippers, environmental and consumer groups, along with academic researchers as well as experts on consumer attitudes, bioethics, and legal issues. In addition, representatives from the Departments of Commerce, Health and Human Services, Interior, and State, and the Environmental Protection Agency, the Council on Environmental Quality, and the Office of the United States Trade Representative will serve as “ex officio” members. The Committee meeting will be held from 8:30 am to 5:30 pm on each day. The topics to be discussed will include: (1) Rules of procedure for the ACAB; (2) ongoing biotechnology-related activities at USDA; (3) assessment of informational needs of ACAB members; (4) priority issues for USDA for consideration by the ACAB; and (5) views of ACAB members regarding the work of the committee and appropriate topics for discussion by the ACAB.

Persons wishing to file written comments must do so by May 1, 2000. Comments should be sent to Dr. Michael Schechtman at the address indicated

below. Members of the public who wish to make oral statements should also inform Dr. Schechtman in writing at the indicated address at least three business days before the meeting. On March 30, 2000, if time permits, reasonable provision will be made for oral presentations of no more than five minutes each in duration.

**DATES:** The meeting will be held in the Atrium Ballroom in the Ronald Reagan Building and International Trade Center, 1300 Pennsylvania Avenue, NW, Washington, DC 20004 on March 29–30, 2000, from 8:30 am to 5 pm each day. The meeting will be open to the public, but space is limited. If you would like to attend the meetings, you must register by contacting Ms. Dianne Harmon at (202) 720–4074, by fax at (202) 720–3191 or by E-mail at [dharmmon@ars.usda.gov](mailto:dharmmon@ars.usda.gov) at least 7 days prior to the meeting. Please provide your name, title, business affiliation, address, telephone, and fax number when you register. If you require a sign language interpreter or other special accommodation due to disability, please indicate those needs at the time of registration.

**FOR FURTHER INFORMATION CONTACT:** Michael Schechtman, Designated Federal Official, Office of the Deputy Secretary, USDA, 202B Jamie L. Whitten Federal Building, 12th and Independence Avenue, SW, Washington, DC 20250; Telephone (202) 720–3817; Fax (202) 690–4265; E-mail [michael.g.schechtman@usda.gov](mailto:michael.g.schechtman@usda.gov).

Dated: March 9, 2000.

**Edward B. Knipling,**

*Associate Administrator.*

[FR Doc. 00–6316 Filed 3–13–00; 8:45 am]

**BILLING CODE 3410–03–P**

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## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Boundary Establishment for Upper Deschutes National Wild and Scenic River, Deschutes National Forest, Deschutes County, Oregon

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of availability.

**SUMMARY:** The USDA Forest Service, Washington Office, is transmitting the final boundary of the Upper Deschutes

National Wild and Scenic River to Congress.

**FOR FURTHER INFORMATION CONTACT:** Information may be obtained by contacting Walt Miller, 1645 Hwy 20 East; Bend, OR 97701, 541–388–2715.

**SUPPLEMENTARY INFORMATION:** The Upper Deschutes Wild and Scenic River boundary is available for review at the following offices:

USDA Forest Service, Recreation, Yates Building, 14th and Independence Avenue S.W., Washington, DC 20024

Pacific Northwest Regional Office, 333 SW, First Avenue, Portland, OR 97204

Deschutes National Forest, 1645 Hwy 20 East, Bend, OR 97701.

The Omnibus Oregon Wild and Scenic Rivers Act (Public Law 100–557) of October 28, 1988, designated the Upper Deschutes River, Oregon, as a National Wild and Scenic River, to be administered by the Secretary of Agriculture. The final decision on delineation of a river corridor boundary is based on the Upper Deschutes Wild and Scenic River Record of Decision and final EIS dated July 25, 1996. Unless changed by Congress, the boundary decision will be implemented ninety days after Congress receives this transmittal.

Dated: March 7, 2000.

**Nancy Graybeal,**

*Deputy Regional Forester.*

[FR Doc. 00–6145 Filed 3–13–00; 8:45 am]

**BILLING CODE 3410–11–M**

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## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Boundary Establishment for Metolius National Wild and Scenic River, Deschutes National Forest, Jefferson County, Oregon

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of availability.

**SUMMARY:** The USDA Forest Service, Washington Office, is transmitting the final boundary of the Metolius National Wild and Scenic River to Congress.

**FOR FURTHER INFORMATION CONTACT:** Information may be obtained by contacting Walt Miller, 1645 Hwy 20 East, Bend, OR 97701.

**SUPPLEMENTARY INFORMATION:** The Metolius Wild and Scenic River boundary is available for review at the following offices:

USDA Forest Service, Recreation, Yates Building, 14th and Independence Avenue SW, Washington, DC 20024  
Pacific Northwest Regional Office, 333 SW First Avenue, Portland, OR 97204

Deschutes National Forest, 1645 Hwy 20 East, Bend, OR 97701.

The Omnibus Oregon Wild and Scenic Rivers Act (Pub. L. 100-557) of October 28, 1988, designated the Metolius River, Oregon, as a National Wild and Scenic River, to be administered by the Secretary of Agriculture. The final decision on delineation of a river corridor boundary is based on the Metolius Wild and Scenic River Record of Decision and final EIS dated May 27, 1997. Unless changed by Congress, the boundary decision will be implemented ninety days after Congress receives this transmittal.

Dated: March 7, 2000.

**Nancy Graybeal,**

*Deputy Regional Forester.*

[FR Doc. 00-6147 Filed 3-13-00; 8:45 am]

**BILLING CODE 3410-11-M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### **Boundary Establishment for Malheur National Wild and Scenic River, Malheur National Forest, Grant and Harney Counties, Oregon**

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of availability.

**SUMMARY:** The USDA Forest Service, Washington Office, is transmitting the final boundary of the Malheur National Wild and Scenic River to Congress.

**FOR FURTHER INFORMATION CONTACT:** Information may be obtained by contacting Gary Lieuellen, 431 Patterson Bridge Road, John Day, OR 97845; 541-575-1731.

**SUPPLEMENTARY INFORMATION:** The Malheur Wild and Scenic River boundary is available for review at the following offices:

USDA Forest Service, Recreation, Yates Building, 14th and Independence Avenue SW., Washington, DC 20024.

Pacific Northwest Regional Office, 333 SW First Avenue, Portland, OR 97204.

Malheur National Forest, 431 Patterson Bridge Road, John day, OR 97845.

The Omnibus Oregon Wild and Scenic Rivers Act (Pub. L. 100-557) of October 28, 1988, designated the Malheur River, Oregon, as a National Wild and Scenic River, to be administered by the Secretary of Agriculture. The final decision on delineation of a river corridor boundary is based on the Malheur Wild and Scenic River Decision Notice and final EA dated August 7, 1992. Unless changed by Congress, the boundary decision will be implemented ninety days after Congress receives this transmittal.

Dated: March 7, 2000.

**Nancy Graybeal,**

*Deputy Regional Forester.*

[FR Doc. 00-6144 Filed 3-13-00; 8:45 am]

**BILLING CODE 3410-11-M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### **Boundary Establishment for North Fork Malheur National Wild and Scenic River, Malheur National Forest, Baker and Grant Counties, OR**

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of availability.

**SUMMARY:** The USDA Forest Service, Washington Office, is transmitting the final boundary of the North Fork Malheur National Wild and Scenic River to Congress.

**FOR FURTHER INFORMATION CONTACT:** Information may be obtained by contacting Gary Lieuallen, 431 Patterson Bridge Road, John Day, OR 97845; 541-575-1731.

**SUPPLEMENTARY INFORMATION:** The North Fork Malheur Wild and Scenic River boundary is available for review at the following offices:

USDA Forest Service, Recreation, Yates Building, 14th and Independence Avenue SW., Washington, DC 20024.

Pacific Northwest Regional Office, 333 SW First Avenue, Portland, OR 97204.

Malheur National Forest, 431 Patterson Bridge Road, John Day, OR 97845.

The Omnibus Oregon Wild and Scenic Rivers Act (Pub. L. 100-557) of October 28, 1988, designated the North Fork Malheur River, Oregon, as a National Wild and Scenic River, to be administered by the Secretary of Agriculture. The final decision on delineation of a river corridor boundary is based on the North Fork Malheur Wild and Scenic River Decision Notice and final EA dated July 15, 1992. Unless changed by Congress, the boundary

decision will be implemented ninety days after Congress receives this transmittal.

Dated: March 7, 2000.

**Nancy Graybeal,**

*Deputy Regional Forester.*

[FR Doc. 00-6146 Filed 3-13-00; 8:45 am]

**BILLING CODE 3410-11-M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### **Boundary Establishment for Chetco National Wild and Scenic River, Siskiyou National Forest, Curry County, OR**

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of availability.

**SUMMARY:** The USDA Forest Service, Washington Office, is transmitting the final boundary of the Chetco National Wild and Scenic River to Congress.

**FOR FURTHER INFORMATION CONTACT:**

Information may be obtained by contacting Jim Heck, 200 N.E. Greenfield Road, Grants Pass, OR 97526 541-471-6500.

**SUPPLEMENTARY INFORMATION:** The Chetco National Wild and Scenic River boundary is available for review at the following offices: USDA Forest Service, Recreation, Yates Building, 14th and Independence Avenue SW., Washington, DC 20024; Pacific Northwest Regional Office, 333 SW First Avenue, Portland, OR 97204; Siskiyou National Forest, 200 NE Greenfield Road, Grants Pass, OR 97526.

The Omnibus Oregon Wild and Scenic Rivers Act (Pub. L. 100-557) of October 28, 1988, designated the Chetco River, Oregon, as a National Wild and Scenic River, to be administered by the Secretary of Agriculture. The final decision on delineation of a river corridor boundary is based on the Chetco National Wild and Scenic River Decision Notice and final EA dated July 23, 1993. Unless changed by Congress, the boundary decision will be implemented ninety days after Congress receives this transmittal.

Dated: March 7, 2000.

**Nancy Graybeal,**

*Deputy Regional Forester.*

[FR Doc. 00-6148 Filed 3-13-00; 8:45 am]

**BILLING CODE 3410-11-M**

**DEPARTMENT OF AGRICULTURE****Forest Service****Boundary Establishment for Elk National Wild and Scenic River, Siskiyou National Forest, Curry County, OR**

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of availability.

**SUMMARY:** The USDA Forest Service, Washington Office, is transmitting the final boundary of the Elk National and Scenic River to Congress.

**FOR FURTHER INFORMATION CONTACT:** Information may be obtained by contacting Jim Heck, 200 NE Greenfield Road, Grants Pass, OR 97526, 541-471-6500.

**SUPPLEMENTARY INFORMATION:** The Elk Wild and Scenic River boundary is available for review at the following offices: USDA Forest Service, Recreation, Yates Building, 14th and Independence Avenue SW, Washington, DC 20024; Pacific Northwest Regional Office, 333 SW First Avenue, Portland, OR 97204; Siskiyou National Forest, 200 NE Greenfield Road, Grants Pass, OR 97526.

The Omnibus Oregon Wild and Scenic Rivers Act (Pub. L. 100-557) of October 28, 1988, designated the Elk River, Oregon, as a National Wild and Scenic River, to be administered by the Secretary of Agriculture. The final decision on delineation of a river corridor boundary is based on the Elk Wild and Scenic River Decision Notice and final EA dated September 22, 1994. Unless changed by Congress, the boundary decision will be implemented ninety days after Congress receives this transmittal.

Dated: March 7, 2000.

**Nancy Graybeal,**

*Deputy Regional Forester.*

[FR Doc. 00-6149 Filed 3-13-00; 8:45 am]

**BILLING CODE 3410-11-M**

**DEPARTMENT OF AGRICULTURE****Natural Resources Conservation Service****Upper Tygart Valley River Watershed, Randolph and Pocahontas Counties, West Virginia**

**AGENCY:** Natural Resources Conservation Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** Pursuant to Section 102(2)(C) of the National Environmental Policy

Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for Upper Tygart Valley River Watershed, Randolph and Pocahontas Counties, West Virginia.

**FOR FURTHER INFORMATION CONTACT:** William J. Hartman, State Conservationist, USDA-NRCS, 75 High Street, Room 301, Morgantown, WV 26505; telephone: 304-284-7545.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, William J. Hartman, State Conservationist, has determined that the preparation and review of an environmental impact statement is needed for this project.

The primary project concerns are water supply, water quality, and fish and wildlife habitat improvement. Alternatives under consideration to reach these objectives include reservoirs, conservation land treatment, and wetland enhancement.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Natural Resources Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. Meetings have been held with various resource agencies and organizations to determine the scope of the evaluation of the proposed action. Further information on the proposed action or planned meetings may be obtained from William J. Hartman, State Conservationist, at the above address or telephone number.

“(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)”

Dated: March 3, 2000.

**William J. Hartman,**

*State Conservationist.*

[FR Doc. 00-6219 Filed 3-13-00; 8:45 am]

**BILLING CODE 3210-16-M**

**DEPARTMENT OF AGRICULTURE****Rural Housing Service****Notice of Request for Extension of a Currently Approved Information Collection**

**AGENCY:** Rural Housing Service, USDA.

**ACTION:** Proposed collection; comments request.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's (RHS) intention to request an extension for a currently approved information collection in support of Sections 514, 515, 516, and 521 programs authorized under Title V of the Housing Act of 1949, as amended, regarding borrower supervision and servicing for Multi-Family Housing Loans and Grants.

**DATES:** Comments on this notice must be received by May 15, 2000 to be assured of consideration.

**FOR FURTHER INFORMATION CONTACT:** James E. Vollmer, Loan Specialist, Multi-Family Housing Portfolio Management, RHS, U.S. Department of Agriculture, Stop 0782, Washington, DC 20250, Telephone (202) 720-1060.

**SUPPLEMENTARY INFORMATION:** *Title:* Security Servicing for Multiple Family Housing Loans.

*OMB Number:* 0575-0100.

*Expiration Date of Approval:* April 30, 2000.

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

*Abstract:* The Rural Housing Loan and Grant programs under Sections 514, 515, 516, and 521 of Title V of the Housing Act of 1949, as amended, provide loans and grants to eligible recipients for the development and operation of rural rental housing projects. These programs are intended to meet the housing needs of very low-, low- and moderate-income rural persons or families including senior citizens, the handicapped or disabled, and domestic farm laborers.

In order to assist its borrowers to operate and maintain these properties to meet program objectives, improve the Agency's ability to assure the continued viability of the program information needs to be collected to process borrower initiated requests.

*Estimate of Burden:* Public reporting for this collection of information is estimated to average between 0.167 and 4.25 hours per response.

*Estimated Number of Respondents:* The estimated number of respondents for this collection of information is

estimated to range from 10 to 300 respondents per year per request.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Number of Responses:* 945.

*Estimated Total Annual Burden on Respondents:* 1,587 hours.

Copies of this information collection can be obtained from Jean Mosley, Regulations and Paperwork Management Division, at (202) 720-0041

#### Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility; (b) the accuracy of RHS'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 through the use of electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Jean Mosley, Regulations and Paperwork Management Division, Rural Development, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue SW, Washington, DC 20250-0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: March 2, 2000.

**James C. Kearney,**

*Administrator, Rural Housing Service.*

[FR Doc. 00-6209 Filed 3-13-00; 8:45 am]

BILLING CODE 3410-XV-P

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## DEPARTMENT OF COMMERCE

### Bureau of the Census

#### Census Advisory Committee of Professional Associations

**AGENCY:** Bureau of the Census, Commerce.

**ACTION:** Notice of Public Meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act (Public Law 92-463, as amended by Pub. L. 94-409, Pub. L. 96-523, and Pub. L. 97-375), we are giving notice of a meeting of the Census Advisory Committee of Professional Associations. The Committee is composed of 36 members

appointed by the Presidents of the American Economic Association, the American Statistical Association, the Population Association of America, and the Chairperson of the Board of the American Marketing Association. The Committee advises the Director, Bureau of the Census (U.S. Census Bureau), on the full range of U.S. Census Bureau programs and activities in relation to their areas of expertise.

**DATES:** The meeting will convene on April 13, 2000, and begin at 9 a.m. and adjourn at 5 p.m.

**ADDRESSES:** The meeting will take place at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** U.S. Census Bureau Committee Liaison Officer, Ms. Maxine Anderson-Brown, Room 1647, Federal Building 3, Washington, DC 20233. Her phone number is 301-457-2308, TDD 301-457-2540.

**SUPPLEMENTARY INFORMATION:** The following is the agenda for the meeting:

- Introductory Remarks by the Director and the Principal Associate Director for Programs, U.S. Census Bureau
- U.S. Census Bureau Responses to Committee Recommendations
- Planning for Census 2000 Ethnographic Research
- Chief Economist Update
- The Census 2000 Testing and Experimentation Program
- Collection of Household Data on E-Commerce
- Retail E-Commerce Sales Estimates—Methods and Results
- Census 2000 Products—Some Recent Developments
- Develop Recommendations and Special Interest Activities
- Closing Session

The meeting is open to the public, and a brief period is set aside, during the closing session, for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the U.S. Census Bureau Committee Liaison Officer. Individuals wishing additional information or minutes regarding this meeting may contact the Liaison Officer as well. Her address and phone number are identified above.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should also be directed to the U.S. Census Bureau Committee Liaison Officer.

Dated: March 8, 2000.

**Kenneth Prewitt,**

*Director, Bureau of the Census.*

[FR Doc. 00-6208 Filed 3-13-00; 8:45 am]

BILLING CODE 3510-07-P

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## 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: Final Results of Changed-Circumstances Antidumping and Countervailing Duty Administrative Reviews, Revocation of Orders, and Rescission of Administrative Reviews

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of changed-circumstances antidumping and countervailing duty administrative reviews, revocation of orders, and rescission of administrative reviews.

**SUMMARY:** On February 15, 2000, the Department of Commerce published a notice of initiation of a changed circumstances review and preliminary results of review with intent to revoke the antidumping and countervailing duty orders on certain hot-rolled carbon steel products from the United Kingdom and rescind the ongoing administrative reviews (65 FR 7490). We are now revoking this order, retroactive to January 1, 1995, based on the fact that domestic parties no longer have an interest in maintaining the antidumping and countervailing duty orders. We are also rescinding the ongoing antidumping and countervailing duty administrative reviews covering the periods March 1, 1998, through February 28, 1999, and January 1, 1998, through December 31, 1998, respectively.

**EFFECTIVE DATE:** January 1, 1995.

**FOR FURTHER INFORMATION CONTACT:** Rebecca Trainor or Kate Johnson (Antidumping); or Jon Lyons (Countervailing), 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, 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 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. We preliminarily determined that the petitioner's statement of no interest constituted changed circumstances sufficient to warrant revocation of these orders. Consequently, on February 15, 2000, we published a notice of initiation of changed circumstances reviews and preliminary results of reviews with intent to revoke the orders and rescind the ongoing administrative reviews (65 FR 7490). We invited interested parties to comment on these preliminary results. We received no comments.

### 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.

### Final 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 section 351.222(g)(1)(i) of the Department's regulations provide that the Department may revoke an order (in whole or in part) if it determines that producers accounting for substantially all of the production of the domestic like product have no further interest in the order, in whole or in part.

The petitioners are domestic interested parties as defined by section 771(9)(E) of the Act and 19 CFR 351.102(b) and represent substantially all of the production of the domestic like product. Based on the petitioners' statement of no interest in the continued application of the antidumping and countervailing duty orders and the fact that no interested parties objected to or otherwise commented on our preliminary results, we determine that there are changed circumstances sufficient to warrant revocation of the orders. Therefore, we are revoking the antidumping and countervailing duty orders on certain hot-rolled carbon steel products from the United Kingdom, retroactive to January 1, 1995. We are

also rescinding the ongoing antidumping and countervailing duty administrative reviews covering the periods March 1, 1998, through February 28, 1999, and January 1, 1998, through December 31, 1998, respectively.

In accordance with 19 CFR 351.222(g)(4), we will instruct the Customs Service to end the suspension of liquidation and to refund any estimated antidumping and countervailing duties collected for all unliquidated entries of certain hot-rolled carbon steel products from the United Kingdom on or after January 1, 1998. We will also instruct the Customs Service to pay interest on such refunds in accordance with section 778 of the Act. We will issue liquidation instructions to the Customs Service for the year 1995, 1996, and 1997 when pending litigation of these CVD review periods is dismissed and the preliminary injunctions are lifted.

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: March 7, 2000.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 00-6265 Filed 3-13-00; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-412-814]

### Certain Cut-to-Length Carbon Steel Plate From the United Kingdom: Notice of Rescission of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On October 1, 1999, the Department of Commerce ("the Department") published in the **Federal Register** (64 FR 53318) the initiation of an administrative review of the antidumping duty order on certain cut-to-length carbon steel plate from the United Kingdom for the manufacturer/exporter, British Steel Limited (British Steel). This review was requested by the petitioners, and covered the period August 1, 1998, through July 31, 1999. The Department is now rescinding this review after receiving a withdrawal of its request for the review from the petitioners.

**EFFECTIVE DATE:** March 14, 2000.

**FOR FURTHER INFORMATION CONTACT:** Maureen McPhillips or Linda Ludwig, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482-0193 or (202) 482-3833, respectively.

#### Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended, by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations are to the regulations at 19 CFR part 351 (April 1999).

#### Scope of the Review

The products covered by this order constitute one "class or kind" of merchandise: certain cut-to-length carbon steel plate. These products include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the (HTSUS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling") for example,

products which have been beveled or rounded at the edges. Excluded are grade X-70 plate and certain cut-to-length carbon steel plate with a maximum thickness of 80 mm in steel grades BS 7191, 355 EM and 355 EMZ, as amended by Sable Offshore Energy Project specification XB MOO Y 15 0001, types 1 and 2 (see, Certain Cut-to-Length Carbon Steel Plate from Finland, Germany, and the United Kingdom: Final Results of Changed Circumstances Antidumping and Countervailing Duty Reviews, and Revocation of Orders in Part, 64 FR 46343, 46344 (August 25, 1999)). These HTSUS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

**SUPPLEMENTARY INFORMATION:** On August 31, 1999, Bethlehem Steel Corporation and U.S. Steel Group, a unit of USX Corporation, collectively "petitioners", requested an administrative review of British Steel Limited (British Steel), a British producer and importer of the subject merchandise, with respect to the antidumping duty order published in the **Federal Register** on August 19, 1993 (58 FR 44168). We initiated this review on October 1, 1999 (64 FR 53318).

On February 24, 2000, the petitioners filed a letter with the Department requesting withdrawal of its request for the Department to conduct an administrative review. Ordinarily, parties have 90 days from the publication of the notice of initiation of review in which to withdraw a request for review. See CFR 351.213(d)(1). We did not receive petitioners' withdrawal request until after the 90-day period had elapsed. However, the review has not progressed substantially and there would be no undo burden on the parties or the Department, if the Department were to rescind the review on the basis of this request. Therefore, the Department has determined that it would be reasonable to grant the withdrawal at this time.

This notice is published pursuant to section 751 of the Tariff Act of 1930, as amended, (19 U.S.C. 1675 (1999)), and section 351.213 of the Department's regulations (19 CFR 351.213 (1999)).

Dated: March 8, 2000.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary, AD/CVD Enforcement Group III.*

[FR Doc. 00-6269 Filed 3-13-00; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-201-827]

#### Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Mexico

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** March 14, 2000.

**FOR FURTHER INFORMATION CONTACT:** Russell Morris at (202) 482-1775, AD/CVD Enforcement, Office VI, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

#### Amendment of Preliminary Determination

The Department of Commerce (the Department) is amending the preliminary determination in the antidumping duty investigation of certain large diameter carbon and alloy seamless standard, line, and pressure pipe from Mexico. This amended preliminary determination results in revised antidumping rates.

On January 28, 2000, the Department issued its affirmative preliminary determination in this proceeding. See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Mexico*, 65 FR 5587 (February 4, 2000).

On February 11, 2000, the petitioners<sup>1</sup> submitted allegations of certain ministerial errors. The petitioners alleged that the Department made ministerial errors when it deducted both U.S. dollar and Mexican Peso imputed credit expenses from its normal value (NV) calculation, and that it incorrectly made an exchange rate conversion on one of the imputed credit expenses. The petitioners claimed that another ministerial error occurred when the Department made a constructed export price (CEP) offset to sales matched at a comparable level of trade (LOT). The sole respondent in this investigation, Tubos de Acero de

<sup>1</sup> The petitioners in this investigation are Gulf States Tube, a Division of Vision Metals, Inc.; Koppel Steel Corporation; Sharon Tube Corporation; USS/Kobe Steel Corporation; U.S. Steel Group, a unit of USX Corporation; and the United Steelworkers of America.

Mexico S.A. (TAMSA), did not submit any ministerial error allegations.

The Department has reviewed its preliminary calculations and agrees with the petitioners, in part, that the Department made certain ministerial errors within the meaning of 19 CFR 351.224(f) and (g). The Department inadvertently deducted from the home market price two imputed credit expenses. We intended to deduct only one credit expense from each home market sale. Further, since we were able to match U.S. sales to NV at the same LOT, no CEP offset should have been made. However, we disagree with the petitioners' allegation concerning the currency conversion applied in one of the imputed credit expense calculations. See "Ministerial Error Allegations for the Preliminary Determination" memorandum to Holly A. Kuga, Acting Deputy Assistant Secretary, for Import Administration, Group II, dated February 24, 2000, on file in room B-099 of the Main Commerce building.

As a result of our analysis of the petitioners' allegations, we are amending our preliminary determination to revise the antidumping rate for TAMSA in accordance with 19 CFR 351.224(e), along with the corresponding correction to the "all others" rate, as listed below. Suspension of liquidation will be revised accordingly and parties shall be notified of this determination, in accordance with sections 733(d) and (f) of the Act.

The revised weighted-average dumping margins are as follows:

Manufacturer/exporter	Weighted-average margin percentage
TAMSA .....	14.20
All Others .....	14.20

This determination is issued and published pursuant to sections 733(d) and 777(i)(1) of the Act.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 00-6266 Filed 3-13-00; 8:45 am]

**BILLING CODE 3510-DS-P**

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**[A-201-817]**

**Oil Country Tubular Goods from Mexico: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** March 14, 2000.

**FOR FURTHER INFORMATION CONTACT:** Phyllis Hall at (202) 482-1398 or Dena Aliadinov at (202) 482-2667, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

**Time Limits**

*Statutory Time Limits*

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days and for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

*Background*

On September 9, 1999, the Department published a notice of initiation of administrative review of the antidumping duty order on Oil Country Tubular Goods from Mexico, covering the period August 1, 1998 through July 31, 1999 (64 FR 48983). The preliminary results are currently due no later than May 2, 2000.

*Extension of Time Limit for Preliminary Results of Review*

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore the Department is extending the time limit for completion of the preliminary results until no later than August 30, 2000. See Decision Memorandum from Richard Weible to

Joseph A. Spetrini, dated March 8, 2000, which is on file in the Central Records Unit, Room B-099 of the main Commerce building. We intend to issue the final results no later than 120 days after the publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: March 8, 2000.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary, AD/CVD Enforcement, Group III.*

[FR Doc. 00-6268 Filed 3-13-00; 8:45 am]

**BILLING CODE 3510-DS-P**

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**[A-549-813]**

**Canned Pineapple Fruit From Thailand: Extension of Preliminary Results of Antidumping Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** March 14, 2000.

**FOR FURTHER INFORMATION CONTACT:** Constance Handley at (202) 482-0631, Office of AD/CVD Enforcement 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

**Time Limits**

*Statutory Time Limits*

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days and for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

*Background*

On August 24, 1999, the Department of Commerce (the Department)

published a notice of initiation of administrative review of the antidumping duty order on canned pineapple fruit from Thailand, covering the period July 1, 1998, through June 30, 1999 (64 FR 47167). The preliminary results are currently due no later than April 3, 2000.

*Extension of Time Limit for Preliminary Results of Review*

We determine that it is not practicable to complete the preliminary results of this review within the original time limit for the reasons stated in our memorandum from Gary Taverman to Holly Kuga, dated March 6, 2000, which is on file in the Central Records Unit, Room B-099 of the main Commerce building. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than July 31, 2000. We intend to issue the final results no later than 120 days after publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: March 6, 2000.

**Holly Kuga,**

*Acting Deputy Assistant Secretary for Import Administration.*

[FR Doc. 00-6267 Filed 3-13-00; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-588-833]

#### Stainless Steel Bar From Japan: Final Results of Antidumping Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of antidumping administrative review.

**SUMMARY:** On November 8, 1999, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on stainless steel bar from Japan. This review covers one producer/exporter, Aichi Steel Corporation, during the period February 1, 1998, through January 31, 1999.

Based on our analysis of comments received, we have made changes in the margin calculations. Therefore the final results differ from the preliminary results. The final weighted-average dumping margin is listed below in the section entitled "Final Results of the Review."

**EFFECTIVE DATE:** March 14, 2000.

**FOR FURTHER INFORMATION CONTACT:** Minoo Hatten or Robin Gray, Office 3 AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482-1690 or (202) 482-4023, respectively.

**SUPPLEMENTARY INFORMATION:**

**The Applicable Statute**

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (1998).

**Background**

On November 9, 1999, the Department published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on stainless steel bar from Japan. *Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Bar from Japan*, 64 FR 60788 (preliminary results). Al Tech Specialty Steel Corp., Dunkirk, NY; Carpenter Technology Corp., Reading, PA; Republic Engineered Steels, Inc., Massillon, OH; Slater Steels Corp., Fort Wayne, IN; Talley Metals Technology, Inc., Hartsville, SC; and the United Steel Workers of America, AFL-CIO/CLC, collectively petitioners in the less-than-fair-value (LTFV) investigation (hereafter petitioners), submitted their case brief on December 8, 1999. Aichi Steel Corporation (Aichi), respondent in this review, also submitted its case brief on December 8, 1999. The petitioners and Aichi submitted rebuttal briefs on December 13, 1999. The Department has conducted this administrative review in accordance with section 751 of the Act.

**Scope of Review**

The merchandise covered by this review is stainless steel bar (SSB). For purposes of this review, the term "stainless steel bar" means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in

straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut-length flat-rolled products (*i.e.*, cut-length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The SSB subject to this order is currently classifiable under subheadings 7222.10.0005, 7222.10.0050, 7222.20.0005, 7222.20.0045, 7222.20.0075, and 7222.30.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs by interested parties to this administrative review are addressed in the "Issues and Decision Memorandum" (Decision Memo) from Richard W. Moreland, Deputy Assistant Secretary, Import Administration, to Robert S. La Russa, Assistant Secretary for Import Administration, dated March 6, 2000, which is hereby adopted and incorporated by reference into this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in B-099. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at [www.ita.doc.gov/import\\_admin/records/frn/](http://www.ita.doc.gov/import_admin/records/frn/). The paper copy and electronic version of the Decision Memorandum are identical in content.

**Sales Below Cost in the Home Market**

The Department disregarded Aichi's home-market below-cost sales which failed the cost test in these final results of review.

### Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. We have also corrected certain programming and clerical errors in our preliminary results, where applicable. We discuss any alleged programming or clerical errors with which we do not agree in the relevant sections of the "Decision Memorandum," accessible in B-099 and on the Web at [www.ita.doc.gov/import\\_admin/records/frn/](http://www.ita.doc.gov/import_admin/records/frn/).

### Final Results of Review

As a result of our analysis of the comments received, we determine a final weighted-average margin of 1.24 percent for Aichi for the period February 1, 1998, through January 31, 1999.

The Customs Service will assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. We have calculated an exporter/customer-specific assessment value for subject merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total quantity sold.

### Cash-Deposit Requirements

The following deposit requirement shall be effective upon publication of this notice of final results of review for all shipments of SSB from Japan, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash-deposit rate for Aichi Steel Corporation will be 1.24 percent; (2) for previously investigated or reviewed 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 or any previous reviews or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash-deposit rate will continue to be 61.47 percent, the "all-others" rate established in the LTFV investigation (59 FR 66930, December 28, 1994).

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 Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 7, 2000.

**Robert S. LaRussa,**  
*Assistant Secretary for Import Administration.*

### Appendix—List of Issues

1. U.S. Date of Sale
2. Model Match
3. Level of Trade
4. Duty Drawback
5. U.S. Credit Expenses
6. Home Market Credit Expense
7. Cost of Production and Constructed Value
  - A. Losses on Scrap Inventory
  - B. Understatement of Costs
  - C. General, Selling and Administrative Expenses
  - D. Interest Expense

[FR Doc. 00-6264 Filed 3-13-00; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[Docket No. 000218045-0045-01]

RIN 0648-ZA80

### Sea Grant Minority Serving Institutions Partnership Program; Request for Proposals for FY 2000

**AGENCY:** National Sea Grant College Program, National Oceanic and Atmospheric Administration, Department of Commerce.

**ACTION:** Notice of request for proposals.

**SUMMARY:** The National Sea Grant College Program (Sea Grant) is soliciting

proposals for innovative partnerships to strengthen the capacity of Minority Serving Institutions to foster student careers, research, and workforce competitiveness in marine and related sciences. Minority Serving Institutions (MSIs) include educational institutions identified by the Department of Education as (i) Historically Black Colleges and Universities, (ii) Hispanic-Serving Institutions, (iii) Tribal Colleges and Universities, and (iv) MSIs located in U.S. insular areas (see Section III. Eligibility.) Marine sciences are defined as those fields relevant to the protection, management, and development of the Nation's ocean, coastal, and Great Lakes resources.

Beginning in Fiscal Year 2000, Sea Grant expects to make available about \$300,000 per year, depending on available funding, to support the Sea Grant Minority Serving Institution (SG-MSI) Partnership Program. Up to \$150,000 will be reserved for proposals related to aquaculture in a cooperative effort with Department of Commerce's Minority Business Development Agency. Sea Grant expects to fund four to six projects per year. Proposals may request up to \$75,000 per year in federal funds and projects may run up to three years maximum. Matching funds from non-federal sources must provide at least one-third of the total project costs, or in other words, for every \$2 in federal support, a minimum of \$1 in non-federal matching funds is required to be committed to the project.

The SG-MSI Partnership Project projects are intended to provide additional access for MSI students and faculty to research opportunities, career-related experience, and work-study or internships that enhance career opportunities and career growth in the marine sciences and related marine fields. Projects should establish partnerships between the MSI and Sea Grant programs or other universities, research institutions, industry, or organizations (public, nonprofit, or private) engaged in the marine sciences or related marine fields. Proposals must be submitted by the MSI and must identify partner institutions by name in their applications.

**DATES AND ADDRESSES:** Applicants are encouraged to submit their proposals to their state's Sea Grant program (contact the appropriate state Sea Grant Program from the list below to obtain the mailing address or the address may be obtained on the web site <http://www.nsgo.seagrant.org/SGDirectors.html>); or, if your state does not have a Sea Grant program, to an adjacent state Sea Grant Program.

Proposals must be received before 5:00 p.m. (local time) on May 15, 2000.

Direct submission to the National Sea Grant College Program Office in Silver Spring, MD, while not encouraged, is acceptable. The address is: National Sea Grant College Program, Attn: Mrs. Geraldine Taylor, SG-MSI Competition, Room 11732, NOAA (R/SG), 1315 East-West Highway, Silver Spring, MD 20910. Proposals submitted to the National Sea Grant Office must be received by 5:00 p.m. (EST) on May 15, 2000.

**FOR FURTHER INFORMATION CONTACT:** Dr. Francis Schuler, Executive Director, National Sea Grant College Program, R/SG, NOAA, 1315 East-West Highway, Silver Spring, MD 20910. Tel. (301) 713-2445 ext. 158; e-mail: [fritz.schuler@noaa.gov](mailto:fritz.schuler@noaa.gov).

### Sea Grant Programs

*Alaska*, University of Alaska (907) 474-7086

*California*, University of California, San Diego (858) 534-4440

*California*, University of Southern California (213) 812-1335

*Connecticut*, University of Connecticut (860) 405-9128

*Delaware*, University of Delaware (302) 831-2841

*Florida*, University of Florida (352) 392-5870

*Georgia*, University of Georgia (706) 542-5954

*Hawaii*, University of Hawaii (808) 956-7031

*Illinois-Indiana*, Purdue University (765) 494-3593

*Louisiana*, Louisiana Sea Grant (225) 388-6710

*Maine*, University of Maine (207) 581-1435

*Maryland*, University of Maryland (301) 405-6371

*Massachusetts*, Massachusetts Institute of Technology (617) 253-7131

*Massachusetts*, Woods Hole Oceanographic Institution (508) 289-2557

*Michigan*, University of Michigan (734) 763-1437

*Minnesota*, University of Minnesota (218) 726-8710

*Mississippi-Alabama*, Mississippi-Alabama Sea Grant Consortium (228) 875-9368

*New Hampshire*, University of New Hampshire (603) 862-0122

*New Jersey*, New Jersey Marine Science Consortium (732) 872-1300, Ext. 21

*New York*, New York Sea Grant Institute, SUNY (631) 632-6905

*North Carolina*, North Carolina State University (919) 515-2454

*Ohio*, Ohio State University (614) 292-8949

*Oregon*, Oregon State University (541) 737-2714

*Puerto Rico*, University of Puerto Rico (787) 832-3585

*Rhode Island*, University of Rhode Island (401) 874-6800

*South Carolina*, South Carolina Sea Grant Consortium (843) 727-2078

*Texas*, Texas A&M University (409) 845-3854

*Virginia*, Virginia Graduate Marine Science Consortium (804) 924-5965

*Washington*, University of Washington (206) 543-6600

*Wisconsin*, University of Wisconsin-Madison (608) 262-0905

### SUPPLEMENTARY INFORMATION:

#### I. Program Authority

**Authority:** 33 U.S.C. 1121-1131. Catalog of Federal Assistance Number: 11.417, Sea Grant Support.

#### II. Program Description

##### Background

In an effort to address the underrepresentation of minorities in the marine sciences, Sea Grant established a pilot program in the mid-1990s to enhance the capabilities of Historically Black Colleges and Universities (HBCU) nationwide in the coastal and marine sciences. The Federal investment in this program has been \$750,000 over three years. Awards of \$50,000 per year were made to HBCU institutions via Sea Grant College Programs in their states. The HBCU institutions were Clark-Atlanta University, Delaware State University, Hampton University, Savannah State University, and the University of Maryland Eastern Shore.

In accord with the Sea Grant mission and with the policy of the U.S. Department of Commerce and the National Oceanic and Atmospheric Administration to reach minority institutions, the goals of the SG-MSI Partnership Program are:

1. To significantly increase the exposure of undergraduate MSI students to the marine and coastal sciences and to increase the participation of underrepresented minorities in the marine sciences.

2. To enhance the quality of undergraduate majors and graduate studies to facilitate entrance into existing marine science graduate programs or marine careers.

3. To accelerate the development of strong partnerships and to encourage graduate research, student experiential internships, and faculty development opportunities between MSIs and Sea Grant programs or other universities, research institutions, industry, or organizations (public, nonprofit, or

private) engaged in the marine sciences or related marine fields.

4. To design and encourage the structuring and implementation of curricula and training opportunities for students interested in pursuing business careers as entrepreneurs in the field of aquaculture.

##### Rationale

The recruitment of minorities into the fields of science and engineering, and especially under-represented minorities, lags behind expectations. According to the National Science Foundation (Women, Minorities and Persons with Disabilities in Science and Engineering: 1996) the percentage of minority scientists and engineers in the workforce ranges from 0.2% for American Indians to 3.5% for African-Americans and Hispanics. Although data are not available for marine sciences in particular, they are included in the general heading of science and natural sciences, and there is every reason to expect the percentages to be similar if not lower.

The quality and nature of academic experience at each step of the educational pipeline are crucial to bringing more minorities into marine science and engineering fields. Bachelors, Master's and Doctoral degrees are the underpinnings of science career achievement and employment. In both undergraduate and graduate levels, Hispanics, African Americans, and Native Americans complete fewer degrees than majority ethnic groups. At the Bachelor's level, National Science Foundation (NSF) data show that African Americans and Hispanics each receive about 4.5% of the bachelor degrees in natural science and engineering; native Americans receive 0.4%. At the Master's level African-Americans and Hispanics receive about 3% of the degrees (NSF Science and Engineering Indicators, 1996). There is additional evidence to suggest that MSI's are underserved in the proportion of grants that they receive from the U.S. Department of Commerce. In FY 1998, MSIs received only 5.8% of Department grants to institutions of higher education. In FY 1999, NOAA's Office of Oceanic and Atmospheric Research provided 0.5% of its extramural grants to MSIs.

NOAA and Sea Grant share the commitment of the Department of Commerce to bring more under-represented minorities into marine science and engineering through working with MSIs. Sea Grant's authorizing legislation includes a strong educational mandate at institutions of higher learning.

### SG-MSI Partnership Program

The intent of the SG-MSI Partnership Program is to increase the exposure of undergraduate and graduate students from MSIs to the marine and coastal sciences and, ultimately, to increase the capacity of MSIs to promote and launch more students into marine science careers. A SG-MSI Partnership project should develop strong partnerships between MSIs and Sea Grant programs or other universities, research institutions, industry, or organizations (public, nonprofit, or private) engaged in the marine sciences or related marine fields that will augment the capabilities of MSIs. Possible partnership mechanisms include: student research and/or experiential internship opportunities, faculty development opportunities, access to facilities and laboratories or field research, mentoring programs, or other enabling programs to increase interest and participation in marine sciences or related marine fields, including aquaculture. Projects using aquaculture as a tool to teach science, business and as a way to stimulate relationships between MSI's and industry or business are encouraged. These projects should aim at stimulating students' interest in and ability to enter the field of aquaculture as a business endeavor.

Proposals must be submitted from an eligible MSI and are expected to have a rigorous work plan, a strong rationale, and clearly identified and achievable goals. Roles, responsibilities and contributions of all partners must be clearly identified.

Proposals should emphasize innovative approaches to solving the problem of encouraging, preparing, and graduating MSI students into marine science career fields. Proposals should build creatively on existing expertise and research programs of academia, state and national efforts. Innovative, imaginative approaches to the issue are sought that take maximum advantage of the synergies of partnership.

Proposals may request up to \$75,000 per year in federal funds and projects may run up to three years duration. Matching funds from non-federal sources must provide at least one-third of total project costs, or in other words, for every \$2 in federal support, a minimum of \$1 in non-federal matching funds is required to be committed to the project. The required non-federal matching funds may be contributed by the MSI, by the partners, or any other non-federal source. Awards are contingent on Federal funding availability.

### III. Eligibility

Minority Serving Institutions eligible to submit proposals include institutions of higher education identified by the Department of Education as (i) Historically Black Colleges and Universities, (ii) Hispanic-Serving Institutions, (iii) Tribal Colleges and Universities, on the "1999 United States Department of Education Accredited Post-Secondary Minority Institutions" list: (<http://www.ed.gov/offices/OCR/99minin.html>). Also, because of their unique dependence on marine resources, (iv) institutions of higher education located in U.S. insular areas that are on the "1999 United States Department of Education Accredited Post-Secondary Minority Institutions" are eligible to submit proposals. (United States' insular areas include the territories of American Samoa, Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands, and the freely associated states of the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.)

### IV. Evaluation Criteria

The evaluation criteria for proposals submitted for support under the SG-MSI Partnership Program are weighted as follows:

(1) *Impact of Proposed Project* (40%): The contributions the project makes to enhancing the capability of the MSI to bring its student population, either undergraduate or graduate, into the marine sciences and related marine fields. The benefit accruing to a faculty from his/her participation in the SG-MSI Partnership Program, including exposure to research and opportunities for professional growth in the marine sciences and related marine fields.

(2) *Quality of Partnership Relationships* (30%): The strength, stability and quality of the proposed partnership. The demonstrated capabilities and interest in marine science or related marine field of the MSI and/or the partner. The degree to which the partners contribute time or in-kind match. Evidence that the partnership has been thought through carefully, with roles and responsibilities clearly identified. Evidence that the partnership can have long term sustainability and usefulness once established. The ability of the partnerships to provide enhanced career opportunities for faculty and students.

(3) *Innovativeness* (15%): The degree to which new approaches are developed to solve problems and exploit opportunities for student and faculty

engagement in marine science and marine resource management.

(4) *Project Personnel* (15%): The caliber of the principal investigators including special skills, past experiences of institutions and investigators, or training that renders the project especially qualified for the SG-MSI Partnership Program.

### V. Selection Procedures

Reviews of the proposals will be conducted by an independent peer review panel consisting of university educators, scientists, administrators, and senior level individuals with expertise in academic partnerships and/or familiarity with MSIs and their students. Proposals will be ranked in accordance with the above evaluation criteria (Section IV) by the panel members. The panel members will provide individual evaluations on proposals, but there will be no consensus advice. Their recommendations and evaluations will be considered by the National Sea Grant Office in the final selection of proposals to be funded. The National Sea Grant Office may also consider programmatic or geographic balance and budget availability in the final selection of proposals to be funded. Hence, awards may not necessarily be made to the peer review panel's highest-scored proposals. Investigators may be asked to modify objectives, work plans, budget levels, or project duration prior to final approval of an award.

### VI. Instructions for Application

#### *Proposal Preparation*

The National Sea Grant Office, NOAA, encourages applicants to discuss their proposal concepts with a local Sea Grant program. The state Sea Grant programs are a valuable source of information about marine issues in their state and region, and can advise applicants new to Sea Grant on the preparation of NOAA and Sea Grant applications.

#### *Timetable*

May 15, 2000—Proposals are due 5 p.m., May 15, 2000. (See Section VII. How To Submit for further details.)

July, 2000—Successful applicants can expect to be notified at the beginning of July 2000. Successful applicants may be asked to provide revised narratives and/or budgets which would be due in mid-July.

October 1, 2000—Funds will be awarded through a grant with an expected start date of October 1, 2000. Multiple-year proposals will be funded in annual increments.

### Proposal Guidelines

Each proposal should include the items listed below. All pages should be single- or double-spaced, typewritten in at least a 10-point font, and printed on metric A4 (210 mm × 297 mm) 8½" × 11" paper. Brevity will assist reviewers and program staff in dealing effectively with proposals. Therefore, the proposals may not exceed 15 pages. Tables and visual materials, including charts, graphs, maps, photographs and other pictorial presentations are included in the 15-page limitation; literature citations are not included in the 15-page limitation. Conformance to the 15-page limitation will be strictly enforced. All information needed for review of the proposal should be included in the main text; no appendices are permitted. The following information should be included:

(1) Signed title page: The title page should be signed by the Principal Investigator and the institutional representative and should clearly identify the program area being addressed by starting the project title with "SG-MSI Partnership Program." The Principal Investigator and institutional representative should be identified by full name, title, organization, telephone number, e-mail and mailing address. The total amount of Federal funds and matching funds being requested should be listed for each budget period.

(2) See Grant Project Summary Form (90-2): This information is very important. It is critical that the project summary accurately describe the essential elements of the project being proposed. The project summary should include: 1. Title: Use the exact title as it appears in the rest of the application. 2. Investigators: List the names and affiliations of each investigator who will significantly contribute to the project. Start with the Principal Investigator. 3. Funding request for each year of the project, including matching funds if appropriate. 4. Project Period: Start and completion dates. Proposals should request a start date of October 1, 2000. 5. Objectives, Methodology, and Rationale: This should include concise statement of the objectives of the project, the scientific or educational methodology to be used, and the rationale for the work proposed. (See below #10 Standard Application Forms.)

(3) Project Description (15-page limit).

(a) Introduction/Background/Justification: What is the problem or opportunity being addressed and what is its scientific, educational, or

economic importance to the region or nation?

(b) Technical Plan: What are the goals, objectives, and anticipated approach of the proposed project? While a detailed work plan is not expected, the proposal should present evidence that there has been thoughtful consideration of the approach to the problem under study. What capabilities does the partner possess that will benefit the project, faculty member and students?

(c) Output/Anticipated Benefits: Upon successful completion of the project, what are the anticipated benefits to the institutions, students, and the partner?

(d) Literature Cited: Should be included here, but does not count against the 15-page limit.

(4) Budget and Budget Justification: There should be a separate annual budget for each year of the project as well as a cumulative budget for the entire project. Applicants are encouraged to use the Sea Grant Budget Form 90-4 (see below #10 Standard Application Forms), but may use their own form as long as it provides the same information as the Sea Grant form. Subcontracts should have a separate budget page. Matching funds must be indicated; failure to provide adequate matching funds will result in the proposal being rejected without review. Each annual budget should include a separate budget justification page that itemizes all budget items in sufficient detail to enable reviewers to evaluate the appropriateness of the funding requested. Please pay special attention to any travel, supply or equipment budgets and provide details.

(5) Current and Pending Support: Applicants must provide information on all current and pending support for ongoing projects and proposals, including subsequent funding in the case of continuing grants. All current project support from whatever source (e.g., Federal, State or local government agencies, private foundations, industrial or other commercial organizations) must be listed. The proposed project and all other projects or activities requiring a portion of time of the principal investigator and other senior personnel should be included, even if they receive no Federal salary support from the project(s). The number of person-months per year to be devoted to the projects must be stated, regardless of source of support. Similar information must be provided for all proposals already submitted or submitted concurrently to other possible sponsors, including those within NOAA.

(6) Results from Prior Sea Grant Support.

If the Principal Investigator (or any co-PI identified on the proposal) has received Sea Grant funding in the past five years, the following information on the prior award(s) is required:

(a) The NOAA award number, amount and period of support;

(b) The title of the project;

(c) Brief summary of the results of the completed work;

(d) Brief description of the contribution the project has made.

(e) Publications resulting from the Sea Grant award.

Reviewers will be asked to comment on the quality of the prior work described in this section of the proposal. Please note that a PI with prior Sea Grant support may use up to two additional pages to describe the results.

(7) Vitae (2 pages maximum per investigator).

(8) Letter of commitment from the partnering organizations.

(9) A brief (less than one-page) description of the partnering organization.

(10) Standard Application Forms: Applicants may obtain all required application forms at website: <http://www.nsgo.seagrant.org/research/rfp/index.html#3> or from a state Sea Grant program: <http://www.nsgo.seagrant.org/SGDirectors.html>, or from Dr. Francis Schuler at the National Sea Grant Office (phone: 301-713-2445 x158 or e-mail: [fritz.schuler@noaa.gov](mailto:fritz.schuler@noaa.gov)). For proposals selected for funding, the following forms must also be submitted:

(a) Standard Forms 424, Application for Federal Assistance, 424B, Assurances—Non-Construction Programs, (Rev 4-88). Please note that both the Principal Investigator and an administrative contact should be identified in Section 5 of the SF424 or Section 10, applicants should enter "11.417" for the CFDA Number and "Sea Grant Support" for the title. The form must contain the original signature of an authorized representative of the applying institution.

(b) Primary Applicant Certifications. All primary applicants must submit a completed Form CD-511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

(i) Non-Procurement Debarment and Suspension. Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Non-Procurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

(ii) Drug-Free Workplace. Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Government-wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

(iii) Anti-Lobbying. Persons (as defined at 15 CFR part 28 section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than \$100,000, and loans and loan guarantees for more than \$150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

(iv) Anti-Lobbying Disclosures. Any applicant that has paid or will pay for lobbying using any funds must submit an SF-LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

(c) Lower Tier Certifications. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD-512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF-LLL, "Disclosure of Lobbying Activities." ORM CD-512 is intended for the use of recipients and should not be transmitted to the Department of Commerce (DOC). F-LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

## VII. How To Submit

Proposals must be submitted according to the Timetable outlined in Section VI, Instructions for Application. Although investigators are not required to submit more than three copies of the proposal, the normal review process requires 10 copies. Applicants are encouraged to submit sufficient proposal copies for the full review process if they wish all reviewers to receive color, unusually sized (not 8.5" x 11"), or otherwise unusual materials submitted as part of the proposal. Only three copies of the Federally required forms are needed.

Applicants are encouraged to submit their proposals to their state Sea Grant program, (see: <http://www.nsgo.seagrant.org/>

[SGDirectors.html](http://SGDirectors.html)); or, if your state does not have a Sea Grant program, to a Sea Grant program in an adjacent state. Proposals must be received before 5 p.m. (local time) on May 15, 2000.

Direct submission to the National Sea Grant College Program Office in Silver Spring, MD, while not encouraged, is acceptable. The address is: National Sea Grant College Program, Attn: Mrs. Geraldine Taylor, SG-MSI Competition, Room 11732, NOAA (R/SG), 1315 East-West Highway, Silver Spring, MD 20910. Proposals submitted to the National Sea Grant Office must be received by 5 p.m. (EST) on May 15, 2000.

Applications received after the deadline and applications that deviate substantially from the format described above will be returned to the sender without review. Facsimile transmissions and electronic mail submission of applications will not be accepted.

## VIII. Other Requirements

(A) Federal Policies and Procedures—Recipients and subrecipients are subject to all Federal laws and Federal and Department of Commerce (DOC) policies, regulations, and procedures applicable to Federal financial assistance awards.

(B) Past Performance—Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

(C) Pre-Award Activities—If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover pre-award costs.

(D) No Obligation for Future Funding—If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

(E) Delinquent Federal Debts—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(1) The delinquent account is paid in full,

(2) A negotiated repayment schedule is established and at least one payment is received, or

(3) Other arrangements satisfactory to DOC are made.

(F) Name Check Review—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if

any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

(G) False Statements—A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(H) Intergovernmental Review—Applications for support from the National Sea Grant College Program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

(I) Purchase of American-Made Equipment and Products—Applicants are hereby notified that they will be encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this program.

(J) For awards receiving funding for the collection or production of geospatial data (e.g., GIS data layers), the recipient will comply to the maximum extent practicable with E.O. 12906, Coordinating Geographic Data Acquisition and Access, The National Spatial Data Infrastructure, 59 Fed. Reg. 17671 (April 11, 1994). The award recipient shall document all new geospatial data collected or produced shall document all new geospatial data collected or produced using the standard developed by the Federal Geographic Data Center, and make that standardized documentation electronically accessible. The standard can be found at the following Internet website: (<http://www.fgdc.gov/standards/standards/html>).

## Classification

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts.

Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

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

This notice contains collection of information requirements subject to the Paperwork Reduction Act. The Sea Grant budget Form, 90-4, Sea Grant Summary Form, 90-2, and Standard Forms 424, and 424b have been approved under control numbers 0648-0362, 0648-0362, 0348-0043, and 0348-0040 with average responses estimated to take 15, 20, 45, and 15 minutes,

respectively. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments on these estimates or any other aspect of these collections to National Sea Grant College Program, R/SG, NOAA, 1315 East-West Highway, Silver Spring, MD 20910 (Attention: Francis S. Schuler). Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

**Louisa Koch,**

*Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.*

[FR Doc. 00-6230 Filed 3-13-00; 8:45 am]

**BILLING CODE 3510-KA-M**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 030700C]

#### New England Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of the joint New England Fishery Management Council/Mid-Atlantic Fishery Management Council Monkfish Oversight Committee and Monkfish Industry Advisory Panels to consider actions affecting New England and Mid-Atlantic fisheries in the exclusive economic zone (EEZ). Recommendations from the committee will be brought to the full Councils for formal consideration and action, if appropriate.

**DATES:** The meeting will be held on Wednesday, March 29, 2000, at 9:30 a.m.

**ADDRESSES:** The meeting will be held at The Yard Restaurant, 1121 South Mammoth Road, Manchester, NH 03109; telephone: (603) 623-3545.

**Council address:** New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465-0492.

**SUPPLEMENTARY INFORMATION:** The committee will review the current status of the fishery in the context of the fishery management plan implementation, including the partial-year implementation of Year 1 measures. The committee will identify problems and issues with the current plan and scheduled adjustments, including the plan's impact on the fishery in the deep-water canyons and the options for a Grand Banks fishery. The committee will also discuss the availability of scientific data and the timing of the assessment relative to the Year 3 fishery adjustments. At the end of the meeting, the committee will hold a closed session to review applications and select new industry advisors.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in the notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

#### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: March 8, 2000.

**Bruce C. Morehead,**

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

[FR Doc. 00-6227 Filed 3-13-00; 8:45 am]

**BILLING CODE 3510-22-F**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 030600B]

#### Marine Mammals; File No. 455-1445-00

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Receipt of application for amendment.

**SUMMARY:** Notice is hereby given that Waikiki Aquarium, 2777 Kalakaua Avenue, Honolulu, HI 96815, has requested an amendment to scientific research and enhancement Permit No. 455-1445.

**DATES:** Written or telefaxed comments must be received on or before April 13, 2000.

**ADDRESSES:** The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713-2289);

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213 (562/980-4001); and

Pacific Area Office, Southwest Region, NMFS, 1601 Kapiolani Blvd., Honolulu, HI 96814-4700 (808/973-2935).

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301) 713-0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

**FOR FURTHER INFORMATION CONTACT:** Ruth Johnson, 301/713-2289.

**SUPPLEMENTARY INFORMATION:** The subject amendment to Permit No. 455-1445, issued on May 26, 1998 (63 FR 30201) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species.

Permit No. 455-1445 authorizes the permit holder to continually hold three

Hawaiian monk seals (*Monachus schauinslandi*) for the purposes of enhancing the survival and recovery of the species, and for scientific research. The research seeks to assess the efficiency with which monk seals assimilate and metabolize amino acids and fatty acids from common prey types, and elucidate and monitor how reproductive and metabolic activity of male seals are related.

The permit holder requests authorization to train seals to accept a rectal temperature probe and to take daily temperature measurements on the three monk seals held at Waikiki Aquarium.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: March 7, 2000.

**Ann D. Terbush,**

*Chief, Permits and Documentation Division,  
Office of Protected Resources, National  
Marine Fisheries Service.*

[FR Doc. 00-6226 Filed 3-13-00; 8:45 am]

**BILLING CODE 3510-22-F**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Proposed Collection; Comment Request

**AGENCY:** DOD, Office of the Assistant Secretary of Defense for Health Affairs/TMA.

**ACTION:** Notice.

In accordance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs/TMA announces the revision of a currently approved collection and seeks public comment on

the provisions thereof. Comments are invited on: (a) Whether the proposed extension of 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 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 May 15, 2000.

**ADDRESSES:** Written comments and recommendations on the information collection should be sent to the Office of the Assistant Secretary of Defense (Health Affairs), TRICARE Management Activity, Office of Resource Management, Skyline Drive, Suite 810, 5111 Leesburg Pike, Falls Church, Virginia 22041-3206. ATTN: Major Rose Layman, (703) 681-8910.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection, please write to the above address or call Major Rose Layman, Office of the Assistant Secretary of Defense (Health Affairs), TRICARE Management Activity, (703) 681-8910.

*Title; Associated Form; and OMB Number:* Third Party Collection Program; DD Form 2569; OMB Control Number 0704-0323.

*Needs and Uses:* The information contained in the DD Form 2569 will be used to collect reimbursement from private insurers for medical care provided to family members of retirees and deceased Service members having health insurance. Such monetary benefits accruing to the Military Medical Treatment Facility (MTF) will be used to enhance healthcare delivery in the MTF. Information will also be used by MTS staff and CHAMPUS Fiscal Intermediaries to determine eligibility for care, deductibles, and copayments and by Health Affairs for program planning and management.

*Affected Public:* Family members of retirees and deceased Service members having health insurance.

*Annual Burden Hours:* 55,221.  
*Number of Respondents:* 1,262,194.  
*Responses Per Respondent:* 1.  
*Average Burden Per Response:* 2.5 minutes.

*Frequency:* Yearly or on occasion when insurance information changes.

#### **SUPPLEMENTARY INFORMATION:**

#### **Summary of Information Collection**

The DD Form 2569 is used to collect third party insurance information from family members of retirees and deceased Service members having health insurance. This information is collected either during the inpatient stay admission and/or discharge process or during the visit when a patient presents for an outpatient procedure.

Dated: March 8, 2000.

**Patricia L. Toppings,**

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

[FR Doc. 00-6171 Filed 3-13-00; 8:45 am]

**BILLING CODE 5001-10-M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Transmittal No. 00-23]

#### **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 Public Law 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 00-23 with attached transmittal, policy justification and Sensitivity of Technology.

Dated: March 7, 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

28 FEB 2000  
In reply refer to:  
I-00/001419

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. 00-23, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Israel for defense articles and services estimated to cost \$58 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 "M. S. Davison, Jr.", is written above the typed name.

MICHAEL S. DAVISON, JR.  
LIEUTENANT GENERAL, USA  
DIRECTOR

**Attachments**

Same ltr to: House Committee on International Relations  
Senate Committee on Appropriations  
Senate Committee on Foreign Relations  
House Committee on National Security  
Senate Committee on Armed Services  
House Committee on Appropriations

**Transmittal No. 00-23****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*	\$ 42million
Other	\$ <u>16 million</u>
TOTAL	\$ 58 million
- (iii) **Description of Articles or Services Offered: Forty- one AGM-142D air-to-ground missiles with data links (including 33 with Z-seeker heads and eight without seeker heads), containers, captive air training missile sets, spare and repair parts, publications and technical data, U.S. Government and contractor technical and logistics personnel services and other related elements of program support**
- (iv) **Military Department: Air Force (YEP, Amendment 1)**
- (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: 28 FEB 2000**

\* as defined in Section 47(6) of the Arms Export Control Act.

## **POLICY JUSTIFICATION**

### **Israel - AGM-142D Air-to-ground Missiles**

**The Government of Israel has requested a possible sale of 41 AGM-142D air-to-ground missiles with data links (including 33 with Z-seeker heads and eight without seeker heads), containers, captive air training missile sets, spare and repair parts, publications and technical data, U.S. Government and contractor technical and logistics personnel services and other related elements of program support. The estimated cost is \$58 million.**

**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.**

**This proposed sale of the AGM-142D missile allows Israel to increase its capability to engage high value and hardened/buried targets. The proposed sale will contribute significantly to U.S. strategic and tactical objectives by strengthening the unity of the coalition forces throughout the region. Israel, which already has AGM-142D air-to-ground missiles in its inventory, will have no difficulty absorbing these missiles.**

**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 Electronics and Missiles of Orlando, Florida. There are no offset agreements proposed in connection with this potential sale.**

**Implementation of this proposed sale will not require the assignment of any additional U.S. Government representatives or contractor representatives to Israel.**

**There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.**

**Transmittal No. 00-23****Notice of Proposed Issuance of Letter of Offer  
Pursuant to Section 36(b)(1)  
of the Arms Export Control Act****Annex  
Item No. vi****(vi) Sensitivity of Technology:**

**1. The AGM-142 stand-off air-to-ground missile hardware and software contain the following sensitive technologies which are classified Confidential: missile seeker hardware, range capability, data link capabilities and launch software (guidance algorithms). The missile has a range of 40-50 NM and can utilize either electro-optical or infrared seekers, and has an 800 lb. warhead. Terminal guidance for the weapons is achieved through the use of data link from either the launch aircraft or another suitable platform.**

**2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software involved in this proposed sale, the information could be used to develop countermeasures or systems which could reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.**

**3. A determination has been made that Israel can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed 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. 00-29]

**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 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 00-29 with attached transmittal and policy justification.

Dated: March 7, 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

**28 FEB 2000**  
**In reply refer to:**  
**I-00/001421**

**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. 00-29 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense articles and services estimated to cost \$90 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.**

**Sincerely,**

A handwritten signature in black ink that reads "MS Davison".

**MICHAEL S. DAVISON, JR.**  
**LIEUTENANT GENERAL, USA**  
**DIRECTOR**

**Attachments**

**Separate Cover:**  
**Classified Annex**

**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. 00-29****Notice of Proposed Issuance of Letter of Offer  
Pursuant to Section 36(b)(1)  
of the Arms Export Control Act**

- (i) **Prospective Purchaser: Egypt**
- (ii) **Total Estimated Value:**

<b>Major Defense Equipment*</b>	<b>\$ 75 million</b>
<b>Other</b>	<b><u>\$ 15 million</u></b>
<b>TOTAL</b>	<b>\$ 90 million</b>
- (iii) **Description of Articles or Services Offered: Fifteen LANTIRN Navigation pods, 15 Sharpshooter targeting pods, associated aircraft integration, support equipment, spare parts, technical orders, publications, training, and other related elements of logistics support**
- (iv) **Military Department: Air Force (DBD)**
- (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: 28 FEB 2000**

\* as defined in Section 47(6) of the Arms Export Control Act.

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**POLICY JUSTIFICATION****Egypt - Navigation and Targeting Pods**

**The Government of Egypt has requested a possible sale of 15 LANTIRN Navigation pods, 15 Sharpshooter targeting pods, associated aircraft integration, support equipment, spare parts, technical orders, publications, training, and other related elements of logistics support. The estimated cost is \$90 million.**

**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 Egyptian Air Force is undergoing a modernization program that involves upgrading its weapon systems for the F-16 aircraft. The LANTIRN pods will provide the F-16 aircraft with a low altitude navigation and targeting system for night operations. Egypt, which already has LANTIRN pods in its inventory, will have no difficulty absorbing these pods.**

**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 Electronics and Missiles Corporation of Orlando, Florida. There are no offset agreements proposed in connection with this potential sale.**

**Implementation of this proposed sale will not require the assignment of any additional U.S. Government and contractor representatives to Egypt.**

**There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.**

**DEPARTMENT OF DEFENSE****Defense Logistics Agency****Privacy Act of 1974; Computer Matching Program**

**AGENCY:** Defense Manpower Data Center, Defense Logistics Agency, DoD.

**ACTION:** Notice of a computer matching program.

**SUMMARY:** Subsection (e)(12) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) requires agencies to publish advance notice of any proposed or revised computer matching program by the matching agency for public comment. The Department of Defense (DoD), as the matching agency under the Privacy Act, is hereby giving notice to the record subjects of a computer matching program between National Science Foundation (NSF) and DoD that records are being matched by computer. The record subjects are NSF delinquent debtors who may be current or former Federal employees receiving Federal salary or benefit payments and who are indebted and or delinquent in their repayment of debts owed to the United States Government under programs administered by NSF.

**DATES:** This proposed action will become effective April 13, 2000 and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

**ADDRESSES:** Any interested party may submit written comments to the Director, Defense Privacy Office, 1941 Jefferson Davis Highway, Suite 920, Arlington, VA 22202-4502.

**FOR FURTHER INFORMATION CONTACT:** Mr. Vahan Moushegian, Jr. at telephone (703) 607-2943.

**SUPPLEMENTARY INFORMATION:** Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DoD and NSF have concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies for debt collection. The match will yield the identity and location of the debtors within the Federal government so that NSF can pursue recoupment of the debt by voluntary payment or by administrative or salary offset procedures.

A copy of the computer matching agreement between the NSF and DoD is

available upon request to the public. Requests should be submitted to the address caption above or to the Debt Management Officer, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Set forth below is a public notice of the establishment of the computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published on June 19, 1989, at 54 FR 25818.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice were submitted on February 28, 2000, to the House Committee on Government Reform, the Senate Committee on Government Affairs, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A-130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: March 8, 2000.

**L. M. Bynum,**

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

**Notice of a Computer Matching Program between the National Science Foundation, and the Department of Defense for Debt Collection.**

**A. Participating agencies:** Participants in this computer matching program are the National Science Foundation (NSF) and the Defense Manpower Data Center (DMDC), Department of Defense (DoD). The National Science Foundation is the source agency, i.e., the activity disclosing the records for the purpose of the match. The DMDC is the specific recipient activity or matching agency, i.e., the agency that actually performs the computer matching.

**B. Purpose of the match:** The purpose of the match is to identify and locate any matched Federal personnel, employed, serving, or retired, who owe delinquent debts to the Federal Government under certain programs administered by NSF. NSF will use this information to initiate independent collection of those debts under the provisions of the Debt Collection Act of 1982, as amended, when voluntary payment is not forthcoming. These collection efforts will include requests by NSF of the military service/employing agency in the case of military personnel (either active, reserve, or retired) and current non-postal civilian employees, to apply administrative and/

or salary offset procedures until such time as the obligation is paid in full.

**C. Authority for conducting the match:** The legal authority for conducting the matching program is contained in the Debt Collection Act of 1982 (Public Law 97-365), as amended by the Debt Collection Improvement Act of 1996 (Public Law 104-134, section 31001); 31 U.S.C. Chapter 37, Subchapter I (General) and Subchapter II (Claims of the United States Government); 31 U.S.C. 3711 Collection and Compromise; 31 U.S.C. 3716 Administrative Offset; 5 U.S.C. 5514, Installment Deduction for Indebtedness (Salary Offset); 10 U.S.C. 135, Under Secretary of Defense (Comptroller); Section 101(1) of Executive Order 12731; 4 CFR 101.1-105.5, Federal Claims Collection Standards; 5 CFR 550.1101 - 550.1108, Collection by Offset from Indebted Government Employees (OPM); 45 CFR part 607 (NSF).

**D. Records to be matched:** The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

1. NSF will use personal data from the following Privacy Act record systems for the match: NSF-57, 'NSF Delinquent Debtors File' which was published in the **Federal Register** at 62 FR 59903 on November 5, 1997.

2. DOD will use personal data from the record system identified as S322.11 DMDC, entitled 'Federal Creditor Agency Debt Collection Data Base,' last published in the **Federal Register** at 64 FR 42101 on August 3, 1999.

**E. Description of computer matching program:** NSF, as the source agency, will provide DMDC with a file which contains information specified below. Upon receipt of the file of debtor accounts, DMDC will perform a computer match using all nine digits of the SSN of the NSF file against a DMDC computer database. The DMDC database, established under an interagency agreement between DOD, OPM, OMB, and the Department of the Treasury, consists of personnel records of non-postal Federal civilian employees and military members, both active, and retired. The 'hits' or matches will be furnished to NSF. NSF is responsible for verifying and determining that the data on the DMDC reply file are consistent with NSF's source file and for resolving any discrepancies or inconsistencies on an individual basis. NSF will also be responsible for making final determinations as to positive

identification, amount of indebtedness and recovery efforts as a result of the match.

*F. Individual notice and opportunity to contest:* Due process procedures will be provided by NSF to those individuals matched (hits) consisting of the NSF's verification of debt; a minimum of 30-day written notice to the debtor explaining the debtor's rights; opportunity for the debtor to examine and copy NSF's documentation relating to the debt; provision for debtor to seek the NSF's review of the debt (or in the case of the salary offset provision, opportunity for a hearing before an individual who is not under the supervision or control of the agency); and opportunity for the individual to enter into a written agreement satisfactory to the NSF for repayment. Only when all of the steps have been taken will the NSF disclose, pursuant to a routine use, to effect an administrative or salary offset. Unless the individual notifies NSF within 30 days from the date of the notice, NSF will infer that the data provided the individual is accurate and correct and will take the next step, as authorized by law, to recoup the delinquent debt.

*G. Inclusive dates of the matching program:* This computer matching program is subject to review by the Office of Management and Budget and Congress. If the mandatory 30 day period for public comment has expired and if no objections are raised by either Congress or the Office of Management and Budget within 40 days of being notified of the proposed match, the computer matching program becomes effective and the respective agencies may begin the exchange of data at a mutually agreeable time and will be repeated on an six month basis. By agreement between NSF and DoD, the matching program will be in effect and continue for 18 months with an option to extend for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

*H. Address for receipt of public comments or inquiries:* Director, Defense Privacy Office, 1941 Jefferson Davis Highway, Suite 920 Arlington, VA 22202-4502. Telephone (703) 607-2943. [FR Doc. 00-6174 Filed 3-13-00; 8:45 am]

BILLING CODE 5001-10-F

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

**SUMMARY:** The Acting 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 May 15, 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 Acting 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: March 9, 2000.

**William E. Burrow,**

Acting Leader, Information Management Group, Office of the Chief Information Officer.

### Office of Elementary and Secondary Education

*Type of Review:* Regular.

*Title:* Goals 2000, Parental Information and Resource Center's Annual/Final Performance Report.

*Frequency:* Annually.  
*Reporting and Recordkeeping Hour Burden:* Responses: 58; Burden Hours: 226.

*Abstract:* Recipients of grants under the Parental Assistance Program must submit an annual performance report that establishes substantial progress toward meeting their project objective to receive a continuation award.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202-4651, or should be electronically mailed to the internet address *Vivian.Reese@ed.gov*, or should be faxed to 202-708-9346.

For questions regarding burden and/or the collection activity requirements, contact Jackie Montague at 202-708-5359. 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. 00-6252 Filed 3-13-00; 8:45 am]

BILLING CODE 4000-01-P

## DEPARTMENT OF EDUCATION

[CFDA No: 84.265A]

### State Vocational Rehabilitation Unit In-Service Training; Notice reopening the closing date for transmittal of applications for new awards for fiscal year (FY) 2000

*Deadline for Transmittal of Applications:* The deadline date for transmittal of applications is reopened from December 17, 1999 to March 28, 2000.

On October 21, 1999 we published in the **Federal Register** (64 CFR 56775) a notice inviting applications for new awards for FY 2000 under the State Vocational Rehabilitation Unit In-Service Training program. The regulations for this program state that each State agency is eligible to receive an award under the In-Service Training program. The purpose of this notice is to reopen the deadline date for transmittal of applications to allow all eligible applicants an opportunity to apply for funds under this program. Applicants who submitted applications under the prior notice need not submit a new application, unless they wish to do so.

*Deadline for Intergovernmental Review:* May 30, 2000.

*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 84.265A.

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) 205-9817. 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:** Ms. Beverly Steburg, U.S. Department of Education, Region IV, 61 Forsyth Street, SW., Suite 18T91, Atlanta, Georgia 30303. Telephone: (404) 562-6336. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph

#### 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 a document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.access.gpo.gov/nara/index.html>

**Program Authority:** 29 U.S.C. 772.

Dated: March 8, 2000.

**Curtis L. Richards,**

*Acting Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 00-6139 Filed 3-13-00; 8:45 am]

**BILLING CODE 4000-01-U**

## DEPARTMENT OF ENERGY

### Office of General Counsel Federalism; Intergovernmental Consultation

**AGENCY:** Office of the General Counsel, Department of Energy.

**ACTION:** Notice of statement of policy.

**SUMMARY:** The Department of Energy (DOE) is publishing a statement of policy on intergovernmental consultation in the development of regulations that have federalism implications. This statement of policy implements provisions in President Clinton's Executive Order on Federalism that require Federal agencies to consult with State and local governments in the development of regulatory policies that may 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.

**EFFECTIVE DATE:** This policy is effective March 14, 2000.

**FOR FURTHER INFORMATION CONTACT:** Michael W. Bowers, Office of the Assistant General Counsel for Regulatory Law, U.S. Department of Energy, 1000 Independence Avenue, S.W., GC-74, Washington, D.C. 20585, (202) 586-2902.

**SUPPLEMENTARY INFORMATION:** The President issued Executive Order 13132, "Federalism," on August 4, 1999 (64 FR 43255, Aug. 10, 1999). Section 6(a) of the Order requires each covered Federal agency to have "an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." The term "State and local officials" is defined in section 1(d) of the Order to mean "elected officials of State and local governments or their representative national organizations." "Regulatory policies that have federalism implications" refers to actions 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." E.O. 13132, section 1(a).

On October 28, 1999, the Administrator, Office of Information and Regulatory Affairs, within the Office of Management and Budget (OMB), issued to heads of executive departments and agencies guidance for implementing Executive Order 13132. Pursuant to section 6 of the Order, the Administrator requested that each agency federalism official submit a description of the agency's consultation process to OMB by January 31, 2000. The General Counsel, who is the DOE federalism official, has submitted this statement of policy to OMB.

The intergovernmental consultation procedures required by Executive Order 13132 and by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) are similar. For that reason, DOE has modeled this statement of policy on its final policy statement on intergovernmental consultation under the Unfunded Mandates Reform Act of 1995, which DOE published on March 18, 1997 (62 FR 12820). This will permit DOE to use the same basic consultation process for development of a regulation that both contains a significant Federal intergovernmental mandate and has federalism implications.

The intergovernmental consultation process required by Executive Order 13132 expands and supersedes the consultation procedures under Executive Order 12875, "Enhancing the Intergovernmental Partnership" (58 FR 58093, Oct. 28, 1993). E.O. 13132 section 10(b). However, Executive Order 13132 supplements, but does not supersede, the requirements in Executive Order 12372, "Intergovernmental Review of Federal Programs" (3 CFR, 1982 Comp., p. 197). E.O. 13132 section 10(a). Executive Order 12372 directs Federal agencies, to the extent permitted by law, to rely on State and local processes for consultation with elected State and local government officials that would provide the non-Federal funds for, or that would be directly affected by, proposed Federal assistance or direct Federal development.

Issued in Washington, D.C., on February 11, 2000.

**Mary Anne Sullivan,**  
*General Counsel.*

DOE adopts the following Statement of Policy:

## Statement of Policy on Intergovernmental Consultation in the Development of Regulations That Have Federalism Implications

### I. Purpose

This Statement of Policy implements the requirement in section 6 of Executive Order 13132, "Federalism," (64 FR 43255, Aug. 10, 1999), that each agency have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. "State and local officials" means elected officials of State and local governments or their representative national organizations.

### II. Applicability

This Statement of Policy applies to the development of any regulation that has federalism implications. A regulation has federalism implications if it has 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.

### III. Intergovernmental Consultation

*When to begin.* As early as possible in the development of a notice of proposed rulemaking, the responsible Secretarial Officer, in consultation with the General Counsel and the Principal Deputy Assistant Secretary for Congressional and Intergovernmental Affairs, should determine whether a proposed regulation has federalism implications. Upon determining that a proposed regulation has federalism implications, the Secretarial Officer responsible for the rulemaking should provide adequate notice to pertinent State and local officials.

*Content of notice.* The notice from the responsible Secretarial Officer to State and local officials should: (1) describe the nature and authority for the rulemaking; (2) give DOE's estimate of the effects on State and local governments of the regulatory options being considered for proposal, including whether they would impose direct compliance costs not funded by the Federal Government or would preempt State law; and (3) invite them to participate in the development of the regulation by participating in meetings or workshops with DOE or by presenting their views in writing on the likely effects of regulatory options being considered by DOE staff or legally available policy alternatives that they wish DOE to consider.

*How to notify State officials.* With respect to State governments, the Secretarial Officer should give actual notice by letter, using a mailing list maintained by the DOE Office of Intergovernmental and External Affairs that includes elected chief executives, the National Governors Association, the National Conference of State Legislatures, and the Council of State Governments.

*How to notify local officials.* With respect to local governments, the Secretarial Officer should give notice through the **Federal Register** and by letter to the Executive Director of the National League of Cities, the National Association of Counties, the U.S. Conference of Mayors, the International City/County Management Association, and any State Municipal League not represented by a national association. If a draft proposed regulation might have federalism implications in a limited area of the United States, then the Secretarial Officer, in consultation with the Office of Intergovernmental and External Affairs, should give actual notice by letter to appropriate local officials and the appropriate State Municipal League(s), if practicable.

*Consultation.* The timing, nature, and detail of the consultation with State and local officials should be appropriate to the nature of the regulation involved. In consultation with State and local officials, staff in the office of the Secretarial Officer responsible for the rulemaking and the Office of Intergovernmental and External Affairs should seek comment, as appropriate, on: (1) The need for Federal regulation; (2) compliance costs of regulatory options DOE is considering for proposal; (3) legally available policy alternatives; and (4) ways to avoid or minimize conflict between State law and Federally protected interests. If a rulemaking would impose an unfunded mandate or preempt State law, staff in the office of the Secretarial Officer responsible for the rulemaking and the Office of Intergovernmental and External Affairs must consult, to the extent practicable and permitted by law, with State and local officials early in the process of developing a notice of proposed rulemaking. Under Executive Order 13132, a regulation would impose an unfunded mandate if it has federalism implications; would impose substantial direct compliance costs on State and local governments; and is not required by statute.

*Exemption from the Federal Advisory Committee Act.* Secretarial Officers are encouraged to meet with State and local elected officials to exchange views, information, and advice concerning the

implementation of intergovernmental responsibilities or administration. Section 204(b) of the Unfunded Mandates Act of 1995 (2 U.S.C. 1534(b)) exempts from the Federal Advisory Committee Act (5 U.S.C. App.) meetings for this purpose that do not include other members of the public.

*Documenting compliance.* The **SUPPLEMENTARY INFORMATION** section of any notice of proposed and final rulemaking that has federalism implications should describe DOE's determinations and intergovernmental consultation activities under Executive Order 13132. The **SUPPLEMENTARY INFORMATION** section of a notice of final rulemaking must include: (1) in a separately identified section, a "federalism summary impact statement," and (2) the certification of compliance required by section 8(a) of Executive Order 13132. The federalism summary impact statement must include a description of DOE's prior consultation with State and local officials; a summary of the nature of State and local officials' concerns and DOE's position supporting the need to issue the regulation; and a statement of the extent to which the concerns of State and local officials have been met. If intergovernmental consultations precede the notice of proposed rulemaking, the **SUPPLEMENTARY INFORMATION** section of the notice of proposed rulemaking should include a preliminary federalism summary impact statement.

[FR Doc. 00-6206 Filed 3-13-00; 8:45 am]

BILLING CODE 6450-01-P

## DEPARTMENT OF ENERGY

### Office of Science; Office of Science Financial Assistance Program Notice 00-11; Atmospheric Chemistry Program

**AGENCY:** U.S. Department of Energy.

**ACTION:** Notice inviting grant applications.

**SUMMARY:** The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for participation in the Atmospheric Chemistry Program (ACP) Science Team. The research program supports the Department's Global Change Research Program, the U.S. Global Change Research Program, and the Administration's goals to understand atmospheric chemistry associated with air quality and climate change. Of particular interest are experimental and

theoretical studies of atmospheric chemistry processes affected by energy-related air pollutants, *e.g.*, sulfur oxides, nitrogen oxides, organic aerosols, and tropospheric ozone.

**DATES:** Formal applications in response to this Notice must be received by 4:30 p.m., E.D.T., May 3, 2000, to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2001. Applications that are collaborative with or complementary to DOE laboratory proposals are strongly encouraged.

**ADDRESSES:** Formal applications referencing Program Notice 00-11 should be sent to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC-64, 19901 Germantown Road, Germantown, MD 20874-1290, ATTN: Program Notice 00-11. This address must also be used when submitting applications by U.S. Postal Service Express Mail or any other commercial overnight delivery service, or when hand-carried by the applicant. An original and seven copies of the application must be submitted.

**FOR FURTHER INFORMATION CONTACT:** Peter Lunn, Environmental Sciences Division, SC-74, Office of Biological and Environmental Research, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874-1290, telephone: (301) 903-4819, E-mail:

peter.lunn@science.doe.gov, fax: (301) 903-8519. The full text of Program Notice 00-11 is available via the Internet using the following web site address: <http://www.sc.doe.gov/production/grants/grants.html>

#### **SUPPLEMENTARY INFORMATION:**

#### **Background**

The goal of the overall Atmospheric Science Program of the Department of Energy (DOE) is to develop a comprehensive understanding of the atmospheric processes that control the transport, transformation, and fate of energy related chemicals and particulate matter. The drivers for the program include urban, regional, national, and global concerns for air quality, climate change (global warming), and other atmospheric issues related to energy policy. The current emphasis is upon urban and regional scales.

The objectives of the program are: (1) To improve understanding of the chemical and physical processes affecting energy related air pollutants such as sulfur and nitrogen oxides, and tropospheric ozone, including gas-to-particle conversion processes, and the deposition and resuspension of aerosols; (2) to improve understanding of the

meteorological processes that control the dispersion and air chemistry of energy-related trace gases and particulate matter in or released to the atmosphere; and (3) to develop predictive models for the above processes and acquire the data to test them.

The overall Atmospheric Science Program consists of several closely-related science programs and facilities. Each program or activity includes scientist-participants from DOE laboratories, other federal laboratories, colleges and universities, and private industry. All research projects are fully peer reviewed.

#### **The Atmospheric Chemistry Program (ACP)**

This program focuses on regional, continental, and global scale research on energy related air pollutants, including: (a) Chemical transformations relating to tropospheric energy-related materials in the troposphere, (b) aerosol influences on air quality and climate forcing, and (c) origin, fate, and characterization of fine particles in the atmosphere. Activities include field measurement campaigns, laboratory studies, modeling, and instrument development. More information can be obtained via the ACP web site at <http://www.atmos.anl.gov/ACP/>.

#### **The Environmental Meteorology Program (EMP)**

This program focuses on the atmospheric transport of energy-related materials through specific and timely program components. Previous components include the Atmospheric Studies of Complex Terrain (ASCOT), the Mexico City Air Quality Study (MCAQS), and the Atmospheric Boundary Layer Experiment (ABLE). The current component and focus of EMP is the Vertical Transport and Mixing Program (VTMX). More information can be obtained via the VTMX web site at <http://www.pnl.gov/vtmx/>.

#### **The NARSTO Program Office**

The Atmospheric Science Program supports NARSTO (formerly known as the North American Research Strategy for Tropospheric Ozone). NARSTO is a public/private partnership, whose membership spans government, the utilities, industry, and academe throughout Mexico, the United States, and Canada. Recently the scope of interest has been broadened to include aerosols. More information can be obtained via the NARSTO web site at <http://www.cgenv.com/Narsto>.

#### **The Research Aircraft Facility (RAF)**

The Research Aircraft Facility consists of a Gulfstream 1 (G1) twin turboprop aircraft research facility, equipped by participating scientists for measurements in atmospheric chemistry, aerosols, turbulence, and radiant energy. The G1 is available to support ACP and EMP projects as well as related research endeavors by other agencies. More information can be obtained via the RAF web site at [http://www.pnl.gov/atmos\\_sciences/as\\_g1.html](http://www.pnl.gov/atmos_sciences/as_g1.html).

#### **The Tropospheric Aerosol Program (TAP)**

This program is under development. More information can be obtained via the TAP web site at <http://www.tap.bnl.gov>.

#### **This Announcement is specific to the Atmospheric Chemistry Program (ACP)**

ACP is concerned primarily with the atmospheric chemistry of energy related pollutants. Collaborations are maintained with counterparts in other agencies, *e.g.*, EPA, NOAA, NSF, and NASA, as well as with other parts of DOE, *i.e.*, and programs concerned with environmental issues related to energy consumption and/or energy production.

Research applications are encouraged that demonstrate the continuity and progress of the DOE ACP during the 1997-2000 period (see research abstracts in <http://www.atmos.anl.gov/ACP/>), *i.e.*, new work that builds upon on or complements previous ACP activities.

The objective of the ACP is to identify and understand the atmospheric processes that are key to anticipating and predicting the effects of energy-related emissions on air quality. This capability is needed by DOE for both short-range and long-range energy planning. Although ACP activities do not include research in human health or other biological sciences, those air quality issues that are related to human health and effects on ecosystems in the United States are currently of direct concern. Tropospheric processes are addressed that affect the amounts and geographic distribution of ozone, particulate matter, air toxics, and the associated precursors compounds near the surface of the Earth. Research is conducted by modeling, laboratory, and field studies. Analysis and publication of results, including those from past ACP field experiments, are an integral part of the ACP program.

Information on national issues that the DOE is addressing in coordination with other federal agencies can be found in several publications:

1. "Rethinking the Ozone Problem in Urban and Regional Air Pollution" by the Committee on Tropospheric Ozone Formation and Measurement of the National Research Council; "Air Quality Research Subcommittee Strategic Plan" by the Committee on Environment and Natural Resources of the National Science and Technology Council. [http://www.nnic.noaa.gov/CENR/AQRS/Aqrs\\_sp.pdf](http://www.nnic.noaa.gov/CENR/AQRS/Aqrs_sp.pdf).

2. "Research Priorities for Airborne Particulate Matter: I. Immediate Priorities and a Long-Range Research Portfolio" by the Committee on Research Priorities for Airborne Particulate Matter of the National Research Council.

3. "Research Priorities for Airborne Particulate Matter: II. Evaluating Research Progress and Updating the Portfolio" by the Committee on Research Priorities for Airborne Particulate Matter of the National Research Council.

4. "Global Environmental Change, Research Pathways for the Next Decade" by the Committee on Global Change Research of the National Research Council.

5. In addition, considerable information on current air quality issues involving ozone, aerosols, and volatile organic compounds can be found on the NARSTO web site <http://www.cgenv.com/Narsto/>.

### Categories

This ACP Program Announcement consists of three categories. Prospective investigators should explicitly specify in the abstract what category or categories are addressed by the proposed research. Individuals or groups intending to participate in field experiments should describe what measurements they intend to make and what instruments will be used to make them, and what process information the measurements are intended to provide. Those intending to analyze data from one or more instruments or who will use data in numerical or conceptual modeling should specify what data are required for their purposes.

Category 1. *Oxidant Studies*. Research to evaluate the causes of spatial and temporal variations in tropospheric concentrations of ozone and other oxidants, especially for areas that experience non-attainment of U.S. ozone standards. Modeling, theoretical, and experimental efforts to address geographic regions having different mixes of atmospheric trace chemicals and atmospheric transport conditions are encouraged. Studies of nighttime as well as daytime chemistry involving oxidants are encouraged. Research may

include the application and testing of numerical models to evaluate the causes of high ozone concentrations over regional and urban scales and to generalize findings.

Category 2. *Aerosol Studies*. Research in conjunction with ACP oxidant studies to evaluate causes of spatial and temporal variations of tropospheric aerosol chemical composition and concentrations, particularly with regard to national standards on particulate matter and visibility (and issues of concern to human health). Topics of interest include particle nucleation and growth, processes affecting chemical composition, interactions with water, and aerosol characterization emphasizing particle chemical composition as a function of particle size. Numerical models may be used to develop methods of estimating aerosol composition over regional and urban scales.

Category 3. *Heterogeneous Chemistry*. Research on heterogeneous processes that affect chemical rates of reactions involving oxidants, nitrogen oxides, volatile organic compounds, and sulfur oxides, and precursors in the troposphere and planetary boundary layer. Studies that lead to information important for evaluating, simulating, and predicting oxidant and particle concentrations and composition are particularly encouraged. Topics of interest include reactions of nitrogen oxides on organic aerosol surfaces, halogen atom-releasing surface reactions, interactions of gas-phase organic gases with aerosol surfaces, interactions of inorganic gases with organic surfaces, photochemistry at the surface and aqueous phase reactions.

### Programmatic Issues

Experimental field campaigns may be carried out in collaboration with the DOE Atmospheric Radiation Measurement Program, the DOE Environmental Meteorology Program, and with other relevant programs supported by federal, state, and private agencies. Collaborative efforts contributing to NARSTO are encouraged. Collaborative use of the DOE Research Aircraft Facility is also encouraged.

Possible future field studies are listed at the ACP web site. A diversity of atmospheric conditions, some of which might exist outside the United States, needs to be addressed by ACP. In such studies, the dynamic atmospheric conditions that affect chemical reactions need to be considered. Air-surface exchange rates of gases and particles are sometimes an important component of the atmospheric budget of chemicals.

Modeling and laboratory experiments are important aspects of this research. Modeling studies devoted to interpretation and generalization of the experimental findings are particularly encouraged. Laboratory studies may include studies of the reactions of oxidant precursors, formation and distribution of product species, aerosol formation, and heterogeneous processes relevant to oxidant formation and loss in the atmosphere. Development and deployment of advanced field instrumentation to make surface and aircraft-based observations necessary for ACP field studies are encouraged.

### Educational Opportunities

Opportunities exist for the financial support of undergraduate and graduate students wishing to participate in this program through the Department of Energy's Global Change Education Program. Information can be obtained at <http://www.atmos.anl.gov/GCEP/>.

### Program Funding

It is anticipated that up to \$2 million in first-year funding will be available for participation in the Atmospheric Chemistry Program. Multiple awards are expected to be made in Fiscal Year 2001 in the categories described above, contingent upon availability of appropriated funds. Applicants may request project support up to four years, with out-year support contingent on availability of appropriated funds, progress of the research, and programmatic needs. The number of awards and range of funding will depend on the number of applications received and selected for award. Typical annual budgets range from \$60,000 to \$200,000 in total costs. Some studies involving field measurements may have larger budgets.

### Merit Review

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project,
2. Appropriateness of the Proposed Method or Approach,
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources,
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation process will include program policy factors such as the relevance of the proposed research to the terms of the announcement and an

agency's programmatic needs. Note that external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers will often be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at <http://www.sc.doe.gov/production/grants/grants.html>. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

The research project description must be 20 pages or less, exclusive of attachments and must contain a 1 or 2-page abstract or summary of the proposed research and a 1 or 2-page statement of relevance to the DOE and national interest. On the SC grant face page, form DOE F 4650.2, in block 15, also provide the PI's phone number, fax number, and E-mail address. Attachments must include curriculum vitae, a listing of all current and pending federal support, and letters of intent when collaborations are part of the proposed research. Applications should include detailed and justified budgets for each year of support requested. Lengthy application appendices are discouraged. Curriculum vitae should be submitted in a form similar to that of NIH or NSF (two to three pages), see for example: <http://www.nsf.gov:80/bfa/cpo/gpg/fkit.htm#forms-9>.

Although the required original and seven copies of the application must be submitted, researchers are asked to submit an electronic version of their abstract of the proposed research in ASCII format and their E-mail address to the Program Director for Atmospheric Sciences, Peter Lunn, by E-mail to [peter.lunn@science.doe.gov](mailto:peter.lunn@science.doe.gov).

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC on March 10, 2000.

**John Rodney Clark,**  
*Associate Director of Science for Resource Management.*

[FR Doc. 00-6205 Filed 3-13-00; 8:45 am]

BILLING CODE 6450-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP00-210-000]

#### Cove Point LNG Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff

March 8, 2000.

Take notice that on March 1, 2000, Cove Point LNG Limited Partnership (Cove Point) tendered for filing as part of its FERC Gas Tariff, First Revised volume No. 1 the following tariff sheet to become effective April 1, 2000.

Seventh Revised Sheet No. 7

Cove Point states that the listed tariff sheet sets forth the restatement and adjustment to its retainage percentages, pursuant to the Section 1.37 of the General Terms and Conditions of its FERC Gas Tariff, first Revised Volume No. 1.

Cove Point states that copies of the filing were served upon Cove Point's affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

**David P. Boergers,**  
*Secretary.*

[FR Doc. 00-6187 Filed 3-13-00; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP00-104-000]

#### Distrigas of Massachusetts Corporation; Notice of Application

March 8, 2000.

Take notice that on February 28, 2000, Distrigas of Massachusetts Corporation (DOMAC), 75 State Street, 12th Floor, Boston, Massachusetts 02109, filed in Docket No. CP00-104-000, an application pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations, for a certificate of public convenience and necessity authorizing DOMAC to install, operate, and maintain facilities at its Everett, Massachusetts LNG Plant in order to recover natural gas vapor that is currently being vented to the atmosphere during LNG cargo transfer operations, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

DOMAC states that its existing vapor handling system adequately recovers the natural gas vapor that results from LNG storage. However, during cargo transfer, additional vapor is produced, causing approximately one percent of each LNG cargo to be vented to the atmosphere in order to maintain design pressure in the LNG tanks. DOMAC now seeks to recover this additional vapor by installing the proposed vapor recovery facilities, consisting of a turbo expander-driven compressor, a heat exchanger, a water pump, a meter, and associated interconnecting piping. DOMAC estimates that the proposed equipment will enable the yearly recovery of over 830,000 Mscf of vapor, which will be marketed. According to DOMAC, construction of the new facilities will conserve energy and reduce methane emissions. The estimated cost of the facilities is \$7 million and will be financed from funds on hand.

DOMAC states that it is not proposing any cost-based recovery of the cost associated with this facility, therefore, its existing customers will not subsidize the project. Further, DOMAC asserts that its proposal will not have any adverse impacts on its existing customers, competing pipelines and their existing customers, third party landowners, or the surrounding community. Based on this, DOMAC states that its proposal is consistent with

the Commission's certificate policy statement.<sup>1</sup>

Any questions concerning this application should be directed to Robert A. Nailling, Senior Counsel, Distrigas of Massachusetts Corporation, 75 State Street, 12th Floor, Boston, Massachusetts 02109 at (617) 526-8300.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 29, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order.

However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents

filed by other parties of issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required hererin, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for DOMAC to appear or be represented at the hearing.

**David P. Boergers,**  
*Secretary.*

[FR Doc. 00-6178 Filed 3-13-00; 8:45 am]

**BILLING CODE 6717-01-M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP00-211-000]

#### East Tennessee Natural Gas Company; Notice of Cashout Report

March 8, 2000.

Take notice that on March 3, 2000, East Tennessee Natural Gas Company (East Tennessee) tendered for filing its sixth annual cashout report for the November 1998 through October 1999 period.

East Tennessee states that the cashout report reflects a net cashout gain during this period \$276,406. As a result, East Tennessee's cumulative loss from its cashout mechanism is reduced to \$540,288. East Tennessee will roll forward this loss into its next annual cashout report.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC

20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before March 15, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-222 for assistance).

**David P. Boergers,**  
*Secretary.*

[FR Doc. 00-6188 Filed 3-13-00; 8:45 am]

**BILLING CODE 67717-01-M**

## DEPARTMENT OF ENERGY

[Docket No. GT00-20-000]

#### El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

March 8, 2000.

Take notice that on March 3, 2000, El Paso Natural Gas Company (El Paso) tendered for filing an interruptible Transportation Service Agreement (TSA) between El Paso and MGI Supply, Ltd. (MGI) and Seventeenth Revised Sheet No. 1 to its FERC Gas Tariff, Second Revised Volume No. 1-A.

El Paso states that it is submitting the TSA for Commission approval since the TSA contains provisions which differ from El Paso's Volume No. 1-A Tariff. The tariff sheet, which references the TSA, is proposed to become effective on April 3, 2000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the

<sup>1</sup> Certification of New Interstate Natural Gas Pipeline Facilities, 88 FERC ¶61,227 (1999), order clarifying, 90 FERC ¶61,128 (2000).

web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00-6179 Filed 3-13-00; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP99-227-006]

#### High Island Offshore System, L.L.C.; Notice of Compliance Filing

March 8, 2000.

Take notice that on March 3, 2000 High Island Offshore System, L.L.C. (HIOS), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets for filing, with an effective date of April 6, 1999:

First Revised Sheet No. 28

First Revised Sheet No. 29

First Revised Sheet No. 30

First Revised Sheet No. 31

First Revised Sheet No. 32

HIOS states that such tariff sheets are being submitted to comply with the Office of Markets, Tariffs and Rates February 25, 2000, Letter Order in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00-6182 Filed 3-13-00; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. PR00-11-000]

#### Humble Gas Pipeline Company; Notice of Petition for Rate Approval

March 8, 2000.

Take notice that on February 29, 2000, Humble Gas Pipeline Company (HGPC) filed a petition for rate approval pursuant to section 284.123(b)(2) or the Commission's regulations. HGPC requests that the Commission approve a maximum rate of \$0.04389 per MMBtu for gas transported on the Inlet System and a maximum rate of \$0.01016 per MMBtu for gas transported on the Header System; both rates are subject to an additional one-percent (1%) retainage for fuel and unaccounted-for gas.

HGPC affirms that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA, with an intrastate pipeline which is located entirely within the state of Texas. HGPC's pipeline is comprised of an Inlet System and a Header System. Consistent with the Commission's approval of its Section 311 rates in Docket No. PR 97-5, HGPC proposes to make its new section 311 rates effective as of March 1, 2000.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation services. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with sections 385.211 and 385.214 or the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before March 23, 2000. The petition for rate approval is on file with the Commission and is 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).

[www.ferc.fed.us/online/rims.htm](http://www.ferc.fed.us/online/rims.htm) (call 202-208-2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00-6181 Filed 3-13-00; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP00-205-000]

#### PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing

March 8, 2000.

Take notice that on March 1, 2000, PG&E Gas Transmission, Northwest Corporation (PG&E GT-NW) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1-A, the following sheets, with an effective date of April 1, 2000.

Second Revised Sheet No. 81.01a

Fourth Revised Sheet No. 121

Third Revised Sheet No. 122

Fifth Revised Sheet No. 127

Third Revised Sheet No. 153

Third Revised Sheet No. 168

PG&E GT-NW asserts that the purpose of this filing is to eliminate its queue for scheduling interruptible capacity.

PG&E GT-NW further states that a copy of this filing has been served on PG&E GT-NW's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

rims.htm (call 202-208-2222 for assistance).

**David P. Boergers,**  
*Secretary.*

[FR Doc. 00-6186 Filed 3-13-00; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP00-199-000]

#### Reliant Energy Gas Transmission Company; Notice of Tariff Filing

March 8, 2000.

Take notice that on March 1, 2000, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to be effective April 1, 2000:

First Revised Sheet No. 240  
First Revised Sheet No. 456  
First Revised Sheet No. 457

REGT states that the purpose of this filing is to add Section 29 to its General Terms and Conditions to provide that REGT may hold capacity in its own name on Mississippi River Transmission Corporation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

**David P. Boergers,**  
*Secretary.*

[FR Doc. 00-6184 Filed 3-13-00; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP00-201-000]

#### Reliant Energy Gas Transmission Company; Notice of Tariff Filing

March 8, 2000.

Take notice that on March 1, 2000, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheets to become effective April 1, 2000:

Second Revised Sheet No. 5  
Second Revised Sheet No. 6  
Third Revised Sheet No. 7

REGT states that the revised tariff sheets are filed in compliance with the Stipulation and Agreement (Settlement) approved by Commission order in Docket No. RP91-149 on March 31, 1992. Arkla Energy Resources, a division of Arkla, Inc. 58 FERC ¶ 61,359 (1992). REGT's March 1, 2000 filing is its eighth annual filing pursuant to the Settlement, and it proposes to continue the currently effective rate for the CSC Charge as provided in the settlement, at \$0.03 per MMBtu.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

**David P. Boergers,**  
*Secretary.*

[FR Doc. 00-6185 Filed 3-13-00; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Southern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

March 8, 2000.

Take notice that on February 29, 2000, Southern Natural Gas Company (Southern), filed a motion to place into effect on March 1, 2000 the tariff sheets suspended in this proceeding as revised by the substitute sheets included in the filing. Southern also requests the Secretary suspend the due date for filing updated statements and schedules pursuant to sections 154.311(c) and 375.302(j) of the Commission's regulations so Southern may devote its resources to a settlement expected to be filed in early March.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before March 15, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

**David P. Boergers,**  
*Secretary.*

[FR Doc. 00-6183 Filed 3-13-00; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER00-536-000]

#### Southwestern Public Service Company; Notice of Informal Settlement Conference

March 8, 2000.

Take notice that an informal settlement conference will be convened in this proceeding on Monday, March 27, 2000, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC, for the purpose of exploring settlement in the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact J. Carmen Gastilo at (202) 208-2182 or Anja M. Clark at (202) 208-2034.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00-6189 Filed 3-13-00; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EC00-54-000, et al.]

#### Duquesne Light Company and Orion Power Midwest, LLC, et al.; Electric Rate and Corporate Regulation Filings

March 7, 2000.

Take notice that the following filings have been made with the Commission:

##### 1. Duquesne Light Company and Orion Power Midwest, LLC

[Docket No. EC00-54-000]

Take notice that on February 29, 2000, Duquesne Light Company and Orion Power Midwest, LLC (Orion Power Midwest) (collectively, Applicants) tendered for filing a clarification to their joint application (Application) requesting authorization under Section 203 of the Federal Power Act filed in the above-captioned docket on February 2, 2000. The Application requested authorization to transfer jurisdictional transmission facilities associated with the generation plants that Duquesne is selling to Orion Power Midwest. The Applicants clarified that they intended also to request Commission authorization for Duquesne to assign to Orion Power Midwest the Power Sales Contract, attached to the February 2, Application.

A copy of the filing was served upon the Pennsylvania Public Utility Commission and the Public Utilities Commission of Ohio.

*Comment date:* March 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

##### 2. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER00-1149-000]

Take notice that on March 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 Amendment Nos. 2 and 3 to Supplement No. 69 to submit two complete service agreements to replace an agreement previously filed which added Engage Energy US, L.P., as a long term firm point-to-point transmission customer under Allegheny Power's Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96-58-000.

The proposed effective dates for Amendment Nos. 2 and 3 are March 1, 2000 and September 1, 2000, respectively, or other dates as ordered by the Commission.

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, and the West Virginia Public Service Commission.

*Comment date:* March 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

##### 3. Carolina Power & Light Company

[Docket No. ER00-1767-000]

Take notice that on March 2, 2000, Carolina Power & Light Company (CP&L), tendered for filing an executed Service Agreement with Statoil Energy Services, Inc. under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4.

This Service Agreement supersedes the un-executed Agreement originally filed in Docket No. ER98-3385-000 and approved effective May 18, 1998.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

*Comment date:* March 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

##### 4. Allegheny Energy Service Corporation on behalf of Monongahela Power Company and West Penn Power Company

[Docket No. ER00-1768-000]

Take notice that on March 2, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company (Monongahela) and West Penn Power Company (West Penn), tendered for filing Amendment No. 14 to the Interchange Agreement with Ohio Edison Company and Pennsylvania Power Company (collectively the Parties). Amendment No. 14 is being submitted to change the location of one metering point between the systems of the Parties.

Monongahela Power and West Penn propose that the Amendment become effective as of May 15, 2000 or a date ordered by the Commission.

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, and the West Virginia Public Service Commission.

*Comment date:* March 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

##### 5. FirstEnergy Operating Companies

[Docket No. ER00-1769-000]

Take note that on March 2, 2000, the FirstEnergy Operating Companies (The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, and The Toledo Edison Company) tendered for filing a Supplement adding new transmission customers to the Service Agreement and Operating Agreement for Network Integration Transmission Service provided by the FirstEnergy Operating Companies to American Municipal Power—Ohio, Inc. (AMP—Ohio) on behalf of certain designated municipal electric systems in Ohio and Pennsylvania. The Supplement does not modify the terms and conditions of the existing Network Agreements between the FirstEnergy Operating Companies and AMP—Ohio.

FirstEnergy Operating Companies request an effective date of March 1, 1999 for the Supplement. A revised Index of Network Customers is also submitted as part of this filing.

Copies of this filing have been served on the utility commissions in Ohio and Pennsylvania.

*Comment date:* March 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**6. Consumers Energy Company**

[Docket No. ER00-1773-000]

Take notice that on March 2, 2000, Consumers Energy Company (Consumers) tendered for filing Amendment No. 2 to the Power Sales Agreement between Consumers and Edison Sault Electric Company (Edison Sault) dated December 1, 1996 (the PSA), designated Consumers Energy Company Electric Rate Schedule FERC No. 94. The amendment changes the extent and duration of service under the PSA and reflects purchases made by Edison Sault under a new power sales service agreement.

Copies of the filing were served upon Edison Sault and the Michigan Public Service Commission.

*Comment date:* March 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**7. Virginia Electric and Power Company**

[Docket No. ER00-1774-000]

Take notice that on March 2, 2000, Virginia Electric and Power Company (Virginia Power), tendered for filing the following:

1. Service Agreement for Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to Conectiv Energy Supply Inc.
2. Service Agreement for Non-Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to Conectiv Energy Supply Inc.

The foregoing Service Agreements are tendered for filing under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreements, Virginia Power will provide point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff. Virginia Power requests an effective date of March 2, 2000, the date of filing of the Service Agreements.

Copies of the filing were served upon Conectiv Energy Supply Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

*Comment date:* March 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**8. Peco Energy Company**

[Docket No. ER00-1775-000]

Take notice that on March 2, 2000, PECO Energy Company (PECO), tendered for filing under Section 205 of the Federal Power Act, 16 U.S.C. S 792 *et seq.*, an Agreement dated March 1, 2000 with Consolidated Edison Energy,

Inc. (CEEI) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of March 1, 2000 for the Agreement.

PECO states that copies of this filing have been supplied to Consolidated Edison Energy, Inc., and to the Pennsylvania Public Utility Commission.

*Comment date:* March 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**9. Peco Energy Company**

[Docket No. ER00-1776-000]

Take notice that on March 2, 2000, PECO Energy Company (PECO), tendered for filing under Section 205 of the Federal Power Act, 16 U.S.C. S 792 *et seq.*, an Agreement dated March 1, 2000 with Consolidated Edison Energy, Inc. (CEEI) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of March 1, 2000, for the Agreement.

PECO states that copies of this filing have been supplied to Utilimax.com, Inc. and to the Pennsylvania Public Utility Commission.

*Comment date:* March 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**10. Wisconsin Electric Power Company**

[Docket No. ER00-1777-000]

Take notice that on March 2, 2000, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a notification indicating a name change for an electric service agreement under its Coordination Sales Tariff (FERC Electric Tariff, First Revised Volume No. 2) as requested by the customer.

Wisconsin Electric respectfully requests effective February 14, 2000, Service Agreement No. 58 with Pennsylvania Power & Light is changed to PPL Electric Utilities Corporation d/b/a PPL Utilities (PPL).

Wisconsin Electric requests waiver of any applicable regulation to allow for the effective dates as requested above. Copies of the filing have been served on PPL, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

*Comment date:* March 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**11. Virginia Electric and Power Company**

[Docket No. ER00-1778-000]

Take notice that on March 2, 2000, Virginia Electric and Power Company (Virginia Power), tendered for filing the Service Agreement between Virginia Electric and Power Company and

Southern Company Energy Marketing L.P. Under the Service Agreement, Virginia Power will provide services to Southern Company Energy Marketing L.P., 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 February 9, 2000, the date service was first provided.

Copies of the filing were served upon Southern Company Energy Marketing L.P., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

*Comment date:* March 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**12. Union Power Partners, L.P.**

[Docket No. ER00-1779-000]

Take notice that on March 2, 2000, Union Power Partners, L.P. (UPP), tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1, and for the purpose of permitting UPP to assign transmission capacity and to resell Firm Transmission Rights, to be effective no later than sixty (60) days from the date of its filing.

UPP intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where UPP sells electric energy, it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Neither UPP nor any of its affiliates is in the business of transmitting or distributing electric power.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices.

*Comment date:* March 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**13. Texas Electric Marketing, LLC**

[Docket No. ER00-1780-000]

Take notice that on March 2, 2000, Texas Electric Marketing, LLC (TEM), tendered for filing, pursuant to Rules 205 and 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.205 and 385.207, and Section 35.12 of the Commission's Regulations, 18 CFR 35.12, an application for blanket authorizations and certain waivers under various regulations of the

Commission, and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective the earlier of May 1, 2000, or the date of a Commission order granting approval of this Rate Schedule.

TEM intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where TEM purchases power, including capacity and related services from electric utilities, qualifying facilities, and independent power producers, and resells such power to other purchasers, TEM will be functioning as a marketer. In TEM's marketing transactions, TEM proposes to charge rates mutually agreed upon by the parties. In transactions where TEM does not take title to the electric power and/or energy, TEM will be limited to the role of a broker and will charge a fee for its services. TEM is not in the business of producing nor does it contemplate acquiring title to any electric power transmission facilities.

*Comment date:* March 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

#### 14. Marquette Energy, L.L.C.

[Docket No. ER00-1781-000]

Take notice that on March 2, 2000, Marquette Energy, L.L.C. (Marquette) petitioned the Commission for acceptance of Marquette 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.

Marquette intends to engage in wholesale electric power and energy purchases and sales as a marketer. Marquette is not in the business of generating or transmitting electric power. Marquette is a wholly-owned subsidiary of Marquette Partners, L.P., which, through its affiliates, trades derivatives on regulated futures exchanges for its own proprietary account.

*Comment date:* March 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

#### 15. Duke Energy Trenton, LLC

[Docket No. ER00-1782-000]

Take notice that on March 2, 2000, Duke Energy Trenton, LLC (Duke Madison) tendered for filing pursuant to Section 205 of the Federal Power Act its proposed Rate Schedules FERC Nos. 1, 2, and 3.

Duke Trenton seeks authority to sell energy and capacity, as well as ancillary services, at market-based rates, together with certain waivers and preapprovals. Duke Trenton also seeks authority to

sell, assign, or transfer transmission rights that it may acquire in the course of its marketing activities.

Duke Trenton seeks an effective date sixty (60) days from the date of filing for its proposed rate schedules.

*Comment date:* March 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

#### 16. Duke Energy Vermillion, LLC

[Docket No. ER00-1783-000]

Take notice that on March 2, 2000, Duke Energy Vermillion, LLC (Duke Vermillion), tendered for filing pursuant to Section 205 of the Federal Power Act an application for an order accepting its rates for filing, determining rates to be just and reasonable, and granting certain waivers and preapprovals.

Duke Vermillion is developing an approximately 640 MW generation facility located in Cayuga, Vermillion County, Indiana. Under its proposed Rate Schedules FERC Nos. 1 and 2, Duke Vermillion seeks to sell energy and capacity, as well as ancillary services, at market-based rates. Under its proposed Rate Schedule FERC No. 3, Duke Vermillion seeks authority to sell, assign, or transfer transmission rights that it may acquire in the course of its marketing activities. Under its proposed Rate Schedule FERC No. 4, Duke Vermillion seeks authority to sell energy generated during the testing phase of construction of the Facility to Cinergy Services, Inc.

*Comment date:* March 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

#### 17. Duke Energy Madison, LLC

[Docket No. ER00-1784-000]

Take notice that on March 2, 2000, Duke Energy Madison, LLC (Duke Madison), tendered for filing pursuant to Section 205 of the Federal Power Act an application for an order accepting its rates for filing, determining rates to be just and reasonable, and granting certain waivers and preapprovals.

Duke Madison is developing an approximately 640 MW generation facility located in Madison Township, Butler County, Ohio. Under its proposed Rate Schedules FERC Nos. 1 and 2, Duke Madison seeks to sell energy and capacity, as well as ancillary services, at market-based rates. Under its proposed Rate Schedule FERC No. 3, Duke Madison seeks authority to sell, assign, or transfer transmission rights that it may acquire in the course of its marketing activities. Under its proposed Rate Schedule FERC No. 4, Duke Madison seeks authority to sell energy generated during the testing phase of

construction of the Facility to Cinergy Services, Inc.

*Comment date:* March 23, 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, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00-6176 Filed 3-13-00; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP00-59-001]

#### Petal Gas Storage, L.L.C.; Notice of Intent To Prepare an Environmental Assessment for the Amended Petal Project and Request for Comments on Environmental Issues

March 8, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the amended Petal Project in Forrest County Mississippi. On February 24, 2000, Petal Gas Storage, L.L.C. (Petal) amended its application under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations to request authorization to construct and operate about 5.5 miles of pipeline and 20,000 horsepower (hp) of compression.<sup>1</sup> The EA will be used by

<sup>1</sup> The original application was filed with the Commission on December 28, 1999, by Petal Gas Storage Company (which converted to Petal Gas

the Commission in its decision-making process to determine whether the projects is in the public convenience and necessity.

If you are a landowner on Petal's proposed route and receive this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need to Know?" was attached to the project notice Petal provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website ([www.ferc.fed.us](http://www.ferc.fed.us)).

This Notice of Intent (NOI) is being sent to landowners crossed by Petal's amended project; landowners along the originally proposed pipeline route withdrawn from the amended project; Federal, state, and local government agencies; national elected officials; regional environmental and public interest groups; Indian tribes that might attach religious and cultural significance to historic properties in the area of potential effects; local libraries and newspapers; and the Commission's list of parties to the proceeding. Government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern. Additionally with this NOI we are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated Petal's proposal relative to their agencies' responsibilities. Agencies who would like to request cooperating status should follow the instructions for filing comments described below.

Storage, L.L.C. on January 4, 2000) requesting authorization to construct and operate about 64.2 miles of pipeline and 35,590 hp of compression. Petal's amended application withdraws 58.7 miles pipeline and 15,000 hp of compression, and other related facilities.

### Summary of the Amended Project

Petal's amended project proposes to build new pipeline and compression facilities to transport up to 700 million cubic feet per day of natural gas from its storage field to an interconnection with Tennessee Gas Pipeline Company (Tennessee). Petal requests Commission authorization to construct, own, operate, and maintain the following facilities.

- About 5.5 miles of bi-directional 36-inch-diameter loop<sup>2</sup> of Petal's existing storage header in Forrest County, Mississippi;
- A new compressor station with four electric-driven units totaling 20,000 hp adjacent to Petal's existing compressor station at its storage field near the town of Petal in Forrest County, Mississippi;
- A new station at the interconnection with Tennessee near the town of Macedonia in Forrest County, Mississippi; and
- Associated facilities, including mainline block valves and pig traps at the Petal storage field and the Tennessee Meter Station.

With its amendment, Petal is withdrawing the following facilities proposed in its original application:

- 58.7 miles of 36-inch-diameter pipeline between the interconnection with Tennessee at milepost (MP) 5.5 and the formerly proposed interconnections with Southern Natural Gas Company (Sonat) and Destin Pipeline Company (Destin) at MP 64.2, crossing portions of Forrest, Jasper, Jones, and Clarke Counties, Mississippi;
- A compressor station totaling 15,590 hp near Heidelberg, in Jasper County, Mississippi; and
- Three meter stations at interconnections with Transcontinental Gas Pipe Line Corporation (Transco) in Jasper County, Mississippi, and with Sonat and Destin in Clarke County, Mississippi.

The purpose of this project is to provide natural gas to Southern County Services, Inc. (Southern). On January 5, 2000, Petal's parent company, Crystal Gas Storage, Inc., merged with El Paso Energy Corporation (El Paso). Petal then reach an agreement with Tennessee, an El Paso affiliate, to transport the volumes intended for Southern by utilizing incremental and interruptible capacity on Tennessee's existing 500 Line, replacing the need for Petal to construct its own transportation pipeline to the Transco, Sonat, and Destin interconnections. However, Petal indicated that Tennessee may file its own application with the Commission in the near future seeking authorization to add facilities along its 500 Line so that Petal would have capacity to move its volumes on a primary firm basis.

<sup>2</sup> A loop is a segment of pipeline that is installed adjacent to an existing pipeline and connected to it on both ends. The loop allows more gas to be moved through the pipeline system.

Tennessee is contemplating adding about 30 miles of pipeline in the general vicinity where Petal had originally proposed to build its 58.7 miles of pipeline.<sup>3</sup>

The general location of Petal's amended facilities is shown on the map attached as appendix 1.<sup>4</sup>

### Land Requirements for Construction

Construction of Petal's amended facilities would affect about 64 acres of land. Following construction, about 24 acres would be retained as permanent right-of-way. The remaining 40 acres of temporary work space would be restored and allowed to revert to its former use.

Petal purposes to use a typical pipeline construction right-of-way width of 75 feet, consisting of 30 feet of permanent right-of-way and 45 feet of temporary extra work space. There also would be about 10 acres used as additional temporary extra work spaces at steam, utility, and road crossings. The new compressor station near Petal, Mississippi would occupy about 4 acres. The new meter station would be within an existing Tennessee facility.

### The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate to Public Convenience and Necessity. NEPA also requires us<sup>5</sup> to discover and address concerns the public may have about proposals. We all this "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this NOI, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are

<sup>3</sup> Tennessee has not yet filed its application with the FERC. Petal asserts that its amended application is for a stand alone project, not dependent on Tennessee's future expansion. Tennessee indicated to Petal that it currently has sufficient capacity on its 500 Line to transport gas to Petal's customers, including the volumes for Southern, on a primary firm, secondary firm, and interruptible basis. The FERC would conduct a separate environmental analysis of any future facilities proposed by Tennessee.

<sup>4</sup> The appendices referenced in this notice are not being printed in the *Federal Register*. Copies are available on the Commission's website at the "RIMS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington, DC 20426, or call (202) 208-1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

<sup>5</sup> "Us," "we" and "our" refer to the environment staff of the FERC's Office of Pipeline Regulation.

considered during the preparation of the EA.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, elected officials, affected landowners, regional public interest groups, Indian tribes, local newspapers and libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

### Currently Identified Environmental Issues

The EA will discuss impacts that would occur as a result of construction and operation of the proposed project. We have already identified a number of issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Petal. This preliminary list of issues may be changed based on your comments and our analysis.

- **Geology and Soils**
  - Impacts on about 2 miles of prime farmland soils.
  - Crossing about 1 mile of erosion prone soils.
- **Water Resources and Wetlands**
  - Crossing one perennial stream.
  - Crossing four wetlands.
- **Biological Resources**
  - Impacts on about 47 acres of forest or woodlands.
  - Impacts on the Gopher Tortoise, a federally listed threatened species.
- **Cultural Resources**
  - Impacts on prehistoric and historic sites.
  - Native American concerns.
- **Land Use**
  - Impacts on crop production.
  - Impacts on residential areas.
  - Visual effect of the aboveground facilities on surrounding areas.
- **Air and Noise Quality**
  - Impacts on local air quality and noise environment as a result of the operation of a new compressor station.

### Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentator, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal,

alternatives to the proposal (including alternative locations or routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR-11.1;
- Reference Docket No. CP00-59-001; and
- Mail your comments so that they will be received in Washington, DC on or before April 14, 2000.

[If you do not want to send comment at this time but still want to remain on our mailing list, please return the Information Request (appendix 3). If you do not return the Information Request, you will be removed from the environmental mailing list.]

### Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor." Intervenor play a more formal role in the process. Among other things, intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208-1088 or on the FERC website ([www.ferc.fed.us](http://www.ferc.fed.us)) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the

instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208-2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notice, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and following the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208-2474.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00-6177 Filed 3-13-00; 8:45 am]

**BILLING CODE 6717-01-M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Draft License Surrender Application and Preliminary Draft Environmental Assessment (PDEA) and Request for Preliminary Terms and Conditions

March 8, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Surrender of License.

b. *Project No.:* 477.

c. *Applicant:* Portland General Electric.

d. *Name of Project:* Bull Run Project.

e. *Location:* On the Sandy, Little Sandy, and Bull run Rivers, in Clackamas County, Oregon. Of 606 acres of land within the project boundary, about 55 acres is managed by Bureau of Land Management and 18 acres is managed by U.S. Forest Service.

f. *Applicant Contact:* Julie Keil, Portland General Electric Company, 121 SW Salmon Street, 3WTC-BRHL, Portland, OR 97204, (503) 464-8864.

g. *FERC Contact:* Jim Hastreiter, (503) 944-6760, [james.hastreiter@ferc.fed.us](mailto:james.hastreiter@ferc.fed.us).

h. Portland General Electric mailed a copy of the Preliminary Draft Environmental Assessment and draft application to interested parties on March 3, 2000. The Commission received a copy of the PDEA and draft application on March 6, 2000.

i. With this notice we are soliciting preliminary terms, conditions, and recommendations on the PDEA and draft license application. All comments on the PDEA and draft license application should be sent to the address above in item (f) with one copy

filed with the Commission at the following address: Federal Energy Regulatory Commission, David P. Boergers, Secretary, 888 First St. NE, Washington, DC 20426. All comments must include the project name and number, and bear the heading "Preliminary Comments," "Preliminary Recommendations," "Preliminary Terms and Conditions," or "Preliminary Prescriptions." Any party interested in commenting must do so before May 5, 2000.

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, N.E., Room 2A, Washington, DC 20426, or by calling (202) 208-0371. The application may be viewed on the web at <http://www.ferc.fed.us/online/rimes.htm>. (Call (202) 208-2222 for assistance).

David P. Boergers,  
Secretary.

[FR Doc. 00-6180 Filed 3-13-00; 8:45 am]

BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-6548-3]

### Agency Information Collection Activities: Proposed Collection; Comment Request; Evaluation of PrintSTEP

**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): Evaluation of PrintSTEP, EPA ICR Number: 1941.01.

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 May 15, 2000.

**ADDRESSES:** Interested persons may obtain a copy of the draft ICR by request from the Office of Compliance, by contacting Amy Porter at the contact information provided below. Details of the PrintSTEP evaluation is available on the Internet at [http://www.epa.gov/ooaujeag/sectors/pdf/pgm\\_eval.pdf](http://www.epa.gov/ooaujeag/sectors/pdf/pgm_eval.pdf)

**FOR FURTHER INFORMATION CONTACT:** Amy Porter, 2221A, 1200 Pennsylvania Avenue NW, Washington DC, 20460. Phone: (202) 564-2431, Fax: (202) 564-0027, E-mail: [porter.amy@epa.gov](mailto:porter.amy@epa.gov)

**SUPPLEMENTARY INFORMATION:** *Affected entities:* Entities potentially affected by this action are those which volunteer to participate in the PrintSTEP pilots including State officials in Missouri, New Hampshire, and Minnesota and printers in those 3 states who participate in the pilots or the evaluation control groups, and members of the communities where participating printers are located.

*Title:* Proposed Information Collection Request for the Evaluation of PrintSTEP.

*Abstract:* Information will be collected for evaluation of the PrintSTEP pilot program. The evaluation aims to systematically identify the impacts the program has had on three types of stakeholders: printers, community residents, and the state government agencies administering the program. Specifically, the evaluation will determine the extent to which the 7 goals of the pilot program are met. The goals are: enhanced environmental protection; increased use of pollution prevention practices; simplified regulatory process for printers; improved efficiency of administration for state governments; enhanced public involvement; participants' realize benefits and are motivated to participate in PrintSTEP; and, cost effectiveness for all stakeholders.

This broad set of expected outcomes will require a range of distinct data collection and analysis activities. Data will be gathered from printer's program applications, from telephone interviews, from in-person interviews and possibly from focus groups. Data will be collected before implementation, a short time after program implementation, and at the end of the pilot. Responses to the collection of information are voluntary. Names of persons providing information will be not recorded. More information is available in the final draft of the Evaluation Strategy which can be accessed at [http://www.epa.gov/ooaujeag/sectors/pdf/pgm\\_eval.pdf](http://www.epa.gov/ooaujeag/sectors/pdf/pgm_eval.pdf)

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

#### *Estimated Recordkeeping and Reporting Hour Burden on Respondents*

The PrintSTEP evaluation includes a telephone interview with three types of respondents: (1) Printers who are voluntarily participating in the PrintSTEP program; (2) a comparison group of printers who are not participating in PrintSTEP; and (3) community members who have participated in the public involvement component of PrintSTEP. For both types of printers, written data will be collected on their costs associated with PrintSTEP and/or regulatory activities. For the comparison group of printers, additional written data will be collected on environmental releases. The written information requested is expected to take one hour for the printers participating in PrintSTEP and 2.75 hours for the comparison group printers. Comparison group printers will be asked to submit information on their environmental releases which the pilot participants provide in their PrintSTEP applications. It is anticipated that a total of 320 printers will be interviewed three times during the course of the evaluation and that they will be either an environmental professional, or a manager. It is expected that one interview will be conducted with each of 50 community members.

The telephone portion of the survey for printers is expected to take 15 minutes to complete. The telephone interview with community members is expected to take 15 minutes. The estimates of respondent burden are shown in the table below.

Respondent type	Estimated number of respondents <sup>1</sup>	Time to respond to telephone survey (hrs) <sup>2</sup>	Time to complete written response (hrs) <sup>2</sup>	Total respondent burden (hrs)	Estimated avg. hourly wage of respondent during the survey (\$/hr) <sup>3</sup>	Total respondent burden in monetary terms (\$)
Wave 1:						
PrintSTEP printer .....	160	0.25	1.00	200	25.00	5,000
Comparison printer .....	160	0.25	2.75	480	25.00	12,000
Wave 2:						
PrintSTEP printer .....	160	0.25	1.00	200	25.00	5,000
Comparison printer .....	160	0.25	2.75	480	25.00	12,000
Wave 3:						
PrintSTEP printer .....	160	0.25	1.00	200	25.00	5,000
Comparison printer .....	160	0.25	2.75	480	25.00	12,000
Community member .....	50	0.25	0.00	13	0.00	0
Total for all 3 waves .....				2053		51,000

<sup>1</sup> Based on estimated number of participants provided by pilot states with the breakdown as follows: 60, 60, and 40 participants expected in MO, NH, and MN, respectively.

<sup>2</sup> Based on preliminary testing of the survey instruments by Abt Associates.

<sup>3</sup> Based on Screenprinting and Graphic Imaging Association International's 1999 Wage Survey.

### Estimated Recordkeeping and Reporting Cost Burden on Respondents

The PrintSTEP evaluation utilizes telephone interviews and written data collection forms to collect all the data necessary from the respondent. The only cost to the respondents resulting from this survey is their time, which is covered in the section above. There are no other costs to the respondents and this section, therefore, is not applicable.

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 24, 2000.

**Michael M. Stahl,**

*Director, Office of Compliance.*

[FR Doc. 00-5627 Filed 3-13-00; 8:45 am]

BILLING CODE 6560-50-P

### ENVIRONMENTAL PROTECTION AGENCY

[FRL-6561-2]

#### Danmark Superfund Site; Notice of Proposed Settlement

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Danmark Site in Tampa, Hillsborough County, Florida. The settlement requires the 59 settling parties to pay \$516,374.57 to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling parties pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), for Past Response Costs. EPA will consider public comments on the proposed settlement for thirty (30) days. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. Copies of the settlement are available from: Ms. Paula V. Batchelor, U.S. EPA Region 4, Waste Management Division, 61 Forsyth Street SW, Atlanta, Georgia 30303, 404/562-8887.

Written comments may be submitted to Ms. Batchelor on or before April 13, 2000.

Dated: March 2, 2000.

**Franklin E. Hill,**

*Chief, CERCLA Program Services Branch  
Waste Management Division.*

[FR Doc. 00-6347 Filed 3-13-00; 8:45 am]

BILLING CODE 6560-50-P

### FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC-99-28-B (Auction No. 28); DA 99-2958]

#### Notice and Filing Requirements for Auction of Certain AM, FM, LPTV, and TV Broadcast Construction Permits Scheduled for March 21, 2000; Minimum Opening Bids and Other Procedural Issues

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the auction, procedures, reserve prices and minimum opening bids for the upcoming supplemental Closed Broadcast Auction (Auction No. 28) scheduled to commence on March 21, 2000.

**DATES:** Auction No. 28 is scheduled for March 21, 2000.

**FOR FURTHER INFORMATION CONTACT:** Jose Ochoa, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418-0660.

**SUPPLEMENTARY INFORMATION:** This is a summary of a Public Notice released December 23, 1999. The complete text of the public notice, including Attachments A through H, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW, Washington, DC. It may

also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW, Washington, DC 20036, (202) 857-3800. It is also available on the Commission's web site at <http://www.fcc.gov>.

### A. Introduction

1. This Public Notice announces the procedures, reserve prices and minimum opening bids for the upcoming supplemental Closed Broadcast Auction (Auction No. 28). On November 19, 1999, the Mass Media Bureau ("MMB") and the Wireless Telecommunications Bureau ("WTB") (collectively, the "Bureaus") released a *Public Notice (Comment Public Notice)* 64 FR 67569 (December 2, 1999). This *Comment Public Notice* sought comment on the establishment of reserve prices and minimum opening bids for the auction of AM, FM, LPTV, and TV Broadcast Construction Permits, in accordance with the Balanced Budget Act of 1997. In addition, the Bureaus sought comment on a number of procedures to be used in Auction No. 28. In response to the *Comment Public Notice*, the Bureaus received comments from two applicants and no replies to these comments.

#### (i) Background

2. All spectrum to be auctioned in Auction No. 28 is the subject of pending, mutually exclusive applications for referenced broadcast services for which the Federal Communications Commission ("FCC") has not approved settlement agreements. In Auctions No. 25 and No. 27, recently completed, the Commission auctioned similar groups of construction permits. This Auction No. 28 shall dispose of broadcast applications not included in those earlier Auctions. Auction No. 28 shall include mutually exclusive applications for full service FM, AM and television construction permits that were subject to the comparative hearing freeze pending resolution of the issues raised by *Bechtel II (Bechtel v. FCC 10 F 3d 875 (D.C. Cir. 1993))*. In addition, included in Auction No. 28 are certain mutually exclusive LPTV and TV translator displacement relief applications. Pursuant to the *Broadcast First Report and Order* 63 FR 48615 (September 11, 1998), participation in the auction will be limited to those applicants identified on Attachment A of this Public Notice. Applicants will be eligible to bid only on those construction permits for which they previously filed long-form applications (FCC Forms 301 or 349). Also pursuant to the *Broadcast First*

*Report and Order*, the Bureaus will dismiss the previously-filed long-form application of any pending applicant failing to timely file a short-form application to participate in Auction No. 28.

#### (ii) Construction Permits Auctioned

3. A list of each of the groups of mutually exclusive applications ("MX Groups") in Auction No. 28, along with its reserve price or minimum opening bid and the upfront payment is included on Attachment A. Pursuant to the *Broadcast First Report and Order*, in those specific situations where both non-commercial and commercial applicants for full power stations filed mutually exclusive long-form applications for non-reserved band channels, auctions shall not be conducted at this time and these applications are not included on Attachment A.

4. In response to the *Comment Public Notice*, Valley Public Television, Inc. ("Valley"), an applicant for a secondary television facility in MX Group SST10, raises arguments similar to those raised prior to the Closed Broadcast Auction (Auction No. 25) concerning whether so-called "noncommercial educational" secondary television applicants should be included in this auction. Valley maintains that (i) under section 309(j)(2)(C) of the Communications Act of 1934, as amended, 47 U.S.C. 309(j)(2)(C), noncommercial applicants are exempt from auction; (ii) non-profit organizations like itself cannot afford to participate in the auction; and (iii) the Commission should use a lottery to choose between the applicants in MX Group SST10. As we stated in the *Public Notice*, DA 99-1346, released July 9, 1999 ("*July 9 Public Notice*"), in Auction No. 25, only those broadcast stations that are "eligible to be licensed by the Commission as a noncommercial educational radio or television broadcast station" are exempt from auction under sections 309(j)(2)(C) and 397(6) of the Communications Act. See *July 9 Public Notice* at 36 through 39. Because applicants for the secondary television services are not "eligible to be licensed . . . as a noncommercial educational \* \* \* television broadcast station" they are not exempt from the auction. See Inquiry Into the Future Role of Low Power Television Broadcasting and Television Translators in the National Telecommunications System, *Report and Order*, FCC 82-107, 47 FR 21468 (May 18, 1982), where the Commission stated that it would not license low power television and television translator stations on a noncommercial basis. Therefore, under

the mandate of section 309(j)(1) of the Communications Act, the Commission has no discretion, as Valley suggests, to exempt these applications from auction or to use an alternative method to choose between mutually exclusive applicants in the secondary television services. See 47 U.S.C. 309(j)(1).

#### (iii) Daisy Chain MX Groups

5. In some, but not all, of the MX Groups listed on Attachment A, a "daisy chain" of mutual exclusivity exists whereby applications are directly mutually exclusive with certain applications in the MX Group but not others. A "daisy chain" occurs when two or more non-table, site-based applications propose service areas that do not directly overlap, but are linked together into a chain by the overlapping proposal(s) of other applicants. In such cases, the potential exists to grant more than one application and issue more than one construction permit per MX Group and remain consistent with the Commission's separation requirements relating to site-based services. The identification of "daisy chains" on Attachment A is provisional in nature, since the final configuration of groups cannot be ascertained until after the acceptance for filing of short-form (FCC Form 175) applications, at which point mutual exclusivity for auction purposes is determined. Further identification and enumeration of "Daisy Chain MX Groups" will be provided prior to the auction in the public notices announcing the status of the applications and listing qualified bidders. It is possible that some MX Groups provisionally identified here as constituting a daisy chain may, after the short-form filing deadline, become directly mutually exclusive. In such cases(s), the procedures set forth in this notice pertaining to "Direct" MX Groups become applicable.

### B. Rules and Disclaimers

#### (i) Relevant Authority

6. Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to broadcast auctions, contained in title 47, part 73 of the Code of Federal Regulations. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions contained in this Public Notice. See also the *Comment Public Notice*, the *Broadcast First Report and Order*, the *Broadcast Reconsideration Order* 64 FR 24523 (May 7, 1999), and the *New Entrant Bidding Credit Reconsideration Order* 64 FR 44856 (August 18, 1999). Potential bidders must also familiarize

themselves with part 1, subpart Q of the Commission's Rules concerning Competitive Bidding Proceedings.

7. The terms contained in the Commission's rules, relevant orders and public notices are not negotiable. The Commission may amend or supplement the information contained in its public notices at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Internet node via anonymous ftp @ftp.fcc.gov or the FCC World Wide Web site at <http://www.fcc.gov/wtb/auctions>.

Additionally, documents may be obtained for a fee by calling the Commission's copy contractor, International Transcription Service, Inc. (ITS), at (202) 314-3070. When ordering documents from ITS, please provide the appropriate FCC number (e.g., FCC 98-194 for the *Broadcast First Report and Order* and FCC 99-74 for the *Broadcast Reconsideration Order*).

(ii) *Prohibition of Collusion*

8. To ensure the competitiveness and integrity of the auction process, the Commission's rules prohibit applicants from communicating with each other during the auction about bids, bidding strategies, or settlements. In Auction No. 28, for example, the rule applies to all applicants within a MX Group. This prohibition becomes effective at the short-form application deadline (February 18, 2000) and ends on the post-auction down payment due date (to be determined). Bidders competing for the same construction permit(s) are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he or she is authorized to represent in the auction. Also, if the authorized bidders are different individuals employed by the same organization (e.g., law firm or technical consulting firm), a violation could similarly occur. At a minimum, in such a case, applicants should certify that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule. See *Public Notice* 63 FR 3572 (January 23, 1998).

The Bureaus, however, caution that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred nor will it preclude the initiation of an investigation when warranted. Applicants may enter into bidding agreements before filing their FCC Form 175 short-form applications, as long as they disclose the existence of the agreement(s) in their FCC Form 175 short-form applications. By electronically submitting their FCC Form 175 short-form applications, applicants are certifying their compliance with §§ 1.2105(c) and 73.5002. In addition, § 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission, as promptly as possible and in any event within 30 days, of any substantial change that may be of decisional significance to that application. Thus, § 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Bidders are therefore required to make such notification to the Commission immediately upon discovery.

(iii) *Due Diligence*

9. Potential bidders are solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the facilities on which they intend to bid. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that a FCC auction represents an opportunity to become a FCC permittee in these services, subject to certain conditions and regulations. A FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does a FCC construction permit or license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

10. Although applicants have had an extensive opportunity to conduct due diligence due to the length of time since the filing of their long-form applications, please remember that, as is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use the broadcast spectrum to deceive and defraud unsuspecting investors.

Common warning signals of fraud include the following:

The first contact is a "cold call" from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.

The offering materials used to invest in the venture appear to be targeted at IRA funds, for example by including all documents and papers needed for the transfer of funds maintained in IRA accounts.

The amount of the minimum investment is less than \$25,000.

The sales representative makes verbal representations that: (a) The Internal Revenue Service, Federal Trade Commission ("FTC"), Securities and Exchange Commission ("SEC"), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits.

In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

11. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326-2222 and from the SEC at (202) 942-7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876-7060. Consumers who have concerns about specific proposals may also call the FCC Consumer Call Center at (888) CALL-FCC ((888) 225-5322).

(iv) *Bidder Certification*

12. All applicants must certify on their short-form FCC Form 175 applications under penalty of perjury that they are:

- legally, technically, financially and otherwise qualified to hold a license, and
- not in default on any payment for Commission construction permits or licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency.

Applicants should be aware that by filing their FCC Form 175 applications, they are certifying that they have long-form applications on file and that there has been no change of control of their long-form applications that would render them ineligible to participate in the auction under 47 U.S.C. 309(l) or any other applicable Commission rule.

13. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that

may result in severe penalties, including monetary forfeitures, construction permit or license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

*(v) National Environmental Policy Act (NEPA) Requirements*

14. The permittee must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). The construction of a broadcast antenna facility is a federal action and the permittee must comply with the Commission's NEPA rules for each such facility. See 47 CFR 1.1305 through 1.1319. The Commission's NEPA rules require that, among other things, the permittee consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corp of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). The permittee must prepare environmental assessments for broadcast facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The permittee must also prepare environmental assessments for broadcast facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

**C. Auction Specifics**

*(i) Auction Date*

15. The auction will begin on March 21, 2000. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction.

*(ii) Auction Title*

16. Auction No. 28 (supplemental Closed Broadcast Auction).

*(iii) Bidder Information*

17. Information necessary to participate in Auction No. 28 is contained in this *Public Notice*, the *Comment Public Notice*, the *Broadcast First Report and Order*, the *Broadcast Reconsideration Order*, the *New Entrant Bidding Credit Reconsideration Order* and the Commission's rules. Since the notice and comment rulemaking proceeding looking toward implementation of this auction was initiated nearly two years ago and since all eligible applicants have had their long-form applications on file for an extensive period of time, no separate

Bidder Information Package will be provided. Applicants may access updated information about Auction No. 28 at the following address on WTB's web site: <http://www.fcc.gov/wtb/auctions/auc28/auc28.html> Applicants are strongly encouraged to check this site regularly for updated information regarding Auction No. 28.

*(iv) Bidding Methodology*

18. The Commission will use two separate auction designs to award broadcast construction permits. For the Daisy Chain MX Groups, an electronic single round auction will be utilized. For the Direct MX Groups, an electronic simultaneous multiple round auction will be implemented. Bidding will be permitted only from remote locations, either electronically (by computer) or telephonically.

*(v) Participation*

19. Those wishing to participate in the auction must: Submit a short-form application (FCC Form 175) by 5:30 p.m. ET, February 18, 2000. Submit a sufficient upfront payment and a FCC Remittance Advice Form (FCC Form 159) by 6 p.m. ET, March 6, 2000.

Comply with all provisions outlined in this Public Notice and applicable Commission rules.

*(vi) Future Releases*

20. Further information regarding sequencing and length of bidding rounds and other procedural issues will be released in a future public notice.

*(vii) Pre-Auction Dates and Deadlines*

21. The following are important events and deadlines related to Auction No. 28:

Auction Seminar (free)—February 3, 2000.

Short-Form Application (FCC Form 175)—February 18, 2000; 5:30 p.m. ET.  
Upfront Payments (via wire transfer)—March 6, 2000; 6:00 p.m. ET.

Orders for Remote Bidding Software—March 7, 2000.

Mock Auction—March 17, 2000.

Auction Commencement—March 21, 2000.

*(viii) List of Attachments to This Public Notice*

22. The following is a list of attachments available at the FCC:

Attachment A: Summary of Construction Permits to be auctioned, Reserve Prices, or Minimum Opening Bids, and Upfront Payments

Attachment B: Guidelines for Completion of FCC Form 175 and Exhibits

Attachment C: Auction-Specific Instructions for FCC Remittance Advice (FCC Form 159)

Attachment D: Electronic Filing and Review of FCC Form 175

Attachment E: Accessing the FCC Network Using Windows 95/98

Attachment F: FCC Remote Bidding Software Order Form

Attachment G: Summary Listing of Documents from the Commission and the Wireless Telecommunications Bureau Addressing the Application of the Anti-Collusion Rules

Attachment H: Auction Seminar Registration Form

*(ix) Contact Information*

23. The following is general contact information relating to Auction No. 28:

*General Auction Information.* General auction questions seminar registration, orders for remote bidding software. FCC Auctions Hotline: (888) CALL-FCC (888-225-5322) or direct (717) 338-2888. Hours of service: 8 a.m.—5:30 p.m. ET.

*Legal Auction Information.* rules, policies, regulations. FCC Auctions Legal Branch: (202) 418-0660.

*Licensing Information.* Rules, policies, regulations, licensing issues, due diligence, incumbency issues. FCC Mass Media Bureau: Audio licenses: (202) 418-2700; video licenses: (202) 418-1600.

*Technical Support.* Electronic filing assistance, software downloading. FCC Auctions Technical Support Hotline: (202) 414-1250 (Voice); (202) 414-1255 (TTY). Hours of service: 8 a.m.—6:00 p.m. ET.

*Payment Information.* Wire transfers, refunds. FCC Auctions Accounting Branch: (202) 418-1995, (202) 418-2843 (Fax).

*Telephonic Bidding.* Will be furnished only to qualified bidders.

*FCC Copy Contractor.* Additional Copies of Commission Documents: International Transcription Services, Inc., 445 12th Street, SW Room CY-B400, Washington, DC 20554 (202) 314-3070.

*Press Information.* Meribeth McCarrick (202) 418-0654.

*FCC Forms.* (800) 418-3676 (outside Washington, DC) (202) 418-3676 (in the Washington Area) <http://www.fcc.gov/formpage>

FCC Internet Sites. <http://www.fcc.gov>; <ftp://ftp.fcc.gov>; <http://www.fcc.gov/wtb/auctions>.

**D. Short-Form (FCC FORM 175) Application Requirements**

24. Guidelines for completion of the short-form (FCC Form 175) are set forth on Attachment B to this Public Notice. The short-form application seeks the applicant's name and address, legal classification, status, bidding credit eligibility, identification of the

construction permit sought, the authorized bidders and contact persons.

*(i) Ownership Disclosure Requirements (Form 175 Exhibit A)*

25. All applicants must comply with the uniform Part 1, ownership disclosure standards and provide information required by §§ 1.2105 and 1.2112 of the Commission's rules. Specifically, in completing Form 175, applicants will be required to file an Exhibit A providing a full and complete statement of the ownership of the bidding entity. The ownership disclosure standards for the short-form are set forth in § 1.2112 of the Commission's rules. Bidders should note that, under § 1.2112 (a)(4), the short-form must list, *inter alia*, the names, addresses and citizenship of any party holding options permitting the acquisition of a ten percent or greater equity interest in the applicant, as well as the amount and percentage held.

*(ii) Consortia and Joint Bidding Arrangements (Form 175 Exhibit B)*

26. Applicants will be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to the licenses being auctioned, including any agreements relating to post-auction market structure. See 47 CFR 1.2105(a)(2)(viii), 1.2105(c)(1). Applicants will also be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular construction permits on which they will or will not bid. See 47 CFR 1.2105(a)(2)(ix). In cases where applicants have entered into consortia or joint bidding arrangements, applicants must submit an Exhibit B to the FCC Form 175.

27. A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants for construction permits in the same MX Group provided that (i) the attributable interest holder certify that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a consortium or entered into

a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, bidders are reminded that certain discussions or exchanges could broach on impermissible subject matters because they may convey pricing information and bidding strategies. Such subject areas include, but are not limited to, issues such as management, sales, local marketing agreements, rebroadcast agreements and other transactional arrangements.

*(iii) New Entrant Bidding Credit (Form 175 Exhibit C)*

28. To fulfill its obligations under section 309(j) and further its long-standing commitment to the diversification of broadcast facility ownership, the Commission adopted a tiered New Entrant Bidding Credit for broadcast auction applicants with no, or very few, other media interests.

*(a) Eligibility*

29. The interests of the bidder, and of any individuals or entities with an attributable interest in the bidder, in other media of mass communications shall be considered when determining a bidder's eligibility for the New Entrant Bidding Credit. The bidder's attributable interests shall be determined as of the short-form (FCC Form 175) filing deadline—February 18, 2000. Bidders intending to divest a media interest or make any other ownership changes, such as resignation of positional interests, in order to avoid attribution for purposes of qualifying for the New Entrant Bidding Credit must have consummated such divestment transactions or have completed such ownership changes by no later than the short-form filing deadline.

30. Under traditional broadcast attribution rules, those entities or individuals with an attributable interest in a bidder include:

- All officers and directors of a corporate bidder;
- Any owner of 5% or more of the voting stock of a corporate bidder;
- All partners and limited partners of a partnership bidder, unless the limited partners are sufficiently insulated; and
- All members of a limited liability company, unless insulated.

Bidders should note that the mass media attribution rules were recently revised. See *Report and Order* 64 FR 50622 (September 17, 1999).

31. In cases where a bidder's spouse or close family member holds other media interests, such interests are not

automatically attributable to the bidder. The Commission decides attribution issues in this context based on certain factors traditionally considered relevant. See *Clarification of Commission Policies Regarding Spousal Attribution* 57 FR 8845 (March 13, 1992)

32. Bidders are also reminded that, by the *New Entrant Bidding Credit Reconsideration Order*, the Commission further refined the eligibility standards for the New Entrant Bidding Credit, judging it appropriate to attribute the media interests held by very substantial investors in, or creditors of, a bidder claiming new entrant status. Specifically, the attributable mass media interests held by an individual or entity with an equity and/or debt interest in a bidder shall be attributed to that bidder for purposes of determining its eligibility for the New Entrant Bidding Credit, if the equity and debt interests, in the aggregate, exceed 33% of the total asset value of the bidder, even if such an interest is non-voting.

33. Generally, media interests will be attributable for purposes of the New Entrant Bidding Credit to the same extent that such other media interests are considered attributable for purposes of the broadcast multiple ownership rules. However, attributable interests held by a winning bidder in existing low power television, television translator or FM translator facilities will not be counted among the bidders' other mass media interests in determining its eligibility for a New Entrant Bidding Credit. A medium of mass communications is defined in 47 CFR 73.5008 (b).

*(b) Application Requirements*

34. In addition to the ownership information required on Exhibit A, applicants are required to file supporting documentation on Exhibit C to their FCC Form 175 short-form applications to establish that they satisfy the eligibility requirements to qualify for a New Entrant Bidding Credit. In addition, in those cases where a New Entrant Bidding Credit is being sought, a certification under penalty of perjury must be set forth in Exhibit C. An applicant claiming that it qualifies for a 35 percent new entrant bidding credit must certify under penalty of perjury that neither it nor any of its attributable interest holders have any attributable interests in any other media of mass communications. An applicant claiming that it qualifies for a 25 percent new entrant bidding credit must certify under penalty of perjury that neither it nor any of its attributable interest holders have any attributable interests in more than three media of mass

communications, and must identify and describe such media of mass communications.

(c) Bidding Credits

35. Applicants that qualify for the New Entrant Bidding Credit, as set forth in 47 CFR 73.5007, are eligible for a bidding credit that represents the amount by which a bidder's winning bids are discounted. The size of a New Entrant Bidding Credit depends on the number of ownership interests in other media of mass communications that are attributable to the bidder-entity and its attributable interest-holders:

- A 35 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has no attributable interest in any other media of mass communications, as defined in 47 CFR 73.5008;
- A 25 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has an attributable interest in no more than three mass media facilities, as defined in 47 CFR 73.5008;
- No bidding credit will be given if any of the commonly owned mass media facilities serve the same area as the proposed broadcast station, as defined in 47 CFR 73.5007, or if the winning bidder, and/or any individual or entity with an attributable interest in the winning bidder, has attributable interests in more than three mass media facilities.

36. Bidding credits are not cumulative; qualifying applicants receive either the 25 percent or the 35 percent bidding credit, but not both. Attributable interests are defined in 47 CFR 73.3555 and note 2 of that section. Bidders should note that unjust enrichment provisions apply to a winning bidder that utilizes a bidding credit and subsequently seeks to assign or transfer control of its license or construction permit to an entity not qualifying for the same level of bidding credit.

**E. Other Information (Form 175 Exhibits D & E)**

37. Applicants owned by minorities or women, as defined in 47 CFR 1.2110(b)(2), may attach an exhibit (Exhibit D) regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of "designated entities" in its auctions. Applicants wishing to submit additional information may do

so in Exhibit E-Miscellaneous Information—to the FCC Form 175.

**F. Minor Modifications to Short-Form FCC Form 175 Applications**

38. After the short-form filing deadline (February 18, 2000), applicants may make only minor changes to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (e.g., change their construction permit selections or proposed service areas, change the certifying official or change control of the applicant or change bidding credits). See 47 CFR 1.2105. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Applicants should make these changes on-line, and submit a letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Suite 4-A760 Washington, DC 20554, briefly summarizing the changes. Questions about other changes should be directed to Jose Ochoa of the FCC Auctions and Industry Analysis Division at (202) 418-0660.

**G. Maintaining Current Information in Short-Form (FCC Form 175) Applications**

39. Applicants have an obligation under 47 CFR 1.65, to maintain the completeness and accuracy of information in their short-form applications. Amendments reporting substantial changes of possible decisional significance in information contained in FCC Form 175 applications, as defined by 47 CFR 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application. Applicants should also be aware that failure to report ownership changes rendering them ineligible to participate in the auction under section 309(l)(2) and applicable Commission rules, even if that failure is inadvertent, could result in serious financial penalties if they participate in competitive bidding and win a construction permit. These include default payments and revocation of construction permit(s) or license(s). § 1.65 amendments to pending long-form applications, however, should be filed after the auction and only by the winning bidder. The time for the filing of such amendments to the auction winners' long form applications will be announced by subsequent Public Notice.

**H. Pre-Auction Procedures**

(i) *Short-Form Application (FCC Form 175)*—Due February 18, 2000, 5:30 p.m. ET

40. In order to be eligible to bid in this auction, applicants must first electronically submit a FCC Form 175 application. This application must be received at the Commission by 5:30 p.m. ET on February 18, 2000. Late applications will not be accepted.

41. There is no application fee required when filing a FCC Form 175. However, to purchase bidding eligibility, an applicant must submit an upfront payment. See section 3.C, *infra*.

(a) Electronic Filing

42. As of January 1, 1999, applications to participate in FCC auctions must be filed electronically. See *Part 1 Third Report and Order* 63 FR 770 (January 7, 1998). For Auction No. 28, applicants may file applications electronically beginning February 3, 2000. The system will generally be open for filing on a 24-hour basis. The Form 175 filing window will remain open until 5:30 p.m. ET on February 18, 2000. Applicants are strongly encouraged to file early, and applicants are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on February 18, 2000. Technical support is available at (202) 414-1250 (voice) or (202) 414-1255 (text telephone (TTY)); the hours of service are 8 a.m.—6 p.m. ET, Monday—Friday. Information about the electronic filing of the FCC Form 175 application is included as Attachment D to this Public Notice.

(b) Completion of the FCC Form 175

43. Applicants should carefully review 47 CFR 1.2105 and 73.5002 and must complete all items on the FCC Form 175. Applicants should not consider their form submitted to the FCC until they press the "Submit Form 175" button on the "Submit" page and receive confirmation from the filing system that the form has been received by the Commission. Instructions for completing the FCC Form 175 are on Attachment B of this Public Notice.

(c) Electronic Review of FCC Form 175

44. The FCC Form 175, review software may be used to review and print applicants' FCC Form 175 applications. Applicants may review their own completed FCC Form 175. Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice

explaining the status of the applications. For this reason, it is important that applicants do not include their Taxpayer Identification Numbers (TINs) on any Exhibits to their FCC Form 175 applications. There are no fees for accessing this system or for submitting a FCC Form 175. Instructions for reviewing the FCC Form 175 are provided on Attachment D to this Public Notice.

(ii) *Application Processing and Minor Corrections*

45. After the deadline for filing FCC Form 175 applications has passed, the FCC will process all timely submitted short-form applications to determine which are acceptable for filing and which are mutually exclusive. The Commission will subsequently issue a public notice identifying: (i) those short-form applications that are acceptable for filing and are mutually exclusive (including FCC file numbers and the construction permits for which they applied); (ii) those applications rejected; and (iii) those short-form applications that have minor defects that may be corrected, and the deadline for filing such corrected applications. In each MX Group, the construction permit(s) will be auctioned if two or more short-form applications are accepted for filing. In any MX Group for which only one short-form application is accepted for filing, the construction permit will be removed from the auction and the related long-form application (FCC Forms 301 and 349) will be processed, and, if acceptable, will be granted.

(iii) *Upfront Payments—Due March 6, 2000*

46. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by a FCC Remittance Advice Form (FCC Form 159). Applicants will have access to filling out an electronic version of the FCC Form 159 (July 1997 version) after completing the electronic FCC Form 175; however, the FCC Remittance Advice Form (FCC Form 159) must be printed and submitted by facsimile transmission to Mellon Bank in accordance with the instructions herein. Earlier versions of this form will not be accepted. All upfront payments must be received at Mellon Bank in Pittsburgh, Pennsylvania, by 6:00 p.m. ET on March 6, 2000.

Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.

- Upfront payments for Auction No. 28 go to a lockbox number different from the ones used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.

- Failure to deliver the upfront payment by the March 6, 2000 deadline will result in no bidding eligibility being accorded the applicant.

(a) *Making Auction Payments by Wire Transfer*

47. Wire transfer payments must be received by 6 p.m. ET on March 6, 2000. To avoid untimely payments, applicants should discuss arrangements (including bank-closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. As the Commission is not accountable for the acts of an applicant's bank, bidders are urged to confirm before the deadline that their wire transfer payments have been properly and timely transmitted by their bank to Mellon Bank. Applicants will need the following information:

ABA Routing Number: 043000261  
Receiving Bank: Mellon Pittsburgh  
BNF: FCC/ACC 910-0198  
OBI Field: (Skip one space between each information item)  
"AUCTION PAY"  
TAXPAYER IDENTIFICATION NO.  
(same as FCC Form 159, block 26)  
PAYMENT TYPE CODE (enter "A28U")  
FCC CODE 1 (same as FCC Form 159, block 23A: "28")  
PAYER NAME (same as FCC Form 159, block 2)  
LOCKBOX NO 358410

**Note:** The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

48. Applicants must fax a completed FCC Form 159 to Mellon Bank at (412) 236-5702 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write "Wire Transfer—Auction Payment for Auction Event No. 28." Bidders are strongly encouraged to confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

(b) *FCC Form 159*

49. A completed FCC Remittance Advice Form (FCC Form 159) must accompany each upfront payment. Proper completion of FCC Form 159 is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are

included in this Public Notice as Attachment C.

(c) *Amount of Upfront Payment*

50. In the *Broadcast First Report and Order*, the Commission delegated to the Bureaus the authority and discretion to determine an appropriate upfront payment for each construction permit being auctioned. *See Order, Memorandum Opinion and Order and Notice of Proposed Rule Making* 62 FR 13540 (March 21, 1997). In the *Comment Public Notice*, the Bureaus proposed certain upfront payments as set forth on Attachment A. No comments were received concerning such upfront payments. We therefore adopt our proposed upfront payment amounts for Auction No. 28.

51. In calculating the upfront payment amount, an applicant should determine the maximum number of bidding units it may wish to bid on in any single round, and submit an upfront payment covering that number of bidding units. Bidders should check their calculations carefully, as there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline.

**Note:** An applicant potentially eligible to bid in more than one MX Group may, on its FCC Form 175, indicate an intent to bid on every construction permit for which an underlying long-form has been filed, but its actual bidding in any round will be limited by the bidding units reflected in its upfront payment.

**I. Auction Registration**

52. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for Auction No. 28. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and that have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the construction permits for which their application was accepted.

53. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, each containing part of the confidential identification codes required to place bids. These mailings will be sent only to the contact person at the contact address listed in the FCC Form 175.

54. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Thursday, March 16, 2000 should contact the Auctions Hotline at (888) 225-5322

(888-CALL-FCC) (press option #2 at the prompt) or dial directly to (717) 338-2888. Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

55. Qualified bidders should note that lost login codes, passwords or bidder identification numbers can be replaced only by appearing in person at the FCC Auction Headquarters located at 445—12th Street, SW, Washington, DC 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacement codes. Bidders needing replacement codes must call technical support at 202-414-1250 prior to arriving at the FCC.

#### J. Remote Electronic Bidding Software

56. Qualified bidders are strongly encouraged to bid electronically. Due to the fact that potential bidders have already paid substantial fees in connection with the filing of their long-form applications, the software packages required to participate in remote electronic bidding will be provided on request at no charge to the bidders in Auction No. 28. These software packages must be ordered by March 7, 2000. While bidders are free to copy the software for use by authorized bidders at different locations, the FCC auction system will accept electronic bids only from bidders who have requested the software. (Auction software is tailored to a specific auction, so software from prior auctions will not work for Auction No. 28.) A software order form is included as Attachment F to this Public Notice.

#### K. Mock Auction (March 17, 2000)

57. All qualified bidders will be eligible to participate in a mock auction on March 17, 2000. The mock auction will enable applicants to become familiar with the electronic software prior to the auction. Free demonstration software will be available for use in the mock auction. Participation by all bidders is strongly recommended. Details will be announced by Public Notice.

#### L. Auction Event

58. The first round of the auction will begin on March 21, 2000. The initial round schedule will be announced in a Public Notice listing the qualified bidders to be released approximately 10 days before the start of the auction.

#### (i) Auction Structure

59. In the *Comment Public Notice*, the Commission proposed two separate auction designs to award these construction permits, one for the Daisy Chain MX Groups and one for the Direct MX Groups. The following auction designs will be utilized.

##### (a) Single Round Auction Design

60. For *Daisy Chain MX Groups*, we proposed a single round in which each bidder must place a bid that meets or exceeds the established reserve price, in whole dollar amounts. No comments were received concerning this proposed auction design.

61. We therefore conclude that utilizing an electronic single round auction will award the construction permits in Auction No. 28 that are in Daisy Chain MX Groups. The determination of the winning bidder in each of the Daisy Chain MX Groups shall be made by finding the set of bids on non-overlapping coverage areas that accrue to the greatest amount. For example, consider the case of an MX Group consisting of a "daisy chain" of three potential bidders (Bidders 1, 2 and 3) interested in three construction permits in the MX Group (respectively Construction Permits A, B and C) such that A is MX'ed with B and B is MX'ed with C. This means that either A and C can both be assigned or B can be assigned, but not A and B, B and C or A, B and C. In order for Bidder 2 to win construction permit B, its bid would have to exceed the combined bids of Bidders 1 and 3 on construction permits A and C, respectively. All bids will be time-stamped and in the case of tie bids, the first complete combination of bids placed first in time shall be considered the winning bid combination. We have concluded that the disposition of the permits for the Daisy Chain MX Groups in this manner is most appropriate because of the complexity of their overlapping nature.

##### (b) Simultaneous Multiple Round Auction Design

62. For *Direct MX Groups*, we proposed a single stage, simultaneous multiple round auction. No comments were received concerning this proposed auction design.

63. We therefore conclude that the construction permits in Auction No. 28 for the Direct MX Groups will be awarded through a single, simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on each of these construction permits in each round of this auction. This approach, we believe, allows for a

more efficient auction process and, in cases where bidders are eligible to participate in multiple markets, allows them to take advantage of any synergies that exist among construction permits.

#### (c) Maximum Eligibility and Activity Rules

64. In the *Comment Public Notice*, we proposed that the amount of the upfront payment submitted by a bidder would determine the initial maximum eligibility (as measured in bidding units) for each bidder. No comments were received concerning the eligibility rule.

65. We adopt the maximum eligibility proposal for Auction No. 28. The amount of the upfront payment submitted by a bidder determines the initial maximum eligibility (in bidding units) for each bidder. Note again that upfront payments are not attributed to specific construction permits, but instead will be translated into bidding units to define a bidder's initial maximum eligibility. The total upfront payment defines the maximum number of bidding units on which the applicant will initially be permitted to bid.

66. For *Direct MX Groups*, to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than waiting until the end to participate. Bidders are required to be active on 100 percent of their maximum eligibility during each round of the auction.

67. A bidder is considered active on a construction permit in the current round if it is either the high bidder at the end of the previous bidding round and does not withdraw the high bid in the current round, or if it submits an acceptable bid in the current round (see "Minimum Accepted Bids" in section 4.B. (3), *infra*). A bidder's activity level in a round is the sum of the bidding units associated with construction permits on which the bidder is active. Required minimum activity levels ensure that an auction will proceed expeditiously and efficiently. Because such procedures have proven successful in maintaining the pace of previous auctions, we adopt them for Auction No. 28.

68. For *Daisy Chain MX Groups*, because of the single round format, activity rules are not applicable.

#### (d) Activity Rule Waivers, Reducing Eligibility and Stopping Rules

69. For *Direct MX Groups*, in the *Comment Public Notice*, we proposed that each bidder in the auction would be provided five activity rule waivers that may be used in any round during the

course of the auction. We also proposed to employ a simultaneous stopping rule, meaning that all construction permits would remain open until the first round in which no new acceptable bids, proactive waivers or withdrawals were received. We sought comment on a modified version of this rule, in which the auction would close for all construction permits after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any construction permit on which it is not the standing high bidder. We further proposed to retain the discretion to keep the auction open, even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn. Finally, we proposed to reserve the right to declare that the auction will end after a specified number of additional rounds ("special stopping rule"), meaning that the Bureaus would accept bids in the final round(s) only for construction permits on which the high bid increased in at least one of the preceding specified number of rounds. We proposed to exercise this option only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity, or where it appears likely that the auction will not close within a reasonable period of time. No comments were received on this proposal.

70. Based upon our experience in previous auctions, we adopt our proposals and each bidder will be provided five activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular construction permit. The FCC auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any round where a bidder's activity level is below the minimum required unless: (i) There are no activity rule waivers available; or (ii) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

71. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the round by using the "reduce

eligibility" function in the software. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

72. A bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding software) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids or withdrawals will not keep the auction open.

73. Barring extraordinary circumstances, bidding will remain open on all construction permits until bidding stops on every construction permit. Thus, the auction will close for all construction permits when one round passes during which no bidder submits a new acceptable bid on any construction permit, applies a proactive waiver, or withdraws a previous high bid. In addition, however, the Bureaus retain the discretion to close the auction for all construction permits after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the standing high bidder would not keep the auction open under this modified stopping rule.

74. The Bureaus retain the discretion however, to keep an auction open even if no new acceptable bids or proactive waivers are submitted, and no previous high bids are withdrawn. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use an activity rule waiver (if it has any left).

75. Further, in their discretion, the Bureaus reserve the right to declare that the auction will end after a specified number of additional rounds ("special stopping rule"). If the FCC invokes this special stopping rule, it will accept bids in the final round(s) only for construction permits on which the high bid increased in at least one of the preceding specified number of rounds. The FCC intends to exercise this option only in extreme circumstances, such as where the auction is proceeding very slowly, where there is minimal overall bidding activity, or where it appears

likely that the auction will not close within a reasonable period of time. Before exercising this option, the FCC is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of construction permits where there is still a high level of bidding activity.

76. For *Daisy Chain MX Groups*, because of the single round format, activity rule waivers and reducing eligibility are not applicable. In the *Comment Public Notice*, we proposed to conduct a single round of bidding and declare the auction over at the conclusion of the two-hour bidding period. No comments were received on this issue.

(e) Auction Delay, Suspension, or Cancellation

77. In the *Comment Public Notice*, we proposed that, by public notice or by announcement during the auction, the Bureaus may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. We received no comments on this proposal.

78. Because this approach has proven effective in resolving exigent circumstances in previous auctions, we will adopt our proposed auction cancellation rules. By public notice or by announcement during the auction, the Bureaus may delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureaus, in their sole discretion, may elect to: resume the auction starting from the beginning of the current round; resume the auction starting from some previous round; or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureaus, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

*(ii) Bidding Procedures**(a) Round Structure*

79. The initial bidding schedule will be announced in the Qualified Bidder Public Notice at least one week before the start of the auction, and will be included in the registration mailings.

80. For *Daisy Chain MX Groups*, a single two-hour bidding round will be conducted after which the auction will close.

81. For *Direct MX Groups*, the simultaneous multiple round formats will consist of sequential bidding rounds, each followed by the release of round results. Details regarding the location and format of round results will be included in the Qualified Bidder Public Notice.

82. The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The FCC may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

*(b) Reserve Price or Minimum Opening Bid*

83. The Balanced Budget Act of 1997 calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses or construction permits are subject to auction (*i.e.*, because the applications are mutually exclusive), unless the Commission determines that a reserve price or minimum bid is not in the public interest. Consistent with this mandate, the Commission has directed the Bureaus to seek comment on the use of minimum opening bids and/or reserve prices prior to the start of each broadcast auction. *See Part 1 Third Report and Order*, 63 FR 2315 (January 15, 1998). This is consistent with policy applied in earlier spectrum auctions, including the recently completed Closed Broadcast Auctions. The Commission has concluded that either or both of these mechanisms may be employed for auctions and has delegated the requisite authority to make determinations regarding the appropriateness of employing either or both.

84. The Bureaus proposed to establish reserve prices for the *Daisy Chain MX Groups* and minimum opening bids for *Direct MX Groups*. The Bureaus also sought comment on whether, consistent with the Budget Act, the public interest

would be served by having no minimum opening bid or reserve price.

85. A comment was received by Irene Rodriguez Diaz de McComas ("McComas") addressing the minimum opening bid for Channel 247A, Rio Grande, Puerto Rico, MX Group FM 1. McComas specifically objects to the minimum opening bid amount established for the Rio Grande construction permit in light of the potential conflict between the Channel 247A allotment at Rio Grande, Puerto Rico and a 100kw station operating on channel 247 in the British Virgin Islands, as noted in the *1990 Hearing Designation Order* setting the mutually exclusive Rio Grande applicants for comparative hearing. McComas contends that the uncertainty regarding interference forecloses a fair evaluation of the frequency. However, as discussed in the December 15, 1999 staff letter addressing the issue, the matter has since been resolved, and there remains neither a cloud over the Rio Grande allotment, nor a need for further Commission pronouncement on the matter.

86. Therefore, we adopt the reserve prices proposed for the construction permits in *Daisy Chain MX Groups* and reducible minimum opening bids proposed for construction permits in the *Direct MX Groups* as listed on Attachment A. Reducible minimum opening bids for the *Direct MX Groups* will allow the Bureaus flexibility to adjust the minimum opening bids if circumstances warrant. We emphasize, however, that such discretion will be exercised, if at all, sparingly and early in the auction. During the course of the auction, the Bureaus will not entertain any bidder requests to reduce the reserve price or minimum opening bid on specific construction permits.

*(c) Bidding*

87. All bidding will take place either through the automated bidding software or by telephonic bidding. (Telephonic bid assistants are required to use a script when handling bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid, by placing their calls well in advance of the close of a round, because four to five minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 28.

88. A bidder's ability to bid on specific construction permits in the first round of the auction is determined by two factors: (1) the construction permits applied for on FCC Form 175; and (2) the upfront payment amount deposited. The bid submission screens will be

tailored for each bidder to include only those construction permits for which the bidder applied on its FCC Form 175.

89. The bidding software requires each bidder to login to the FCC auction system during the bidding round using the FCC account number, bidder identification number, and the confidential security codes provided in the registration materials. Bidders are strongly encouraged to download and print bid confirmations *after* they submit their bids.

90. For both *Daisy Chain MX Groups* and *Direct MX Groups*, a bidder may submit bids on any licenses for which it is eligible during a bidding round. Bidders also have the option of making multiple submissions and withdrawals in the bidding round. If a bidder submits multiple bids for a single license in the same round, the system takes the last bid entered as that bidder's bid for the round and the date- and time-stamp of that bid reflects the latest time the bid was submitted. For the *Direct MX Groups* only, a bidder may withdraw high bids from previous bidding rounds, remove bids placed in the same bidding round, or permanently reduce eligibility.

91. For *Daisy Chain MX Groups*, the bid entry screen of the Automated Auction System software for the Auction No. 28 allows bidders to place a bid that is equal to or greater than the established reserve price in a whole dollar amount.

92. For *Direct MX Groups*, the bid entry screen of the Automated Auction System software for Auction No. 28 allows bidders to place multiple increment bids that will let bidders increase high bids from one to nine bid increments. A single bid increment is defined as the difference between the standing high bid and the minimum acceptable bid for each construction permit.

93. To place a bid on a particular construction permit, the bidder must enter a whole number between 1 and 9 in the bid increment multiplier (Bid Mult) field. This value will determine the amount of the bid (Amount Bid) by multiplying the bid increment multiplier by the bid increment and adding the result to the high bid amount according to the following formula:

$$\text{Amount Bid} = \text{High Bid} + (\text{Bid Mult} * \text{Bid Increment})$$

Thus, bidders may place a bid that exceeds the standing high bid by between one and nine times the bid increment. For example, to bid the minimum acceptable bid, which is equal to one bid increment, a bidder

will enter "1" in the bid increment multiplier column and press submit.

94. For any construction permit on which the FCC is designated as the high bidder (*i.e.*, a construction permit that has not yet received a bid in the auction or where the high bid was withdrawn and a new bid has not yet been placed), bidders will be limited to bidding only the minimum acceptable bid. In both of these cases no increment exists, and bidders should enter "1" in the Bid Mult field. Note that, in such cases, when the FCC is the designated high bidder any whole number between 1 and 9 entered in the multiplier column will result in a bid value at the minimum acceptable bid amount. Finally, bidders are cautioned in entering numbers in the Bid Mult field because, as explained in the following section, a high bidder that withdraws its standing high bid from a previous round, even if mistakenly or erroneously made, is subject to bid withdrawal payments.

#### (d) High Bids

95. For *Direct MX Groups*, each bid will be date-and time-stamped when it is entered into the Auctions Automation System. In the event of tie bids, the Commission will identify the high bidder on the basis of the order in which the Commission, starting with the earliest bid receives bids. The bidding software allows bidders to make multiple submissions in a round. As each bid is individually date and time-stamped according to when it was submitted, bids submitted by a bidder earlier in a round will have an earlier date-and time-stamp than bids submitted later in a round.

96. For *Daisy Chain MX Groups*, the high bid will be determined as set forth herein in section 4.A.1 of this Public Notice.

#### (e) Bid Increments

97. For *Daisy Chain MX Groups*, because of the single round auction design, bid increments are not applicable.

98. For *Direct MX Groups*, in the *Comment Public Notice*, the Bureaus proposed to begin the bid level with established minimum opening bids and then apply a minimum bid increment of 10%, rounded to the nearest hundred dollars for high bids below \$10,000.00 and rounded to the nearest thousand dollars for high bids of \$10,000.00 or higher. No comments were received. We adopt the proposal contained in the *Comment Public Notice*.

99. The Bureaus retain the discretion to change the minimum bid increment if they determine those circumstances

so dictate. For example, the Bureaus may raise the minimum bid increment towards the end of the auction to speed the pace at which bids reach their final values. The Bureaus will do so by announcement in the Automated Auction System. In addition, the Bureaus retain the discretion to implement a dollar floor for the bid increment to further facilitate a timely close of the auction.

100. Once there is a standing high bid on a construction permit, there will be a bid increment associated with that bid indicating the minimum amount by which the bid on that permit can be raised. For the Auction No. 28, we will use a flat, across-the-board increment of 10% to calculate minimum bid increments. The Bureaus retain the discretion to compute the minimum bid increment through other methodologies if it determines circumstances so dictate.

#### (f) Bid Removal and Bid Withdrawal

101. For *Daisy Chain MX Groups*, bidders have the option to remove any bids placed before the end of the bidding round. A bidder removing a bid is not subject to withdrawal payments. Bid withdrawals (*i.e.*, after the close of the single round), however, are not applicable to the single round auction.

##### (i) Procedures for Direct MX Groups.

102. Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the "remove bid" function in the software, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed. This procedure will enhance bidder flexibility and, we believe, may serve to expedite the course of the auction.

103. Once a round closes, a bidder may no longer remove a bid. However, in the next round, a bidder may withdraw standing high bids from previous rounds using the "withdraw bid" function (assuming that the bidder has not exhausted its withdrawal allowance). A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g) and 1.2109.

104. In previous auctions, we have detected bidder conduct that, arguably, may have constituted strategic bidding through the use of bid withdrawals. While we continue to recognize the important role that bid withdrawals play in an auction, *i.e.*, reducing risk associated with efforts to secure various

construction permits in combination, we conclude that, for Auction No. 28, adoption of a limit on their use to two rounds. By doing so, we believe we strike a reasonable compromise that will allow bidders to use withdrawals.

105. The Bureaus will therefore limit the number of rounds in which bidders may place withdrawals to two rounds. These rounds will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals will still be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g), and 1.2109. Bidders are reminded that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a construction permit.

106. If a high bid is withdrawn, the construction permit will be offered in the next round at the second highest bid price, which may be less than, or equal to (in the case of tie bids), the amount of the withdrawn bid, without any bid increment. The FCC will serve as a "place holder" on the construction permit until a new acceptable bid is submitted on that permit.

##### (ii) Withdrawal Payment Calculations for Direct MX Groups.

107. Generally, a bidder that withdraws a standing high bid during the course of an auction will be subject to a payment equal to the lower of: (1) The difference between the net withdrawn bid and the subsequent net winning bid; or (2) the difference between the gross withdrawn bid and the subsequent gross winning bid for that construction permit. In the case of multiple withdrawals on a construction permit, the payment for the final withdrawer (*i.e.*, that bidder who is the last bidder to withdraw before the license is won in an auction) will be computed as described herein. The payment for all other withdrawers will be computed as the lower of: (i) Either the difference between the net withdrawn bid and the highest of the subsequent net withdrawn bids or the difference between the net withdrawn bid and the subsequent net winning bid, whichever is less; or (ii) either the difference between the gross withdrawn bid and the highest of the subsequent gross withdrawn bids or the difference between the gross withdrawn bid and the subsequent gross winning bid, whichever is less. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent gross or net winning bid or if any of the subsequent gross or net withdrawn bids exceed the gross or net amount of the withdrawn bid. In the event that a

construction permit for which there have been withdrawn bids is not won in the auction, then those bidders with outstanding withdrawals will have 3 percent of their withdrawn bid withheld until such time as the construction permit can be subject to competitive bidding in a subsequent auction and a final payment assigned. For further guidance, please refer to §§ 1.2104 and 1.2109 of the Commission's rules. We adopt the proposed procedures for bid removal and bid withdrawal.

#### (g) Round Results

108. Reports reflecting bidders' identities and bidder identification numbers for Auction No. 28 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

109. For *Daisy Chain MX Groups*, the auction results will be published at the conclusion of the single bidding round. The FCC will compile reports, which will include a list of all bids placed and high bidders for the designated permits.

110. For *Direct MX Groups*, the bids placed during each bidding period are not published until the conclusion of that round. The FCC will compile reports of all bids placed, bids withdrawn, current high bids, new minimum accepted bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Instructions for accessing the Round Results will be included in the Qualified Bidder Public Notice.

#### (h) Auction Announcements

111. The FCC will use auction announcements to announce items such as schedule changes and round sequences and length. All FCC auction announcements will be available on the FCC remote electronic bidding system, as well as the Internet.

### N. Post-Auction Procedures

#### (i) Down Payments and Withdrawn Bid Payments

112. After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bids and bidders for each permit, and listing withdrawn bid payments due, if any.

113. Within ten business days after release of the auction closing public notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Government to 20 percent of its net winning bids (actual bids less any

applicable bidding credits). See 47 CFR 1.2107(b). In addition, by the same deadline all bidders must pay any withdrawn bid amounts due under 47 CFR 1.2104(g), as discussed in "Bid Removal and Bid Withdrawal," Part 4.B. (6), *supra*. (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

#### (ii) Default and Disqualification

114. Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may offer the construction permit to the next highest bidder (in descending order) at their final bid, or offer the spectrum in a later auction. See 47 CFR 1.2109(b) and (c). In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing construction permits or licenses held by the applicant. See 47 CFR 1.2109(d).

#### (iii) Applicant's Wire Transfer Information for Purposes of Refunds

115. To ensure that refunds are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed herein be supplied to the FCC. Once the request has been approved, a refund will be sent to the address provided on the FCC Form 159. Refund processing generally takes up to two weeks to complete. Should the payor fail to submit the requested information, the refund will be returned automatically to the original payor by check after 45 days of the closing of the auction. The Commission will use wire transfers for all Auction No. 28 refunds, under the condition that we have received proper instructions by the designated date. Please fax wire transfer instructions to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Michelle Bennett or Gail Glasser at (202) 418-2843.

Please include the following information:

Applicant's Name & TIN #  
Name and Address of Bank  
ABA Number  
Contact and Phone Number

Name of Account Holder  
Address of Account Holder  
Account Number to Credit  
Correspondent Bank (if applicable)  
ABA Number  
Account Number

(Applicant's name, signature and date are required in order to process refund request. Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain an applicant's Taxpayer Identification Number (TIN) before it can disburse refunds.)

#### (iv) Partial Refund of Remaining Upfront Payment Balance

116. All applicants that submitted upfront payments but were not winning bidders for a construction permit in Auction No. 28 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from that applicant after any applicable bid withdrawal payments have been paid.

117. Direct MX Group bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. However, bidders that reduce their eligibility and remain in the auction are not eligible for partial refunds of upfront payments until the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request which includes wire transfer instructions and a Taxpayer Identification Number ("TIN") to: Federal Communications Commission, Auctions Accounting Branch, Attn: Michelle Bennett and Gail Glasser, 445 12th Street, SW, Room 1-A824, Washington, DC 20554

118. Bidders can also fax their request to the Auctions Accounting Branch at (202) 418-2843. Once the request has been approved, a refund will be sent to the address provided on the FCC Form 159. Refund processing generally takes up to two weeks to complete.

### O. Contacts

119. The following is a list of FCC contacts:

*Media Contact:* Meribeth McCarrick at (202) 418-0654.

*Wireless Telecommunications Bureau:* Auctions and Industry Analysis Division: Jose Ochoa, Legal Branch or Ruby Hough, Auctions Operations Branch, at (202) 418-0660, or Kathy

Garland or Bob Reagle, Auctions Operations Branch, at (717) 338-2888.  
*Mass Media Bureau:* Video Services Division: Shaun Maher at (202) 418-2324 Audio Services Division: Lisa Scanlan at (202) 418-2700  
*Office of Managing Director:* Financial Operations: Michelle Bennett or Gail Glasser at (202) 418-1995.

Federal Communications Commission.

**Louis J. Sigalos,**

*Deputy Chief, Auctions & Industry Analysis Division.*

[FR Doc. 00-6323 Filed 3-13-00; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice and request for comment.

**SUMMARY:** The FDIC, 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 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled "Procedures for Monitoring Bank Protection Act Compliance."

**DATES:** Comments must be submitted on or before May 15, 2000.

**ADDRESSES:** Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898-7453, Office of the Executive Secretary, Room 4058, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. All comments should refer to "Procedures for Monitoring Bank Protection Act Compliance." Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. [FAX number (202) 898-3838; Internet address: [comments@fdic.gov](mailto:comments@fdic.gov)].

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Tamara R. Manly, at the address identified above.

### SUPPLEMENTARY INFORMATION:

#### Proposal To Renew the Following Currently Approved Collection of Information

*Title:* Procedures for Monitoring Bank Protection Act Compliance.

*OMB Number:* 3064-0095.

*Frequency of Response:* Annually.

*Affected Public:* All financial institutions.

*Estimated Number of Respondents:* 5,800.

*Estimated Time per Response:* 1/2 hour.

*Estimated Total Annual Burden:* 2,900 hours.

*General Description of Collection:* The collection requires insured state nonmember banks to comply with the Bank Protection Act and to review bank security programs.

#### Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, D.C., this 8th day of March, 2000.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 00-6232 Filed 3-13-00; 8:45 am]

**BILLING CODE 6714-01-U**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice and request for comment.

**SUMMARY:** The FDIC, 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 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled "Notification of Changes in Insured Status."

**DATES:** Comments must be submitted on or before May 15, 2000.

**ADDRESSES:** Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898-7453, Office of the Executive Secretary, Room 4058, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. All comments should refer to "Notification of Changes in Insured Status." Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. [FAX number (202) 898-3838; Internet address: [comments@fdic.gov](mailto:comments@fdic.gov)].

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Tamara R. Manly, at the address identified above.

### SUPPLEMENTARY INFORMATION:

#### Proposal To Renew the Following Currently Approved Collection of Information

*Title:* Notification of Changes in Insured Status.

*OMB Number:* 3064-0124.

*Frequency of Response:* On occasion.

*Affected Public:* Insured depository institutions.

*Estimated Number of Respondents:* 943.

*Estimated Time per Response:* 1/4 hour.

*Estimated Total Annual Burden:* 236 hours.

*General Description of Collection:* 12 U.S.C. 1818(q) requires an insured depository institution to provide the FDIC with a certification when it partially or completely assumes deposit liabilities from another insured depository institution.

#### Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, this 8th day of March, 2000.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 00-6233 Filed 3-13-00; 8:45 am]

**BILLING CODE 6714-01-U**

### FEDERAL DEPOSIT INSURANCE CORPORATION

#### Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:44 p.m. on Thursday, March 9, 2000, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate and resolution activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Ellen S. Seidman (Director, Office of Thrift Supervision), concurred in by Director John D. Hawke, Jr. (Comptroller of the Currency), and

Chairman Donna Tanoue, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no notice earlier than March 6, 2000, of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW, Washington, DC.

Dated: March 10, 2000.

Federal Deposit Insurance Corporation.

**James D. LaPierre,**

*Deputy Executive Secretary.*

[FR Doc. 00-6386 Filed 3-10-00; 2:07 pm]

**BILLING CODE 6714-01-M**

### FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1320-DR]

#### Kentucky; Major Disaster and Related Determinations

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

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Kentucky (FEMA-1320-DR), dated February 28, 2000, and related determinations.

**EFFECTIVE DATE:** February 28, 2000.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3772.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated February 28, 2000, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the Commonwealth of Kentucky, resulting from severe storms and flooding on February 18, 2000, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288, as amended ("the Stafford Act"). I, therefore, declare that such a major

disaster exists in the Commonwealth of Kentucky.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint A. Scott Wells of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Kentucky to have been affected adversely by this declared major disaster:

Bath, Boyd, Carter, Fleming, Greenup, Lewis, Mason, Nicholas, Robertson, and Rowan Counties for Individual Assistance.  
Boyd, Fleming, Greenup, Harrison, Lewis, Nicholas, and Rowan Counties for Public Assistance.

All counties within the Commonwealth of Kentucky are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

**James L. Witt,**

*Director.*

[FR Doc. 00-6213 Filed 3-13-00; 8:45 am]

**BILLING CODE 6718-02-P**

**FEDERAL EMERGENCY  
MANAGEMENT AGENCY****[FEMA-1318-DR]****Virginia; Amendment No. 1 to Notice of  
a Major Disaster Declaration****AGENCY:** Federal Emergency  
Management Agency (FEMA).**ACTION:** Notice.**SUMMARY:** This notice amends the notice of a major disaster for the Commonwealth of Virginia (FEMA-1318-DR), dated February 28, 2000, and related determinations.**EFFECTIVE DATE:** March 7, 2000.**FOR FURTHER INFORMATION CONTACT:**  
Madge Dale, Response and Recovery  
Directorate, Federal Emergency  
Management Agency, Washington, DC  
20472, (202) 646-3772.**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the Commonwealth of Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 28, 2000:Newport News City for debris removal  
(Category A), emergency protective  
measures (Category B), and utilities  
(Category F) under Public Assistance.(The following Catalog of Federal Domestic  
Assistance Numbers (CFDA) are to be used  
for reporting and drawing funds: 83.537,  
Community Disaster Loans; 83.538, Cora  
Brown Fund Program; 83.539, Crisis  
Counseling; 83.540, Disaster Legal Services  
Program; 83.541, Disaster Unemployment  
Assistance (DUA); 83.542, Fire Suppression  
Assistance; 83.543, Individual and Family  
Grant (IFG) Program; 83.544, Public  
Assistance Grants; 83.545, Disaster Housing  
Program; 83.548, Hazard Mitigation Grant  
Program)**Lacy E. Suiter,***Executive Associate Director, Response and  
Recovery Directorate.*

[FR Doc. 00-6212 Filed 3-13-00; 8:45 am]

**BILLING CODE 6718-02-P****FEDERAL LABOR RELATIONS  
AUTHORITY****[FLRA Docket No. 0-NG-2353]****Notice of Opportunity To Submit Amici  
Curiae Briefs in a Negotiability  
Proceeding Pending Before the  
Federal Labor Relations Authority****AGENCY:** Federal Labor Relations  
Authority.**ACTION:** Notice of the opportunity to file  
briefs as amici curiae in a proceedingbefore the Federal Labor Relations  
Authority in which the Authority has  
been asked to reconsider how  
management's statutory rights to direct  
employees and to assign work should be  
interpreted in relation to proposals that  
establish the number of performance  
rating levels for individual job elements  
and summary ratings.**SUMMARY:** The Federal Labor Relations  
Authority is providing an opportunity  
for all interested parties to file briefs as  
amici curiae on significant issues arising  
in a case pending before the Authority.  
The Authority is considering the case  
pursuant to its responsibilities under  
the Federal Service Labor-Management  
Relations Statute, 5 U.S.C. 7101-7135  
(the Statute) and its regulations set forth  
at 5 CFR part 2424. The issue concerns  
how management's rights to direct  
employees and assign work under  
section 7106(a)(2)(A) and (B) of the  
Statute should be interpreted in relation  
to proposals that establish the number  
of performance rating levels for  
individual job elements and summary  
ratings.**DATES:** Briefs submitted in response to  
this notice will be considered if  
received by mail or by personal or  
commercial delivery in the Authority's  
Office of Case Control by 5 p.m. on  
April 13, 2000. Placing submissions in  
the mail by this deadline will not be  
sufficient. Extensions of time to submit  
briefs will not be granted.**FORMAT:** All briefs shall be captioned  
*"National Association of Government  
Employees, Local R3-10 and U.S.  
Department of Transportation, Federal  
Aviation Administration, Washington,  
D.C., Case No. NG-2353."* Briefs must  
contain separate, numbered topic  
headings corresponding to the four  
questions at the end of this notice.  
Parties must submit an original and four  
copies of each amicus brief, on 8½ by  
11 inch paper. Briefs must include a  
signed and dated statement of service  
that complies with the Authority's  
regulations showing service of one copy  
of the brief on all counsel of record or  
other designated representatives. 5 CFR  
2429.27(a) and (c). The designated  
representatives are:George L. Reaves, Jr., Union  
Representative, National  
Association of Government  
Employees, 36 Wine Street,  
Hampton, VA 23669;  
Ron Frampton, Agency Representative,  
Federal Aviation Administration,  
800 Independence Ave., SW, AHR-  
12, Washington, DC 20591.**ADDRESSES:** Mail or deliver briefs to  
Peter Constantine, Director, CaseControl Office, Federal Labor Relations  
Authority, 607 14th Street, NW, Room  
415, Washington, DC 20424-0001.**FOR FURTHER INFORMATION CONTACT:**  
Peter Constantine, Director, Case  
Control Office, Federal Labor Relations  
Authority, (202) 482-6540.**SUPPLEMENTARY INFORMATION:** The case  
presenting the issues on which amicus  
briefs are being solicited is before the  
Authority on a petition for review of  
negotiability issues filed by the National  
Association of Government Employees,  
Local R3-10 (NAGE/Union) under  
section 7105(a)(2)(E) of the Statute. The  
Union requests that the Authority  
reconsider its precedent that proposals  
that establish the number of rating  
levels for individual performance  
elements and for summary performance  
ratings violate management's rights to  
direct employees and assign work under  
section 7106(a)(2)(A) and (B) of the  
Statute and are outside the duty to  
bargain. To assist interested persons in  
responding, the Authority offers the  
following background on the case,  
summary of the relevant precedent, and  
questions on which amicus views are  
being sought.**A. Background**The negotiability dispute in this case  
arose in the context of the parties'  
negotiations for an initial collective  
bargaining agreement that would cover  
a unit of the Federal Aviation  
Administration's (FAA/Agency's) Air  
Traffic Assistants. The Agency and the  
Union executed a Memorandum of  
Understanding (MOU) which served as  
an interim supplement to FAA Order  
3500.7 regarding its Performance  
Management System.The Agency established a new  
Performance Planning and Recognition  
System that recognized two rating levels  
of performance for individual job  
elements and summary ratings. In  
response, the Union submitted two  
proposals that specified three rating  
levels for individual job elements and  
summary ratings consistent with the  
former system and the parties' MOU.  
The Union filed a petition for review of  
negotiability issues with the Authority  
after the Agency declared these  
proposals nonnegotiable.During the parties' negotiations,  
Congress enacted two pieces of  
legislation that are relevant to the  
Agency's personnel management  
activities. First, in November 1995,  
Congress enacted the Department of  
Transportation and Related Agencies  
Appropriation Act of 1996, Pub. L. No.  
104-50, Title III, section 347, 109 Stat.  
460 (1995), as amended by Pub. L. 104-

122, 110 Stat. 876 (1996) (codified at 49 U.S.C. 106 note) (Transportation Act) which gave the FAA Administrator broad discretion to institute a new personnel management system for the FAA. Section 347(a) of the Transportation Act provides that— notwithstanding the provisions of title 5, United States Code, and other Federal personnel laws, the Administrator of the [FAA] shall develop and implement \* \* \* a personnel management system for the [FAA]. \* \* \*

Section 347(b), as amended, made the Statute applicable to the new personnel management system instituted by the FAA, providing, in pertinent part, that— [t]he provisions of title 5, United States Code, shall not apply to the new personnel management system developed and implemented pursuant to subsection (a), with the exception of \* \* \* (3) chapter 71, relating to labor-management relations.

Second, in early October 1996, Congress enacted the Air Traffic Management System Performance Improvement Act of 1996, Pub. L. No. 104-264, Title II, 110 Stat. 3213 (1996) (Improvement Act) at about the time the Union filed its petition for review with the Authority. Section 253 of the Improvement Act amended 49 U.S.C. Chapter 401 by adding section 40122. New section 40122(a) addresses the FAA's bargaining responsibilities with respect to "developments" or "changes" to the new personnel management system. Section 40122(a) provides in pertinent part—

(1) CONSULTATION AND NEGOTIATION. In developing and making changes to the personnel management system initially implemented by the Administrator of the [FAA] on April 1, 1996, the Administrator shall negotiate with the exclusive bargaining representatives of employees of the [FAA] certified under section 7111 of title 5 and consult with other employees of the [FAA].

## B. Summary of Selected Cases

The parties' submissions in the case before the Authority reference and rely on a number of Authority decisions. Some of these decisions are summarized below. This is not intended as a complete description of Authority precedent in this area, and amici are encouraged to address any precedent deemed applicable.

In *National Treasury Employees Union and Department of the Treasury, Bureau of the Public Debt*, 3 FLRA 769 (1980) (*BPD*), *aff'd sub nom. NTEU v. FLRA*, 691 F.2d 553 (D.C. Cir. 1982) (*NTEU I*), the Authority held that management's rights to assign work and direct employees encompassed the identification of critical elements and

the establishment of job requirements in performance standards for such elements. The Authority reasoned, in line with the then relevant Office of Personnel Management (OPM) regulations, that the establishment of critical elements and performance standards are "among the ways in which management supervises and determines the quality, quantity, and timeliness of work required of employees." *Id.* at 776.

In affirming *BPD*, the D.C. Circuit ruled that "the right to determine what work will be done, and by whom and when it will be done, is at the very core of successful management of the \* \* \* public service operations of a federal agency[.]" and that this right is crucial to management achieving optimum productivity and effectiveness. *NTEU I*, 691 F.2d at 563.

In *NTEU and U.S. Nuclear Regulatory Commission*, 13 FLRA 325 (1983) (*NRC*), the Authority held that the right to assign work and to direct employees included the right to identify non-critical elements and to establish performance standards for all rating levels, which "management will use to encourage and reward successful performance as well as to discourage performance which is unacceptable." *Id.* at 328.

Relying on *BPD*, *NRC* and *NTEU I*, the Authority, in *AFSCME, Council 26 and U.S. Department of Justice*, 13 FLRA 578 (1984) (*DOJ*), found that the number of performance levels for individual job elements and summary ratings were "essential aspects" of management's rights to assign work and to direct employees. *Id.* at 580. In doing so, the Authority relied upon the relationship of the number of levels to the setting of performance standards and to the establishment of rewards and sanctions for performance, which have been viewed as related to the identified management rights. The Authority noted that "[i]n short, the number of such levels is integrally related to the effectiveness of an agency's using performance standards to accomplish the work of the agency in a manner consistent with the exigencies of effective government." *Id.* at 581.

Relying on *DOJ*'s analytical framework, in *National Treasury Employees Union and Internal Revenue Service*, 14 FLRA 463 (1984) (*IRS*) (proposal 5)(Member Haughton dissenting), *vacated sub nom. NTEU v. FLRA*, 793 F.2d 371 (D.C. Cir. 1986) (*NTEU II*), the Authority held that management's rights to assign work and direct employees involve establishing rewards and sanctions for employee performance, including the use of

incentives for superior performance to "accomplish [the agency's] work in a manner consistent with the exigencies of effective government." *IRS*, 14 FLRA at 470.

The D.C. Circuit in *NTEU II* overruled the Authority, and held that the level of incentive pay for "work that has been "assigned" or "directed" does not come within the nonbargainable management rights to assign work and direct employees." *NTEU II*, 793 F.2d at 375. The court ruled that the terms "assign work" and "direct employees" represent precise, defined management activity and were not meant to be so expansive as to include whatever is useful for getting the agency's work done. The court concluded that the Authority's reasoning, that incentive pay affected management's rights since incentives affected the priorities for accomplishing the agency's work, demonstrated a familiar defect in statutory construction of improperly substituting the ends for the means. Then Judge Scalia suggested that if this approach were allowed, it would be difficult to imagine any proposal concerning terms and conditions of work that would remain within the duty to bargain. *See id.* at 374-75.

In *National Treasury Employees Union and Internal Revenue Service*, 27 FLRA 132 (1987), the Authority adopted the court's holding in *NTEU II*, that management rights do not encompass the right to determine rewards for performance, and has consistently applied it to proposals concerning incentive awards. *See, e.g., National Association of Government Employees, Local R1-144, Federal Union of Scientists and Engineers and U.S. Department of the Navy, Naval Underwater Systems Center, Newport, Rhode Island*, 38 FLRA 456 (1990) (*U.S. Navy*) *decision on remand as to other matters*, 43 FLRA 47 (1991). However, the Authority has not discussed or applied the court's rationale in *NTEU II* in cases involving the number of performance rating levels.

## A. Questions on Which Briefs Are Solicited

The Authority directed the parties in the instant case to file briefs addressing the following questions:

1. Notwithstanding current precedent, does the specification of the number of performance rating levels affect management's rights to direct employees and assign work? If so, how and why? If not, how is the analysis of *DOJ* incorrect?

2. In *NTEU II*, the D.C. Circuit rejected the Authority's determination in *IRS* that proposals establishing a system of

rewards and sanctions for employee performance affected management's rights to direct employees and assign work under section 7106(a)(2)(A) and (B) of the Statute. What application, if any, does the court's rejection of this determination have on whether the specification of the number of rating levels affects management's rights to direct employees and assign work?

3. In 1995, OPM deregulated performance management to give agencies greater flexibility. Is OPM's deregulation of performance management relevant to the determination of whether the specification of the number of rating levels affects management's rights to direct employees and assign work?

4. Under section 347(b) of the Transportation Act, the FAA's personnel management system is exempted from substantially all of title 5 of the U.S.C. and implementing regulations. Does this exemption prevent the Authority from addressing in this case the general question of whether the specification of the number of rating levels for individual performance elements and for summary performance ratings affects management's rights to direct employees and assign work under sections 7106(a)(2)(A) and (B) of the Statute?

As this matter is likely to be of concern to agencies, labor organizations, and other interested persons, the Authority finds it appropriate to provide for the filing of amicus briefs addressing these issues and any other relevant issues that amici want to address.

Dated: March 9, 2000.

For the Authority.

**Peter Constantine,**

*Director of Case Control.*

[FR Doc. 00-6211 Filed 3-13-00; 8:45 am]

**BILLING CODE 6727-01-P**

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## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices

also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 28, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Angela Tinervia, Shelby Township, Michigan; to acquire voting shares of New Century Bancorp, Inc., Southfield, Michigan, and thereby indirectly acquire voting shares of New Century Bank, Southfield, Michigan.

Board of Governors of the Federal Reserve System, March 8, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00-6138 Filed 3-13-00; 8:45 am]

**BILLING CODE 6210-01-P**

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## 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 April 7, 2000.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. The Charles Schwab Corporation, Wilmington, Delaware; to become a bank holding company by acquiring U.S. Trust Corporation, New York, New York, and U.S.T.L.P.O. Corp., Wilmington, Delaware (a bank holding company with respect to U.S.T. Company of Texas, National Association, Dallas, Texas), and thereby indirectly acquire United States Trust Company of New York, New York, New York; U.S. Trust Company National Association, Los Angeles, California; U.S. Trust Company, Greenwich, Connecticut; U.S. Trust Company of New Jersey, Princeton, New Jersey; and U.S. Trust Company of Texas, National Association, Dallas, Texas.

In connection with this application, Applicant also has applied to acquire U.S. Trust Company of Florida Savings Bank, Palm Beach, Florida, and thereby engage in operating a savings and loan association, pursuant to § 225.28(b)(4)(ii) of Regulation Y; U.S. Trust Company of Delaware, Wilmington, Delaware, and U.S. Trust Company of North Carolina, Greensboro, North Carolina, and thereby engage in trust company functions, pursuant to § 225.28(b)(5) of Regulation Y; and NCT Opportunities, Inc., Greensboro, North Carolina, and CTC Consulting, Inc., Portland, Oregon, and thereby engage in providing financial and investment advice, pursuant to § 225.28(b)(6) of Regulation Y.

In addition to the application, Applicant also has applied to retain voting shares of U.S. Trust Company of North Carolina, Greensboro, North Carolina, upon the nondepository trust company becoming a bank as defined by the Bank Holding Company Act, by accepting FDIC insured deposits and NCT Holdings, Inc., Greensboro, North Carolina, on becoming an intermediate bank holding company with respect to U.S. Trust Company of North Carolina. Applicant also has an option, subject to the terms of the stock option agreement, to exercise its option to purchase up to 19.9 percent of the outstanding common shares of U.S. Trust Corporation, New York, New York.

B. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Anderson Bancshares, Inc., Hemingway, South Carolina; to merge with Anderson Brothers Bancshares,

Inc., Mullins, South Carolina, and thereby indirectly acquire Anderson Brothers Bank, Mullins, South Carolina.

C. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Futurus Financial Services, Inc., Roswell, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Futurus Bank, N.A. (in organization), Roswell, Georgia.

D. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Waumandee Bancshares, Ltd., Waumandee, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Waumandee State Bank, Waumandee, Wisconsin.

E. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Corpus Christi Bancshares, Inc., Corpus Christi, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of The First State Bank, Bishop, Texas.

Board of Governors of the Federal Reserve System, March 8, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00-6136 Filed 3-13-00; 8:45 am]

**BILLING CODE 6210-01-P**

## FEDERAL RESERVE SYSTEM

### Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for

inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. 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 the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 28, 2000.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President), 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. SierraCities.com, Inc. (formerly known as First Sierra Financial, Inc.), Houston, Texas, and FSF of Delaware, Inc., Wilmington, Delaware, to retain all the voting shares of SierraCities Financial, Inc., First Sierra Receivables, Inc., First Sierra Receivables II, Inc., First Sierra Receivables III, Inc., First Sierra Receivables IV, Inc., all of Houston, Texas, and thereby engage in making, acquiring, brokering, or servicing loans, pursuant to § 225.28(b)(1) of Regulation Y; and leasing personal or real property or acting as agent, broker, or adviser in leasing such property, pursuant to § 225.28(b)(3) of Regulation Y.

Board of Governors of the Federal Reserve System, March 8, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00-6137 Filed 3-13-00; 8:45 am]

**BILLING CODE 6210-01-P**

## FEDERAL TRADE COMMISSION

[File No. 961 0050]

### McCormick & Company Incorporated; Analysis to Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed Consent Agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before April 7, 2000.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary,

Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580.

### FOR FURTHER INFORMATION CONTACT:

Willard Tom, FTC/H-374, 600 Pennsylvania Ave., NW, Washington, DC 20580. (202) 326-2786.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, have been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 8, 2000), on the World Wide Web, at "<http://www.ftc.gov/ftc/formal.htm>." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326-3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments on views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

### Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed Consent Order from McCormick & Company, Incorporated ("McCormick"), the world's largest spice company, that is designed to resolve claims, set forth in the accompanying Complaint, that McCormick discriminated in the pricing of its products to certain competing supermarket purchasers in violation of Section 2(a) of the Robinson-Patman Act amendments to the Clayton Act, 15 U.S.C. 13(a). The Consent Order requires McCormick to refrain from unlawfully discriminating in the prices at which it sells its products to competing purchasers in the

supermarket channel. In addition, in those instances in which McCormick believes that its pricing is lawful because its prices were offered to meet competition from a competing supplier, the Consent Order requires McCormick, for a period of ten years, to contemporaneously document the information on which it bases its entitlement to the statutory meeting competition" defense.

The proposed Consent has been placed on the public record for 30 days so that the Commission may receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed Consent Order.

*McCormick's Business.* McCormick, with its principal office and place of business in Sparks, Maryland, has been engaged for many years in the production, distribution and sale of spice and seasoning products for resale. Its products sold through supermarkets include core and gourmet spice lines, dry seasoning mixes, and so-called "competitive seasonings" such as meat tenderizers, monosodium glutamate (MSG), and garlic and other spice blends. Respondent sells these products under the brand names McCormick, Schilling, Fifth Seasons, Spice Classics, Select Seasons, Mojave, Spice Trend, Royal Trading, Crescent, McCormick Schilling, La Cochina De McCormick, McCormick Collection and Old Bay, among others. With 1998 retail sales of \$623.7 million in the Americas, McCormick is the largest supplier of spice and seasoning products in the United States, and claims to be "the world's largest spice company."

Among those firms that supply core or gourmet spice lines for sale in supermarkets in the United States, McCormick is by far the leading firm, accounting for the majority of such sales nationally. Since the early 1990's, McCormick has faced competition in such sales from only one other national firm, Burns Philp Food Incorporated, and several much smaller independent regional or local firms. These circumstances, combined with the superior brand recognition of McCormick products, mean that supermarkets that purchase McCormick products have relatively few alternative sources for equivalent products from

other suppliers at comparable prices and terms.

*McCormick's Pricing.* During the period pertinent to the Complaint, McCormick had a single national price list for its products sold to direct customers, whether retail supermarkets or wholesalers reselling to independent supermarkets. McCormick modified this price list from time to time, to reflect changes in McCormick's costs to manufacture particular products, among other reasons. However, relatively few McCormick customers paid the list price. Instead, McCormick commonly entered into written or unwritten supply agreements with customers that provided substantial discounts off the list prices. These discounts took a variety of forms, including cash payments at the commencement of the supply agreement, free goods, off-invoice discounts, cash rebates, performance funds and other financial benefits that effectively reduced the net price of McCormick's products. Typically, McCormick individually negotiated with particular customers the amount of discounts and payments; the aggregate percentage of discounts and benefits provided to a particular customer was commonly known as the "allowance offer" or the "deal rate." McCormick's aggregate discounts and financial benefits to some customers were substantially greater than to some other competing customers.

Frequently the McCormick discounts included up-front cash payments that resembled the payments sometimes called "slotting allowances" in the supermarket industry. However, the McCormick discounts and payments typically were for all or a substantial part of the existing McCormick product line and typically were not incentives to accept new McCormick products. McCormick's supply agreements with customers commonly include provisions that, as is sometimes seen with slotting allowances, restrict supermarket customers' ability to deal in the products of competing spice suppliers. Such provisions commonly require that the customer allocate to McCormick the large majority (as much as 90%) of the shelf space devoted to spice products.

*Price Discrimination.* The complaint alleges that in the period from at least 1994 to the present, McCormick has on no fewer than five instances discriminated in price by providing different deal rates consisting of preferential up-front "slotting"-type payments or allowances, discounts, rebates, deductions, free goods, or other financial benefits. Through such discriminatory terms of sale,

McCormick sold its products to the favored purchasers at a lower net price than to the disfavored purchasers, in violation of section 2(a) of the Robinson-Patman Act amendments to the Clayton Act, 15 U.S.C. 13(a).

The Complaint alleges that, in each instance of discrimination, McCormick made contemporaneous sales of McCormick products of like grade and quality to a favored and a disfavored purchaser; the disfavored purchaser competed with the favored purchaser which resold respondent's products at the same level of distribution; and at least one of the discriminatory sales by McCormick involved commodities that crossed state lines. The Complaint also alleges that each of the spice and seasoning products that make up McCormick's product line is a commodity within the meaning of the statute.

The Complaint alleges that McCormick's price discrimination threatened injury at the "secondary line" level of competition, that is, at the level of the favored and disfavored purchasers. It alleges that each instance of discrimination involved a substantial price difference over a substantial period of time between competing purchasers in markets where profit margins are low and competition is keen. These circumstances give rise to an inference of competitive harm within the meaning of the statute, pursuant to the reasoning of the Supreme Court in *Federal Trade Commission v. Morton Salt Co.*, 334 U.S. 37, 50-51 (1948), and subsequent cases. While that inference may not be sufficient by itself in some circumstances to warrant bringing a case, in this instance the inference is strengthened by McCormick's position as the largest supplier of spice and seasoning products in the United States and by the fact that McCormick typically demanded that customers allocate to McCormick the large majority of the space devoted to spice products—in some cases 90% of all shelf space devoted to packaged spices, herbs, seasonings and flavorings of the kinds offered by McCormick. As alleged in the Complaint, disfavored purchasers consequently had few, if any, alternative sources from which to purchase comparable goods at prices and terms equivalent to those which McCormick provided to the favored purchasers.

The Complaint also alleges that the favorable prices and terms McCormick provided to the favored purchasers were not justified by good faith attempts to meet the equally low price of a competitor; nor were the favorable prices justified by cost savings associated with doing business with the

avored retailer. The instances of price discrimination were therefore not within the scope of either the statutory "meeting competition" or "cost justification" defenses established by sections 2(a) and (b) of the Robinson-Patman Act amendments to the Clayton Act, 15 U.S.C. 13(a) and (b).

*The Order Provisions.* The Consent Order provides relief for the violations alleged in the Complaint. The Order applies to McCormick's sale of products, broadly defined to include spices, seasonings and other products used to season or flavor foods, packaged for sale to consumers. The Consent Order does not apply to products packaged for sale to food service or industrial customers, which are beyond the scope of the conduct at issue in the Complaint. Order, ¶ I.B. The Order applies to McCormick's sales to persons or entities that purchase McCormick products for resale. Order, ¶ I.C.

The principal relief is contained in Paragraph II of the Consent Order, which requires that McCormick cease and desist from price-discriminating, within the meaning of section 2(a) of the Robinson-Patman Act, by selling its products to any purchaser at a net price higher than that charged to any competing purchaser, where the discrimination may cause competitive harm as contemplated by the statutory language. "Net Price" is defined as the list price of McCormick Products less advances, allowances, discounts, rebates, deductions, free goods and other financial benefits provided by McCormick and related to such products. Order, ¶ I.D.

The inclusion of competitive harm language in Paragraph II ensures that the remedy established by the Consent Order is not over-broad and does not enjoin instances of price discrimination otherwise lawful under the statute. This paragraph also includes a proviso that makes applicable under the Order the statutory defenses set forth in sections 2(a) and (b) of the Robinson-Patman act, thus accomplishing explicitly what otherwise would be implicit pursuant to the Supreme Court's decision in *Federal Trade Commission v. Ruberoid Co.*, 343 U.S. 470, 475-478 (1952).

As further relief, Paragraph III orders that for each instance in which McCormick wishes to avail itself of the "meeting competition" defense of section 2(b) of the Robinson Patman Act,<sup>1</sup> McCormick is required to contemporaneously document all

information on which it bases its entitlement to the defense, and to retain such documentation in its files for five years after the lower price made to meet competition is no longer effective. This provision is "fencing-in" relief<sup>2</sup> that should ensure the existence of a reliable evidentiary basis in future instances where McCormick invokes the defense.

In addition to these principal relief provisions, the Consent Order requires that McCormick distribute a copy of the Order to all officers, employees, brokers, and agents of its operating divisions involved in the sale of products covered by the order, and in the future to new employees, brokers, and agents. Order, ¶ IV. McCormick is required to inform the Commission of corporate changes that may affect its compliance obligations under the Order (Order, ¶ V), and to file reports concerning its compliance under the Order (*id.*, ¶ VI.) The term of the Order is twenty years (*id.*, ¶ VII); the obligations under ¶ III to document the "meeting competition" defense and under ¶ VI to file annual compliance reports extend for ten and five years, respectively.

The purpose of this analysis is to facilitate public comment on the proposed Consent Order, and it is not intended to constitute an official interpretation of the agreement and proposed Consent Order or to modify in any way their terms.

By direction of the Commission.

**Donald S. Clark,**  
*Secretary.*

**Statement of Chairman Robert Pitofsky and Commissioners Sheila F. Anthony and Mozelle W. Thompson**

The Analysis to Aid Public Comment fully describes the Commission action in this matter. Some comments by our dissenting colleagues, however, require a brief response.

The Commission has accepted for public comment a consent order from McCormick & Company Inc. ("McCormick") in which the company has agreed to cease and desist granting discounts (partly in the form of up-front shelf-allocation payments) to large chains without making comparable payments available to other chains and independents that compete with the favored chains. Under the Supreme Court's controlling decision in *FTC v. Morton Salt Co.*,<sup>1</sup> injury to competition at the retailer (i.e., "secondary") level can be inferred where substantial and durable price discrimination exists between competing purchasers who

operate in a market with low profit margins and keen competition.

McCormick is far and away the largest manufacturer and supplier of full lines of spices to grocery stores in the United States. In the early 1990s, it found itself in a price war with Burns-Philp Food Inc. ("Burns-Philp"), its only full-line competitor. Substantial discriminatory discounts were granted to favored chains, often accounting for many individual stores, and not to competing retailers.

In examining McCormick's discounts, the Commission did not simply apply the Morton Salt presumption in finding injury to competition, but examined other factors, including the market power of McCormick and the fact that discounts to favored chains were conditioned on an agreement to devote all or a substantial portion of shelf space to the McCormick line of products. Our dissenting colleagues applaud the fact that the Commission is willing to examine injury to competition by looking at factors beyond those narrowly described in the Morton Salt approach, but conclude that those factors do not justify a secondary-line price discrimination case here. We do not find their arguments persuasive.

1. The dissenting Commissioners observe that the discriminatory discounts were granted in the midst of, and possibly because of, a price war. But the Robinson-Patman Act limits on discriminatory pricing—including the rule that a seller can meet but not exceed prices offered by a competitor<sup>2</sup>—are not suspended during price wars.

2. Our colleagues suggest that this is a primary-line case (i.e., injury at the producer level) masquerading as a secondary line (injury at the retailer level) enforcement action. But that kind of distinction between primary-line and secondary-line anti-competitive effects is unduly rigid and mechanical—particularly in light of the facts of this matter. It is true that part of the injury at the secondary level occurred because McCormick's behavior injured its only full-line competitor. But that is just one part of the secondary-line case. The fact remains that favored chain store buyers received from a dominant seller substantially better discounts than disfavored buyers, and they were injured, and competition at the secondary line was injured, as a result. Moreover, with Burns-Philp out of the picture as an aggressive competitor,

<sup>1</sup> Section 2(b) of the Robinson-Patman Act permits a seller to rebut a prima-facie case of price discrimination by showing that his lower price "was made in good faith to meet an equally low price of a competitor." 15 U.S.C. 13(b).

<sup>2</sup> See *Federal Trade Commission v. National Lead Co.*, 352 U.S. 419, 430 (1957).

<sup>1</sup> 334 U.S. 37 (1948) (Morton Salt).

<sup>2</sup> See *Falls City Indus. v. Vanco Beverage, Inc.*, 460 U.S. 428, 446 (1983) ("a seller's response must be defensive, in the sense that the lower price must be calculated and offered in good faith to 'meet not beat' the competitor's low price.")

chain stores and other retailers at the secondary level will be denied benefits of future competition.

3. The Commission was influenced in the decision to enforce the Robinson-Patman Act here because McCormick is a dominant seller. Our colleagues' conclusion—that market dominance by the discriminating seller should be irrelevant to secondary-line price discrimination—flies in the face of commentary by leading scholars such as Herbert Hovenkamp suggesting that the dominance of the seller is exactly the factor that should be examined in the exercise of prosecutorial discretion.<sup>3</sup>

The essential feature of Commission action here should not be lost in a quarrel over particular facts. As the Analysis to Aid Public Comment points out, there will be circumstances in which the Morton Salt presumption is appropriate and dispositive. There may be other market settings in which it makes sense for the Commission, as a matter of prosecutorial discretion, or the Commission and Courts, in the process of considering whether there has been a violation, to look past the Morton Salt factors to a broader range of market conditions to determine whether there has been real injury to competition. Taking those additional factors into account, the majority concluded that there was injury not just to the disfavored buyers, but to secondary-line competition generally.

#### **Dissenting Statement of Commissioners Orson Swindle and Thomas B. Leary**

We respectfully dissent from the Commission's decision to accept a consent agreement with McCormick & Company, Inc. ("McCormick") to resolve allegations that the company violated the Robinson-Patman Act. We recognize that the majority sincerely believes that this case will clarify a controversial statute and properly circumscribe its application. We are concerned, however, that this case will have precisely the opposite effect.

McCormick is the largest American supplier of spices to grocery stores, with more than 2,000 contracts<sup>1</sup> that account for a majority of spice sales in the United States. (Complaint ¶1A5).

<sup>3</sup> See, e.g., Herbert Hovenkamp, *Market Power and Secondary-Line Differential Pricing*, 71 *Geo. L.J.* 1157, 1170 (1983) ("Systematic, long-term price discrimination can be achieved only by a seller with market power. If the seller does not have market power, purchasers asked to pay the higher price will purchase from another seller willing to sell at a more competitive price.")

<sup>1</sup> See McCormick & Company, Inc., Press Release, *McCormick Signs Settlement Agreement with the Federal Trade Commission at 2* (Feb. 3, 2000), (McCormick has "more than 2,200 customer contracts").

During the past decade, McCormick's main competitor has been Burns Philp Food Incorporated ("Burns Philp"). In the early 1990s, Burns Philp commenced a price war in which both it and McCormick offered increased discounts and other payments to try to win the business of grocery stores.<sup>2</sup> When the price war ended, McCormick remained the dominant spice supplier in the United States, and Burns Philp's ability to compete may have been impaired.<sup>3</sup>

A supplier may violate section 2(a) of the Robinson-Patman Act amendments to the Clayton Act, 15 U.S.C. 13(a), if it engages in price discrimination that causes so-called "primary-line" injury. Primary-line injury under the statute occurs when a difference in price causes harm to competition between suppliers. A case predicated on primary-line injury to Burns Philp or other suppliers of spices would require proof that the discriminatory prices that McCormick charged grocery stores were below cost and that McCormick had a reasonable prospect of recouping its losses. See *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209 (1993). In other words, primary-line injury to suppliers is actionable only when there is a threat of ultimate injury to buyers. The Commission's complaint does not allege that McCormick engaged in price discrimination that caused primary-line injury to suppliers such as Burns Philp.

Instead, after more than three years of investigation and the commitment of substantial resources, the majority of the Commission has alleged that McCormick engaged in price discrimination that caused "secondary-line" injury, *i.e.*, harm to competition between buyers. Specifically, out of McCormick's more than 2,000 contracts, the complaint alleges that in five instances McCormick charged higher prices to certain grocery stores than it charged to their competitors. (Complaint ¶ 12). The higher prices that the disfavored grocery stores paid McCormick for spices allegedly harmed their ability to compete against other grocery stores for customers. (Id. ¶ 19).

The majority statement conveys the impression that there was actual secondary-line injury in this case. But the Commission does not rely on direct evidence of secondary-line injury to the

<sup>2</sup> Anthony Hughes, *Burns Philp Was Inept, Says ASIC*, *The Age* at 2 (Mar. 11, 1999).

<sup>3</sup> Id. "Inadequate financial reporting to the board of directors and its failure to question overstated valuations were largely behind the near-collapse of the food group Burns Philp & Co., a report by the Australian Securities and Investments Commission has found.")

disfavored grocery stores. Rather, the Commission relies on the so-called "Morton Salt inference" of competitive harm. (Id. ¶ 17). For more than 50 years, courts have used the Morton Salt inference that "injury to competition is established prima facie by proof of a substantial price discrimination between competing purchasers over time."<sup>4</sup> In essence, the Morton Salt inference permits a court to infer injury to a disfavored purchaser from a persistent and substantial discriminatory price in a market where profit margins are low and competition is keen, and then to infer injury to competition from the injury to the disfavored purchaser.

We question whether the facts in this case support the application of the Morton Salt inference. The Robinson-Patman Act was primarily intended to prevent price discrimination in favor of large buyers at the expense of small buyers.<sup>5</sup> When a small buyer pays more than a large buyer for an item in an industry with low profit margins and keen competition, the Morton Salt inference may make sense. In such circumstances, it is reasonable to infer that the purchasing power of the large buyer will cause the price discrimination to be repeated across many items, with consequent competitive injury to the small buyer.

The complaint does not allege that the favored grocery stores were larger than the disfavored grocery stores<sup>6</sup> or that they purchased more spices from McCormick. Since the favored stores here were not necessarily purchasing larger quantities of spices than the disfavored stores, it is unlikely that McCormick granted lower prices to the favored grocery stores because of their buying power. In fact, the most plausible explanation for the lower prices granted in the five instances alleged in the complaint is that they were the almost fortuitous and incidental result of McCormick's responses during its price war with Burns Philp. If the favored stores were not accorded lower spice prices because

<sup>4</sup> *Falls City Indus., Inc. v. Vanco Beverage, Inc.*, 460 U.S. 428, 435 (1983) (citing *Federal Trade Commission v. Morton Salt Co.*, 334 U.S. 37, 46, 50-51 (1948)).

<sup>5</sup> In enacting the Robinson-Patman amendments, the Congress addressed the concern that large buyers could secure a competitive advantage over small buyers solely because of the large buyers' quantity purchasing ability. H.R. Rep. No. 2287, 74th Cong., 2d Sess. 7 (1936); S. Rep. No. 1502, 74th Cong., 2d Sess. 4-6 (1936).

<sup>6</sup> To the extent that the majority tries to suggest that the disfavored stores are "mom-and-pop" operations, in fact only one of the disfavored stores could be so characterized; the rest of the disfavored stores are all large or relatively large grocery store chains.

of their buying power, there is little reason to believe that the favored stores generally would receive lower prices from the suppliers of the thousands of products sold in the typical grocery store. It follows that it is unlikely that the ability of the disfavored grocery stores to compete with favored stores would be harmed—the underlying rationale for use of the Morton Salt inference.

The Analysis to Aid Public Comment emphasizes that the Commission is not relying on the Morton Salt inference by itself to support bringing a case. Analysis of Proposed Consent Order to Aid Public Comment at 4. The Analysis explains that the use of the Morton Salt inference in this case is particularly appropriate because McCormick is the largest supplier of spices in the United States and because the company typically demanded that grocery stores allocate to McCormick a large majority of the shelf space they devoted to spices. *Id.*; see Complaint ¶¶ 6, 10, 18. Although we share the majority's apparent view that the public interest generally would be better served if the Commission did not bring Robinson-Patman cases based only on the Morton Salt inference, the majority has not identified additional facts that warranted bringing this case.

McCormick's alleged market power as a supplier and its alleged discriminatory prices may have harmed the ability of Burns Philp and other suppliers to compete with McCormick. But this does not make it any more plausible that McCormick's alleged discriminatory prices harmed the ability of the disfavored grocery stores to compete with the favored grocery stores. In the long run, if McCormick's pricing has harmed the ability of Burns Philp or other suppliers to compete, the loss of alternative suppliers would harm both the disfavored grocery stores and the favored grocery stores (once their present contracts with McCormick expire). A loss of alternative suppliers is a classic consequence of primary-line injury, but such a loss does not necessarily have a differential impact on buyers that will cause secondary-line injury—the relevant level of commerce in this case.<sup>7</sup>

We recognize that there has been much controversy over the years

<sup>7</sup> We do not suggest that market power of the supplier is irrelevant in a Robinson-Patman Act case—in fact, it is likely to be present in all cases of economic price discrimination. However, supplier market power is not dispositive of whether secondary-line injury is likely to have occurred. Our agreement with the majority that McCormick is the dominant spice seller does not overcome the lack of proof of secondary-line injury in this case.

concerning the use of the Morton Salt inference and that the inference has not been uniformly applied.<sup>8</sup> Overall, the concern has been that the inference makes violations too easy to prove.<sup>9</sup> It is laudable that the majority has tried to limit the use of the Morton Salt inference. We do not believe, however, that evidence of supplier market power justifies bringing cases in which the Morton Salt inference is used as the basis to prove competitive harm among buyers.<sup>10</sup> Because the majority has no other basis on which to show secondary-line competitive injury in this case, we dissent.<sup>11</sup>

[FR Doc. 00-6231 Filed 3-13-00; 8:45 am]

BILLING CODE 6750-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 00C-0929]

#### Kraft Foods, Inc.; Filing of Color Additive Petition

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Kraft Foods, Inc., has filed a petition proposing that the color additive regulations be amended to provide for the safe use of sodium copper chlorophyllin to color citrus base dry beverage mixes.

**FOR FURTHER INFORMATION CONTACT:** Aydin Orstan, Center for Food Safety and Applied Nutrition (HFS-215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3076.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 721(d)(1) (21 U.S.C. 379e(d)(1))), notice is given that a color additive petition (CAP 0C0270) has been filed by Kraft Foods, Inc., c/o Flamm Associates, 622 Beachland Blvd., Vero Beach, FL 32963. The petition proposes to amend the color additive regulations to provide for the safe use of sodium copper

<sup>8</sup> See ABA Section of Antitrust Law, *Antitrust Law Developments* 450-51 (4th ed. 1997).

<sup>9</sup> See, e.g., LaRue, *Robinson-Patman Act in the Twenty-First Century: Will the Morton Salt Rule Be Retired?*, 48 S.M.U.L. Rev. 1917 (1995).

<sup>10</sup> As noted above, McCormick's alleged discriminatory prices were offered during a price war with its main competitor. We assume without deciding that a "meeting competition" defense under the Robinson-Patman Act would not have insulated McCormick from liability.

<sup>11</sup> We do recognize that the proposed narrowly circumscribed order would be appropriate in a proper secondary-line case.

chlorophyllin to color citrus base dry beverage mixes.

The agency has determined under 21 CFR 25.32(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: February 29, 2000.

**Alan M. Rulis,**

*Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.*

[FR Doc. 00-6121 Filed 3-13-00; 8:45 am]

BILLING CODE 4160-01-F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 93F-0331]

#### Hoechst Aktiengesellschaft; Withdrawal of Food Additive Petition

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) in announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 3B4397) proposing that the food additive regulations be amended to provide for the safe use of dioctadecylsulfide as an antioxidant and/or stabilizer in propylene polymers and copolymers.

**FOR FURTHER INFORMATION CONTACT:** Ellen M. Waldron, Center for Food Safety and Applied Nutrition (HFS-215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3089.

**SUPPLEMENTARY INFORMATION:** In a notice published in the *Federal Register* of October 15, 1993 (58 FR 53517), FDA announced that a food additive petition (FAP 3B4397) had been filed by Hoechst Aktiengesellschaft, c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposed to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of dioctadecylsulfide as an antioxidant and/or stabilizer in propylene polymers and copolymers. Hoechst Aktiengesellschaft has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: February 29, 2000.

**Alan M. Rulis,**

*Director, Office of Premarket Approval,  
Center for Food Safety and Applied Nutrition.*

[FR Doc. 00-6118 Filed 3-13-00; 8:45 am]

BILLING CODE 4160-01-F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 96G-0035]

#### Sankyo Co., Ltd.; Withdrawal of GRAS Affirmation Petition

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a petition (GRASP 6G0420) proposing to affirm that the use of dextranase enzyme preparation derived from *Chaetomium gracile* is generally recognized as safe (GRAS) in cane and beet sugar processing.

**FOR FURTHER INFORMATION CONTACT:** Martha D. Peiperl, Center for Food Safety and Applied Nutrition (HFS-215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3077.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of February 14, 1996 (61 FR 5787), FDA announced that a petition (GRASP 6G0420) had been filed by Solvay Enzymes, Inc., c/o 1001 G St. NW., suite 500 West, Washington, DC 20001 (now, Sankyo Co., Ltd., No. 7-12, Ginza 2-chome, Chuo-ku, Tokyo 104-8113, Japan). This petition proposed that the use of dextranase enzyme preparation derived from *Chaetomium gracile* in cane and beet sugar processing be affirmed as GRAS. Sankyo has now

withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: March 1, 2000.

**Alan M. Rulis,**

*Director, Office of Premarket Approval,  
Center for Food Safety and Applied Nutrition.*

[FR Doc. 00-6120 Filed 3-13-00; 8:45 am]

BILLING CODE 4160-01-F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 98N-0046]

#### Quarterly List of Guidance Documents at the Food and Drug Administration

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is publishing an update of all guidance documents issued and withdrawn since we compiled the annual comprehensive list of guidance documents that published on June 10, 1999. FDA committed to publishing quarterly updates in its February 1997 "Good Guidance Practices" (GGP's) final rule, which set forth the agency's policies and procedures for developing, issuing, and using guidance documents. This list is intended to inform the public of the existence and availability of guidance documents issued since the annual comprehensive list was compiled.

**DATES:** General comments on this list and on agency guidance documents are welcome at any time.

**ADDRESSES:** Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. For

information on where to obtain single copies of guidance documents listed here, see the specific center's list of guidance documents.

**FOR FURTHER INFORMATION CONTACT:**

LaJuana D. Caldwell, Office of Policy (HF-27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-7010.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

In the **Federal Register** of February 27, 1997 (62 FR 8961), FDA published a notice announcing its "Good Guidance Practices" (GGP's), which set forth our policies and procedures for developing, issuing, and using guidance documents. The agency adopted the GGP's to ensure public involvement in the development of guidance documents and to enhance public understanding of the availability, nature, and legal effect of our guidance documents.

As part of FDA's effort to ensure meaningful interaction with the public regarding guidance documents, we committed to publishing an annual comprehensive list of guidance documents and quarterly **Federal Register** notices that list all guidance documents that were issued and withdrawn during that quarter, including "Level 2" guidance documents. The following list of guidance documents represents all guidances that we issued or withdrew since we published the annual comprehensive list on June 10, 1999 (64 FR 31228). The guidance documents are organized by the issuing center or office within FDA, and are further grouped by the intended users or relevant regulatory activities. Dates provided in the following list refer to the date of the guidance was issued or, where applicable, the last date the document was revised. We provided document numbers where available.

## II. Guidance Documents Issued by the Center for Biologics Evaluation and Research (CBER)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Draft Guidance for Industry: Monoclonal Antibodies Used as Reagents in Drug Manufacturing	May 1999	FDA Regulated Industry	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, 800-835-4709 or 301-827-1800, FAX Information System: 1-888-CBER-FAX (within U.S.) or 301-827-3844 (outside U.S. and local to Rockville, MD). Internet access: <a href="http://www.fda.gov/cber">http://www.fda.gov/cber</a>
Guidance for Industry: Container Closure Systems for Packaging Human Drugs and Biologics; Chemistry, Manufacturing, and Controls Documentation	May 1999	Do	Do
Draft Guidance for Industry: Establishing Pregnancy Registries	June 1999	Do	Do
Draft Reviewer Guidance: Evaluation of Human Pregnancy Outcome Data	June 1999	Do	Do
Draft Guidance for Industry: Current Good Manufacturing Practice for Blood and Blood Components: (1) Quarantine and Disposition of Prior Collections from donors with Repeatedly Reactive Screening Tests for Hepatitis C Virus (HCV); (2) Supplemental Testing, and the Notification of Consignees and Transfusion Recipients of donor Test Results for Antibody to HCV (Anti-HCV)	June 1999	Do	Do
ICH Guidance on the Duration of Chronic Toxicity Testing in Animals (Rodent and Nonrodent Toxicity Testing)	June 25, 1999	Do	Do
Draft Guidance for Industry: Clinical Development Programs for Drugs, Devices, and Biological Products Intended for the Treatment of Osteoarthritis (OA)	July 1999	Do	Do
Draft Guidance for Industry: Interpreting Sameness of Monoclonal Antibody Products Under the Orphan Drug Regulations	July 1999	Do	Do
Draft Guidance for Industry: Cooperative Manufacturing Arrangements for Licensed Biologics	August 1999	Do	Do
Guidance for Industry: Consumer-Directed Broadcast Advertisements	August 1999	Do	Do
Draft Guidance for Industry: Information Request and Discipline Review Letters Under the Prescription Drug User Fee Act	August 1999	Do	Do
ICH Guidance on Specifications: Test Procedures and Acceptance Criteria for Biotechnological/Biological Products	August 18, 1999	Do	Do
Guidance for Industry: Possible Dioxin/PCB Contamination of Drug and Biological Products	August 1999	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance for Industry: Submission of Abbreviated Reports and Synopses in Support of Marketing Applications	August 1999	Do	Do
Draft Guidance for Industry: Revised Recommendations for the Invalidation of Test Results When Using Licensed and 510(k) Cleared Bloodborne Pathogen Assays to Test Donors	September 1999	Do	Do
International Conference on Harmonisation Draft Guidance; Choice of Control Group in Clinical Trials	September 24, 1999	Do	Do
Guidance for Industry: Qualifying for Pediatric Exclusivity Under Section 505A of the Federal Food, Drug, and Cosmetic Act	September 1999	Do	Do
Draft Guidance for Industry: Supplemental Guidance on Testing for Replication Competent Retrovirus in Retroviral Vector Based Gene Therapy Products and During Follow-up of Patients in Clinical Trials Using Retroviral Vectors	November 1999	Do	Do
Guidance for Industry: Providing Regulatory Submissions to the Center for Biologics Evaluation and Research (CBER) in Electronic Format—Biologics Marketing Applications [Biologics License Application (BLA), Product License Application (PLA) / Establishment License Application (ELA) and New Drug Application (NDA)]—Revised	November 1999	Do	Do
Guidance for Industry: Revised Precautionary Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) and New Variant Creutzfeldt-Jakob Disease (nvCJD) by Blood and Blood Products	November 1999	Do	Do
Guidance for Industry: In Vivo Drug Metabolism / Drug Interaction Studies—Study Design, Data Analysis and Recommendations for Dosing and Labeling	November 1999	Do	Do
Draft Guidance for Industry: Application of Current Statutory Authority to Nucleic Acid Testing of Pooled Plasma	November 1999	Do	Do
Draft Guidance for Industry: Pharmacokinetics in Patients With Impaired Hepatic Function: Study Design, Data Analysis and Impact on Dosing and Labeling	November 1999	Do	Do
Guidance for Industry: In the Manufacture and Clinical Evaluation of <i>In Vitro</i> Tests to Detect Nucleic Acid Sequences of Human Immunodeficiency Viruses Types 1 and 2	December 1999	Do	Do
Draft Guidance for Industry: Precautionary Measures to Reduce the Possible Risk of Transmission of Zoonoses by Blood and Blood Products from Xenotransplantation Product Recipients and Their Contacts	December 1999	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Draft Guidance for Industry: Changes to an Approved Application: Biological Products: Human Blood and Blood Components Intended for Transfusion or for Further Manufacture	January 2000	Do	Do

### III. Guidance Documents Issued by the Center for Device and Radiological Health (CDRH)

Name of Document	Date of Issuance	Group by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance for Industry and FDA Staff—Guidance on Medical Device Tracking (FDAMA) (Replaces: Guidance for Industry and FDA Staff—Guidance on Medical Device Tracking (FDAMA) 2/12/99)	January 24, 2000	Office of Compliance (OC)	Division of Small Manufacturers Assistance, 1-800-638-2041 or 301-827-0111 or (FAX) Facts-on-Demand at 1-800-899-0381 or Internet: <a href="http://www.fda.gov/cdrh">http://www.fda.gov/cdrh</a>
Guidance for FDA Staff—Civil Money Penalty Policy	June 8, 1999	Do	Do
Alternative to Certain Prescription Device Labeling Requirements	January 21, 2000	Do	Do
Guidance for Industry—Guidance on Information Disclosure by Manufacturers to Assemblers for Diagnostic X-ray Systems	October 18, 1999	OC/Division of Enforcement I (DOEI)	Do
Guidance on Electrosurgical Devices and the Application of the Performance Standard for Electrode Lead Wires and Patient Cables	November 15, 1999	Do	Do
Guidance for Industry—Draft Guidance on Quality System Regulation Information for Various Premarket Submissions	August 3, 1999	OC/Division of Enforcement II (DOE II)	Do
Guidance for FDA Staff—Regulating In Vitro Diagnostic Device (IVD) Studies	December 17, 1999	OC/Division of Bioresearch Monitoring (DBM)	Do
Guidance for Industry on the Likelihood of Facilities Inspections When Modifying Devices Subject to Premarket Approval	August 5, 1999	OC/Division of Program Operations (DPO)	Do
The FDA Export Reform and Enhancement Act of 1996/Export Certification Package including "Instructions for Requests for Certificate to Foreign Governments" (Replaces: The FDA Export Reform and Enhancement Act of 1996/Export Certification 10/1/96)	June 22, 1999	Do	Do
Draft Compliance Program Guidance Manual: Inspection of Medical Devices	August 12, 1999	Do	Do
Guidance for Off-the-Shelf Software Use in Medical Devices—Draft Guidance (Replaces: Guidance for Off-the-Shelf Software Use in Medical Devices—Draft Guidance August 17, 1998)	September 9, 1999	Office of Device Evaluation (ODE)	Do

Name of Document	Date of Issuance	Group by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance for Industry and FDA Reviewers on Evidence Models for the Least Burdensome Means to Market	September 1, 1999	DO	Do
Guidance on the Labeling for Over-the-Counter Sample Collection Systems for Drugs of Abuse Testing	December 21, 1999	ODE/Division of Clinical Laboratory Devices (DCLD)	Do
Guidance on Labeling for Laboratory Tests	June 24, 1999	DO	Do
Draft Guidance on Premarket Approval Applications for Assays Pertaining to Hepatitis C Viruses (HCV) that Are Indicated for Diagnosis or Monitoring of HCV Infection or Associated Disease	October 8, 1999	Do	Do
Guidance and Format of Premarket Notification (510(k)) Submissions for Liquid Chemical Sterilants/High Level Disinfectants (Replaces: Draft Guidance on the Content and Format of Premarket Notification (510(k)) Submission for Liquid Chemical Sterilants and High Level Disinfectants (12/18/97)	January 3, 2000	ODE/Division of Dental, Infection Control and General Hospital Devices (DDIGD)	Do
Reprocessing and Reuse of Single-Use Devices—Risk Categorization Scheme	December 9, 1999	Do	Do
Guidance for Conducting Stability Testing To Support An Expiration Date Labeling Claim for Medical Gloves	November 16, 1999	Do	Do
Guidance for Cardiovascular Intravascular Filter 510(k) Submission	November 26, 1999	ODE/Division of Cardiovascular, Respiratory & Neurological Devices (DCRND)	Do
Guidance for Industry and for FDA Reviewers: Recommended Clinical Study Design for Ventricular Tachycardia Ablation	May 7, 1999	Do	Do
Guidance Document for Vascular Prostheses 510(k) Submissions	November 26, 1999	Do	Do
Guidance for Annuloplasty Rings 510(k) Submissions	November 26, 1999	Do	Do
Guidance for Cardiovascular Intravascular Filter 510(k) Submissions	November 26, 1999	Do	Do
Guidance for Cardiopulmonary Bypass Oxygenators 510(k) Submissions	January 17, 2000	Do	Do
Guidance for the Submission of Research and Marketing Applications for Permanent Pacemaker Leads and for Pacemaker Lead Adaptor 510(k) Submissions (Replaces: Implantable Pacemaker Lead Testing Guidance for the Submission of a Section 510(k) Notification September 1, 1989)	January 14, 2000	Do	Do
Guidance for Industry and/or for FDA Reviewers/Staff and/or Compliance—Guidance for Spinal System 510(k)s	May 7, 1999	ODE/Division of General & Restorative Devices (DGRD)	Do

Name of Document	Date of Issuance	Group by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance for Industry—Guidance for the Preparation of a Premarket Notification Application for Processed Human Dura Mater (Replaces: Guidance for Industry—Guidance for the Preparation of a Premarket Notification Application for Processed Human Dura Mater July 31, 1999)	August 30, 1999	Do	Do
Guidance for Industry—Guidance Document for Neurological Embolization Devices	August 13, 1999	Do	Do
Guidance for Industry—Guidance Document for Dura Substitute Devices	August 13, 1999	DO	Do
Guidance for Industry—Guidance on Pre-clinical and Clinical Data and Labeling for Breast Prostheses	October 5, 1999	Do	Do
Guidance for Industry, FDA Reviewers/Staff and Compliance—Guidance Document for Powered Muscle Stimulator 510(k)s	June 9, 1999	Do	Do
Guidance for Resorbable Adhesion Barrier Devices for Use in Abdominal and/or Pelvic Surgery	December 16, 1999	Do	Do
Intraocular Lens (IOL) Guidance Document; Draft (Replaces Intraocular Lens (IOL) Guidance Document Draft, September 10, 1997)	October 14, 1999	ODE/Division of Ophthalmic Devices (DOD)	Do
Guidance for Industry and for FDA Reviewers—Accountability for Clinical Studies for Ophthalmic Devices	August 4, 1999	Do	Do
Guidance for Industry and for FDA Reviewers/Staff—Guidance on 510(k) Submissions for Keratoprotheses	—	ODE/DOD	Do
Home Uterine Activity Monitors: Guidance for the Submission of 510(k) Premarket Notifications (Replaces: Premarket Testing Guidelines for Home Uterine Activity Monitors March 31, 1993)	July 30, 1999	ODE/Division of Reproductive, Abdominal, ENT & Radiological Devices (DRAERD)	Do
Guidance for the Submission of 510(k)s for Solid State X-ray Imaging Devices	August 6, 1999	Do	Do
Guidance for Industry: Electro-optical Sensors for the In Vivo Detection of Cervical Cancer and its Precursors: Submission Guidance for an IDE/PMA; Draft	August 25, 1999	Do	Do
Announcement for FOD: Guidance for Industry and FDA—Medical Glove Guidance Manual; Draft FDA 99-4257	August 12, 1999	Office of Health and Industry Programs (OHIP)/Division of Small Manufacturers Assistance (DSMA)	Do
Guidance for Industry—Device Use Safety: Incorporating Human Factors in Risk Management	August 3, 1999	OHIP/Division of Device User Programs and Systems Analysis (DUPSA)	Do
Compliance Guidance: The Mammography Quality Standards Act Final Regulations Document #2	January 14, 2000	OHIP/Division of Mammography Quality and Radiation Programs (DMQRP)	

Name of Document	Date of Issuance	Group by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Compliance Guidance: The Mammography Quality Standards Act Final Regulations Document #3	December 8, 1999	Do	Do
Compliance Guidance—Mammography Facility Survey and Medical Physicist Qualification Requirements Under MQSA	May 5, 1999	Do	Do
Compliance Guidance—The Mammography Quality Standards Act Final Regulations—Preparing for MQSA Inspections (Replaces: Compliance Guidance—Preparing for MQSA Inspections 6/30/95)	May 5, 1999	Do	Do
Guidance for Request and Issuance of Interim Notice Letters for Mammography Facilities Under the mammography Quality Standards Act, 42 U.S.C. Section 263(b)	May 4, 1999	Do	Do
Addendum to the Instructions for Completing FDA Form 3500A with Coding Manual (MEDWATCH) (MDR)	June 9, 1999	Office of Surveillance and Biometrics (OSB)	Do
Guidance for Industry and FDA Reviewers: Guidance on Immunotoxicity Testing	May 6, 1999	Office of Science and Technology (OST)/ Division of Life Science (DLS)	Do
Guidance for Industry—CDRH Standard Operating Procedures for the Identification and Evaluation of Candidate Consensus Standard for Recognition	August 6, 1999	OST/ODE	Do
Guidance for Industry on the Testing of Metallic Plasma Sprayed Coatings on Orthopedic Implants to Support Reconsideration of Postmarket (Replaces: Guidance for Industry on the Testing of Metallic Plasma Sprayed Coatings on Orthopedic Implants to Support Reconsideration of Postmarket—No Date Available)	February 22, 1999	OSB/Division of Postmarket Surveillance (DPS)	Do

## Withdrawals

Name of Document	Date of Issuance	Group by Intended User or Regulatory Activity	Date Withdrawn
Guidance on Premarket Notification 510(k) for Sterilizers Intended for Use in Health Care Facilities March 3, 1993	March 3, 1993	OC	June 29, 1999
Global Harmonization Task Force Study Group 3—Draft Process Validation Guidance	1998	Do	June 22, 1999
Guidance for Industry and FDA Staff—Guidance on Medical Device Tracking (FDAMA) (Replaced by: Guidance for Industry and FDA Staff—Guidance on Medical Device Tracking (FDAMA) January 24, 2000)	February 12, 1999	Do	January 24, 2000
Regulatory Requirements for Medical Gloves—A Workshop Manual FDA Publication No 96.4257	September 1, 1996	OC/DOEII	July 7, 1999

## Withdrawals

Name of Document	Date of Issuance	Group by Intended User or Regulatory Activity	Date Withdrawn
The FDA Export Reform and Enhancement Act of 1996/Export Certification	October 1, 1996	OC/DPO	September 29, 1999
Guidance Document for Abbreviated 510(k) Submissions for In Vitro Diagnostic Calibrators	1998	ODE	June 29, 1999
Freedom of Information/510(K) Process Changes	May 15, 1997	Do	May 26, 1999
Guidance for Off-the-Shelf Software Use in Medical Devices—Draft Guidance	August 17, 1998	Do	October 5, 1999
Reexamination of the Evaluation Process for Liquid Chemical Sterilants and High Level Disinfectants	May 19, 1997	Do	January 11, 2000
PMA Summaries of Safety and Effectiveness—Review by the Office of General Counsel (blue book memo #P85-1)	July 25, 1986	ODE/BlueBook	May 26, 1999
Guidance for the Submission of 510(k) Pre-market Notifications for Cardiovascular Intravascular Filters—Version 1.0	February 11, 1997	ODE/DCRND	December 13, 1999
Guidance for Industry—Guidance For The Submission of Research and Marketing Applications for Permanent Pacemaker Leads	June 1, 1998	Do	October 18, 1999
Outline of Recommended Procedures for a Clinical Investigation of Endosseous Implants Under a 510(k)	1998	ODE/Division of Dental, Infection Control and General Hospital Devices (DDIGD)	May 5, 1999
Outline of Recommended Procedures for Animal Laboratory Studies of Endosseous Implants	1998	Do	May 5, 1999
510(k) Information Needed for Hydroxyapatite Coated Titanium Endosseous Implants	July 6, 1993	Do	Do
510(k) Information Needed for Ti-Powder Coated Titanium Endosseous Implants	July 13, 1993	Do	Do
510(k) Information Needed for Metallurgical Endosseous Implants	August 12, 1993	Do	Do
Guidance Document for the Preparation of Pre-market Notifications [510(k)s] for Temporomandibular Joint Implants	January 23, 1995	Do	Do
Draft Guidance on the Content and Format of Pre-market Notification (510(k)) Submission for Liquid Chemical Sterilants and High Level Disinfectants	December 18, 1997	Do	January 11, 2000
Draft Guideline for Reviewing Spinal Fixation Device Systems	January 9, 1997	ODE/DGRD	June 1, 1999
Guide for 510(k) Review of Processed Human Dura Mater	June 26, 1990	Do	August 9, 1999
Draft Guidance for Preparation of PMA Applications for Silicone Inflatable (Saline) Breast Prostheses	January 18, 1995	Do	August 16, 1999
Draft Guidance for Testing of Alternative Breast Prostheses (nonsilicone gel-filled)	September 1, 1994	Do	September 1, 1994

## Withdrawals

Name of Document	Date of Issuance	Group by Intended User or Regulatory Activity	Date Withdrawn
Draft Guidance for Preparation of FDA Submissions of Silicone Gel-Filled Breast Prostheses	May 11, 1992	Do	August 16, 1999
Guidance for Industry—Guidance for the Preparation of a Premarket Notification Application for Processed Human Dura Mater	July 31, 1999	Do	September 7, 1999
Technological Reporting For Powered Muscle Stimulator 510(k) (EMS)	January 1, 1993	DO	June 29, 1999
Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Powered Muscle Stimulators, and Ultrasound Diathermy and Muscle Stimulators	July 26, 1995	Do	June 29, 1999
Electrical Muscle Stimulator (EMS) Labeling Indications; Contraindications; Warnings; etc.	July 11, 1985	Do	June 29, 1999
Draft Intraocular Lens (IOL) Guidance Document	October 10, 1997	ODE/DOD	July 21, 1999
Guidance for the Content of Premarket Notifications for Metal Expandable Biliary Stents	February 5, 1998	ODE/DRAERD	June 29, 1999
In-vivo Devices for the Detection of Cervical Cancer and its Precursors: Submission Guidance for an IDE Draft Document	June 14, 1997	Do	May 26, 1999
Premarket Testing Guidelines for Home Uterine Activity Monitors	March 31, 1993	Do	June 2, 1999
Information for Manufacturers Seeking Marketing Clearance of Digital Mammography Systems	June 19, 1996	Do	June 29, 1999
Obtaining CDRH Guidance Documents	March 29, 1999	OHIP/DSMA	May 11, 1999
List of Current CDRH Addresses for Report Submission and Ordering of CDRH Forms	July 30, 1996	OHIP/DUPSA	October 20, 1999
Addendum to What a Mammography Facility Should do to Prepare for an MQSA Inspection	July 31, 1996	OHIP/DMQRP	May 12, 1999
Compliance Guidance—Preparing for MQSA Inspections	June 30, 1995	Do	May 13, 1999
Instructions for completing Semi-Annual Report, Form 3419 (MDR)	September 24, 1996	OSB	May 21, 1999
Guidance for Industry on the Testing of Metallic Plasma Sprayed Coatings on Orthopedic Implants to Support Reconsideration of Postmarket	No date available	OSB/Division of Postmarket Surveillance (DPS)	January 7, 2000

## IV. Guidance Documents Issued by the Center for Drug Evaluation and Research (CDER)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
ANDAs: Blend Uniformity Analysis	August 26, 1999	Generic Drug Draft	Office of Training and Communication, Drug Information Branch, Food and Drug Administration, 5600 Fishers Lane, Rockville, Md 20857, Internet: <a href="http://www.fda.gov/cder/guidance/index.htm">http://www.fda.gov/cder/guidance/index.htm</a>
ANDAs: Impurities in Drug Substances	December 3, 1999	Generic Drug	Do
Applications Covered by Section 505(b)(2)	December 8, 1999	Procedural Draft	Do
Average, Population, and Individual Approaches to Establishing Bioequivalence	August 27, 1999	Biopharmaceutic Draft	Do
BA and BE Studies for Orally Administered Drug Products	August 27, 1999	Do	Do
Bioavailability and Bioequivalence Studies for Nasal Aerosols and Nasal Sprays for Local Action	June 2, 1999	Do	Do
Catheter-Related Bloodstream Infections - Developing Antimicrobial Drugs for Treatment	October 18, 99	Clinical Antimicrobial Draft	Do
Changes to an Approved NDA or ANDA	November 23, 1999	Chemistry	Do
Clinical Considerations for Accelerated and Traditional Approval of Antiretroviral Drugs Using Plasma HIV RNA Measurements	September 1, 1999	Clinical Medical Draft	Do
Clinical Development Programs for Drugs, Devices, and Biological Products Intended for the Treatment of Osteoarthritis (OA)	July 15, 1999	Do	Do
Computerized Systems Used in Clinical Trials	May 10, 1999	Compliance	Do
Consumer-Directed Broadcast Advertisements	August 9, 1999	Advertising	Do
Disclosure of Materials Provided to Advisory Committees in Connection with Open Advisory Committee Meetings Convened by the Center for Drug Evaluation and Research	November 30, 1999	Procedural	Do
Draft Guidance for Industry on Disclosing Information Provided to Advisory Committees in Connection with Open Advisory Committee Meetings Related to the Testing or Approval of New Drugs and Convened by CDER, Beginning January 1, 2000; Availability	December 22, 1999	Procedural Draft	Do
Drug Master Files for Bulk Antibiotic Drug Substances: Availability	November 29, 1999	Chemistry	Do
E10 - Choice of Control Group in Clinical Trials	September 24, 1999	ICH Draft - Efficacy	Do
Establishing Pregnancy Registries	June 4, 1999	Clinical Medical Draft	Do
Evaluation of Human Pregnancy Outcome Data	June 4, 1999	Do	Do
In Vivo Metabolism/Drug Interaction Studies - Study Design, Data Analysis, and Recommendations for Dosing and Labeling	November 24, 1999	Clinical Pharmacology	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
In Vivo Pharmacokinetics and Bioavailability Studies and In Vitro Dissolution Testing for Levothyroxine Sodium Tablets	June 10, 1999	Clinical Medical Draft	Do
Information Request and Discipline Review Letters Under the Prescription Drug User Fee Act	August 17, 1999	Procedural Draft	Do
Labeling OTC Human Drug Products Using a Column Format	December 1, 1999	OTC Draft	Do
Levothyroxine Sodium	August 18, 1999	Clinical Medical Draft	Do
Major, Minor, Facsimile, and Telephone Amendments to Original Abbreviated New Drug Applications	August 11, 1999	Generic Drug	Do
Monoclonal Antibodies Used as Reagents in Drug Manufacturing	June 24, 1999	Chemistry Draft	Do
Nasal Spray and Inhalation Solution, Suspension, and Spray Drug Products	June 2, 1999	Do	Do
Noncontraceptive Estrogen Class Labeling	September 27, 1999	Labeling Draft	Do
Pharmacokinetics in Patients With Impaired Hepatic Function: Study Design, Data Analysis, and Impact on Dosing and Labeling	December 7, 1999	Clinical Pharmacology	Do
Photosafety Testing	January 10, 2000	Pharmacology/Toxicology	Do
Possible Dioxin/PCB Contamination of Drug and Biological Products	August 23, 1999	Compliance	Do
Preparing Data for Electronic Submission in ANDAs	September 21, 1999	Generic Drug	Do
Q6B-Test Procedures and Acceptance Criteria for Biotechnological/Biological Products	August 18, 1999	ICH-Quality	Do
Qualifying for Pediatric Exclusivity Under Section 505A of the Federal Food, Drug, and Cosmetic Act-Revised	October 1, 1999	Procedural	Do
S4A Duration of Chronic Toxicity Testing in Animals (Rodent and Nonrodent Toxicity Testing)	June 25, 1999	ICH-Safety	Do
Submission of Abbreviated Reports and Synopses in Support of Marketing Applications	September 13, 1999	Clinical Medical	Do
Submission of Documentation in Drug Applications for Container Closure Systems Used for the Packaging of Human Drugs and Biologics	July 7, 1999	Chemistry	Do

## Withdrawals

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	Date Withdrawn
Alprazolam Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	November 27, 1992	Biopharmaceutic	July 8, 1999
Bumetanide Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	April 23, 1993	Do	Do
Carbidopa and Levodopa Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	June 19, 1992	Do	Do
Cefaclor Capsules and Suspension In Vivo Bioequivalence and In Vitro Dissolution Testing	April 23, 1993	Do	Do

Withdrawals			
Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	Date Withdrawn
Diflunisal Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	May 16, 1992	Do	Do
Diltiazem Hydrochloride Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	May 16, 1992	Do	Do
Flurbiprofen (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	June 8, 1995	Do	Do
Gemfibrozil Capsules or Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	June 16, 1992	Do	Do
Guanabenz Acetate Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	April 23, 1993	Do	Do
Hydroxychloroquine Sulfate (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	December 28, 1995	Do	Do
Indapamide (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	April 23, 1993	Do	Do
Ketoprofen (capsules) In Vivo Bioequivalence and In Vitro Dissolution Testing	April 23, 1993	Do	July 8, 1999
Leucovorin Calcium (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	August 4, 1988	Do	Do
Medroxyprogesterone Acetate (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	September 17, 1987	Do	Do
Metoprolol Tartrate (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	June 12, 1992	Do	Do
Nadolol (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	May 16, 1992	Do	Do
Naproxen (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	June 8, 1995	Do	Do
Nortriptyline Hydrochloride (capsules) In Vivo Bioequivalence and In Vitro Dissolution Testing	June 12, 1992	Do	Do
Pentoxifylline (extended-release tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	December 22, 1995	Do	Do
Pindolol (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	April 23, 1993	Do	Do
Piroxicam (capsules) In Vivo Bioequivalence and In Vitro Dissolution Testing	June 15, 1999	Do	Do
Ranitidine Hydrochloride (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	April 23, 1993	Do	Do
Trazodone Hydrochloride (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	April 30, 1988	Do	Do
Waiver Policy	March 29, 1993	Biopharmaceutic Draft	Do
Bioavailability Policies and Guidelines	N/A	Biopharmaceutic Draft	Do
SUPAC-IR: Immediate Release and Solid Oral Dosage Forms; Manufacturing Equipment Addendum	October 21, 1997	Chemistry Draft	February 26, 1999
Selegiline Hydrochloride (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	December 22, 1995	Biopharmaceutic	December 27, 1999

**V. Guidance Documents Issued by the Center for Food Safety and Applied Nutrition (CFSAN)**

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Antimicrobial Food Additives—Guidance	July 1999	Industry and Center for Food Safety and Applied Nutrition Staff	Mark Hepp, Ph.D., (HFS-215) OPA/CFSAN/FDA 200 C Street, S.W. Washington, DC 20204 202-418-3098 Internet: <a href="http://vm.cfsan.fda.gov/~dms/opa-antg.html">http://vm.cfsan.fda.gov/~dms/opa-antg.html</a>
Guidance for Industry—Preparation of Premarket Notifications for Food Contact Substances—Chemistry Recommendations	Sept. 1999	Regulated Industry	Mitch Cheeseman, Ph.D., (HFS-215) OPA/CFSAN/FDA 200 C Street, S.W. Washington, DC 20204 202-418-3083 Internet: <a href="http://vm.cfsan.fda.gov/~dms/opa-pmnc.html">http://vm.cfsan.fda.gov/~dms/opa-pmnc.html</a>
Guidance for Industry—Preparation of Premarket Notifications for Food Contact Substances—Toxicology Recommendations	Sept. 1999	Regulated Industry	Mitch Cheeseman, Ph.D., (HFS-215) OPA/CFSAN/FDA 200 C Street, S.W. Washington, DC 20204 202-418-3083 Internet: <a href="http://vm.cfsan.fda.gov/~dms/opa-pmnt.html">http://vm.cfsan.fda.gov/~dms/opa-pmnt.html</a>

**VI. Guidance Documents Issued by the Center for Veterinary Medicine (CVM)**

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance for Industry: Chemistry, Manufacturing and Controls Changes to an Approved NADA or ANADA: Draft Guidance	June 1999	Animal Drug Industry	Communications Staff (HFV-12), FDA/CVM, 7500 Standish Pl., Rockville, MD 20855, 301-594-1755, FAX 301-594-1831 Internet: <a href="http://www.fda.gov/cvm">http://www.fda.gov/cvm</a>
Draft Guidance for Industry: Good Clinical Practices	July 1999	Do	Do
Guidance for Industry: Efficacy of Anthelmintics: General Recommendations: Draft Guidance	July 1999	Do	Do
Guidance for Industry: Stability Testing for Medicated Premixes Draft Guidance	July 1999	Do	Do
Guidance for Industry: Impurities in New Veterinary Drug Substances Draft Guidance	July 1999	Do	Do
Guidance for Industry: Impurities in New Veterinary Medical Products Draft Guidance	July 1999	Do	Do
Guidance for Industry: Efficacy of Anthelmintics: Specific Recommendations for Bovines: Draft Guidance	July 1999	Do	Do
Guidance for Industry: Efficacy of Anthelmintics: Specific Recommendations for Ovines: Draft Guidance	July 1999	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance for Industry—Validation of Analytical Procedures: Definition and Terminology	July 1999	Do	Do
Guidance for Industry—Validation of Analytical Procedures: Methodology: Final Guidance	July 1999	Do	Do
Guidance for Industry: Efficacy of Anthelmintics: Specific Recommendations for Caprines: Draft Guidance	July 1999	Do	Do
Guidance for Industry: Manufacture and Distribution of Unapproved Piperazine Products	August 1999	Do	Do
Guidance for Industry: Possible Dioxin/PCB Contamination of Drug and Biological Products	August 1999	Do	Do
Guidance for Industry—Consumer-Directed Broadcast Advertisements: Final Guidance	August 1999	Do	Do
Guidance for Industry: Stability Testing of New Veterinary Dosage Forms VICH GL4: Final Guidance	September 1999	Do	Do
Guidance for Industry: Stability Testing of New Veterinary Drug Substances and Medicinal Products VICH GL3: Final Guidance	September 1999	Do	Do
Guidance for Industry: Environmental Impact Assessments (EIA's) for Veterinary Medicinal Products (VMP's)—Phase I: Draft Guidance	September 1999	Do	Do
Guidance for Industry: Quality of Biotechnological Products in the Veterinary Field: Stability Testing of Biotechnological/ Biological Products VICH GL 17: Draft Guidance	September 1999	Do	Do
Guidance for Industry: Impurities: Residual Solvents VICH GL 18: Draft Guidance	September 1999	Do	Do
Guidance for Industry—Content and Format of Effectiveness and Target Animal Safety Technical Sections and Final Study Reports for Submission to the Division of Therapeutic Drugs for Non-Food Animals	September 1999	Do	Do
Guidance for Industry: Stability Testing: Photostability Testing of New Veterinary Drug Substances and Medicinal Products: Final Guidance	September 1999	Do	Do
Computerized Systems Used in Clinical Trials	October 1999	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Dioxin in Anti-Caking Agents Used in Animal Feed and Feed Ingredients	October 1999	Do	Do
Guidance for Industry—Evaluation of the Human Health Impact of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals	December 1999	Do	Do

#### VII. Guidance Documents Issued by Office of Regulatory Affairs

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guide to Inspections of Quality Systems	August 1999	FDA Personnel	Division of Emergency and Investigational Operations (HFC-130), Office of Regional Operations, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-5636 Internet: <a href="http://www.fda.gov/ora/inspect-ref/igs/qsit/QSITGUIDE.PDF">http://www.fda.gov/ora/inspect-ref/igs/qsit/QSITGUIDE.PDF</a>
Import Alerts	Continuously	FDA Personnel	Freedom of Information Staff (HFI-35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD Internet: <a href="http://www.fda.gov/ora/fiars/ora-import-alerts.html">http://www.fda.gov/ora/fiars/ora-import-alerts.html</a>

Withdrawals	Date of Issuance	Grouped by Intended User or Regulatory Activity	Date Withdrawn
Compliance Policy Guide (CPG), Chapter 3, Sec. 305.100, Accupuncture Devices and Accessories (CPG 7124.11) Revoked: December 23, 1999.		FDA Personnel	December 23, 1999

Dated: March 7, 2000.

**Margaret M. Dotzel,**

*Acting Associate Commissioner for Policy.*  
[FR Doc. 00-6117 Filed 3-13-00; 8:45 am]

BILLING CODE 4160-01-F

#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

#### Food and Drug Administration

[Docket No. 99D-2249]

#### International Cooperation on Harmonisation of Technical Requirements for Approval of Veterinary Medicinal Products (VICH); Final Guidance on Stability Testing for Medicated Premixes (VICH GL8); Availability

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a final guidance for industry (#91) entitled "Stability Testing for Medicated Premixes (VICH GL8)." This guidance document has been developed for veterinary use by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). This final guidance document is an annex to the parent guidance VICH GL3 entitled "Stability Testing of New Veterinary Drug Substances and

Medicinal Products." This final guidance document is the annex and addresses the recommendations for stability testing of veterinary medicinal Type A medicated articles (referred to as medicated premix drug products in the final guidance) intended for submission for approval to the European Union, Japan, and the United States.

**DATES:** You may submit written comments at any time.

**ADDRESSES:** Copies of the final guidance document entitled "Stability Testing for Medicated Premixes (VICH GL8)" may be obtained on the Internet from the CVM home page at <http://www.fda.gov/cvm/fda/mappgs/vich.html>. Persons without Internet access may submit written requests for single copies of the final guidance to the Communications Staff (HFV-12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests.

You may submit written comments at any time on the final guidance document to the Policy and Regulations Team (HFV-6), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

**FOR FURTHER INFORMATION CONTACT:**

Regarding the VICH: Sharon R.

Thompson, Center for Veterinary Medicine (HFV-3), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1798, e-mail:

[sthompso@cvm.fda.gov](mailto:sthompso@cvm.fda.gov), or Robert C. Livingston, Center for Veterinary Medicine (HFV-1), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-5903, e-mail: [rlivings@cvm.fda.gov](mailto:rlivings@cvm.fda.gov).

Regarding the guidance document:

William G. Marnane, Center for Veterinary Medicine (HFV-140), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-827-6966, e-mail: [wmarnane@cvm.fda.gov](mailto:wmarnane@cvm.fda.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In recent years, many important initiatives have been undertaken by regulatory authorities, industry associations, and individual sponsors to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically-based harmonized technical procedures for the development of pharmaceutical

products. One of the goals of harmonization is to identify and reduce the differences in technical requirements for drug development among regulatory agencies.

FDA has actively participated in the International Conference on Harmonisation of Technical Requirements for Approval of Pharmaceuticals for Human Use for several years to develop harmonized technical requirements for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical requirements for the approval of veterinary pharmaceutical products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH meetings are held under the auspices of the Office International des Epizooties (OIE). During the initial phase of the VICH, an OIE representative chairs the VICH Steering Committee. The VICH Steering Committee is composed of member representatives from the European Commission; the European Medicines Evaluation Agency; the European Federation of Animal Health; the Committee on Veterinary Medicinal Products; the U.S. FDA; the U.S. Department of Agriculture; the Animal Health Institute; the Japanese Veterinary Pharmaceutical Association; the Japanese Association of Veterinary Biologics; and the Japanese Ministry of Agriculture, Forestry, and Fisheries.

Two observers are eligible to participate in the VICH Steering Committee: One representative from the Government of Australia/New Zealand, and one representative from the industry in Australia/New Zealand. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the Confederation Mondiale de L'Industrie de la Sante Animale (COMISA). A COMISA representative also participates in the VICH Steering Committee meetings.

**II. Guidance on Stability Testing**

In the *Federal Register* of July 22, 1999 (64 FR 39515), FDA published the draft guidance entitled "Stability Testing for Medicated Premixes (VICH GL8)," giving interested persons until August 23, 1999, to submit comments. After consideration of comments received the final draft guidance was submitted to the VICH Steering Committee. At a meeting held on November 16 through 19, 1999, the

VICH Steering Committee endorsed the final draft guidance, VICH GL8, for industry.

VICH GL8 addresses the generation of acceptable stability information for submission in new animal drug applications (referred to as registration applications in the final guidance) for Type A medicated articles containing new molecular entities. This guidance will be implemented in May 2000.

This final guidance document represents the agency's current thinking on acceptable stability testing of Type A medicated articles. The document does not create or confer any rights for or on any person and will not operate to bind FDA or the public. Alternate approaches may be used if they satisfy the requirements of applicable statutes, regulations, or both.

**III. Comments**

As with all of FDA's guidances, the public is encouraged to submit written comments with new data or other new information pertinent to this guidance. The comments in the docket will be periodically reviewed, and, where appropriate, the guidance will be amended. The public will be notified of any such amendments through a notice in the *Federal Register*.

Dated: March 3, 2000.

**Margaret M. Dotzel,**

*Acting Associate Commissioner for Policy.*

[FR Doc. 00-6119 Filed 3-13-00; 8:45 am]

**BILLING CODE 4160-01-F**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-4567-N-01]

**Notice of Proposed Information Collection: Comment Request; Customer Satisfaction Survey for Business Partners and Multiclass Program Participants**

**AGENCY:** Office of the President of Government National Mortgage Association (Ginnie Mae), HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* May 15, 2000.

**ADDRESSES:** Interested persons are invited to submit comments regarding

this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Sonya Suarez, Office of Policy, Planning and Risk Management, Department of Housing & Urban Development, 451—7th Street, SW, Room 6226, Washington, DC 20410.

**FOR FURTHER INFORMATION CONTACT:** Sonya Suarez, Ginnie Mae, (202) 708–2772 (this is not a toll-free number) for copies of the proposed forms and other available documents.

**SUPPLEMENTARY INFORMATION:** The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information 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; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Customer Satisfaction Survey for Business

Partners and Multiclass Program Participants.

*OMB Control Number, if applicable: Description of the need for the information and proposed use:* The purpose of this information collection will be to evaluate existing Ginnie Mae services and programs. This request to conduct a Ginnie Mae Customer Satisfaction Survey is in response to Executive Order 12862 on setting customer driven standards. The survey will be used to evaluate what benefits would be needed to understand and satisfy Ginnie Mae customers, program participants, and business partners.

*Agency form numbers, if applicable:* Not applicable.

*Members of affected public:* For-profit business (mortgage industry trade associations, securities companies, accounting firms, law firms, service providers, etc.).

**ESTIMATION OF THE TOTAL NUMBERS OF HOURS NEEDED TO PREPARE THE INFORMATION COLLECTION INCLUDING NUMBER OF RESPONDENTS, FREQUENCY OF RESPONSE, AND HOURS OF RESPONSE**

	Respondents	Frequency of response	Hours of response
Business Partners .....	50	15	750 minutes or 12.5 hours.
Multiclass Securities Program Participants .....	100	15	1500 minutes or 25 hours.

*Status of the proposed information collection:* This is a new collection of information from Ginnie Mae's Business Partners and Multiclass Program participants.

**Authority:** Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 1, 2000.

**George S. Anderson,**  
Executive Vice President, Ginnie Mae.  
[FR Doc. 00–6142 Filed 3–13–00; 8:45 am]  
**BILLING CODE 4210–01–M**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR–4561–N–12]

**Notice of Submission of Proposed Information Collection to OMB; Tenant Assessment Subsystem (TASS) Computer Matching Income Verification**

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork

Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* April 13, 2000.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne\_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to

collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**This Notice Also Lists the Following Information**

*Title of Proposal:* Tenant Assessment Subsystem (TASS) computer matching income verification.

*OMB Approval Number:* 2507–XXXX.

*Form Numbers:* HUD–50073, HUD–50074.

*Description of the Need for the Information and Its Proposed Use:* Real Estate Assessment Center (REAC) has developed the Tenant Assessment Subsystem (TASS) to identify potential income discrepancies between income

reported tenants and that reported by POAs with Federal tax data provided by Internal Revenue Service and the Social Security Administration. The process of comparing these sources of income is referred to as computer matching

income verification (CMIV). The information collection requested will assist REAC obtain accurate results.

*Respondents:* Business or Other-for-Profit, Non-for-Profit.

*Frequency of Submission:* Annually and three times per year on a quarterly basis.

*Reporting Burden:*

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collection .....	24,000		31		0.6		37,500

*Total Estimated Burden Hours:* 37,500.

*Status:* New collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 8, 2000.

**Wayne Eddins,**

*Departmental Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 00-6143 Filed 3-13-00; 8:45 am]

**BILLING CODE 4210-01-M**

properties have been determined suitable or unsuitable this week.

Dated: March 2, 2000.

**Fred Karnas, Jr.,**

*Deputy Assistant Secretary for Special Needs Assistance Programs.*

[FR Doc. 00-5542 Filed 3-13-00; 8:45 am]

**BILLING CODE 4210-29-M**

**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 has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

**Permit Number TE 023666-0**

*Applicant:* Eric R. Britzke, Tennessee Technological University, Cookeville, Tennessee.

The applicant requests a permit to take (collect) the following endangered species throughout their entire ranges: Gray bat (*Myotis grisecens*), Indiana bat (*Myotis sodalis*), Ozark big-eared bat (*Corynorhinus townsendii ingens*), and the Virginia big-eared bat (*Corynorhinus townsendii virginianus*). 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: (612/713-5343); FAX: (612/713-5292).

Dated: March 8, 2000.

**Stanley L. Smith,**

*Acting Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.*

[FR Doc. 00-6153 Filed 3-13-00; 8:45 am]

**BILLING CODE 4310-55-P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**Notice of Decision and Availability of Decision Documents on the Issuance of Permits for Incidental Take of Threatened and Endangered Species**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of decision.

**SUMMARY:** Between March 11, 1999 and February 11, 2000, Region 1 of the Fish and Wildlife Service issued 14 permits for incidental take of threatened and endangered species, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. Of the 14 permits issued, 3 are associated with implementation of a Habitat Conservation Plan for the Delhi Sands Flower-loving Fly, in the City of Rialto, California, and one was for the City of Laguna Woods, California, in association with the Orange County Central/Coastal Natural Community Conservation Plan (Central/Coastal Plan). We also transferred two previously issued permits due to changes in land ownership. One transfer was associated with the Central/Coastal Plan and one was associated with The Bluffs Habitat Conservation Plan.

In addition, on March 1, 1999, we issued a permit to the Pacific Lumber Corporation. This permit notice was inadvertently left out of our last Notice on the issuance of permits for incidental take of threatened and endangered species.

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-4557-N-10]

**Federal Property Suitable as Facilities to Assist the Homeless**

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**EFFECTIVE DATE:** March 14, 2000.

**FOR FURTHER INFORMATION CONTACT:** Clifford Taffet, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708-1234; TTY number for the hearing- and speech-impaired (202) 708-2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

**SUPPLEMENTARY INFORMATION:** In accordance with the December 12, 1988 court order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless.

Today's Notice is for the purpose of announcing that no additional

Copies of the 14 permits, 2 transferred permits, and associated decision documents are available upon request.

**ADDRESSES:** If you would like copies of any of the above documents, please contact the Fish and Wildlife Service Reference Service, 5430 Grosvenor Lane, Suite 110, Bethesda, Maryland 20814, telephone (800) 582-3421; or the Fish and Wildlife Service, Division of Consultation and Conservation Planning, 911 N.E. 11th Avenue, 4th Floor East, Portland, Oregon 97232.

**FOR FURTHER INFORMATION CONTACT:** Heather Hollis, Fish and Wildlife Biologist, at the above Portland, Oregon address; telephone (503) 231-6241.

**SUPPLEMENTARY INFORMATION:** Section 9 of the Endangered Species Act and Federal regulation prohibit the take of

wildlife species listed as endangered or threatened, respectively. Under the Act, the term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed wildlife, or to attempt to engage in any such conduct. The Service may, under limited circumstances, issue permits to authorize take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing permits for threatened and endangered species are found in 50 CFR 17.32 and 17.22.

Between March 11, 1999, and February 11, 2000, Region 1 of the Service issued the following permits for incidental take of threatened and endangered species, pursuant to section 10(a)(1)(B) of the Act. Each permit was issued after the following

determinations were made: the application had been submitted in good faith; all permit issuance criteria were met, including the requirement that granting the permit will not jeopardize the continued existence of the species; and the permit was consistent with the Act and applicable regulations, including a thorough review of the environmental effects of the action and alternatives, pursuant to the National Environmental Policy Act of 1969.

Copies of these permits and associated decision documents are available upon request. Decision documents for each permit include Findings and Recommendations; a Biological Opinion; and either a Finding of No Significant Impact, a Record of Decision, or an Environmental Action Statement.

Name of permittee	Permit No.	Issuance date
PALCO Headwaters .....	TE828950-0	03/01/99
North Peak Partners, LP .....	TE012768-0	06/07/99
City of The Dalles .....	TE004366-0	07/01/99
RMC Lonestar, Bonny Doon Quarries .....	TE844722-0	08/05/99
E-Z Mix, Inc .....	TE015985-0	08/27/99
Antoninni Trust .....	TE015986-0	08/27/99
Angelus Block Co., Inc .....	TE015987-0	08/27/99
Hanson Aggregates .....	TE013227-0	09/03/99
Hord .....	TE003250-0	09/30/99
Nuevo/Torch .....	TE019489-0	11/17/99
Teichart, Esparto Mining Project .....	TE019954-0	12/20/99
Plum Creek I-90 Permit Modification .....	PRT-808398	12/23/99
Ox Yoke Road Development .....	TE021326-0	02/11/00

**Permit Transfer Associated With the Bluffs Habitat Conservation Plan**

In addition to issuing the incidental take permits listed above, we approved an assumption agreement, dated May 21, 1999, to transfer incidental take permit TE003795-0 issued October 19, 1998. This agreement formally recognized the transfer of title from East County Investors and Greenbriar Land Company to Warmington Livermore Associates, LP. In signing the agreement, Warmington Livermore Associates, LP assumed the obligations of The Bluffs Habitat Conservation Plan and the Assumption Agreement with Respect to the Bluffs Habitat Conservation Plan. The assumption by Warmington Livermore Associates, LP did not result in a new analysis of

effects or change the requirements of the original permit, habitat conservation plan, or implementing agreement. Copies of the executed assumption agreement and transferred permit are available upon request.

**Incidental Take Permits Associated With the Central/Coastal Plan**

On January 21, 2000, we approved an assumption agreement to transfer incidental take permit PRT-810581 (issued July 17, 1996) from Chandis Securities Company to the Headlands Reserve, LLC. This agreement formally recognized transfer of title of land and obligations of the two parties with respect to this permit pursuant to the Central/Coastal Plan.

In addition, on November 3, 1999 we issued an incidental take permit to the

City of Laguna Woods in association with its participation in the Central/Coastal Plan. The Central/Coastal Plan fully anticipated that jurisdictions within the plan boundaries would sign the plan's Implementing Agreement as participating jurisdictions following approval of the plan and subsequently be issued an incidental take permit. Provided that no plan revisions or additional impacts were determined to be associated with permit issuance, no revision to the Service's permit decision documents for the Central/Coastal Plan would be necessary. The Service determined that no plan revisions or additional impacts were associated with issuance of the following permits pursuant to the Central/Coastal plan. Copies of these permits and assumption agreement are available upon request.

Name of permittee	Permit No.	Issuance date
City of Laguna Woods .....	TE019204-0	11/03/99
Permit Transfer from Chandis Securities to Headlands Reserve .....	TE810581-1	01/21/00

Dated: March 7, 2000.

**Thomas Dwyer,**

*Deputy Regional Director, Fish and Wildlife Service, Region 1, Portland, Oregon.*

[FR Doc. 00-6152 Filed 3-13-00; 8:45 am]

BILLING CODE 4310-55-U

## DEPARTMENT OF THE INTERIOR

### Geological Survey

#### Application Notice Describing the Areas of Interest and Establishing the Closing Date for Receipt of Applications Under the National Earthquake Hazards Reduction Program (NEHRP) for Fiscal Year (FY) 2001

**AGENCY:** Department of the Interior, U.S. Geological Survey.

**ACTION:** Notice.

**SUMMARY:** Applications are invited for research projects under the NEHRP.

The purpose of this Program is to support the USGS Earthquake Hazards Program by providing products for earthquake loss reduction to the public and private sectors and by carrying out research on earthquake occurrence and effects.

Applications may be submitted by educational institutions, private firms, private foundations, individuals, and agencies of state and local governments.

**ADDRESSES:** The program announcement is expected to be available on or about March 10, 2000. You may obtain a copy of Announcement No. O1HQPA0002 from the USGS Contracts and Grants Information Site at <http://www.usgs.gov/contracts/nehpr/> or by writing Brian Heath, U.S. Geological Survey, Office of Acquisition and Federal Assistance—Mail Stop 205A, 12201 Sunrise Valley Drive, Reston, Virginia 20192, or by fax (702-648-7901).

**DATES:** The closing date for receipt of applications will be on or about May 10, 2000. The actual closing date will be specified in Announcement No. O1HQPA0002.

**FOR FURTHER INFORMATION CONTACT:** John Unger, Earthquake Hazards Reduction Program—U.S. Geological Survey, Mail Stop 905, 12201 Sunrise Valley Drive, Reston, Virginia 20192. Telephone: (703) 648-6701.

**SUPPLEMENTARY INFORMATION:** Authority for this program is contained in the Earthquake Hazards Reduction Act of 1977, Public Law 95-124 (42 U.S.C. 7701, *et. seq.*). The Office of Management and Budget Catalog of Federal Domestic Assistance number is 15.807.

Dated: March 8, 2000.

**James C. Leupold,**

*Chief, Office of Program Support.*

[FR Doc. 00-6169 Filed 3-13-00; 8:45 am]

BILLING CODE 4310-Y7-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[OR-020-1020-DE; G 0-0-147]

#### Notice of Meeting

**AGENCY:** Bureau of Land Management (BLM), Burns District.

**ACTION:** Meeting Notice for the Southeast Oregon Resource Advisory Council.

**SUMMARY:** The Southeast Oregon Resource Advisory Council will meet at Treasure Valley Community College, Weese Building, Room W-10, 650 College Boulevard, Ontario, OR, from 8 a.m. to 5 p.m., Mountain Standard Time (MST), on Thursday, April 13, 2000, and sage grouse field tour from 4 a.m. to 12 p.m. on Friday, April 14, 2000. Topics to be discussed by the Council include Sage Grouse listing, Interim Sage Grouse Guidelines Update, Steens Legislation Update, Redband Trout Petition/Listing Update, Owyhee Litigation Update, Off-Highway Vehicle Strategy Presentation, Interior Columbia Basin Ecosystem Management Update, and such other matters as may reasonably come before the Council. The entire meeting is open to the public. Public comment is scheduled for 11 a.m. to 11:30 a.m. MST on Thursday, April 13, 2000.

The Southeast Oregon Resource Advisory Council will meet on the following dates in the year 2000.

7/20-21/2000: Burns District Office, BLM, Hines, OR

10/19-20/2000: Lakeview District Office, BLM, Lakeview, OR

**FOR FURTHER INFORMATION CONTACT:** Additional information concerning the Southeast Oregon Resource Advisory Council may be obtained from Holly LaChapelle, Resource Assistant, Burns District Office, HC 74-12533 Highway 20 West, Hines, OR 97738; (541) 573-4501, or [Holly\\_LaChapelle@or.blm.gov](mailto:Holly_LaChapelle@or.blm.gov) or our web site at <http://www.or.blm.gov/SEOR-RAC>

Dated: March 6, 2000.

**Miles R. Brown,**

*Andrews Resource Area Field Manager.*

[FR Doc. 00-6210 Filed 3-13-00; 8:45 am]

BILLING CODE 4310-33-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[WY-920-1430-EU; WYW 139970]

#### Opening of National Forest System Land; Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice terminates the temporary segregative effect as to 580.00 acres of National Forest System lands which were originally included in an application for exchange in the Targhee National Forest.

**EFFECTIVE DATE:** March 14, 2000.

**FOR FURTHER INFORMATION CONTACT:** Jimi Metzger, BLM Wyoming State Office, 5353 Yellowstone Rd., P.O. Box 1828, Cheyenne, Wyoming 82003, 307-775-6250.

**SUPPLEMENTARY INFORMATION:** Pursuant to the regulations contained in 43 CFR 2091.3-2(b), at 9 a.m. on March 14, 2000, the following described lands will be relieved of the temporary segregative effect of exchange application WYW 139970.

#### Sixth Principal Meridian, Wyoming

T. 44 N., R. 118 W.,

Sec. 16, E $\frac{1}{2}$ , E $\frac{1}{2}$ W $\frac{1}{2}$ ;

Sec. 21, N $\frac{1}{2}$ NE, N $\frac{1}{2}$ SENE.

The area described contains 580.00 acres in Teton County.

At 9 a.m. on March 14, 2000, the lands shall be opened to such forms of disposition as may by law be made of National Forest System lands, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988) shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The BLM will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

Dated: March 7, 2000.

**Jim Paugh,**

*Acting Chief, Mineral & Lands Authorization Group.*

[FR Doc. 00-6154 Filed 3-13-00; 8:45 am]

BILLING CODE 4310-22-P

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Champlain Valley Heritage Corridor Project; Extension of Comment Period

The public review period for the draft special resource study of the Champlain Valley, including an environmental assessment, is extended for 30 days from the original closing date of March 1, 2000. It will now close on April 1, 2000. The National Park Service is extending the period of public review to allow interested parties more time to review the draft study.

In accordance with P.L. 103-332, the draft special resource study of the Champlain Valley is available for public review and comment. A special resource study is used by the National Park Service to evaluate a resource for national significance and to assess its suitability and feasibility for possible federal designation and for further National Park Service involvement. Based on the results of this assessment, the study presents a range of possible management alternatives.

The draft special resource study for the Champlain Valley is available for review at most local libraries throughout the Champlain region of New York and Vermont. Copies are also available from W. Douglas Lindsay, Superintendent, Saratoga National Historical Park, 648 Route 32, Stillwater, NY 12170; or from Philip B. Huffman, a National Park Service contractor, 82 Church Street, Burlington, VT 05401. For further information, call Saratoga National Historical Park at 518.664.9821, extension 206; or Mr. Huffman at 802.865.4523. Written comments will be accepted through April 1, 2000 at Boston Support Office, National Park Service, 15 State Street, Boston, MA 02109, Attn: Marjorie Smith.

**Sandra Corbett,**

*Acting Superintendent.*

[FR Doc. 00-6110 Filed 3-13-00; 8:45 am]

BILLING CODE 4310-70-P

## INTERNATIONAL TRADE COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** United States International Trade Commission.

**TIME AND DATE:** March 15, 2000 at 11 a.m.

**PLACE:** Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205-2000.

**STATUS:** Open and closed to the public.

#### MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731-TA-474-475 (Review)(Chrome-Plated Lug Nuts from China and Taiwan)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on March 23, 2000.)
5. Inv. No. 731-TA-469 (Review) (Electroluminescent Flat-Panel Displays from Japan)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on March 27, 2000).
6. Outstanding action jackets: (1.) Document No. (E)GC-00-001: Administrative matters.

Pursuant to 5 U.S.C. 552b(c) and Commission rule 19 CFR 201.36(b), the Commission has unanimously determined to close agenda item 6 of the meeting of Wednesday, March 15, 2000, to public observation, in order to avoid disclosure of information of a personal nature which would constitute a clearly unwarranted invasion of personal privacy. The General Counsel has certified that a portion of the meeting is being properly closed to the public by the Commission. Persons permitted to attend this closed portion of the meeting include Commissioners, their staff, and other Commission personnel who need to be available for the discussion or to conduct the meeting.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: March 8, 2000.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00-6349 Filed 3-10-00; 1:50 pm]

BILLING CODE 7020-02-M

## DEPARTMENT OF JUSTICE

### Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** Request OMB Emergency Approval; National Center for Victims of Crime: Service Referral Questionnaire.

The Department of Justice, Office of Community Oriented Policing Services (COPS) has submitted the following information collection request utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. OMB approval has been requested by March 22, 2000. If granted, the emergency approval is only valid for 180 days.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. In addition to comments and/or questions pertaining to this pending request for emergency approval, written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged and will be accepted for 60 days from the date listed at the top of this page in the **Federal Register**. Comments should address one or more of the following four points:

- (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;
- (2) 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;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond, 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.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the emergency approval request, estimated public burden and associated response time, should be directed to the COPS Office, PPSE Division, 1100 Vermont Ave, NW, Washington, DC 20530-0001; attn: Karen Beckman. Additionally, comments may be submitted to COPS via facsimile to 202-633-1386, attn: Karen Beckman. Comments may also be

submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, National Place, Suite 1220, 1331 Pennsylvania Avenue, NW, Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to 202-514-1534.

Overview of this information collection:

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* National Center for Victims of Crime: Service Referral Questionnaire.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form: COPS PPSE/02. Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Approximately 10,000 victims' services organizations nationwide will be asked to respond. The Service Referral Questionnaire will allow the National Center for Victims of Crime (NCVC) to collect information on agency name, contact information, types of services provided to crime victims, types of crime victims primarily served by the organization, and to request permission to allow the NCVC to include the listing in its service database on its website.

NCVC will use the information collected to provide referral assistance to victims of crime who request information via the telephone through a toll-free number, e-mail, general mail and the NCVC website.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Surveys will be administered by telephone to approximately 10,000 victims' service organizations nationwide. The survey will also be available to respondents via the NCVC website to allow on-line completion. Administrative preparation and survey completion will take approximately 0.25 hours per respondent (there is no record keeping burden for this collection).

(6) *An estimate of the total public burden (in hours) associated with the collection:* Approximately 2,500 hours. If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, National Place, Suite 1220, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

Dated: March 8, 2000.

**Brenda E. Dyer,**

*Department Clearance Officer, United States Department of Justice.*

[FR Doc. 00-6234 Filed 3-13-00; 8:45 am]

**BILLING CODE 4410-AT-M**

## DEPARTMENT OF JUSTICE

### Federal Bureau of Investigation

#### Telecommunications Contracts and Audit Unit; Agency Information Collection Activities: Current Collection; Comment Request

**ACTION:** Notice of Information Collection Under Review; Extension of a Currently Approved Collection; Cost Recovery Regulations, Communications Assistance for Law Enforcement Act of 1994.

The Department of Justice, Federal Bureau of Investigation, Communications Assistance for Law Enforcement Act (CALEA) Implementation Section, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. The proposed information collection was previously published in the **Federal Register** on December 28, 1999, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until April 13, 2000. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395-7285. Comments may also be submitted to the Department of Justice, Justice Management Division, Information and Security Staff, Attention: Department Clearance Officer, Suite 1220, National Place, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

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

(2) 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;

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

(4) Minimize the burden of the collection of information on those who are to respond, 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.

#### Overview of This Information

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Cost Recovery Regulations, Communications Assistance for Law Enforcement Act of 1994.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. Federal Bureau of Investigation, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* None. This rule establishes the procedures whereby telecommunications carriers can recover the costs associated with complying with the Communications Assistance for Law Enforcement Act, which went into effect on October 25, 1994.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The average time burden of the approximately 3,000 respondents to provide the information requested is approximately four hours per telecommunications switch

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to provide the information necessary to file a claim under the Cost Recovery Regulation is approximately 46,000 annual burden hours.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, United States Department of Justice, Justice Management Division, Information Management and Security Staff, Suite

1220, National Place, 1331 Pennsylvania Avenue, NW, Washington, D.C. 20530.

Dated: March 9, 2000.

**Robert B. Briggs,**

*Department Clearance Officer, United States Department of Justice.*

[FR Doc. 00-6235 Filed 3-13-00; 8:45 am]

BILLING CODE 4410-02-M

## DEPARTMENT OF JUSTICE

### Federal Bureau of Investigation

#### CALEA Implementation Section; Agency Information Collection Activities: Current Collection; Comment Requested

**ACTION:** Notice of information collection under review; Extension of a currently approved collection, flexible deployment assistance guide.

The Department of Justice, Federal Bureau of Investigation, Communications Assistance for Law Enforcement Act (CALEA) Implementation Section, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. The proposed information collection was previously published in the **Federal Register** on December 28, 1999, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until April 13, 2000. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395-7285. Comments may also be submitted to the Department of Justice, Justice Management Division, Information and Security Staff, Attention: Department Clearance Officer, Suite 1220, National Place, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points.

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

(2) 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;

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

(4) Minimize the burden of the collection of information on those who are to respond, 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.

#### Overview of This Information

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Flexible Deployment Assistance Guide.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. Federal Bureau of Investigation, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. Other: None. The Flexible Deployment Assistance Guide has been developed to assist the telecommunications industry in meeting its obligations under the Communications Assistance for Law Enforcement Act, 47 U.S.C. 1001-1010 (1994).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The average time burden of the approximately 5,000 respondents to provide the information requested is approximately four hours and fifteen minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to provide the information requested by the Flexible Deployment Assistance Guide is approximately 21,250 annual burden hours.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, United States Department of Justice, Justice Management Division, Information Management and Security Staff, Suite 1220, National Place, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

Dated: March 9, 2000.

**Robert B. Briggs,**

*Department Clearance Officer, United States Department of Justice.*

[FR Doc. 00-6237 Filed 3-13-00; 8:45 am]

BILLING CODE 4410-02-M

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

#### Bureau of Justice Statistics; Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** Reinstatement, with change, of a previously approved collection for which approval has expired: Census of State and Federal Adult Correctional Facilities.

Office of Management and Budget approval is being sought for the information collection listed below. This proposed collection was previously published in the **Federal Register** on August, 17, 1999, allowing for a 60-day public comment period. No comments were received by the Bureau of Justice Statistics.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 13, 2000. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points;

(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;

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

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

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

#### Overview of This Information Collection

(1) *Type of information Collection:* Reinstatement, with change, of a

previously approved collection for which approval has expired.

(2) *Title of the Form Collection*: 2000 Census of State and Federal Adult Correctional Facilities.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection*; Forms: CJ-43. Corrections Statistics, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract* Federal and State Government. The Census of State and Federal Adult Correctional Facilities is the quinquennial Census of State and Federal Correctional Facilities is the only data collection effort that provides a comprehensive assessment of the characteristics of State correctional facilities, programs, and staffs throughout the United States. The data will be used by Department of Justice officials, together with prison administrators, researchers, and policy makers to assess the current trends and patterns in the Nation's correctional facilities and populations.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond*. 1,750 respondents each taking an average 3.0 hours to respond.

(6) *An estimate of the total public burden (in hours) associated with the collection*: 5,250 total annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instruction, or additional information, please contact Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, Washington Center, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

Dated: March 3, 2000.

**Brenda E. Dyer,**

*Department Deputy Clearance Officer, United States Department of Justice.*

[FR Doc. 00-6236 Filed 3-13-00; 8:45 am]

**BILLING CODE 4410-18-M**

## DEPARTMENT OF JUSTICE

### Office of Juvenile Justice and Delinquency Prevention

[OJP(OJJDP)-1266]

#### Meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention

**AGENCY**: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (OJJDP), Justice.

**ACTION**: Notice of meeting.

**SUMMARY**: Announcement of the Coordinating Council on Juvenile Justice and Delinquency Prevention meeting.

**DATES**: A meeting of the advisory committee, chartered as the Coordinating Council on Juvenile Justice and Delinquency Prevention, will take place in the District of Columbia on Friday, March 31, 2000, beginning at 1 p.m. and ending at 3 p.m., ET.

**ADDRESSES**: The meeting will take place at the U.S. Department of Justice, Office of Justice Programs, Main Conference Room, 3rd Floor, 810 7th Street, NW, Washington, DC 20531.

**FOR FURTHER INFORMATION CONTACT**: Bob Altman, Program Manager, Juvenile Justice Resource Center at (301) 519-5721. [This is not a toll-free number].

**SUPPLEMENTARY INFORMATION**: The Coordinating Council, established pursuant to section 3(2)A of the Federal Advisory Committee Act (5 U.S.C. App. 2), will meet to carry out its advisory functions under Section 206 of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. This meeting will be open to the public. Members of the public who wish to attend the meeting should notify the Juvenile Justice Resource Center at the number listed above by 5:00 p.m. on Tuesday, March 21, 2000. For security purposes, picture identification will be required.

Dated: March 8, 2000.

**John Wilson,**

*Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.*

[FR Doc. 00-6135 Filed 3-13-00; 8:45 am]

**BILLING CODE 4410-18-P**

## DEPARTMENT OF LABOR

### Employment Standards Administration

#### Proposed collection; comment request

**AGENCY**: Employment Standards Administration, Department of Labor.

**ACTION**: Notice.

**SUMMARY**: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed extension collection of the reporting and recordkeeping requirements of Regulations 29 CFR, Part 520; the Application for Authorization to Employ a Student-Learner at Subminimum Wages, Form WH-205, and the Application for a Certificate to Employ Messengers/Learners at Subminimum Wages, Form WH-209. A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this notice.

**DATE**: Written comments must be submitted to the office listed in the **ADDRESSES** section below within 60 days of the date of this Notice.

**ADDRESSES**: Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Ave., NW, Room S-3201, Washington, DC 20210, telephone (202) 693-0339 (this is not a toll-free number), fax (202) 693-1451.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Regulations 29 CFR Part 520 require the Secretary of Labor, to the extent necessary to prevent curtailment of employment opportunities, to provide "by regulations or by orders" for employment under special certificates of categories of workers who may be paid less than the statutory minimum wage. This section also authorizes the Secretary to set limitations on such employment as to time, number,

proportion and length of service. These workers include apprentices, messengers and learners, including student-learners, and student-workers. Form WH-209 is an application for a certificate authorizing an employer to employ learners and/or messengers at subminimum wage rates for a period up to one year. Form WH-205 is used by the employer to obtain certificates to employ student-learners at wages lower than the Federal minimum wage to prevent curtailment of opportunities for employment.

**II. Review Focus**

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

**III. Current Actions**

The Department of Labor seeks the extension of approval to collect this information in order to carry out its responsibility to administer subminimum wage programs in accordance with the Fair Labor Standards Act.

*Type of Review:* Extension.  
*Agency:* Employment Standards Administration.

*Title:* Employment Under Special Certificates for Apprentices, Messengers and Learners (Including Student-Learners).

*OMB Number:* 1215-0192.  
*Agency Number:* WH-205; WH-209.  
*Affected Public:* Businesses or other for-profit; Not-for-profit Institutions; State, Local or Tribal Government; Individuals or households.

	Total respondents	Frequency	Total responses	Average time per response	Burden hours
WH-209 .....	1	Annually .....	0	20 minutes .....	0
WH-205 .....	650	Annually .....	650	30 minutes .....	325

*Estimated Total Burden Hours:* 325.  
*Total Burden Cost (capital/startup):* 0.  
*Total Burden Cost (operating/maintenance):* 234.36.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 7, 2000.

**Margaret J. Sherrill,**  
*Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.*

[FR Doc. 00-6207 Filed 3-13-00; 8:45 am]  
**BILLING CODE 4510-27-M**

**DEPARTMENT OF LABOR**

**Pension and Welfare Benefits Administration**

**Medical Child Support Working Group; Meeting**

**AGENCY:** Pension and Welfare Benefits Administration, Department of Labor.

**ACTION:** Notice of open meeting.

**SUMMARY:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (FACA), notice is given of the date of the eighth meeting of the Medical Child Support Working Group (MCSWG). The Medical Child Support Working Group was jointly established by the

Secretaries of the Department of Labor (DOL) and the Department of Health and Human Services (DHHS) under section 401(a) of the Child Support Performance and Incentive Act of 1998. The purpose of the MCSWG is to identify the impediments to the effective enforcement of medical support by State child support enforcement agencies, and to submit to the Secretaries of DOL and DHHS a report containing recommendations for appropriate measures to address those impediments.

**DATES:** The eighth meeting of the MCSWG will be held on Thursday, March 30th, 2000, from 1:00 p.m. to approximately 2:30 p.m.

**ADDRESSES:** The meeting will be held in the 6th Floor Auditorium, Aerospace Building, 901 D St. SW, Washington, DC. All interested parties are invited to attend this public meeting. Seating may be limited and will be available on a first-come, first-serve basis. Persons needing special assistance, such as sign language interpretation or other special accommodation, should contact the Executive Director of the Medical Child Support Working Group, Office of Child Support Enforcement at the address listed below.

**FOR FURTHER INFORMATION CONTACT:** Ms. Samara Weinstein, Executive Director, Medical Child Support Working Group, Office of Child Support Enforcement, Fourth Floor East, 370 L'Enfant Promenade, SW, Washington, DC 20447 (telephone (202) 401-6953; fax (202) 401-5559; e-mail:

sweinstein@acf.dhhs.gov). These are not toll-free numbers. The date, location and time for subsequent MCSWG meetings will be announced in advance in the **Federal Register**. However, it is expected this will be the last meeting.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2) (FACA), notice is given of a meeting of the Medical Child Support Working Group (MCSWG). The Medical Child Support Working Group was jointly established by the Secretaries of the Department of Labor (DOL) and the Department of Health and Human Services (DHHS) under section 401(a) of the Child Support Performance and Incentive Act of 1998 (Pub. L. 105-200).

The purpose of the MCSWG is to identify the impediments to the effective enforcement of medical support by State child support enforcement agencies, and to submit to the Secretaries of DOL and DHHS a report containing recommendations for appropriate measures to address those impediments. This report will include: (1) Recommendations based on assessments of the form and content of the National Medical Support Notice, as issued under proposed regulations; (2) appropriate measures that establish the priority of withholding of child support obligations, medical support obligations, arrearages in such obligations, and in the case of a medical support obligation, the employee's

portion of any health care coverage premium, by such State agencies in light of the restrictions on garnishment provided under title III of the Consumer Credit Protection Act (15 U.S.C. 1671–1677); (3) appropriate procedures for coordinating the provision, enforcement, and transition of health care coverage under the State programs for child support, Medicaid and the Child Health Insurance Program; (4) appropriate measures to improve the availability of alternate types of medical support that are aside from health care coverage offered through the noncustodial parent's health plan, and unrelated to the noncustodial parent's employer, including measures that establish a noncustodial parent's responsibility to share the cost of premiums, co-payments, deductibles, or payments for services not covered under a child's existing health coverage; (5) recommendations on whether reasonable cost should remain a consideration under section 452(f) of the Social Security Act; and (6) appropriate measures for eliminating any other impediments to the effective enforcement of medical support orders that the MCSWG deems necessary.

The membership of the MCSWG was jointly appointed by the Secretaries of DOL and DHHS, and includes representatives of: (1) DOL; (2) DHHS; (3) State Child Support Enforcement Directors; (4) State Medicaid Directors; (5) employers, including owners of small businesses and their trade and industry representatives and certified human resource and payroll professionals; (6) plan administrators and plan sponsors of group health plans (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1167(1))); (7) children potentially eligible for medical support, such as child advocacy organizations; (8) State medical child support organizations; and (9) organizations representing State child support programs.

#### Agenda

The agenda for this meeting includes review and approval of the MCSWG's report to the Secretaries containing recommendations for appropriate measures to address the impediments to the effective enforcement of medical child support as listed above. At the May, 1999, meeting the MCSWG formed four (4) subcommittees to discuss barriers, issues, options, and recommendations in the interim between full MCSWG meetings. At the next three meetings (August, 1999, October, 1999, and November, 1999), the subcommittees presented their draft

recommendations to the full MCSWG for further discussion and consideration. At the January, 2000, meeting the MCSWG discussed the recommendations to be contained in the report to the Secretaries. At this meeting, the MCSWG will review and approve the actual report.

#### Public Participation

Members of the public wishing to present oral statements to the MCSWG should forward their requests to Samara Weinstein, MCSWG Executive Director, as soon as possible and at least four days before the meeting. Such request should be made by telephone, fax machine, or mail, as shown above. Time permitting, the Chairs of the MCSWG will attempt to accommodate all such requests by reserving time for presentations. The order of persons making such presentations will be assigned in the order in which the requests are received. Members of the public are encouraged to limit oral statements to five minutes, but extended written statements may be submitted for the record. Members of the public also may submit written statements for distribution to the MCSWG membership and inclusion in the public record without presenting oral statements. Such written statements should be sent to the MCSWG Executive Director, as shown above, by mail or fax at least five business days before the meeting.

Minutes of all public meetings and other documents made available to the MCSWG will be available for public inspection and copying at both the DOL and DHHS. At DOL, these documents will be available at the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5638, 200 Constitution Avenue, NW, Washington, DC from 8:30 a.m. to 5:30 p.m. Questions regarding the availability of documents from DOL should be directed to Ms. Ellen Goodwin, Plan Benefits Security Division, Office of the Solicitor, Department of Labor (telephone (202) 219-4600, ext. 119). This is not a toll-free number. Any written comments on the minutes should be directed to Ms. Samara Weinstein, Executive Director of the Working Group, as shown above.

Signed at Washington, DC, this 9th day of March, 2000.

#### Leslie Kramerich,

*Acting Assistant Secretary for Pension and Welfare Benefits.*

[FR Doc. 00-6255 Filed 3-13-00; 8:45 am]

**BILLING CODE 4510-29-P**

#### NATIONAL CREDIT UNION ADMINISTRATION

##### Sunshine Act Meetings; Notice of Meetings

**TIME AND DATE:** 10 a.m., Thursday, March 16, 2000.

**PLACE:** Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314-3428.

**STATUS:** Open.

##### MATTERS TO BE CONSIDERED:

1. Request from a Corporate Federal Credit Union for a Regional Field of Membership Amendment.
2. Advance Notice of Proposed Rulemaking: Part 742, NCUA's Rules and Regulations, Regulatory Flexibility and Exemption Program.
3. Final Rule: Amendment to Part 701, NCUA's Rules and Regulations, Share Overdraft Accounts.
4. NCUA's "Results Act" 2000 Annual Performance Plan.

**RECESS:** 11:15 a.m.

**TIME AND DATE:** 11:30 a.m., Thursday, March 16, 2000.

**PLACE:** Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314-3428.

**STATUS:** Closed.

##### MATTERS TO BE CONSIDERED:

1. Administrative Action under Section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii) and (9)(B).
2. Three (3) Personnel Actions. Closed pursuant to exemptions (2), (5), (6), (7) and (9)(B).

**FOR FURTHER INFORMATION CONTACT:** Becky Baker, Secretary of the Board, Telephone (703) 518-6304.

#### Becky Baker,

*Secretary of the Board.*

[FR Doc. 00-6321 Filed 3-10-00; 11:26 am]

**BILLING CODE 7535-01-M**

#### NORTHEAST DAIRY COMPACT COMMISSION

##### Notice of Meeting

**AGENCY:** Northeast Dairy Compact Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** The Compact Commission will hold its monthly meeting to consider matters relating to administration and enforcement of the price regulation, including the reports and recommendations of the Commission's standing Committees.

**DATES:** The meeting will commence at 10:30 a.m. on Wednesday, April 5, 2000.

**ADDRESSES:** The meeting will be held at the Wayfarer Inn, 121 S. River Road, U.S. Route 3, Bedford, New Hampshire.

**FOR FURTHER INFORMATION CONTACT:** Kenneth M. Becker, Executive Director, Northeast Dairy Compact Commission, 34 Barre Street, Suite 2, Montpelier, VT 05602. Telephone (802) 229-1941.

**Authority:** 7 U.S.C. 7256.

Dated: March 8, 2000.

**Kenneth M. Becker,**

*Executive Director.*

[FR Doc. 00-6155 Filed 3-13-00; 8:45 am]

**BILLING CODE 1650-01-U**

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## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-338 and 50-339]

### Virginia Electric and Power Co.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Virginia Electric and Power Company (the licensee) to withdraw its May 3, 1999, application for proposed amendments to Facility Operating License Nos. NPF-4 and NPF-7 for the North Anna Power Station, Unit Nos. 1 and 2, located in Louisa County, Virginia.

The proposed changes would have deleted and/or relocated the additional primary-to-secondary leak rate limits and enhanced leakage monitoring requirements imposed following the 1987 steam generator tube rupture event.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on June 2, 1999 (64 FR 29716). However, by letter dated February 23, 2000, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated May 3, 1999, and the licensee's letter dated February 23, 2000, which withdrew the application for license amendment. The above documents are 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 March 2000.

For the Nuclear Regulatory Commission.

**Gordon E. Edison,**

*Senior Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00-6196 Filed 3-13-00; 8:45 am]

**BILLING CODE 7590-01-P**

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## NUCLEAR REGULATORY COMMISSION

### Notice of Intent To Prepare a Draft Supplement to the Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities and To Hold Public Meetings for the Purpose of Scoping and To Solicit Public Input Into the Process

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC, the Commission) intends to prepare a draft supplement to the Final Generic Environmental Impact Statement (GEIS) on Decommissioning of Nuclear Facilities (NUREG-0586, August 1988) and to hold public scoping meetings for the purpose of soliciting comments. Although NUREG-0586 covered all NRC-licensed facilities, this supplement will address only the decommissioning of nuclear power reactors.

The NRC plans to hold public scoping meetings in four regions of the U.S. on the following days to present an overview of the proposed supplement to the GEIS and to accept public comment on its proposal: Midwest (Chicago, Illinois, area) April 27, 2000, Northeast (Boston, Massachusetts, area) May 17, 2000, Southeast (Atlanta, Georgia, area) June 13, 2000, and West (San Francisco, California, area) June 21, 2000. The public scoping meetings will begin at 7:00 p.m. and continue to 10:00 p.m. The locations of these meetings and any changes to the dates, which are not expected to be more than one day different from the dates set forth in this notice, will be announced in the **Federal Register** and in local media nearer the actual dates of the meetings.

All meetings will be transcribed and will include (1) a presentation by the NRC staff on the reasons for preparing a supplement to the GEIS and the environmental issues related to power reactor decommissioning to be addressed in the GEIS, and (2) the opportunity for interested government agencies, private organizations, and individuals to provide comments. Anyone wishing to attend or present oral comments at the meetings may pre-register by contacting Mr. Dino C. Scaletti by telephone at 1-800-368-5642, extension 1104, or by Internet to

the NRC at [DGEIS@nrc.gov](mailto:DGEIS@nrc.gov), 1 week prior to a specific meeting. Members of the public may also register to provide oral comments up to 15 minutes prior to the start of each meeting. Individual oral comments may be limited by the time available, depending on the number of persons who register. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Mr. Scaletti's attention no later than 1 week prior to a specific meeting, so that the NRC staff can determine whether the request can be accommodated.

Any interested party may submit comments related to the NRC's intent to supplement the GEIS for consideration by the NRC staff. To be certain of consideration, comments on the intent to prepare the supplement must be received by July 15, 2000. Comments received after the due date will be considered if it is practical to do so. At this time, comments are being sought only on the intent to prepare the supplement. The NRC staff currently projects issuance of the draft supplement for comment in early 2001. Comments on the draft supplement will be solicited at that time. Written comments should be sent to

Chief, Rules and Directives Branch, Division of Administrative Services, Mail Stop T-6 D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Submittal of electronic comments may be sent by the Internet to the NRC at [DGEIS@nrc.gov](mailto:DGEIS@nrc.gov). All comments received by the Commission, including those made by Federal, State, and local agencies, Indian tribes, or other interested persons, will be made available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, in Washington, DC. Also, publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, <http://www.nrc.gov> (the Public Electronic Reading Room).

**FOR FURTHER INFORMATION CONTACT:** Mr. Dino C. Scaletti, Decommissioning Section, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Mr. Scaletti can be contacted at the aforementioned telephone number.

Dated at Rockville, Maryland, this 8th day of March, 2000.

For the Nuclear Regulatory Commission.

**Dino C. Scaletti,**

*Senior Project Manager, Decommissioning Section, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00-6198 Filed 3-13-00; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

### Experts' Meeting on High-Burnup Fuel Behavior Under Postulated Accident Conditions

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** The Nuclear Regulatory Commission will hold a meeting to further develop a Phenomena Identification and Ranking Table (PIRT) for a BWR accident. PIRTs have been used at NRC since 1988, and they provide a structured way to obtain a technical understanding that is needed to address certain issues. About twenty of the world's best technical experts are participating in this activity, and the experts represent a balance between industry, universities, foreign researchers, and regulatory organizations. The current PIRT activity is addressing a postulated BWR accident wherein power oscillations occur, the reactor fails to scram, and the oscillations then reach sufficient magnitude that fuel failure may occur before the emergency operating procedures are able to terminate the oscillations and shut the reactor down.

**DATES:** April 4-7, 2000, 8:30 am-5:30 pm.

**ADDRESSES:** Room T10A1 (TWFN) of the Nuclear Regulatory Commission, 11545 Rockville Pike, Rockville, MD.

**FOR FURTHER INFORMATION CONTACT:** Dr. Ralph Meyer, SMSAB, Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Regulatory Research, Washington, DC 20555-0001, telephone (301) 415-6789.

**SUPPLEMENTARY INFORMATION:** The meeting agenda will be posted on the NRC Web site at [www.nrc.gov/RES/meetings.html](http://www.nrc.gov/RES/meetings.html) by March 20, 2000. The meeting is open to the public. Attendees will need to obtain a visitor badge at the TWFN building lobby.

Dated at Rockville, Maryland, this 8th day of March 2000.

For the Nuclear Regulatory Commission.

**Charles E. Rossi,**

*Director, Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Regulatory Research.*

[FR Doc. 00-6197 Filed 3-13-00; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

(NUREG-1555 and NUREG-1555, Supplement 1)

### Updated Environmental Standard Review Plan: Availability

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability.

**SUMMARY:** The Nuclear Regulatory Commission has prepared an update to the Environmental Standard Review Plan for the review of environmental reports for nuclear power plants (ESRP). The draft version of this update of the ESRP was published in 1997. The updated ESRP is contained in two documents, NUREG-1555, "Environmental Standard Review Plan—Standard Review Plans for Environmental Reviews for Nuclear Power Plants" and its companion document for operating license renewal environmental reviews, NUREG-1555, Supplement 1, "Standard Review Plans for Environmental Reviews for Nuclear Power Plants—Supplement 1: Operating License Renewal." These documents replace the ESRP (NUREG-0555) originally issued in 1978.

**ADDRESSES:** The updated ESRP in printed paper, 3.5-inch disks and compact disks (CD) versions are available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC 20555-0001, and can be found electronically at <http://www.nrc.gov/NRC/NUREGS/indexnum.html> on the NRC Web site. Additionally, publically available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, <http://www.nrc.gov> (the Electronic Reading Room).

**FOR FURTHER INFORMATION CONTACT:** James Luehman, Office of Nuclear Reactor Regulation, Mail Stop O-11F1, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-3150, or email [JGL@nrc.gov](mailto:JGL@nrc.gov).

**SUPPLEMENTARY INFORMATION:** In a Notice of Availability published in the **Federal Register** on October 3, 1997 (62 FR 51915), the NRC made available

NUREG-1555, "Environmental Standard Review Plan—Standard Review Plan for Environmental Reviews for Nuclear Power Plants (Draft Report for Comment)." As stated in that Notice of Availability, the comment period for the draft report expired January 30, 1998. The NRC received seven letters providing comments on the draft report. Three letters were received from nuclear industry groups, two letters were received from nuclear power reactor licensees, one letter was submitted by a law firm, another by a federal agency, and one by an individual. All of the comments received were considered and dispositioned. One comment received concluded that the requirements for operating license renewal review requirements were difficult to extract from the draft document which contained review requirements for new applications as well as review requirements for operating license renewals. In response to that comment, the final ESRP was divided and now consists of NUREG-1555 and NUREG-1555, Supplement 1, which is specifically devoted to operating license renewal issues.

In addition to updating the draft ESRP to reflect the comments received, the NRC has done some additional updating to reflect recent rulemaking affecting the environmental reviews required for operating license renewal. On September 3, 1999 (64 FR 48495), the NRC published a final rule expanding the generic findings about the environmental impacts due to transportation of spent fuel and nuclear waste to and from a single nuclear power plant. That amendment to Part 51 changed the transportation of spent fuel and nuclear waste from a Category 2 issue (an issue for which the licensee would have to perform a plant-specific analysis of the impacts) to a Category 1 issue (an issue for which the licensee could adopt a generic analysis performed by the NRC staff). The appropriate ESRP sections have been changed to reflect the rule change.

The updated ESRP is not a generic communication that proposes new NRC staff positions or seeks additional licensee commitments. It does not impose new or revised requirements but simply compiles and documents NRC and other Federal requirements, and NRC staff positions. The ESRP does not explicitly incorporate State, regional or Native American tribal agency requirements that may also need to be addressed by applicants or licensees.

Work activities related to updating the ESRP were performed substantially in conformance with the guidance in NUREG-1447, "Standard Review Plan

Update and Development Program—Implementing Procedures Document,” dated May 1992. NUREG-1447 documents the results of developing the major work assumptions and work processes for completing the standard review plan revision process. Information protocols and process modifications were made to account for changes that resulted requirements outside the Atomic Energy Act and NRC regulations including, but not limited to, the National Environmental Policy Act, the Endangered Species Act, the Presidential executive order on environmental justice, guidance from the Council on Environmental Quality, and regulations of the Environmental Protection Agency on non-radiological issues. The entire work effort and responsibility for updating the ESRP resides in the NRC Generic Issues, Environmental, Financial, and Rulemaking Branch, which coordinates with the appropriate technical review branches and essential technical specialists on particular issues.

Dated at Rockville, Maryland, this 8th day of March, 2000.

For the Nuclear Regulatory Commission.

**David B. Matthews,**

*Director, Division of Regulatory Improvement Programs.*

[FR Doc. 00-6195 Filed 3-13-00; 8:45 am]

BILLING CODE 7590-01-P

## SECURITY AND EXCHANGE COMMISSION

[Extension: Rule 17a-6; SEC File No. 270-433; OMB Control No. 3235-0489]

### Request Under Review by Office of Management and Budget

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, D.C. 20549.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (“Commission”) has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 17a-6 (17 CFR 240.17a-6) permits national securities exchanges, national securities associations, registered clearing agencies, and the Municipal Securities Rulemaking Board (collectively, “SROs”) to destroy or convert to microfilm or other recording media records maintained under Rule 17a-1 (17 CFR 240.17a-1), if they have

filed with the Commission a plan to destroy or dispose of records and the Commission has declared such plan effective.

There are currently 23 SROs required under Rule 17a-1 to maintain certain records and that could receive relief under Rule 17a-6: 8 national securities exchanges, 1 national securities association, 13 registered clearing agencies, and the Municipal Securities Rulemaking Board. Assuming that one of these respondents might file a plan to destroy or dispose of records, or an amendment thereto, in a given year, such filing would require approximately 40 hours per respondent to complete. Thus, the total compliance burden is 40 hours. At an approximate cost per hour of \$100, the resulting total related cost of compliance for these respondents is \$4,000 per year (40 hours x \$100/hour=\$4,000).

Compliance with Rule 17a-6 is required only in order to obtain the relief it offers from records retention requirements. If an eligible SRO plan to destroy or dispose of records will employ conversion onto microfilm or other recording medium, the SRO shall (1) be ready at all times to provide, and immediately provide, easily readable projection of the microfilm or other recording medium and easily readable hardcopy thereof, (2) provide indexes permitting the immediate location of and such document on the microfilm or other recording medium, and (3) in the case of microfilm, store a duplicate copy of the microfilm separately from the original microfilm for the time required (17 CFR 240.17a-6(b)). Information collected under Rule 17a-6 shall 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.

Written comments regarding the above information should be directed to the following persons: (a) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (b) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to the Office of Management and Budget within 30 days of this notice.

Dated: March 7, 2000.

**Jonathan G. Katz,**  
*Secretary.*

[FR Doc. 00-6202 Filed 3-13-00; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42500; File No. SR-CBOE-99-44]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. To Revised the Limits on New Series of Index Options

March 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 August 18, 1999, the Chicago Board Options Exchange, Inc. (“CBOE” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On November 22, 1999, the CBOE submitted to the Commission amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The CBOE seeks to revise Interpretations .01 and .05 of Exchange Rule 24.9, “Terms of Index Option Contracts” to revise the limits on new series of index options. Under the proposal, the requirement that new series of index options must be “reasonably related to the current index value of the underlying index” would be interpreted to permit the Exchange to introduce new series of index options if their strike prices are within 30% of the current index value. In addition, the proposal would permit the CBOE to introduce new series of index options

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 1 revised the proposal to include OEX index options as well as non-OEX index options. Amendment No. 1 also proposes to permit the Exchange to introduce new series of index options whose strike prices are more than 30% away from the current index value, provided that demonstrated customer interest exists. See Letter from Christopher R. Hill, attorney, CBOE, to Nancy Sanow, Senior Special Counsel, Division of Market Regulation (“Division”), Commission, dated November 16, 1999 (“Amendment No. 1”).

whose strike prices are more than 30% away from the current index value, so long as demonstrated customer interest existed for those new series. The text of the proposed rule change is available at the Office of the Secretary, the CBOE, and at the Commission.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

Interpretation .05 of CBOE Rule 24.9 currently allows the Exchange to open for trading additional series of the same class of index options, other than options based on the S&P 100 Index ("OEX"), when the current index value of the underlying index moves substantially from the exercise price of those index options previously opened for trading on the Exchange. Under the Exchange's rules, the exercise price of each new series of index of index options must be "reasonably related to the current index value of the underlying index to which the options relate at or about the time the series of options is first opened for trading on the Exchange."

For all index options, except for long term index options ("LEAPS") and OEX index options, Interpretation .05 presently defines "reasonably related" to be " (a) The lesser of 50 points of the current index value or 15% of the current index value; and (b) where demonstrated customer interest exists, the lesser of 100 points of the current index value or 30% of the current index value. For LEAPS, "reasonably related" is defined to be 25% of the current index value. For OEX options, which are governed by Interpretation.01 of Rule 24.9, "reasonably related" is defined to be 8% of the current index value, or 20% if unusual market conditions exist.

When the current limits on new series of index options were approved by the Commission, 100 index points generally

represented about 30% of the index value for most indexes underlying Exchange-traded options. The exchange has represented that 100 index points currently represents about 7-8% of the current index value for many indexes underlying Exchange-traded options, and only about 4% for the NASDAQ 100 index.

In the order that first approved Interpretation .05 of CBOE Rule 24.9,<sup>4</sup> the Commission noted that the provision would:

[E]nable the CBOE to respond to changing market conditions and list index options series that provide market participants with an effective means to transfer risk and implement their trading strategies. The Commission believes that the discretion to list additional series index options will help to ensure the consistent availability of index options series tailored to meet the needs of investors during periods of market volatility.

The CBOE believes that the current form of Exchange Rule 24.9 does not allow it to respond to changed market conditions or provide market participants with effective risk management strategies in rapidly rising markets. Moreover, the Exchange believes that CBOE Rule 24.9 limits the Exchange's ability to list strike prices that are reasonable and realistic in light of today's market values, and that it further prevents the Exchange from listing strike prices that would be attractive to customers.

To address these limitations, the Exchange proposes to amend Interpretations .01 and .05 of CBOE Rule 24.9 to define "reasonably related" to mean 30% of the current index value for all index options.<sup>5</sup> In addition, the proposal would permit the CBOE to introduce new series of index options whose strike prices are more than 30% away from the current index value, as long as demonstrated customer interest existed for those new series.

The CBOE believes that the proposal will benefit CBOE members and their customers. Specifically, the CBOE believes that the proposal will enhance the Exchange's flexibility by permitting the Exchange to introduce new series of index options as warranted by market conditions, and by eliminating an outdated formula that is tied to a fixed

<sup>4</sup> See Securities Exchange Act Release No. 31683 (Dec. 31, 1992), 58 FR 3307 (Jan. 8, 1993).

<sup>5</sup> The Exchange's proposal would therefore eliminate the distinction between OEX index options, LEAPs, and non-OEX index options for purposes CBOE Rule 24.9 and limits on new series. The Exchange believes that the distinction between these types of index options does not serve any regulatory purpose because all new series of index options have the same capacity implications irrespective of their underlying index. See Amendment No. 1, *supra* note 3.

number of index points. In addition, changing the limits from a fixed number of index points to a percentage of the current index value will help to ensure that future market levels do not impede the Exchange from listing new strike prices that are in demand because of price changes. The CBOE believes that the revised limits will enable the Exchange to better respond to the trading needs of its members and their customers.

Additionally, in 1996, the Commission approved changes to Interpretation .01 of CBOE Rule 24.9 to revise the limits on new series of OEX index options. The revision changed the limits from flat numbers (in that case, the number of strike prices) to percentages of the current index value.<sup>6</sup> At that time, the Commission determined that the increased level of the OEX index made it appropriate to transition from flat numbers to percentage parameters.

The Exchange represents that the new series of index options that will result from this proposed rule change are within the Exchange's and OPRA's capacity.<sup>7</sup> The Exchange has indicated that it routinely monitors inactive option contracts and removes from listing those index option series that do not have open interest and have little chance of trading.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the act,<sup>8</sup> in general, and with Section 6(b)(5) of the Act, in particular,<sup>9</sup> in that it will promote just and equitable principles of trade, protect investors and the public interest, and remove impediments to and perfect the mechanisms of a free and open market. The Exchange further believes that the proposal will allow the Exchange to list strike prices in response to the historically high market prices in a manner that addresses the needs of its valued customers.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

<sup>6</sup> See Securities Exchange Act Release No. 37815 (Oct. 11, 1996), 61 FR 54693 (Oct. 21, 1996).

<sup>7</sup> The Exchange has represented that it will obtain and submit a letter from the Options Price Reporting Authority ("OPRA") confirming that the new strike prices expected to be generated by the proposal are within the capacity of OPRA. See Amendment No. 1 *supra* note 3.

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(5).

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received 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 the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interests persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CBOE-99-44 and should be submitted by April 4, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 00-6204 Filed 3-13-00; 8:45 am]

**BILLING CODE 8010-01-M**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-42501; File No. SR-NYSE-99-44]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Rule 103A**

March 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 November 3, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. 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 proposed rule change consists of amendments to Exchange Rule 103A (Specialist Stock Reallocation). The text of the proposed rule change is available at the Exchange and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange 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 Section A, B, and C below of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

**1. Purpose**

The Exchange proposes to amend Rule 103A (Specialist Stock Reallocation) to codify the Market Performance Committee's ("MPC") authority with respect to allocation freezes, stock assignments and reassignments, specialist unit organizational changes and Floor

member qualification and continuing education requirements.

a. *Allocation Freezes.* Currently, Rule 103A provides the MPC the authority to establish and administer measures of specialist performance, conduct performance improvement actions when a specialist unit does not meet the performance standards in Rule 103A, and reallocate stocks if a unit does not achieve its specified goals when subject to a performance improvement action. These standards help to establish and maintain acceptable levels of specialist performance, thereby enhancing the competitiveness of the Exchange's specialist performance, thereby enhancing the competitiveness of the Exchange's specialist system. The purpose of a performance improvement action is to provide assistance and guidance to specialist units to enable them to enhance their performance. When a performance improvement action is initiated, a specialist unit is required to submit a performance improvement plan addressing how it intends to improve performance to the MPC. Based on the MPC's review of the performance improvement plan, the MPC has the authority to preclude a specialist unit subject to a performance improvement action, from applying to be allocated any newly-listing company (an "allocation freeze") if the MPC believes such action is appropriate.

The Exchange proposes to amend Rule 103 to allow the MPC to exercise its discretion in imposing allocation freezes. In certain instances, the Committee will determine that a unit's performance is not as strong as other units' performance, although the unit's performance fully meets the Rule 103A performance standards. For example, this may occur when a specialist unit's scores on the quarterly Specialist Performance Evaluation Questionnaire are above Rule 103A performance standards; however, the unit may have lower scores than other units over a period of several quarters, resulting in persistent lower rankings in the bottom quartile. In these instances, the Exchange believes the MPC should have the ability to provide an incentive to the specialist unit to ensure performance by using its professional judgment. Therefore, the Exchange proposes to add to Rule 103A authority for the Committee to initiate an allocation freeze for a unit, without initiating a formal performance improvement action.

b. *Receipt of New Listings During an Allocation Freeze.* Under the Exchange's Allocation Policy and Procedures (the "Allocation Policy") there are circumstances when a newly-listing

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>10</sup> 17 CFR 200.30-3(a)(12).

company may choose its specialist unit. For example, a newly-listing company that is related to an already listed company may choose to stay with the current specialist for the listed company or choose to go through the Allocation Committee.<sup>3</sup> The newly-listing company may choose to stay with the current specialist for the related listed company even if such unit is under an allocation freeze imposed by the MPC as long as the unit is not subject to a performance improvement action.

Similarly, under the Allocation Policy, the newly-listing company may choose its specialist from among a group of specialist units chosen by the Allocation Committee. The Allocation Committee has the ability to exclude or include the current specialist for the related company in such a group. If the specialist unit was under an allocation freeze imposed by the MPC, it would not be precluded from being placed in the group or chosen by the newly-listing company as long as the allocation freeze was not the result of a performance improvement action.

*c. Floor Member Qualifications and Continuing Education.* The Exchange also proposes to amend Rule 103A to make mandatory: (i) Participation by proposed Floor members in an Exchange-sponsored educational program before such individuals would be permitted to act as members on the Floor; and (ii) participation by all Floor members in an Exchange-sponsored educational program, conducted semi-annually, and at such other times as may be appropriate in connection with any particular matter or matters. Rule 103A would also make it mandatory for Floor members to participate in any testing programs the Exchange may introduce from time to time in connection with the mandatory education program.

*d. Stock Assignments and Reassignments and Organizational Changes of Specialist Units.* The Exchange proposes to amend Rule 103A to codify the Committee's authority with respect to approving stock assignments and reassignments, assignments in special stock situations, and organizational changes to specialist units. Such situations typically involve: (i) Changes in a specialist unit's organizational structure effecting control of the specialist unit, such as split-ups and mergers; (ii) withdrawal of individual specialists from one specialist unit, where the specialists propose to register with another unit and transfer certain securities to such

other unit; and (iii) assignments of newly-listed securities to a specialist unit already registered in a security with a trading relationship to the newly-listed securities (e.g., a corporate restructuring of a listed company; stocks involved in mergers of listed companies; and immediate relisting of a listed company that delisted for technical reasons). In all of these situations, the MPC will review the proposal, and approve the matter if the Committee believes that market quality in the securities subject to the proposal will not be eroded.

## 2. Statutory Basis

The Exchange believes that 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, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. The amendments to Rule 103A are consistent with these objectives in that they facilitate high quality member performance through the reallocation of stocks by the MPC and the Floor member qualification and mandatory education program.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposed rule change will not impose any burden on competition that is not 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 has neither solicited nor received 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 self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-99-44 and should be submitted by April 4, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Jonathan G. Katz,**  
*Secretary.*

[FR Doc. 00-6203 Filed 3-13-00; 8:45 am]

**BILLING CODE 8010-01-M**

## SELECTIVE SERVICE SYSTEM

### Inquiries Regarding Security Classification Program

**AGENCY:** Selective Service System.

**ACTION:** Notice.

Pursuant to Executive Order 12958, Sec. 5.6(c)(2), notice is hereby given that any queries regarding Selective Service System (SSS) Security Information should be directed to the Readiness Division, Operations Directorate, Selective Service System.

Address for receipt of public comments or inquires regarding this notice: Justo Gonzalez, Jr., COL EN, Director of Operations, 1515 Wilson Boulevard, Arlington, VA 22209-2425.

<sup>3</sup> See Securities Exchange Act Release No. 42487 (March 2, 2000).

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(5).

<sup>6</sup> 17 CFR 200.3-3(a)(12).

Dated: March 8, 2000.

**Gil Coronado,**

*Director.*

[FR Doc. 00-6122 Filed 3-13-00; 8:45 am]

BILLING CODE 8015-01-M

## SMALL BUSINESS ADMINISTRATION

### Data Collection Available for Public Comments and Recommendations

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

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, these notices announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

**DATES:** Submit comments on or before May 15, 2000.

**ADDRESSES:** Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Terri A. Dickerson, Associate Administrator, Office of Small Disadvantaged Business Certification & Eligibility, Small Business Administration, 409 3rd Street, SW, Suite 8000A.

**FOR FURTHER INFORMATION CONTACT:** Terri A. Dickerson, Associate Administrator, 202-619-1727 or Curtis B. Rich, Management Analyst, 202-205-7030.

**SUPPLEMENTARY INFORMATION:** *Title:* "8(a) Business Development and Small Disadvantaged Business Programs Application".

*Form No:* 1010.

*Description of Respondents:* Small Disadvantaged Businesses and 8(a) eligible Companies.

*Annual Responses:* 10,000.

*Annual Burden:* 30,000.

**Jacqueline White,**

*Chief, Administrative Information Branch.*

[FR Doc. 00-6250 Filed 3-13-00; 8:45 am]

BILLING CODE 8025-01-P

## SOCIAL SECURITY ADMINISTRATION

### Privacy Act of 1974, as Amended; New System of Records; New Routine Use Disclosures; and Alterations to Existing Systems of Records

**AGENCY:** Social Security Administration (SSA).

**ACTION:** New System of Records, Proposed Routine Uses and Alterations to Existing Systems of Records.

**SUMMARY:** In accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (e)(11)), we are issuing public notice of our intent to:

(1) Establish a new system of records, the Social Security Title VIII Special Veterans Benefits Claims Development and Management Information System, and routine uses applicable to this system, and

(2) Alter two existing systems of records entitled the Claims Folders System and the Supplemental Security Income Record.

The proposed new system of records and the two altered systems of records will maintain information collected for use in connection with SSA's implementation of title VIII of the Social Security Act (the Act), Special Veterans Benefits (SVB). We invite public comment on these proposals.

**DATES:** We filed a report of the proposed new system of records and proposed altered systems of records with the President of the Senate, the Speaker of the House of Representatives, and the Director, Office of Information and Regulatory Affairs, Office of Management and Budget on February 18, 2000. We also requested a waiver of the OMB 40-day advance notice requirements. If OMB does not grant the waiver we will not implement the proposal before March 29, 2000.

**ADDRESSES:** Interested individuals may comment on this publication by writing to the SSA Privacy Officer, Social Security Administration, 3-F-1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at the above address.

**FOR FURTHER INFORMATION CONTACT:** Ms. Joan Peddicord (new system of records) or Ms. Hazel Brodie (alterations to the existing systems), Social Insurance Policy Specialists, Social Security Administration, Room 3-C-3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (410) 966-6491 or (410) 965-1744, respectively.

**SUPPLEMENTARY INFORMATION:**

### I. Background and Purpose of the Proposed New System of Records, the Social Security Title VIII Special Veterans Benefits Claims Development and Management Information System and Proposed Alterations to Existing Systems of Records, the Claims Folders System and the Supplemental Security Income Record

#### A. General Background

On December 14, 1999, Public Law 106-169, the Foster Care Independence Act of 1999, was enacted into law. Section 251 of this law added title VIII to the Act, providing a new benefit program, Special Benefits for Certain World War II Veterans. Under this title, veterans of the U.S. military and the organized military forces of the Philippines (while in the service of the U.S. Armed Forces) during World War II, who are age 65 or older on or before December 14, 1999, and who are eligible for supplemental security income (SSI) benefits in both the month of enactment and the month of application for the special benefit, and whose total benefit income is less than the title VIII benefit amount are entitled to a title VIII benefit for each month the individual resides outside the United States.

SSA is responsible for the administration of the SVB to eligible veterans under title VIII of the Act. In order to administer this program SSA must collect and maintain personally identifiable information about applicants for title VIII SVB and be able to retrieve specific information about each applicant's claim. Thus, SSA's maintenance of this information requires it to modify existing systems of records and to create a new system of records under the Privacy Act. Information about the applicants for SVB will be maintained in a new system of records, the Social Security Title VIII Special Veterans Benefits Claims Development and Management Information System, and in two existing systems of records, the Claims Folders System and the Supplemental Security Income Record.

#### B. Proposed New System of Record, the Social Security Title VIII Special Veterans Benefits Claims Development and Management Information System

##### 1. Purpose

All information in this system of records will be maintained under the claimant/beneficiary's name and SSN. The system of records will be designed to permit electronic entry and retrieval of claims development and tracking and management information about title VIII SVB claims. This electronic record will

contain data applicable to the special veterans' eligibility to title VIII SVB and facilitate efforts to control and track this workload from the initial inquiry and application to further development. The system of records will also maintain information about the implementation of title VIII to permit allocation of resources, budget projection and workload management. The information contained in this system of records will be centralized on a website allowing access by the regional and field offices to nationally consolidated data.

### 2. Collection and Maintenance of Data for the Proposed New System of Records, the Social Security Title VIII Special Veterans Benefits Claims Development and Management Information System

The information maintained in this system of records will be collected from the applicants for title VIII SVB, and other systems of records maintained by SSA. The information maintained will include: Identifying information such as the applicant's name, Social Security number (SSN) and date of birth (DOB); telephone number (if any); foreign and domestic addresses; the applicant's sex; and other information provided by the applicant relative to his or her entitlement for SVB.

In cases where an applicant's claim for SVB is denied, this system of records will include the denial reason and date and information relative to the appellate process.

There will also be a number of data elements in the proposed system pertinent to the beneficiary's continued eligibility. These include payment, foreign residence information and other elements that will help regional and local offices maintain the tracking and management information required to administer the title VIII program efficiently.

If the beneficiary has a representative payee, this system of records will include data about the representative payee such as the payee's SSN; employer identification number, if applicable; mailing address/residence address; DOB; and place of birth.

### 3. Proposed Routine Use Disclosure of Data Maintained in the Proposed New System of Records, the Social Security Title VIII Special Veterans Benefits Claims Development and Management Information System

We are proposing to establish routine uses of information that will be maintained in the proposed system as discussed below.

1. To third party contacts in situations where the party to be contacted has, or

is expected to have, information relating to the individual's capability to manage his/her affairs or his/her eligibility for or entitlement to benefits under the Social Security program when:

(a) The individual is unable to provide information being sought. An individual is considered to be unable to provide certain types of information when:

- (i) He/she is incapable or of questionable mental capability;
- (ii) He/she cannot read or write;
- (iii) He/she cannot afford the cost of obtaining the information;
- (iv) He/she has a hearing impairment, and is contacting SSA by telephone through a telecommunications relay system operator;

(v) A language barrier exists; or  
(vi) The custodian of the information will not, as a matter of policy, provide it to the individual; or

(b) The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following:

- (i) His/her eligibility for benefits under the Social Security program;
- (ii) The amount of his/her benefit payment; or
- (iii) Any case in which the evidence is being reviewed as a result of suspected abuse or fraud, concern for program integrity, or for quality appraisal, or evaluation and measurement activities.

We will disclose information under this routine use only as necessary to enable SSA to obtain information that will assist in determining individuals' entitlement to title VIII SVB.

2. Disclosure to the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

We will disclose information under this routine use only in situations in which an individual may contact the Office of the President, seeking that office's assistance in an SSA matter on his or her behalf. Information would be disclosed when the Office of the President makes an inquiry and presents evidence that the office is acting on behalf of the individual whose record is requested.

3. Disclosure to a congressional office in response to an inquiry from that office made at the request of the subject of a record.

We will disclose information under this routine use only in situations in which an individual may ask his her congressional representative to intercede in an SSA matter on his or her behalf. Information would be disclosed

when the congressional representative makes an inquiry and presents evidence that he or she is acting on behalf of the individual whose record is requested.

4. To DOJ, a court, or other tribunal (either foreign or domestic), or another party before such tribunal when:

(a) SSA, or any component thereof; or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components, is a party to the litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, the court, or other tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

We will disclose information under this routine use only as necessary to enable DOJ, a court, or other tribunal, to effectively defend SSA, its components or employees in litigation involving the proposed system of records.

5. Information may be disclosed to student volunteers and other workers, who technically do not have the status of Federal employees, when they are performing work for SSA as authorized by law, and they need access to personally identifiable information in SSA records in order to perform their assigned Agency functions.

Under certain Federal statutes, SSA is authorized to use the services of volunteers and participants in certain educational, training, employment and community service programs. Examples of such statutes and programs are: 5 U.S.C. 3111 regarding student volunteers; and 42 U.S.C. 2753 regarding the College Work Study Program.

We contemplate disclosing information under this routine use only when SSA uses the services of these individuals and they need access to information in this system to perform their assigned duties.

6. Disclosure to Federal, State, local, or foreign agencies (or agents acting on their behalf) for administering Social Security affairs under the Act, including but not limited to the title VIII SVB.

We may disclose information under this routine use to Federal, State, local or foreign agencies where these agencies may provide assistance to SSA in the

administration of programs under the Social Security Act.

7. Disclosure to the Department of Veterans Affairs (DVA), Philippines Regional Office and its agents, for administering Social Security title VIII SVB for applicants residing in the Philippines.

The DVA, Philippines Regional Office, acts as SSA's agent in administering Social Security affairs on the Philippines. We contemplate disclosing to that agency as necessary to administer SVB benefits for individuals residing in the Philippines.

8. To the Department of State and its agents for administering the Act in foreign countries through services and facilities of that agency.

The Department of State acts as SSA's agent in administering Social Security affairs in foreign countries. We contemplate disclosing to the Department of State as necessary to administer SVB for individuals residing in foreign countries.

9. To the American Institute of Taiwan and its agents for administering the Act in Taiwan through services and facilities of that agency.

The American Institute of Taiwan acts as SSA's agent in administering Social Security affairs on Taiwan. We contemplate disclosing to the American Institute of Taiwan as necessary to administer SVB for individuals residing in Taiwan.

10. To the Department of Interior and its agents for administering the Act in the Northern Mariana Islands through services and facilities of that agency.

The Department of Interior acts as SSA's agent in administering Social Security affairs in the Northern Mariana Islands. We contemplate disclosing to the Department of Interior as necessary to administer SVB for individuals residing in the Northern Mariana Islands.

11. Disclosure to representative payees, when the information pertains to individuals for whom they serve as representative payees, for the purpose of assisting SSA in administering its representative payment responsibilities under title VIII and assisting the representative payees in performing their duties as payees, including receiving and accounting for benefits for individuals for whom they serve as payees.

Generally, a representative payee is appointed if SSA determines that the beneficiary is not able to manage or direct the management of benefit payments in his or her interest. We will disclose information from this system to representative payees appointed to title VIII beneficiaries only to the extent

necessary to administer the program and to assist the representative payee in performing their duties.

12. Disclosure to contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs.

We will disclose information under this routine use only in situations in which SSA may enter into a contractual agreement or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

13. Nontax return information which is not restricted from disclosure by federal law may be disclosed to the General Services Administration (GSA) and the National Archives and Records Administration (NARA) under 44 U.S.C. § 2904 and § 2906, as amended by NARA Act of 1984, for the use of those agencies in conducting records management studies.

The Administrator of GSA and the Archivist of NARA are charged by 44 U.S.C. § 2904 with promulgating standards, procedures and guidelines regarding records management and conducting records management studies. Section 2906 of that law, also amended by the NARA Act of 1984, provides that GSA and NARA are to have access to federal agencies' records and that agencies are to cooperate with GSA and NARA. In carrying out these responsibilities, it may be necessary for GSA and NARA to have access to this proposed system of records. In such instances, the routine use will facilitate disclosure.

14. To third party contacts (including private collection agencies under contract with SSA) for the purpose of their assisting SSA in recovering overpayments.

We will disclose information under this routine use only in situations in which SSA requires third party assistance to collect overpayments material to the title VII SVB program.

#### 4. Compatibility of Proposed Routine Uses

The Privacy Act (5 U.S.C. 552a(b)(3) and our disclosure regulations (20 CFR part 401) permit us to disclose information under a published routine use for a purpose which is compatible with the purpose for which we collected the information. Section 401.150(c) of the regulations permits us to disclose information under a routine use where necessary to assist in carrying out SSA programs. Section 401.120 of the regulations provides that we will disclose information when a law specifically requires the disclosure. The proposed routine uses numbered 1-14

above will ensure efficient administration of the title VIII program; the disclosures that would be made under routine use "13" are required by Federal law. Thus, all of the routine uses are appropriate and meet the relevant statutory and regulatory criteria.

#### C. Proposed Alterations to the Existing Systems of Records, the Claims Folders System and the Supplemental Security Income Record

##### 1. Purpose of Proposed Alterations

The Claims Folders System contains information that constitutes the basic record for payments and determinations made for title II Retirement, Survivors and Disability Insurance benefits and title XVI Supplemental Security Income (SSI) payments under the Social Security Act. Data from the Claims Folders System is used to produce and maintain various Social Security program benefit systems. The Supplemental Security Income Record is one of these specific systems and maintains data that are used internally to control and process SSI cases. Both systems of records also provide a historical record of information concerning the basis for payments and determinations as well as related activity on an individual's record. Since the title VIII provision is an additional entitlement that will be administered by SSA under its benefit programs and is directly related to the individual's SSI eligibility, we will maintain information about applicants for the title VIII SVB in both of these systems of records.

Specifically, we are altering the Claims Folders System and the Supplemental Security Income Record as follows:

- Expanding the categories of individuals covered by the systems of records to reflect that the systems cover applicants for Social Security title VIII SVB;
- Expanding the categories of records maintained in the systems of records to indicate that records about SVB payments are maintained in these systems;
- Expanding the "Purposes" of the systems of records to indicate that the data in the systems are used to process SVB claims; and \*
- Making other corresponding changes throughout the **Federal Register** notices of these systems of records relative to our implementation of title VIII of the Act.

2. Collection And Maintenance Of Title VIII Data In The Claims Folders System and the Supplemental Security Income Record Systems of Records

We will collect the additional information that will be maintained in these systems of records from applicants for the Social Security title VIII SVB and from other government agencies and third party sources that maintain information pertinent to the applicant's claim for SVB. The information will consist of entitlement and payment information.

3. Routine Use Disclosure of Title VIII Information from the Claims Folders System and Supplemental Security Income Record Systems of Records

As necessary we will disclose information to other government agencies and other third party sources in order to obtain information we need to determine eligibility and continuing eligibility for SVB. We will make the disclosures under the authority of existing routine uses applicable to the Supplemental Security Income Record.

**II. Records Storage Medium and Safeguards for the Proposed New System, the Social Security Title VIII Special Veterans Benefits Claims Development and Management Information System and Proposed Alterations to Existing Systems of Records, the Claims Folders System and the Supplemental Security Income Record**

We will maintain information about the title VIII SVB in the proposed new system of records and the altered systems of records in electronic form, computer data systems, and paper form. Only authorized SSA personnel who have a need for the information in the performance of their official duties will be permitted access to the information. Some authorized personnel in the VA Philippines Regional Office and foreign service posts will have limited access to the new system to assist SSA in administering the title VIII program. Access by authorized foreign site personnel will require strict adherence to systems security safeguards, access and use of the data and be monitored closely by the SSA systems support staff in the San Francisco regional office.

Security measures include the use of access codes to enter the computer systems that will maintain the data, and storage of the computerized records in secured areas that are accessible only to employees who require the information in performing their official duties. Any manually maintained records will be kept in locked cabinets or in otherwise

secure areas. Also, all entrances and exits to SSA buildings and related foreign facilities are patrolled by security guards. Contractor personnel having access to data in the proposed and altered systems of records will be required to adhere to SSA rules concerning safeguards, access and use of the data. SSA and foreign personnel having access to the data on these systems will be informed of the criminal penalties of the Privacy Act for unauthorized access to or disclosure of information maintained in these systems. See 5 U.S.C. A7 552a(i)(1).

**III. Effect of the Proposed New System of Records, the Social Security Title VIII Special Veterans Benefits Claims Development and Management Information System and Proposed Alterations to Existing Systems of Records, the Claims Folders System and the Supplemental Security Income Record**

The proposed new system and altered systems will maintain information to determine individuals' entitlement to SVB and their continued eligibility. The proposed new system will also maintain management information that will facilitate the efficient administration of the title VIII program. There are existing security standards that protect access to and disclosure of records in the existing systems as well as to the proposed new system. Thus, we do not anticipate that the proposed system of records and the alterations to the two existing systems will have any unwarranted adverse effect on individuals.

**IV. General Housekeeping Changes to the Federal Notices of the Claims Folders System and Supplemental Security Income Systems of Records**

We have made a number of editorial and general housekeeping changes throughout the notices of these two systems of records to make them accurate and up to date.

Dated: February 18, 2000.

**Kenneth S. Apfel,**  
*Commissioner of Social Security.*

**60-0273**

**SYSTEM NAME:**

Social Security Title VIII Special Veterans Benefits Claims Development and Management Information System, SSA/RO/San Francisco.

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

Social Security Administration, San Francisco Regional Office, Center for

Infrastructure, Systems Support Staff, Frank Hagel Federal Building, 1221 Nevin Ave., Richmond, California 94801.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All applicants and beneficiaries for SVB under title VIII of the Social Security Act (Act). Records also contain information on applicants whose claims have been denied.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The information maintained in this system of records is collected from the applicants for title VIII SVB and other systems of records maintained by SSA. The information maintained includes: identifying information such as the applicant's name, Social Security number (SSN) and date of birth (DOB); telephone number (if any); foreign and domestic addresses; the applicant's sex; and other information provided by the applicant relative to his or her entitlement for SVB.

In cases where an applicant's claim for SVB is denied, this system of records includes the denial reason and date and information relative to the appellate process.

There are also a number of data elements in the proposed system pertinent to the beneficiary's continued eligibility. These include payment, foreign residence information and other elements that help regional and local offices maintain the tracking and management information required to administer the title VIII program efficiently.

If the beneficiary has a representative payee, this system of records includes data about the representative payee such as the payee's SSN; employer identification number, if applicable; mailing address/residence address; DOB; and place of birth.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Title VIII of the Social Security Act, Special Benefits for Certain World War II Veterans.

**PURPOSE(S):**

All information in this system of records is maintained under the claimant/beneficiary's name and SSN. The system of records is designed to permit electronic entry and retrieval of claims development and tracking and management information about title VIII SVB claims. This electronic record contains data applicable to the special veterans' eligibility to title VIII SVB and facilitates efforts to control and track this workload from the initial inquiry and application to further development. The system of records also maintains

information about the implementation of title VIII to permit allocation of resources, budget projection and workload management. The information contained in this system of records will be centralized on a website allowing access by the regional and field offices to nationally consolidated data.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Disclosure may be made for routine uses as indicated below:

1. To third party contacts in situations where the party to be contacted has, or is expected to have, information relating to the individual's capability to manage his/her affairs or his/her eligibility for or entitlement to benefits under the Social Security program when:

(a) The individual is unable to provide information being sought. An individual is considered to be unable to provide certain types of information when:

(i) He/she is incapable or of questionable mental capability;

(ii) He/she cannot read or write;

(iii) He/she cannot afford the cost of obtaining the information;

(iv) He/she has a hearing impairment, and is contacting SSA by telephone through a telecommunications relay system operator;

(v) A language barrier exists; or

(vi) The custodian of the information will not, as a matter of policy, provide it to the individual; or

(b) The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following:

(i) His/her eligibility for benefits under the Social Security program;

(ii) the amount of his/her benefit payment; or

(iii) any case in which the evidence is being reviewed as a result of suspected abuse or fraud, concern for program integrity, or for quality appraisal, or evaluation and measurement activities.

2. To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

3. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

4. To DOJ, a court, or other tribunal (either foreign or domestic), or another party before such tribunal when,

(a) SSA, or any component thereof; or

(b) any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA

where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components, is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, the court, or other tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

5. To student volunteers and other workers, who technically do not have the status of Federal employees, when they are performing work for SSA as authorized by law, and they need access to personally identifiable information in SSA records in order to perform their assigned Agency functions.

6. Disclosure to Federal, State, local, or foreign agencies (or agents acting on their behalf) for administering Social Security affairs under the Act, including but not limited to the title VIII SVB.

7. Disclosure to the Department of Veterans Affairs (DVA), Philippines Regional Office and its agents, for administering Social Security title VIII SVB for applicants residing in the Philippines.

8. To the Department of State and its agents for administering the Act in foreign countries through services and facilities of that agency.

9. To the American Institute of Taiwan and its agents for administering the Act in Taiwan through services and facilities of that agency.

10. To the Department of Interior and its agents for administering the Act in the Northern Mariana Islands through services and facilities of that agency.

11. To representative payees, when the information pertains to individuals for whom they serve as representative payees, for the purpose of assisting SSA in administering its representative payment responsibilities under title VIII and assisting the representative payees in performing their duties as payees, including receiving and accounting for benefits for individuals for whom they serve as payees.

12. Disclosure to contractors, as necessary, for the purpose of assisting SSA in the efficient administration of its programs.

13. Nontax return information which is not restricted from disclosure by federal law may be disclosed to GSA and NARA for the purpose of conducting records management studies with respect to their duties and responsibilities under 44 U.S.C. 2904

and 2906, as amended by NARA Act of 1984.

14. To third party contacts (including private collection agencies under contract with SSA) for the purpose of their assisting SSA in recovering overpayments.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Data are stored in electronic and paper form.

**RETRIEVABILITY:**

Records in this system are indexed and retrieved both numerically by SSN and alphabetically by name.

**SAFEGUARDS:**

This system of records is a data base that is accessible via an SSA intranet website. Security measures include the use of access codes to enter the data base, and storage of the electronic records in secured areas which are accessible only to employees who require the information in performing their official duties. The paper records that result from the electronic site are kept in locked cabinets or in otherwise secure areas. SSA, foreign site and contractor personnel having access to data in the system of records are required to adhere to SSA rules concerning safeguards, access, and use of the data. They also are informed of the criminal penalties of the Privacy Act for unauthorized access to or disclosure of information maintained in this system of records.

**RETENTION AND DISPOSAL:**

Claims development and tracking and management information maintained in this system are retained indefinitely or when it is determined that they are no longer needed. Means of disposal is appropriate to storage medium (e.g., deletion of individual records from the electronic site when appropriate or shredding of paper records that are produced from the system).

**SYSTEM MANAGER(S) AND ADDRESSES:**

Social Security Administration, San Francisco Regional Office, Center for Infrastructure, Manager, Systems Support Staff, Frank Hagel Federal Building, 1221 Nevin Ave., Richmond, California 94801.

**NOTIFICATION PROCEDURE:**

An individual can determine if this system contains a record about him/her by writing to the system manager at the above address and providing his/her name, address and SSN. An individual requesting notification of records in

person need not provide any special documents of identity. Documents he/she would normally carry on his/her person would be sufficient (e.g., credit cards, drivers license, or voter registration card.) If an individual does not have identification papers sufficient to establish his/her identity, that individual must certify in writing that he/she is the person claimed to be and that he/she understands that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense.

If notification is requested by telephone, an individual must verify his/her identity by providing identifying information that parallels the record to which notification is being requested. If it is determined that the identifying information provided by telephone is insufficient, the individual will be required to submit a request in writing or in person.

If a request for notification is submitted by mail, an individual must include a notarized request to SSA to verify his/her identity or must certify in the request that he/she is the person claimed to be and that he/she understands that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense.

These procedures are in accordance with SSA Regulations 20 CFR 401.50.

**RECORD ACCESS PROCEDURES:**

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. These procedures are in accordance with SSA Regulations 20 CFR Section 401.50.

**CONTESTING RECORD PROCEDURES:**

Same as notification procedures. Requesters should also reasonably identify the record, specify the information they are contesting, and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is untimely, incomplete, inaccurate, or irrelevant. These procedures are in accordance with SSA Regulations 20 CFR 401.65.

**RECORD SOURCE CATEGORIES:**

Data for the system are obtained primarily from individual claimants/beneficiaries (or their representative payees if applicable) who claim benefits under title VIII. Records in this system may also be derived in part from other SSA systems of records (e.g., Claims Folders System, (09-60-0089) and the Supplemental Security Income Record, (09-60-0103)).

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

**60-0089**

**SYSTEM NAME:**

Claims Folders Systems, HHS/SSA/ODP.

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

The claims folders initially are established and maintained in Social Security field offices when claims for benefits are filed or a lead is expected to result in a claim. Telephone and address information for Social Security field offices may be found in local telephone directories under Social Security Administration (SSA). The claims folders are retained in field offices until all development has been completed, and then transferred to the appropriate processing center as set out below. In addition, the information provided by Social Security claimants on the application for benefits is maintained as a computerized record. The computerized records are maintained at the following address: Social Security Administration, Office of Systems Operations, 6401 Security Boulevard, Baltimore, MD 21235.

Supplemental Security Income (SSI) claims folders are held in Social Security field offices pending establishment of a payment record, or until the appeal period in a denied claim situation has expired. The folders are then transferred to a folder-staging facility (FSF) in Wilkes-Barre, Pennsylvania. The address is: Social Security Administration, SSI Folder Staging Operations, Wilkes-Barre Data Operations Center, P.O. Box 7000, Wilkes-Barre, PA 18703.

Retirement and Survivors Insurance (RSI) claims folders are maintained primarily in the SSA's PSCs (contact the system manager at the address below for PSC address information). If the individual to whom the claim pertains resides outside the United States or any of its possessions, the folder is maintained in the Office of Central Operations (OCO) Rolling Heights Building (Megasite). The address for the Megasite is: 2255 Rolling Road, Baltimore, MD 21244.

Disability Insurance (DI) claims folders for individuals under age 55 are maintained primarily in the OCO Megasite (see the address above).

DI claims folders for disabled individuals over age 54 are maintained in SSA's National Records Center (NRC). The address for the NRC is: 601

S. 291 Hwy., 6000 E. Geospace Dr., Independence, MO 64056.

If the individual resides outside the United States or any of its possessions, DI claims folders for individuals under age 55 are maintained in the OCO Megasite (see the address above).

Special Veterans Benefits (SVB) claims folders are held in Social Security field offices and the Veterans Affairs Regional Office (VARO), Philippines pending establishment of a payment record or until the appeal period in a denied claim situation has expired. Contact the system manager for address information for SVB claims folders maintained in the VARO, Philippines.

In addition, claims folders are transferred to the General Services Administration and on occasion may be temporarily transferred to other Federal agencies. The DI claims folders also are transferred to State agencies for disability and vocational rehabilitation determinations. Contact the system manager for address information.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Claimants, applicants, beneficiaries and potential claimants benefits and payments administered by the Social Security Administration (e.g., title II RSI and DI benefits; and title VIII SVB title XVI SSI payments). Folders also are maintained on claims that have been denied.

*Categories of records in the system:* The claim folder contains the name and Social Security number of the claimant or potential claimant; the application for benefits; earnings record information established and maintained by SSA; documents supporting findings of fact regarding factors of entitlement and continuing eligibility; payment documentation; correspondence to and from claimants and/or representatives; information about representative payees; and leads information from third parties such as social service agencies, IRS, VA and mental institutions.

The claim folder also may contain data collected as a result of inquiries or complaints, and evaluation and measurement studies of the effectiveness of claims policies. Separate files may be maintained of certain actions which are entered directly into the computer processes. These relate to reports of changes of address, work status, and other post-adjudicative reports. Separate files also temporarily may be maintained for the purpose of resolving problem cases. Separate abstracts also are maintained for statistical purposes (i.e.,

disallowances, technical denials, and demographic and statistical information relating to disability decisions).

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Sections 202–205, 223, 226, 228, 1611, 1631, 1818, 1836, and 1840 and title VIII of the Social Security Act.

**PURPOSE(S):**

Each claim constitutes a basic record for payments and determinations under the Social Security Act. The information in the claim folder is used to produce and maintain the Master Beneficiary Record (60–0090) which is the automated payment system for RSI and DI benefits; the Supplemental Security Income Record (09–60–0103) which is the automated payment system for SSI payments for the aged, blind, disabled and SVB payments under title VIII of the Act; the Black Lung Payment System (09–60–0045) which is the payment system for BL claims; and the Health Insurance Billing and Collection Master Record system (09–70–0522) which is the payment system for HI and Supplementary Medical Insurance (Medicare) benefits.

Claims folders information is used throughout SSA for purposes of pursuing claims; determining, organizing and maintaining documents for making determinations of eligibility for benefits, the amount of benefits, the appropriate payee for benefits; reviewing continuing eligibility; holding hearings or administrative review processes; ensuring that proper adjustments are made based on events affecting entitlement; and answering inquiries.

Claims folders may be referred to State disability determination services agencies or vocational rehabilitation agencies in disability cases. They may also be used for quality review, evaluation, and measurement studies, and other statistical and research purposes. Extracts may be maintained as interviewing tools, activity logs, records of claims clearance, and records of type or nature of actions taken.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Disclosure may be made for routine uses as indicated below:

1. To third party contacts in situations where the party to be contacted has, or is expected to have, information relating to the individual's capability to manage his/her affairs or his/her eligibility for or entitlement to benefits under the Social Security program when:

(a) The individual is unable to provide information being sought. An

individual is considered to be unable to provide certain types of information when:

(i) He/she is incapable or of questionable mental capability;

(ii) He/she cannot read or write;

(iii) He/she cannot afford the cost of obtaining the information;

(iv) He/she has a hearing impairment, and is contacting SSA by telephone through a telecommunications relay system operator;

(v) A language barrier exists; or

(vi) The custodian of the information will not, as a matter of policy, provide it to the individual; or

(b) The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following:

(i) His/her eligibility for benefits under the Social Security program;

(ii) The amount of his/her benefit payment; or

(iii) Any case in which the evidence is being reviewed as a result of suspected abuse or fraud, concern for program integrity, or for quality appraisal, or evaluation and measurement activities.

2. To third party contacts where necessary to establish or verify information provided by representative payees or payee applicants.

3. To a person (or persons) on the rolls when a claim is filed by an individual which is adverse to the person on the rolls; *i.e.*:

(a) An award of benefits to a new claimant precludes an award to a prior claimant; or

(b) An award of benefits to a new claimant will reduce the benefit payments to the individual(s) on the rolls; but only for information concerning the facts relevant to the interests of each party in a claim.

4. To employers or former employers for correcting or reconstructing earnings records and for Social Security tax purposes only.

5. To the Department of the Treasury for:

(a) Collecting Social Security taxes or as otherwise pertinent to tax and benefit payment provisions of the Act (including SSN verification services); or

(b) Investigating alleged theft, forgery, or unlawful negotiation of Social Security checks.

6. To the United States Postal Service for investigating the alleged forgery, theft or unlawful negotiation of Social Security checks.

7. To DOJ for:

(a) Investigating and prosecuting violations of the Act to which criminal penalties attach,

(b) Representing the Secretary, or

(c) Investigating issues of fraud by agency officers or employees, or violation of civil rights.

8. To the Department of State and its agents for administering the Act in foreign countries through facilities and services of that agency.

9. To the American Institute of Taiwan and its agents for administering the Act in Taiwan through facilities and services of that organization.

10. To the Department of Veterans Affairs, Philippines Regional Office and its agents for administering the Act in the Philippines through facilities and services of that agency.

11. To the Department of Interior and its agents for administering the Act in the Northern Mariana Islands through facilities and services of that agency.

12. To RRB for administering provisions of the Act relating to railroad employment.

13. To State Social Security Administrators for administration of agreements pursuant to section 218 of the Act.

14. To State audit agencies for:

(a) Auditing State supplementation payments and Medicaid eligibility considerations; and

(b) Expenditures of Federal funds by the State in support of the DDS.

15. To private medical and vocational consultants for use in making preparation for, or evaluating the results of, consultative medical examinations or vocational assessments which they were engaged to perform by SSA or a State agency acting in accord with sections 221 or 1633 of the Act.

16. To specified business and other community members and Federal, State, and local agencies for verification of eligibility for benefits under section 1631(e) of the Act.

17. To institutions or facilities approved for treatment of drug addicts or alcoholics as a condition of the individual's eligibility for payment under section 1611(e)(3) of the Act and as authorized by regulations issued by the Special Action Office for Drug Abuse Prevention.

18. To applicants, claimants, prospective applicants or claimants, other than the data subject, their authorized representatives or representative payees to the extent necessary to pursue Social Security claims and to representative payees when the information pertains to individuals for whom they serve as representative payees, for the purpose of assisting SSA in administering its representative payment responsibilities under the Act and assisting the representative payees in performing

their duties as payees, including receiving and accounting for benefits for individuals for whom they serve as payees.

19. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

20. In response to legal process or interrogatories relating to the enforcement of an individual's child support or alimony obligations, as required by sections 459 and 461 of the Act.

21. To Federal, State, or local agencies (or agents on their behalf) for administering cash or noncash income maintenance or health maintenance programs (including programs under the Act). Such disclosures include, but are not limited to, release of information to:

(a) RRB for administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment and for administering the Railroad Unemployment Insurance Act;

(b) The VA for administering 38 U.S.C. 412, and upon request, information needed to determine eligibility for or amount of VA benefits or verifying other information with respect thereto;

(c) The Department of Labor for administering provisions of Title IV of the Federal Coal Mine Health and Safety Act, as amended by the Black Lung Benefits Act;

(d) State welfare departments for administering sections 205(c)(B)(i)(II) and 402(a)(25) of the Act requiring information about assigned SSNs for AFDC program purposes only;

(e) State agencies for making determinations of Medicaid eligibility; and

(f) State agencies for making determinations of food stamp eligibility under the food stamp program.

22. To State welfare departments:

(a) Pursuant to agreements with SSA for administration of State supplementation payments;

(b) For enrollment of welfare recipients for medical insurance under section 1843 of the Act; and

(c) For conducting independent quality assurance reviews of SSI recipient records, provided that the agreement for Federal administration of the supplementation provides for such an independent review.

23. To State vocational rehabilitation agencies or State crippled children's service agencies (or other agencies providing services to disabled children) for consideration of rehabilitation services per sections 222(a) and 1615 of the Act.

24. To the Social Security agency of a foreign country, to carry out the purpose of an international Social Security agreement entered into between the United States and the other country, pursuant to section 233 of the Act.

25. To IRS, Department of the Treasury, for the purpose of auditing SSA's compliance with the safeguard provisions of the IRC of 1986, as amended.

26. To the Office of the President for responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

27. To third party contacts (including private collection agencies under contract with SSA) for the purpose of their assisting SSA in recovering overpayments.

28. To DOJ (Immigration and Naturalization), upon request, to identify and locate aliens in the United States pursuant to section 290(b) of the Immigration and Nationality Act (8 U.S.C. 1360(b)).

29. Information may be disclosed to contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

30. Nontax return information which is not restricted from disclosure by Federal law may be disclosed to GSA and NARA for the purpose of conducting records management studies with respect to their duties and responsibilities under 44 U.S.C. 2904 and 2906, as amended by NARA Act of 1984.

31. To DOJ, a court or other tribunal, or another party before such tribunal when:

(a) SSA, any component thereof; or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components, is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, the court or other tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such

disclosure is compatible with the purpose for which the records were collected.

Wage and other information which is subject to the disclosure provisions of the IRC (26 U.S.C. 6103) will not be disclosed under this routine use unless disclosure is expressly permitted by the IRC.

32. Addresses of beneficiaries who are obligated on loans held by the Secretary of Education or a loan made in accordance with 20 U.S.C. 1071, *et seq.* (the Robert T. Stafford Student Loan Program) may be disclosed to the Department of Education as authorized by section 489A of the Higher Education Act of 1965.

33. To student volunteers and other workers, who technically do not have the status of Federal employees, when they are performing work for SSA as authorized by law, and they need access to personally identifiable information in SSA records in order to perform their assigned Agency functions.

34. To Federal, State, and local law enforcement agencies and private security contractors, as appropriate, information necessary.

(a) To enable them to protect the safety of SSA employees and customers, the security of the SSA workplace and the operation of SSA facilities, or

(b) To assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operation of SSA facilities.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records generally are maintained manually in file folders. However, some records may be maintained in magnetic media (*e.g.*, on disk and microcomputer).

**RETRIEVABILITY:**

Claims folders are retrieved both numerically by SSN and alphabetically by name.

**SAFEGUARDS:**

Paper claims folders are protected through limited access to SSA records. Access to the records is limited to those employees who require such access in the performance of their official duties. All employees are instructed in SSA confidentiality rules as a part of their initial orientation training.

Safeguards for automated records have been established in accordance with the Systems Security Handbook. All magnetic tapes and disks are within an enclosure attended by security

guards. Anyone entering or leaving this enclosure must have special badges which are issued only to authorized personnel. All microfilm and paper files are accessible only by authorized personnel and are locked after working hours.

For computerized records, electronically transmitted between SSA's central office and field office locations (including organizations administering SSA programs under contractual agreements), safeguards include a lock/unlock password system, exclusive use of leased telephone lines, a terminal oriented transaction matrix, and an audit trail.

#### RETENTION AND DISPOSAL:

The retention period for claims folders are as follows:

##### A. RSI Claims Folders

Folders for disallowed life and death claims, withdrawals, and lump-sum claims in which potential entitlements exist are transferred to the FRC after being so identified and then destroyed 10 years thereafter.

Folders for awarded claims where the last payment has been made and there is no future potential claimant indicated in the record are transferred to the FRC and then destroyed 5 years thereafter.

##### B. DI Claims Folders

Folders for DI denial claims are transferred to the FRC after expiration of the reconsideration period and then destroyed 10 years thereafter.

Folders for terminated DI claims are transferred to the FRC after being identified as eligible for transfer and then destroyed 10 years thereafter.

##### C. SSI Claims Folders and SVB Folders

Folders for SSI and SVB death termination claims are destroyed 2 years after resolution of possible outstanding overpayments or underpayments. Folders for other SSI and SVB terminations are transferred to the FRC after termination and destroyed after 6 years, 6 months.

When a subsequent claim is filed on the SSN the claim folder is recalled from the FRC. Similarly, claims folders may be recalled from the FRC at any time by SSA, as necessary, in the administration of Social Security programs. When this occurs, the folder will be temporarily maintained in a Social Security field, regional or central office.

Separate files of actions entered directly into the computer processes are shredded or destroyed by heat after 1 to 6 months. Claims leads that do not result in a filing of an application are

destroyed 6 months after the inquirer is invited by letter to file a claim.

All paper claim files are disposed of by shredding or the application of heat when the retention periods have expired.

#### SYSTEM MANAGER(S) AND ADDRESS:

SSA Privacy Officer, Social Security Administration, 6401 Security Boulevard, Baltimore MD 21235.

#### NOTIFICATION PROCEDURE:

An individual can determine if this system contains a record about him/her by contacting any Social Security field office.

When requesting notification, the individual should provide his/her name, SSN, and the type of claim he or she filed (RSI, DI, HI, BL special minimum payments, SSI or SVB). If more than one claim is filed, each should be identified, whether he/she is or has been receiving benefits, whether payments are being received under his or her own SSN, and if not, the name and SSN under which received, if benefits have not been received, the approximate date and place the claim was filed, and his/her address and/or telephone number. (Furnishing the SSN is voluntary, but it will make searching for an individual's record easier and prevent delay.)

An individual requesting notification of records in person need not furnish any special documents of identity. Documents, he/she would normally carry on his/her person would be sufficient (e.g., credit cards, driver's license or voter registration card). An individual requesting notification via mail or telephone must furnish a minimum of his/her name, date of birth and address in order to establish identity, plus any additional information specified in this section. These procedures are in accordance with SSA Regulations (20 CFR 401.40(c)).

An individual who requests access to a medical record shall, at the time he/she makes the request, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents. A parent or guardian who requests notification of or access to a minor's medical record shall at the time he/she makes the request designate a physician or other health professional (other than a family member) who will be willing to review the record and inform the parent or guardian of its contents. These procedures are in accordance with SSA Regulations (20 CFR 401.55).

#### RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the information they are seeking. These procedures are in accordance with SSA Regulations (20 CFR 401.40(c) and 401.55).

#### CONTESTING RECORD PROCEDURES:

Same as notification procedures. Requesters should also reasonably identify the record, specify the information they are contesting and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate or irrelevant. These procedures are in accordance with SSA Regulations (20 CFR 401.65).

#### RECORD SOURCE CATEGORIES:

Information in this system is obtained from claimants, beneficiaries, applicants and recipients; accumulated by SSA from reports of employers or self-employed individuals; various local, State, and Federal agencies; claimant representatives and other sources to support factors of entitlement and continuing eligibility or to provide leads information.

#### SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

#### 60-0103

#### SYSTEM NAME:

Supplemental Security Income Record and Special Veterans Benefits, SSA/OSR.

#### SECURITY CLASSIFICATION:

None.

#### SYSTEM LOCATION:

Social Security Administration, Office of Telecommunications and Systems Operations, 6401 Security Boulevard, Baltimore, MD 21235

Records also may be located in the Social Security Administration (SSA) Regional and field offices (individuals should consult their local telephone directories for address information).

#### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This file contains a record for each individual who has applied for supplemental security income (SSI) payments, including individuals who have requested an advance payment; SSI recipients who have been overpaid; and ineligible persons associated with an SSI recipient. This file also covers those individuals who have applied for and who are entitled to the Special Veterans Benefits (SVB) under title VIII

of the Social Security Act. (This file does not cover applicants who do not have a Social Security number (SSN).)

**CATEGORIES OF RECORDS IN THE SYSTEM:**

This file contains data regarding SSI eligibility; citizenship; residence; Medicaid eligibility; eligibility for other benefits; alcoholism or drug addiction data, if applicable (disclosure of this information may be restricted by 21 U.S.C. 1175 and 42 U.S.C. 290dd-3 and ee-3); income data; resources; payment amounts, including overpayment amounts and date and amount of advance payments; living arrangements; case folder location data; appellate decisions, if applicable; SSN used to identify a particular individual, if applicable; information about representative payees, if applicable; and a history of changes to any of the persons who have applied for SSI payments. For eligible individuals, the file contains basic identifying information, income and resources (if any) and, in conversion cases, the State welfare number.

*This file also contains information about applicants for SVB.* The information maintained in this system of records is collected from the applicants for title VIII SVB, and other systems of records maintained by SSA. The information maintained includes a data element indicating this is a title VIII SVB claim. It will also include: identifying information such as the applicant's name, Social Security number (SSN) and date of birth (DOB); telephone number (if any); foreign and domestic addresses; the applicant's sex; income data, payment amounts (including overpayment amounts); and other information provided by the applicant relative to his or her entitlement for SVB.

If the beneficiary has a representative payee, this system of records includes data about the representative payee such as the payee's SSN; employer identification number, if applicable; and mailing address.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Sections 1602, 1611, 1612, 1613, 1614, 1615, 1616, 1631, 1633, 1634 of title XVI and title VIII of the Social Security Act (the Act).

**PURPOSE(S):**

SSI records begin in Social Security field offices where an individual or couple files an application for SSI payments. SVB records begin in Social Security field offices and Veterans Affairs Regional Office (VARO) where an individual files an application for SVB payments. The SSI and SVB

applications contain data which may be used to prove the identity of the applicant, to determine his/her eligibility for SSI or SVB payments and, in cases where eligibility is determined, to compute the amount of the payment. Information from the application, in addition to data used internally to control and process SSI and SVB cases, is used to create the Supplemental Security Income Record (SSR). The SSR also is used as a means of providing a historical record of all activity on a particular individual's or couple's record.

In addition, statistical data are derived from the SSR for actuarial and management information purposes.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Disclosure may be made for routine uses as indicated below:

(1) To the Department of the Treasury to prepare SSI, Energy Assistance, and SVB checks to be sent to claimants or beneficiaries.

(2) To the States to establish the minimum income level for computation of State supplements.

(3) To the following Federal and State agencies to prepare information for verification of benefit eligibility under section 1631(e) of the Act: Bureau of Indian Affairs; Office of Personnel Management; Department of Agriculture; Department of Labor; Immigration and Naturalization Service; Internal Revenue Service; Railroad Retirement Board; State Pension Funds; State Welfare Offices; State Worker's Compensation; Department of Defense; United States Coast Guard; and Department of Veterans Affairs.

(4) To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

(5) To the appropriate State agencies (or other agencies providing services to disabled children) to identify title XVI eligibles under the age of 16 for the consideration of rehabilitation services in accordance with section 1615 of the Act, 42 U.S.C. 1382d.

(6) To contractors under contract to SSA or under contract to another agency with funds provided by SSA for the performance of research and statistical activities directly relating to this system of records.

(7) To State audit agencies for auditing State supplementation payments and Medicaid eligibility consideration.

(8) To State agencies to effect and report the fact of Medicaid eligibility of title XVI recipients in the jurisdiction of

those States which have elected Federal determinations of Medicaid eligibility of title XVI eligibles and to assist the States in administering the Medicaid program.

(9) To State agencies to identify title XVI eligibles in the jurisdiction of those States which have not elected Federal determinations of Medicaid eligibility in order to assist those States in establishing and maintaining Medicaid rolls and in administering the Medicaid program.

(10) To State agencies to enable those agencies which have elected Federal administration of their supplementation programs to monitor changes in applicant/recipient income, special needs, and circumstances.

(11) To State agencies to enable those agencies which have elected to administer their own supplementation programs to identify SSI eligibles in order to determine the amount of their monthly supplementary payments.

(12) To State agencies to enable them to assist in the effective and efficient administration of the SSI program.

(13) To State agencies to enable those which have an agreement with SSA to carry out their functions with respect to Interim Assistance Reimbursement pursuant to section 1631(g) of the Act.

(14) To State agencies to enable them to locate potentially eligible individuals and to make eligibility determinations for extensions of social services under the provisions of title XX of the Act.

(15) To State agencies to assist them in determining initial and continuing eligibility in their income maintenance programs and for investigation and prosecution of conduct subject to criminal sanctions under these programs.

(16) To the United States Postal Service for investigating the alleged theft, forgery or unlawful negotiation of SSI and SVB checks.

(17) To the Department of the Treasury for investigating the alleged theft, forgery or unlawful negotiation of SSI and SVB checks.

(18) To the Department of Education for determining the eligibility of applicants for Basic Educational Opportunity Grants.

(19) To Federal, State or local agencies (or agents on their behalf) for administering cash or non-cash income maintenance or health maintenance programs (including programs under the Act). Such disclosures include, but are not limited to, release of information to:

(a) The Department of Veterans Affairs (DVA) upon request for determining eligibility for, or amount of, DVA benefits or verifying other information with respect thereto in accordance with 38 U.S.C. 5106;

(b) The RRB for administering the Railroad Unemployment Insurance Act;

(c) State agencies to determine eligibility for Medicaid;

(d) State agencies to locate potentially eligible individuals and to make determinations of eligibility for the food stamp program;

(e) State agencies to administer energy assistance to low income groups under programs for which the States are responsible; and

(f) Department of State and its agents to assist SSA in administering the Social Security Act in foreign countries, the American Institute on Taiwan and its agents to assist in administering the Social Security Act in Taiwan, the VA, Philippines Regional Office and its agents to assist in administering the Social Security Act in the Philippines, and the Department of Interior and its agents to assist in administering the Social Security Act in the Northern Mariana Islands.

(20) To IRS, Department of the Treasury, as necessary, for the purpose of auditing SSA's compliance with safeguard provisions of the Internal Revenue Code (IRC) of 1986, as amended.

(21) To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or a third party on his/her behalf.

(22) Upon request, information on the identity and location of aliens may be disclosed to the DOJ (Criminal Division, Office of Special Investigations) for the purpose of detecting, investigating and, where necessary, taking legal action against suspected Nazi war criminals in the United States.

(23) To third party contacts such as private collection agencies and credit reporting agencies under contract with SSA and State motor vehicle agencies for the purpose of their assisting SSA in recovering overpayments.

(24) Information may be disclosed to contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

(25) Non-tax return information which is not restricted from disclosure by Federal law may be disclosed to General Services Administration and National Archives and Records Administration (NARA) for the purpose of conducting records management studies with respect to their duties and

responsibilities under 44 U.S.C. 2904 and 2906, as amended by NARA Act of 1984.

(26) To the DOJ, a court or other tribunal, or another party before such tribunal when:

(a) SSA, any component thereof, or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components, is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, the court, or other tribunal, is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

Wage and other information which are subject to the disclosure provisions of the IRC (26 U.S.C. 6103) will not be disclosed under this routine use unless disclosure is expressly permitted by the IRC.

(27) To representative payees, when the information pertains to individuals for whom they serve as representative payees, for the purpose of assisting SSA in administering its representative payment responsibilities under the Act and assisting the representative payees in performing their duties as payees, including receiving and accounting for benefits for individuals for whom they serve as payees.

(28) To third party contacts (e.g., employers and private pension plans) in situations where the party to be contacted has, or is expected to have, information relating to the individual's capability to manage his/her affairs or his/her eligibility for, or entitlement to, benefits under the Social Security program when:

(a) The individual is unable to provide information being sought. An individual is considered to be unable to provide certain types of information when:

(i) he/she is incapable or of questionable mental capability;

(ii) he/she cannot read or write;

(iii) he/she cannot afford the cost of obtaining the information;

(iv) he/she has a hearing impairment, and is contacting SSA by telephone through a telecommunications relay system operator;

(v) a language barrier exists; or

(vi) the custodian of the information will not, as a matter of policy, provide it to the individual; or

(b) The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following:

(i) His/her eligibility for benefits under the Social Security program;

(ii) The amount of his/her benefit payment; or

(iii) Any case in which the evidence is being reviewed as a result of suspected fraud, concern for program integrity, quality appraisal, or evaluation and measurement activities.

(29) To Rehabilitation Services Administration (RSA) for use in its program studies of, and development of enhancements for, State vocational rehabilitation programs. These are programs to which applicants or beneficiaries under titles II and or XVI of the Act may be referred. Data released to RSA will not include any personally identifying information (such as names or SSNs).

(30) Addresses of beneficiaries who are obligated on loans held by the Secretary of Education or a loan made in accordance with 20 U.S.C. 1071, *et. seq.* (the Robert T. Stafford Student Loan Program) may be disclosed to the Department of Education as authorized by section 489A of the Higher Education Act of 1965.

(31) To student volunteers and other workers, who technically do not have the status of Federal employees, when they are performing work for SSA as authorized by law, and they need access to personally identifiable information in SSA records in order to perform their assigned Agency functions.

(32) To Federal, State, and local law enforcement agencies and private security contractors, as appropriate, if information is necessary:

(a) To enable them to protect the safety of SSA employees and customers, the security of the SSA workplace and the operation of SSA facilities, or

(b) To assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operation of SSA facilities.

(33) Corrections to information that resulted in erroneous inclusion of individuals in the Death Master File (DMF) may be disclosed to recipients of erroneous DMF information.

(34) Information as to whether an individual is alive or deceased may be disclosed pursuant to section 1106(d) of the Social Security Act (42 U.S.C. 1306(d)), upon request, for purposes of

an epidemiological or similar research project, provided that:

(a) SSA determines in consultation with the Department of Health and Human Services, that the research may reasonably be expected to contribute to a national health interest; and

(b) The requester agrees to reimburse SSA for the costs of providing the information; and

(c) The requester agrees to comply with any safeguards and limitations specified by SSA regarding rerelease or redisclosure of the information.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are maintained in magnetic media (*e.g.*, magnetic tape) and in microform and microfiche form.

**RETRIEVABILITY:**

Records are indexed and retrieved by SSN.

**SAFEGUARDS:**

System security for automated records has been established in accordance with the Systems Security Handbook. This includes maintaining all magnetic tapes and magnetic disks within an enclosure attended by security guards. Anyone entering or leaving that enclosure must have special badges which are only issued to authorized personnel. All authorized personnel having access to the magnetic records are subject to the penalties of the Privacy Act. The microfiche are stored in locked cabinets, and are accessible to employees only on a need-to-know basis. All SSR State Data Exchange records are protected in accordance with agreements between SSA and the respective States regarding confidentiality, use, and redisclosure.

**RETENTION AND DISPOSAL:**

Original input transaction tapes received which contain initial claims and posteligibility actions are retained indefinitely although these are processed as received and incorporated into processing tapes which are updated to the master SSR tape file on a monthly basis. All magnetic tapes appropriate to SSI information furnished to specified Federal, State, and local agencies for verification of eligibility for benefits and under section 1631(e) are retained, in accordance with the PA accounting requirements, for at least 5 years or the life of the record, whichever is longer.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Division of Supplemental Security Income Systems, Office of Systems Requirements, Social Security

Administration, 6401 Security Boulevard, Baltimore, Maryland 21235.

**NOTIFICATION PROCEDURE:**

An individual can determine if this system contains a record about him/her by writing to or visiting any Social Security field office and providing his or her name and SSN. (Individuals should consult their local telephone directories for Social Security office address and telephone information.) Applicants for SVB who reside in the Philippines should contact VARO, Philippines. (Furnishing the SSN is voluntary, but it will make searching for an individual's record easier and prevent delay.)

An individual requesting notification of records in person need not furnish any special documents of identity. Documents he/she would normally carry on his/her person would be sufficient (*e.g.*, credit cards, driver's license, or voter registration card). An individual requesting notification via mail or telephone must furnish a minimum of his/her name, date of birth and address in order to establish identity, plus any additional information specified in this section. These procedures are in accordance with SSA Regulations (20 CFR 401.40(c)).

**RECORD ACCESS PROCEDURES:**

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An individual who requests notification of, or access to, a medical record shall, at the time he or she makes the request, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. A parent or guardian who requests notification of, or access to, a minor's medical record shall at the time he or she makes the request designate a physician or other health professional (other than a family member) who will be willing to review the record and inform the parent or guardian of its contents at the physician's or health professional's discretion. These procedures are in accordance with SSA Regulations (20 CFR 401.40(c) and 401.55).

**CONTESTING RECORD PROCEDURES:**

Same as notification procedures. Requesters should also reasonably identify the record, specify the information they are contesting and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is incomplete, untimely,

inaccurate or irrelevant. These procedures are in accordance with SSA Regulations (20 CFR 401.65).

**RECORD SOURCE CATEGORIES:**

Data contained in the SSR are obtained for the most part from the applicant for SSI and SVB payments and are derived from the Claims Folders System (60-0089) and the Modernized Supplemental Security Income Claims System. The States and other Federal agencies such as the Department of Veterans Affairs also provide data affecting the SSR.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. 00-6229 Filed 3-13-00; 8:45 am]

BILLING CODE 4190-29-U

**DEPARTMENT OF STATE**

[Public Notice 3252]

**Proposed Information Collection**

**AGENCY:** Department of State.

**ACTION:** Notice of information collection under emergency review procedure and 60-day notice of proposed information collection under standard review procedure: Irish Peace Process Cultural and Training Program.

**SUMMARY:** The Department of State has submitted the information collection request described below to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995. Additionally, the Department is seeking OMB approval for the subject information collection request under the standard review procedures of the 1995 Act.

The twofold purpose of this notice is to advise the public that (a) the Department's clearance request has been submitted to OMB for review pursuant to OMB's emergency clearance process; and (b) the Department additionally intends to submit the information collection to OMB for approval pursuant to OMB's standard approval process, after allowing the required 60 days for public comment in the **Federal Register**.

The following summarizes the information collection proposal submitted, and to be submitted, to OMB:

*Type of Request:* New Collection.

*Originating Office:* EUR.

*Title of Information Collection:* Irish Peace Process Cultural and Training Program ("IPPCTP").

*Frequency:* 1.

*Form Number:* N/A.

*Respondents:* Entities wishing to provide employment opportunities to IPPCTP participants as well as persons selected for participation in the IPPCTP.

*Estimated Number of Respondents:* 4200.

*Average Hours Per Response:* (a) Prospective Employers: up to 2 hours in providing employer background information and up to 1 hour in reporting on participants' work experience (for each participant hired by an employer). (b) Participants: up to 2 hours in providing background/resume information, a photograph, and tracking information. Where participation originates with an employer nomination, the increase of time required of an employer in providing employee-related information will be offset by a corresponding reduction in the time otherwise required of employees in providing this same information.

*Total Estimated Burden:* 12,400 hours.

The proposed information collection is being published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by March 1, 2000. If granted, the emergency approval will only be valid for 180 days. Comments should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, (202) 395-5871.

During the first 60 days of this same period a regular review of this information collection will also be undertaken, pursuant to the OMB's standard review process. Comments are encouraged and will be accepted until the 60th day from the date that this notice is published in the **Federal Register**. The agency requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Comments are being solicited to permit the agency to:

- 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, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including

through the use of automated collection techniques or other forms of technology.

**FOR ADDITIONAL INFORMATION:** Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to the Officer for Ireland and Northern Ireland Affairs, Bureau of European Affairs (EUR/UBI), Room 4513, U.S. Department of State, Washington, DC 20520, (202) 647-6585.

Dated: March 1, 2000.

**Catherine M. Smith,**

*Acting Executive Director Bureau of European Affairs, U.S. Department of State.*

[FR Doc. 00-6215 Filed 3-13-00; 8:45 am]

**BILLING CODE 4710-23-P**

## DEPARTMENT OF STATE

[Public Notice 3251]

### Proposed Information Collection

**AGENCY:** Department of State.

**ACTION:** 60-day notice of proposed information collection; U.S. department of state, parking permit application, DS-1987.

**SUMMARY:** The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

*Type of Request:* Paperwork Reduction Act.

*Originating Office:* A/OPR/GSM/SS.

*Title of Information Collection:*

Parking Permit Application.

*Frequency:* Year-round with one large collection done once a year.

*Form Number:* DS-1987.

*Respondents:* Department of State employees and contractors.

*Estimated Number of Respondents:* 4,050.

*Average Hours Per Response:* ¼ hour.

*Total Estimated Burden:* 1,012.50.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

- Enhance the quality, utility, and clarity of the information to be collected.

- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

**FOR ADDITIONAL INFORMATION:** Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Ms. Lee Martinez, Room B258, 202/647-0305, U.S. Department of State, Washington, DC 20520.

Dated: February 24, 2000.

**Robert B. Dickson,**

*Executive Director, Bureau of Administration, U.S. Department of State.*

[FR Doc. 00-6214 Filed 3-13-00; 8:45 am]

**BILLING CODE 4710-05-P**

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Technical Correction to the Harmonized Tariff Schedule of the United States

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Technical correction to the Harmonized Tariff Schedule of the United States.

**SUMMARY:** The United States Trade Representative (the USTR) is modifying the Harmonized Tariff Schedule of the United States (HTS) as set forth below, pursuant to authority granted by Congress to the President in section 604 of the Trade Act of 1974 (Trade Act) and delegated to the USTR in Presidential Proclamation No. 6969 of January 27, 1997 (62 FR 4415). This technical correction is to ensure that the intended tariff treatment is accorded to certain imported valve spring quality wire rod. **ADDRESSES:** Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508.

**FOR FURTHER INFORMATION CONTACT:** Gordana Earp, Acting Assistant United States Trade Representative, (202) 395-6160, or Audrey Winter, Associate General Counsel, (202) 395-7305.

### Correction to HTS

Presidential Proclamation 7273 of February 16, 2000 (65 FR 8621) modified subchapter III of chapter 99 of the HTS in order to facilitate positive adjustment to competition from imports of certain steel wire rod. The proclamation inserted new U.S. note 9 in that subchapter; the note provides that various steel products are excluded from the new subheadings

implementing the adjustment action. However, new subdivision (b) of note 9, which describes the valve spring quality wire rod intended to be excluded from the new tariff subheading, inadvertently misstated the purchasers of the subject product. Accordingly, the HTS is modified as follows:

Subdivision (b) of U.S. note 9 to subchapter III of chapter 99 of the HTS is modified by deleting the phrase "order from an automotive valve spring or automotive brake spring manufacturer in" and by inserting in lieu thereof the phrase "order from an automotive valve spring manufacturer, automotive valve spring wire manufacturer, automotive brake spring manufacturer or automotive brake spring wire manufacturer in".

This modification to the HTS shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after March 1, 2000, and shall continue in effect as if this language had been contained in Proclamation 7273, under the terms provided for therein.

**Charlene Barshefsky,**

*United States Trade Representative.*

[FR Doc. 00-6199 Filed 3-13-00; 8:45 am]

BILLING CODE 3190-01-M

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Noise Exposure Map Notice: Receipt of Noise Compatibility Program and Request for Review; Corpus Christi International Airport, Corpus Christi, Texas

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

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by City of Corpus Christi for Corpus Christi International Airport under the provisions of Title 49 U.S.C., Chapter 475 (hereinafter referred to as "Title 49") and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Corpus Christi International Airport under Part 150 in conjunction with the noise exposure maps and that this program will be approved or disapproved on or before August 1, 2000.

**EFFECTIVE DATE:** The effective date of the FAA's determination on the noise

exposure maps and the start of its review of the associated noise compatibility program are March 1, 2000. The public comment period ends May 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Nan L. Terry, Department of transportation, Federal Aviation Administration, Fort Worth, Texas, 76193-0650, (817) 222-5607. Comments on the proposed noise compatibility program should also be submitted to the above office.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA finds that the noise exposure maps submitted for Corpus Christi International Airport are in compliance with applicable requirements of Part 150, effective March 1, 2000. Further, the FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before August 1, 2000. This notice also announces the availability of this program for public review and comment.

Under Title 49, an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. Title 49 requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title 49, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing non-compatible uses and for the prevention of the introduction of additional non-compatible uses.

The City of Corpus Christi submitted to the FAA on January 10, 2000 noise exposure maps, descriptions and other documentation, which were produced during the Master Plan Update and the Federal Aviation Regulations (FAR) Part 150 Airport Noise Compatibility Planning Study for Corpus Christi International Airport beginning on July 18, 1995.

It was requested that the FAA review this material as the noise exposure maps, as described in Title 49, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved

as a noise compatibility program under Title 49.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the City of Corpus Christi. The specific maps under consideration are Noise Exposure Map 1999, Figure 5-1, Noise Exposure Map 2004, Figure 5-2, and Noise Exposure Map Ultimate Airfield, Figure 5-3 in the submission.

The FAA has determined that these maps for Corpus Christi International Airport are in compliance with applicable requirements. This determination is effective on March 1, 2000. The FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information, plans, a commitment to approve a noise compatibility program, or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Title 49.

These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Title 49. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Corpus Christi International Airport, also effective on March 1, 2000. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further

review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before August 1, 2000.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation for the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration,  
Airports Division, 2601 Meacham  
Boulevard, Fort Worth, Texas 76137  
Department of Aviation, City of Corpus  
Christi, 1000 International Drive,  
Corpus Christi, Texas 78406-1801

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Fort Worth, Texas, March 1, 2000.

**Joseph G. Washington,**

*Acting Manager, Airports Division.*

[FR Doc. 00-6222 Filed 3-13-00; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Aging Transport Systems Rulemaking Advisory Committee; Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice announces a public meeting of the FAA's Aging Transport Systems Rulemaking Advisory Committee.

**DATES:** The meeting will be held April 4-6, 2000, beginning at 9 a.m. on April 4. Arrange for oral presentations by March 28.

**ADDRESSES:** The meeting will be at the FAA-AANC NDI Validation Center,

Conference Room, 3260 University Blvd., SE., Albuquerque, NM.

**FOR FURTHER INFORMATION CONTACT:**

Terry K. Stubblefield, Office of Rulemaking, ARM-208, FAA, 800 Independence Avenue, SW, Washington, DC 20591, Telephone (202) 267-7624, FAX (202) 267-5075.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given of a meeting of the Aging Transport Systems Rulemaking Advisory Committee in the Conference Room at the FAA-AANC NDI Validation Center, 3260 University Blvd., SE., Albuquerque, NM.

The agenda will include:

- Opening remarks.
- Working group reports.
- Discussion of potential problems related to mixing wire types in bundles.
- Developing an ATSRAC approach to nonelectrical systems.
- Status of arc fault circuit interrupter development.
- Reports on SDR data mining, maintenance processes, service bulletins and AD history.
- Tour of the FAA-AANC NDI Validation Center (FAA-Sandia facilities).

Attendance is open to the interested public will be limited to the space available. The public must make arrangements by March 28, 2000, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 20 copies to the Executive Director, or by bringing the copies to him at the meeting. Public statements will only be considered if time permits. If you are in need of assistance or require a reasonable accommodation for this material or event, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**. In addition, sign and oral interpretation as well as a listening device can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC on March 8, 2000.

**Ida Klepper,**

*Acting Director, Office of Rulemaking.*

[FR Doc. 00-6133 Filed 3-13-00; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Air Traffic Procedures Advisory Committee

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

**SUMMARY:** The FAA is issuing this notice to advise the public that a meeting of

the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

**DATES:** The meeting will be held from April 3-6, 2000, from 9 a.m. to 5 p.m. each day.

**ADDRESSES:** The meeting will be held at the Federal Aviation Administration, Bessie Coleman Conference Center, 800 Independence Avenue, SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr.

Eric Harrell, Executive Director, ATPAC, Terminal and En Route Procedures Division, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-3725.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the ATPAC to be held April 3 through April 6, 2000, at the Federal Aviation Administration, Bessie Coleman Conference Center, 800 Independence Avenue, SW., Washington, DC.

The agenda for this meeting will cover: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes.
2. Submission and Discussion of Areas of Concern.
3. Discussion of Potential Safety Items.
4. Report from Executive Director.
5. Items of Interest.
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than March 30, 2000. The next quarterly meeting of the FAA ATPAC is planned to be held from July 17-20, 2000, in Anchorage, AK.

Any member of the public may present a written statement to the Committee at any time at the address given above.

Issued in Washington, DC, on March 1, 2000.

**Eric Harrell,**

*Executive Director, Air Traffic Procedures Advisory Committee.*

[FR Doc. 00-6131 Filed 3-13-00; 8:45 am]

**BILLING CODE 4910-13-M**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****Proposed Modification of the Memphis Class B Airspace Area, TN**

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

**ACTION:** Notice of public meetings.

**SUMMARY:** This notice announces two fact-finding informal airspace meetings. The purpose of these meetings is to provide interested parties an opportunity to present views, recommendations, and comments on the proposal to modify the Memphis Class B Airspace Area. All comments received during these meetings will be considered prior to any revision or issuance of a notice of proposed rulemaking.

**TIMES AND DATES:** *Meetings.* These informal airspace meetings will be held on Thursday, April 27, 2000, at 7:00 pm; and Thursday, May 4, 2000, at 7:00 pm. Comments must be received on or before March 30, 2000.

**ADDRESSES:** On April 27, 2000, the meeting will be held at the FedEx World Tech Center, 50 FedEx Parkway (off Bailey Station Road), Collierville, TN. On May 4, 2000, the meeting will be held at the Memphis Airport Traffic Control Tower, Memphis, International Airport, 2515 Winchester Road, Memphis, TN. There is limited space available at the May 4th meeting.

**COMMENTS:** Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO-500, Federal Aviation Administration, 1701 Columbia Ave., College Park, GA 30337.

**FOR FURTHER INFORMATION CONTACT:** Brigitte Lewkowicz, Airspace Specialist, Air Traffic Division, ASO-500, FAA, Southern Regional Office, telephone (404) 305-5559.

**SUPPLEMENTARY INFORMATION:****Meeting Procedures**

(a) These meetings will be informal in nature and will be conducted by a representative of the FAA, Southern Region. A representative from the FAA will present a formal briefing on the proposed changes to the Class B airspace area. Each participant will be given an opportunity to deliver comments or make a presentation at the meetings.

(b) These meetings will be open to all persons on a space-available basis. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make a presentation to the FAA panel will be

asked to sign in and estimate the amount of time needed for such presentation. This will permit the panel to allocate an appropriate amount of time for each presenter.

(d) These meetings will not be adjourned until everyone on the list has had an opportunity to address the panel.

(e) Position papers or other handout material relating to the substance of these meetings will be accepted. Participants wishing to submit handout material should present three copies to the presiding officer. There should be additional copies of each handout available for other attendees.

(f) These meetings will not be formally recorded.

**Agenda for the Meetings**

Opening Remarks and Discussion of Meeting Procedures.

Briefing on Background for Proposals. Public Presentations.

Closing Comments.

Issued in Washington, DC, on March 8, 2000.

**Paul Gallant,**

*Acting Manager, Airspace and Rules Division.*

[FR Doc. 00-6220 Filed 3-13-00; 8:45 am]

**BILLING CODE 4910-13-U**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Columbus Metropolitan Airport, Columbus, Georgia; Correction**

**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 Columbus Metropolitan Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before March 27, 2000.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, 1701 Columbia Avenue, Campus Building, Suite 2-260, College Park, GA 30337-2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Mark Oropeza, Airport Director of the Columbus Metropolitan Airport at the following address: Mr. Mark Oropeza, Airport Director, Columbus Metropolitan Airport, 3250 West Britt David Road, Columbus, GA 31909-5399.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Columbus Airport Commission under section 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Daniel Gaetan, Program Manager, Atlanta Airports District Office, 1701 Columbia Avenue, Campus Building, Suite 2-260, College Park, GA 30337-2747; telephone number (404) 305-7146. 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 Columbus Metropolitan Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 24, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by Columbus Airport Commission 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 May 12, 2000.

The following is a brief overview of the application.

*PFC Application No.:* 99-03-C-00-CSG.

*Level of the proposed PFC:* \$3.00.

*Proposed charge effective date:* August 1, 2000.

*Proposed charge expiration date:* November 1, 2004.

*Total estimated PFC revenue:* \$1,223,986.

*Brief description of proposed project(s):*

- (1) North Terminal Access Road Rehabilitation;
- (2) Obstruction approach clearing for Runway Ends 5, 23, 12, and 30;
- (3) Passenger lift device;
- (4) Taxiway "D" Rehabilitation;
- (5) Runway 5/23 Rehabilitation;
- (6) Runways 12/30 & 5/23 renumbering and signage;
- (7) Aircraft Rescue & Fire Fighting Vehicle;

(8) Update Airport Master Plan; Taxiway "C" Relocation.

*Class or classes of air carriers, which the public agency has requested not be required to collect PFCs:* All classes of carriers that enplaned less than 1% of the total number of passengers enplaned annually at the airport.

An original notice was printed on February 25, 2000 Volume 65, Number 38 indicating a proposed charge expiration date of November 1, 2000. This corrected notification includes the accurate date of November 1, 2004.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Columbus Metropolitan Airport.

Issued in Atlanta, Georgia on January 24, 2000.

**Scott L. Seritt,**

*Manager, Atlanta Airports District Office, Southern Region.*

[FR Doc. 00-6223 Filed 3-13-00; 8:45 am]

**BILLING CODE**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Tulsa International Airport, Tulsa, OK

**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 Tulsa 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) (Pub. L. 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before April 13, 2000.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW-611, Fort Worth, Texas 76193-0611.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Brent A. Kitchen, Airports Director, Tulsa International Airport at the following address: P.O. Box 58183, Tulsa, OK 74158-1838.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under § 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW-611, Fort Worth, Texas 76193-0610, (817) 222-5613.

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 Tulsa 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) (Pub. L. 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On February 29, 2000 the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 13, 2000.

The following is a brief overview of the application.

*Level of the proposed PFC:* \$3.00.

*Proposed charge effective date:* June 1, 2000.

*Proposed charge expiration date:* June 1, 2003.

*Total estimated PFC revenue:*

\$13,500,000.

*PFC application number:* 00-04-C-00-TUL

Brief description of proposed project(s):

*Projects to Impose and Use PFC'S*

Terminal Security and Flight Information Display System Improvements

Conduct Noise Mitigation

Interior Terminal Improvements

Airfield Drainage Improvements

Airfield Snow Removal Equipment

Building Improvements

Terminal Access Improvements

*Proposed class or classes of air carriers to be exempted from collecting PFC's:*

None

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: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW-611, 2601 Meacham Blvd., Fort Worth, Texas 76137-4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Tulsa International Airport.

Issued in Fort Worth, Texas on February 29, 2000.

**Joseph G. Washington,**

*Acting Manager, Airports Division.*

[FR Doc. 00-6132 Filed 3-13-00; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

### Bureau of Transportation Statistics

#### Grant Program for Research and Development in the Field of Transportation Statistics

**AGENCY:** Bureau of Transportation Statistics, DOT.

**ACTION:** Announcement of grant program.

**SUMMARY:** The Bureau of Transportation Statistics announces a new Transportation Statistics Research Grants program to support its goal of advancing the field of transportation statistics. This notice solicits applications for projects that (1) support the development of the field of transportation statistics; and/or (2) involve research or development in transportation statistics. It outlines the purpose, goals, and general procedures for application and award. For FY 2000, BTS will make available up to \$500,000 in grant funds to eligible organizations.

**DATES:** For BTS to consider your application, we must either receive it by April 27, 2000, at 5:00 P.M. Eastern Standard Time or it must be postmarked by the U.S. Postal Service by that date. Applications received or postmarked after April 27, 2000, will be processed at the next application date, which is anticipated to be every six to twelve months, unless you request in writing that your application be returned.

**ADDRESSES:** You must send six copies of the application package to the BTS Grants Program, K-20, Bureau of Transportation Statistics, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** David Banks, Office of Statistical Programs and Services, Bureau of

Transportation Statistics, 400 Seventh Street, SW, Washington, DC 20590; (202) 366-0963; fax: (202) 366-3640; e-mail: david.banks@bts.gov.

#### SUPPLEMENTARY INFORMATION:

### I. Background—Advancing the Discipline of Transportation Statistics

The purpose of this grant program is to provide financial assistance to eligible organizations to help advance the discipline of transportation statistics. These grants are authorized by section 5109 of the Transportation Equity Act for the 21st Century (TEA-21) (Pub. L. 105-178 (1998), codified at 49 U.S.C. 111(g)). BTS anticipates awarding up to \$500,000 per year in grants for projects that (1) support development of the field of transportation statistics; and/or (2) advance research or development in transportation statistics.

BTS is a separate operating administration within the Department of Transportation (DOT). Its mission is to lead in developing transportation data and information of high quality, and to advance their effective use in public and private transportation decisionmaking. In accomplishing this mission, BTS works to improve six key attributes of transportation data and analysis—quality, comparability, completeness, timeliness, relevance, and utility.

Our ultimate goal is to make transportation better—to enhance safety, mobility, economic growth, the human and natural environment, and national security (the five strategic goals of the Department of Transportation). BTS's role in this goal is to put together data and information that others need to make decisions concerning transportation. We collect data and compile, analyze, and publish statistics. Many others, both within and outside DOT, are involved in building this knowledge base and BTS could not do it alone.

While there are many excellent transportation data programs and many excellent statistics programs, few are devoted to the intersection of these two disciplines. Bringing a better understanding of statistics to transportation data will improve data quality, increase utility (e.g., by improving measures of travel), and reduce costs (e.g., by using techniques to make data collection, analysis, and dissemination more efficient). BTS wants to foster the transportation statistics discipline and increase its quality and usefulness to the transportation community. This grants program is one way BTS is working toward this goal.

### II. Eligibility Requirements

#### *What Organizations May Apply?*

BTS invites applications from public and private non-profit institutions of higher education. We strongly encourage Minority Serving Institutions, which have been traditionally under represented in transportation statistics, to submit applications. If organizations partner on a project, the participants should submit a single application. You may submit more than one application as long as the applications are for separate and distinct projects.

#### *What Projects Are Eligible for Funding?*

Eligible projects must support the development of the field of transportation statistics and/or involve research or development in transportation statistics. Examples include, but are not limited to, research and development in the following areas:

- (1) Visualizing and mining transportation databases;
- (2) Aggregating and analyzing databases maintained by DOT agencies, especially where the research involves multiple modes of transportation;
- (3) Improving the quality and usability of federal transportation statistics;
- (4) Developing exposure measures (e.g., vehicle miles traveled) for use in risk analyses;
- (5) Improving the statistical use of geographic information systems to better understand and quantify travel behavior;
- (6) Developing performance measures for the transportation system;
- (7) Designing and analyzing transportation surveys; and
- (8) Improving data quality and data collection.

#### *What Are the Cost Sharing Requirements?*

For awards of \$100,000 or more, the recipient shall fund at least 50 percent of the project's costs. The nonfederal match must come from sources other than the project sponsor, and must be cash contributions rather than in-kind contributions. In reviewing all applications, even those requesting less than \$100,000, the degree of cost-sharing will be considered, with more weight given to cash contributions than in-kind services.

### III. Application Contents

For more information about sending your application, please refer to the **ADDRESSES** and **DATES** sections listed above. In order to be considered for funding under this program, your application package must include the following:

(1) A Project Narrative. This must not exceed five letter-size pages, single-sided and double-spaced. Use at least 12 point type and one inch margins. In general, the information you provide should be in sufficient detail so BTS understands the proposed work and its anticipated benefits and to demonstrate that you have the necessary experience and resources to accomplish it. The narrative must identify the organization; how it meets the eligibility criteria; its experience and accomplishments in collecting, analyzing, and/or disseminating transportation data; and the qualifications of the principals proposed to conduct the activities. The narrative must also describe the proposed activity, including how you would accomplish it, a time line listing major milestones associated with the project, and a list of specific products and/or services with the dates they will be delivered.

(2) An Application for Federal Assistance. Submit OMB SF-424 (Application for Federal Assistance), which is the official form required for all federal grants. It requests basic information about the grantee and the proposed project. Under Part 10 of this form, use 20.920 and Transportation Statistics Research Grants for the Catalog of Federal Domestic Assistance Number and Title. Also submit OMB SF-424A (Budget Information—Nonconstruction Programs). You can download these forms from the OMB Internet site at <http://www.whitehouse.gov/omb/grants>.

(3) An Evaluation Plan. Include a brief description of how you will evaluate and measure the success of the project, including the anticipated benefits and challenges in completing it. This can be part of the Project Narrative.

(4) Resumes. Include resumes from up to three key personnel who would be significantly involved in the project.

(5) Letters of Commitment. If your proposal includes the significant involvement of other eligible organizations, your application must include letters of commitment from them.

### IV. Application Review Process and Selection Criteria

The Transportation Statistics Research Grants program uses a competitive process and applications will be evaluated based on the merit of the proposed project in relation to the other applications received. BTS anticipates making multiple awards based on this solicitation. While BTS will select the most meritorious proposals, we may choose to not award all available funds.

Upon receiving an application, BTS will conduct an initial review to determine if it meets the eligibility criteria and contains all of the items specified under the Application Contents section of this announcement. A BTS evaluation committee will then review each complete application from an eligible recipient using the evaluation criteria listed below (the order of criteria does not designate priority) and the BTS Director will select the final grants. The evaluation criteria are:

(1) How well does the proposal support BTS's strategic goals of improving the quality, comparability, completeness, timeliness, relevance, and utility of transportation data? How well does the proposal serve the broad transportation interests of the United States?

(2) How innovative is the proposed activity? To what extent is the work being accomplished elsewhere?

(3) How much experience has the applicant demonstrated in one or more of the following areas—collecting, analyzing, storing, or disseminating transportation data, particularly data collected or disseminated by BTS, and working with theoretical statistical issues concerning transportation data?

(4) Does the applicant have the professional qualifications and team members necessary for satisfactory performance of the proposed activity?

(5) How well does the technical approach and proposed costs reflect an understanding of the procedures necessary to complete the required tasks?

(6) To what degree does the proposal include cost-sharing? More weight will be given to proposals with cash contributions than in-kind services. For awards of \$100,000 or more, BTS requires cash contributions of 50 percent toward the total project's cost.

#### V. Amount of Funds Available and Period of Support

We anticipate that approximately \$500,000 per year will be designated to support grants over the next five years, subject to the availability of appropriated funds. This estimate does not bind BTS to a specific number of offers or awards, nor to a specific amount of funding support for particular awards or awards in aggregate. It is anticipated that individual awards amounts, based upon demonstrated needs, will likely range from \$50,000 to \$200,000, though BTS has not established minimum or maximum funding levels.

Given the amount of funds available, applicants are strongly encouraged to

seek other funding opportunities to supplement the federal funds. Preference will be given to applicants with cost sharing proposals from within or outside their organizations.

The period of time of awards will vary with the complexity of the project and it is possible that grants will be awarded for periods greater than one year.

#### VI. BTS Involvement

BTS involvement, if any, will vary by award. If you anticipate BTS involvement, you must note this in your project narrative and any support BTS provides will be specified in the award agreement. BTS will assign a liaison to serve as the primary contact regarding the grant.

#### VII. Terms and Conditions of Award

(1) Prior to award, each grantee will be required to complete additional government application forms, such as OMB SF-424B (Assurances—Nonconstruction Programs) and with the certification requirements of 49 CFR part 20, Department of Transportation New Restrictions on Lobbying, and 49 CFR part 29, Department of Transportation Government-Wide Debarment and Suspension (Non-Procurement) and Government-Wide Requirements for Drug Free Workplace (Grants).

(2) Each grantee shall submit a program implementation plan no more than one month after award. The BTS liaison will review and comment, if necessary.

(3) Each grantee shall submit quarterly progress reports, a draft final report, and a final report that reflects the BTS liaison's comments.

Thank you for your interest in our Transportation Statistics Research Grants program.

**Ashish Sen,**

*Director.*

[FR Doc. 00-6254 Filed 3-13-00; 8:45 am]

BILLING CODE 4910-FF-P

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## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

#### Proposed Collection; Comment Request

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

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this

opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Notices Relating to Payment of Firearms and Ammunition Excise Tax.

**DATES:** Written comments should be received on or before May 15, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8930.

#### FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the form(s) and instructions should be directed to Marjorie Ruhf, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8230.

**SUPPLEMENTARY INFORMATION:** *Title:* Notices Relating to Payment of Firearms and Ammunition Excise Tax.

*OMB Number:* 1512-0512.

*Abstract:* Excise taxes are collected on the sale or use of firearms and ammunition by firearms or ammunition manufacturers, importers or producers. Taxpayers who elect to pay excise taxes by electronic fund transfer must furnish a written notice upon election and discontinuance. The tax revenue will be protected. The record retention requirement for this information collection is 3 years.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 10.

*Estimated Time Per Respondent:* 6 minutes.

*Estimated Total Annual Burden Hours:* 1 hour.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) The accuracy of the agency's estimate of the burden of the collection of information; (c) Ways to enhance the

quality, utility, and clarity of the information to be collected; (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 8, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00-6238 Filed 3-13-00; 8:45 am]

**BILLING CODE 4810-31-P**

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

#### Proposed Collection; Comment Request

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

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Letterhead Applications and Notices Relating to Tax-Free Alcohol.

**DATES:** Written comments should be received on or before May 15, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Richard Mascolo, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8210.

**SUPPLEMENTARY INFORMATION:** *Title:* Letterhead Applications and Notices Relating to Tax-Free Alcohol.

*OMB Number:* 1512-0335.

*Recordkeeping Requirement ID Number:* ATF REC 5150/4.

*Abstract:* Tax-free alcohol is used for nonbeverage purposes in scientific research and medicinal uses by

educational organizations, hospitals, laboratories, etc. The use of alcohol free of tax is regulated to prevent illegal diversion to taxable beverage use. The record retention requirement for this information collection is 3 years.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Not-for-profit institutions, Federal Government, State, Local or Tribal Government.

*Estimated Number of Respondents:* 4,444.

*Estimated Time Per Respondent:* 30 minutes.

*Estimated Total Annual Burden Hours:* 2,222.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) The accuracy of the agency's estimate of the burden of the collection of information; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 8, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00-6239 Filed 3-13-00; 8:45 am]

**BILLING CODE 4810-31-P**

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

#### Proposed Collection; Comment Request

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

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed

and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Letterhead Applications and Notices Relating to Wine.

**DATES:** Written comments should be received on or before May 15, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Richard Mascolo, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8210.

**SUPPLEMENTARY INFORMATION:** *Title:* Letterhead Applications and Notices Relating to Wine.

*OMB Number:* 1512-0292.

*Recordkeeping Requirement ID*

*Number:* ATF REC 5120/2.

*Abstract:* Letterhead applications and notices relating to wine are required to ensure that the intended activity will not jeopardize the revenue or defraud consumers. The record retention requirement for this information collection is 3 years.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 1,650.

*Estimated Time Per Respondent:* 30 minutes.

*Estimated Total Annual Burden Hours:* 825.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of

information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 8, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00-6240 Filed 3-13-00; 8:45 am]

**BILLING CODE 4810-31-P**

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

#### Proposed Collection; Comment Request

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

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Manufacturers of Ammunition, Records and Supporting Data of Ammunition Manufactured and Disposed of.

**DATES:** Written comments should be received on or before May 15, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Gary Thomas, Firearms Programs Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-7770.

#### SUPPLEMENTARY INFORMATION:

*Title:* Manufacturers of Ammunition, Records and Supporting Data of Ammunition Manufactured and Disposed of:

*OMB Number:* 1512-0247

*Recordkeeping Requirement ID Number:* ATF REC 5000/2

*Abstract:* These records are used by ATF in criminal investigations and compliance inspections in fulfilling the

Bureau's mission to enforce the Gun Control Law. The record retention requirement for this information collection is 2 years.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 50.

*Estimated Time Per Respondent:* 15 minutes.

*Estimated Total Annual Burden Hours:* 325.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 8, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00-6241 Filed 3-13-00; 8:45 am]

**BILLING CODE 4810-31-P**

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

#### Proposed Collection; Comment Request

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

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C.

3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Distilled Spirits Records and Monthly Report of Production Operations.

**DATES:** Written comments should be received on or before May 15, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Mary Wood, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-6993.

#### SUPPLEMENTARY INFORMATION:

*Title:* Distilled Spirits Records and Monthly Report of Production Operations.

*OMB Number:* 1512-0205.

*Form Number:* ATF F 5110.40.

*Recordkeeping Requirement ID Number:* ATF REC 5110/01.

*Abstract:* The information collected is used to account for the proprietor's tax liability, adequacy of the bond coverage and protection of the revenue. The information also provides data to analyze trends in the industry, and plan efficient allocation of field resources, audit plant operations and compilation of statistics for government economic analysis. The record retention requirement for this information collection 4 years.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 150.

*Estimated Time Per Respondent:* 2 hours.

*Estimated Total Annual Burden Hours:* 3,600.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the

quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 8, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00-6242 Filed 3-13-00; 8:45 am]

**BILLING CODE 4810-31-P**

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

#### Proposed Collection; Comment Request

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

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Renewal of Explosives License or Permit.

**DATES:** Written comments should be received on or before May 15, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Joe Bradley, Arson and Explosives Programs Division, 650 Massachusetts Avenue, NW., Washington, DC (202) 927-8053.

#### SUPPLEMENTARY INFORMATION:

**Title:** Renewal of Explosives License or Permit.

**OMB Number:** 1512-0131.

**Form Number:** ATF F 5400.14/5400.15, Part III.

**Abstract:** This information collection is used for the renewal of explosives licenses and permits. This short renewal

form is used in lieu of a more detailed application.

**Current Actions:** There are no changes to this information collection and it is being submitted for extension purposes only.

**Type of Review:** Extension.

**Affected Public:** Business or other for-profit.

**Estimated Number of Respondents:** 2,500.

**Estimated Time Per Respondent:** 20 minutes.

**Estimated Total Annual Burden Hours:** 825.

**Request for Comments:** Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 8, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00-6243 Filed 3-13-00; 8:45 am]

**BILLING CODE 4810-31-P**

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

#### Proposed Collection; Comment Request

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

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within

the Department of the Treasury is soliciting comments concerning the Drawback on Wines Exported.

**DATES:** Written comments should be received on or before May 15, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8930.

#### FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the form(s) and instructions should be directed to Richard Mascolo, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202) 927-8200.

#### SUPPLEMENTARY INFORMATION:

**Title:** Drawback on Wines Exported.

**OMB Number:** 1512-0082.

**Form Number:** ATF F 1582-A (5120.24).

**Abstract:** When proprietors export wines that have been produced, packaged, manufactured, or bottled in the U.S., they file a claim for drawback or refund for the taxes that have already been paid on the wine. This form notifies ATF that the wine was in fact exported and helps to protect the revenue and prevent fraudulent claims.

**Current Actions:** There are no changes to this information collection and it is being submitted for extension purposes only.

**Type of Review:** Extension.

**Affected Public:** Business or other for-profit.

**Estimated Number of Respondents:** 900.

**Estimated Time Per Respondent:** 1 hour and 7 minutes.

**Estimated Total Annual Burden Hours:** 2,025.

**Request for Comments:** Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 8, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00-6244 Filed 3-13-00; 8:45 am]

BILLING CODE 4810-31-P

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

#### Proposed Collection; Comment Request

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

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Bonded Wineries-Formula and Process for Wine, Letterhead Applications and Notices Relating to Formula Wine.

**DATES:** Written comments should be received on or before May 15, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Roberta Sanders, Product Compliance Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8116.

#### SUPPLEMENTARY INFORMATION:

**Title:** Bonded Wineries-Formula and Process for Wine, Letterhead Applications and Notices Relating to Formula Wine.

**OMB Number:** 1512-0059.

**Form Number:** ATF F 5120.29.

**Abstract:** ATF F 5120.29 is used to determine the classification of wines for labeling and consumer protection. The form describes the person filing, type of product to be made and restrictions for the labeling and manufacturing. The form is also used to audit a product.

**Current Actions:** There are no changes to this information collection and it is being submitted for extension purposes only.

**Type of Review:** Extension.

**Affected Public:** Business or other for-profit.

**Estimated Number of Respondents:** 600.

**Estimated Time Per Respondent:** 2 hours.

**Estimated Total Annual Burden Hours:** 1,200.

**Request for Comments:** Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 8, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00-6245 Filed 3-13-00; 8:45 am]

BILLING CODE 4810-31-P

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

#### Proposed Collection; Comment Request

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

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Authorization to Furnish Financial Information and Certificate of Compliance.

**DATES:** Written comments should be received on or before May 15, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8930.

#### FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the form(s) and instructions should be directed to Marjorie Ruhf, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8230.

#### SUPPLEMENTARY INFORMATION: Title:

Authorization to Furnish Financial Information and Certificate of Compliance.

**OMB Number:** 1512-0038.

**Form Number:** ATF F 5030.6.

**Abstract:** The Right to Financial Privacy Act of 1978 limits access to records held by financial institutions and provides for certain procedures to gain access to the information. ATF F 5030.6 serves as both a customer authorization for ATF to receive information and as the required certification to the financial institution.

**Current Actions:** There are no changes to this information collection and it is being submitted for extension purposes only.

**Type of Review:** Extension.

**Affected Public:** Business or other for-profit.

**Estimated Number of Respondents:** 2,000.

**Estimated Time Per Respondent:** 15 minutes.

**Estimated Total Annual Burden Hours:** 500.

#### Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 8, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00-6246 Filed 3-13-00; 8:45 am]

**BILLING CODE 4810-31-P**

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

#### Proposed Collection; Comment Request

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

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Information Collected in Support of Small Producer's Wine Tax Credit.

**DATES:** Written comments should be received on or before May 15, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Marjorie D. Ruhf, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8320.

**SUPPLEMENTARY INFORMATION:** *Title:* Information Collected in Support of Small Producer's Wine Tax Credit.

*OMB Number:* 1512-0540.

*Recordkeeping Requirement ID Number:* ATF REC 5120/11.

*Abstract:* ATF is responsible for the collection of the excise tax on wine. Certain small wine producers are eligible for a credit which may be taken to reduce the tax they pay on wines they remove from their own premises. The record retention period for all wine premises records is 3 years.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 280.

*Estimated Time Per Respondent:* None.

*Estimated Total Annual Burden Hours:* 1.

#### Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 8, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00-6247 Filed 3-13-00; 8:45 am]

**BILLING CODE 4810-31-P**

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

#### Proposed Collection; Comment Request

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

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the 2000 Floor Stocks Tax Return (Cigarettes) and Recordkeeping Requirements.

**DATES:** Written comments should be received on or before May 15, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW, Washington, DC 20226, (202) 927-8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Robert Ruhf, Revenue Division, 650 Massachusetts Avenue, NW, Washington, DC 20226, (202) 927-8188.

**SUPPLEMENTARY INFORMATION:** *Title:* 2000 Floor Stocks Tax Return (Cigarettes) and Recordkeeping Requirements.

*OMB Number:* 1512-0554.

*Form Number:* ATF F 5000.28T.

*Abstract:* A floor stocks tax has been imposed on cigarettes. All persons who hold for sale any cigarettes on January 1, 2000, must take an inventory. Each person will be required to make either a record of the physical inventory or a book or record inventory supported by the appropriate source records.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 400,000.

*Estimated Time Per Respondent:* 3 hours (small establishment) and 12 hours (large establishment, 2 people inventorying) and 30 minutes to complete ATF F 5000.28T.

*Estimated Total Annual Burden Hours:* 1,532,000.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) The accuracy of the agency's estimate of the burden of the collection of information; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 8, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00-6248 Filed 3-13-00; 8:45 am]

BILLING CODE 4810-31-P

## DEPARTMENT OF THE TREASURY

### Customs Service

[T.D. 00-15]

#### Application of Producers' Good Versus Consumers' Good Test in Determining Country of Origin Marking

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Final interpretation.

**SUMMARY:** This notice advises the public that Customs does not intend to rely on the distinction between producers' goods and consumers' goods in making country of origin marking determinations. It is Customs' opinion that as demonstrated in a number of recent court decisions, the consumer-good-versus-producer-good distinction is not determinative that a substantial transformation, as it traditionally is defined, has occurred.

**EFFECTIVE DATE:** June 12, 2000.

**FOR FURTHER INFORMATION CONTACT:** Monika Brenner, Attorney, Special Classification and Marking Branch, Office of Regulations and Rulings (202-927-1254).

#### SUPPLEMENTARY INFORMATION:

##### Background

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article.

In *Midwood Industries Inc. v. United States*, 313 F. Supp. 951 (Cust. Ct. 1970), *appeal dismissed* 57 CCPA 141 (1970), the U.S. Customs Court considered whether an importer of steel forgings was the ultimate purchaser for purposes of the marking statute, 19 U.S.C. 1304. The court cited the principles set forth in *United States v. Gibson-Thomsen Co., Inc.*, 27 CCPA 267 (1940), in determining that the importer's manufacturing operations made it the ultimate purchaser, namely that the importer may be considered the ultimate purchaser for marking

purposes if it subjects the article to further processing that results in the manufacture of a "new article with a new name, character and use." *Midwood*, 313 F. Supp. at 956. However, the *Midwood* court also found it relevant to that finding that the imported forgings at issue were transformed from producers' goods to consumers' goods, stating:

While it may be true \* \* \* that the imported forgings are made as close to the dimensions of ultimate finished form as is possible, they, nevertheless, remain forgings unless and until converted by some manufacturer into consumers' goods, i.e., flanges and fittings. And as producers' goods the forgings are a material of further manufacture, having, as such, a special value and appeal only for manufacturers of flanges and fittings. But, as consumers' goods and flanges and fittings produced from these forgings are end use products, having, as such, a special value and appeal for industrial users and for distributors of industrial products. *Id.* at 957.

It is Customs opinion that based on subsequent court decisions applying substantial transformation analysis, *Midwood* would be decided differently today. Accordingly, Customs proposed in a notice published in the **Federal Register** (63 FR 14751, March 26, 1998), to no longer rely on the distinction between producers' and consumers' goods.

#### Analysis of Comments

A total of 14 entities responded to the proposal (one untimely). Nine comments supported the proposal, three comments opposed the proposal, and two comments neither supported nor opposed the proposal.

*Comment:* Three commenters supporting and three commenters opposing the proposal provided detailed analyses of court decisions to support their respective positions. One commenter supporting the proposal states that recent court decisions, in particular *Superior Wire v. United States*, 669 F. Supp. 472 (CIT 1987), *aff'd*, 867 F.2d 1409 (Fed. Cir. 1989), did not use a producers' versus consumers' goods analysis. The court in *Superior Wire*, according to this commenter, made its decision based on an analysis of the effect on the metallurgical properties of wire rod, the fact that the wire rod specification is generally determined by reference to the end product for which the drawn wire will be used, the value added, and the amount of labor and capital investment. The commenter also claims that *Superior Wire* should control because the Federal Circuit rendered the decision.

Another commenter supporting the proposal points out that the court in *Superior Wire* noted that *Uniroyal v. United States*, 542 F. Supp. 1026 (CIT 1982), *aff'd*, 702 F.2d 1022 (Fed. Cir. 1983), did not find the producers' to consumers' goods distinction as determinative whether a substantial transformation occurred.

A commenter opposing the proposal states that the court in *Superior Wire* did look at the shift from producers' to consumers' goods. Two of the commenters opposing the proposal state that *Midwood* was cited with approval in *Superior Wire*.

*Response:* Customs believes that both the lower court and appellate court decisions in *Superior Wire* support the proposed interpretation. In *Superior Wire*, the parties agreed that the U.S. Court of International Trade (CIT) should make its determination of whether wire was a product of Spain or Canada on the basis of the substantial transformation test. *Superior Wire*, 669 F. Supp. at 478. The CIT in *Superior Wire* noted that recent cases cite the test used in *Anheuser-Busch Brewing Ass'n v. United States*, 207 U.S. 556, 568 (1908), but apply it differently. *Id.* The court also noted that the courts have concentrated on a change in use or character, along with certain cross-checks, including value added, and the amount of processing. *Id.* However, in making its decision, the court decided to examine cases, in particular *Torrington Co. v. United States*, 596 F. Supp. 1083 (CIT 1984), *aff'd*, 764 F.2d 1563 (Fed. Cir. 1985), that involved the processing of metal objects without combination or assembly operations. *Id.* at 479. The court noted that *Torrington* cited *Midwood* with approval, but also noted that the "producer to consumer goods distinction drawn in *Midwood*, \* \* \* was found not determinative as to substantial transformation" in *Uniroyal*. *Id.* The court then stated that "there is no clear change from producers' to consumers' goods." *Id.* The *Superior Wire* court, however, did not analyze the facts of *Midwood*, although *Midwood* also was a case involving the processing of metal objects. In contrast to the decision in *Midwood*, this court found that "wire rod and wire may be viewed as different stages of the same product." *Id.*

While the CIT in *Superior Wire* did state that there was a change in name, the court also found that there was no transformation from producers' to consumers' goods, no change from many uses to limited uses, no complicated processing, and that only a small percentage of value was added. The Federal Circuit held that the CIT's

conclusions were correct that the drawing of wire rod into wire was not the manufacture of a new and different product as required by *Anheuser-Busch, Superior Wire*, 867 F.2d at 1415. While the Federal Circuit in *Superior Wire* did acknowledge, without further comment, that the CIT cited other considerations, including no transformation from producers' to consumers' goods, it did not include this as a basis for its holding, and in its decision it only analyzed the changes in name, character and use.

*Comment:* One supporting commenter states that in *SDI Tech., Inc. v. United States*, 977 F. Supp. 1235 (CIT 1997), the court observed that the *Midwood* test exempts from marking virtually any product that was imported in unfinished form and finished prior to sale. Another supporting commenter states that while consumer electronics products changed from producers' to consumers' goods in *SDI*, the court determined that they did not undergo a substantial transformation. Two opposing commenters state that the court in *SDI* did look at the shift from producers' to consumers' goods.

*Response:* While Customs agrees that the court in *SDI* did look at the shift from producers' to consumers' goods as this was specifically raised by the plaintiff, the court also stated, citing *Uniroyal*, that it "has never held that the producer/consumer shift alone is dispositive." *SDI*, 977 F. Supp. at 1240. Furthermore, the court stated that by plaintiff's argument, "virtually any unfinished product that is finished by a producer before it is sold to a consumer would have undergone substantial transformation." *Id.* While the court recognized that the producer/consumer shift has some evidentiary value, the court found that the chassis could be used by a consumer, and found that the essence of the chassis remained the same. Also of relevance, is the court's statement that while a change in essence is not always a necessary prerequisite to a change in character, a lack of a change in essence evidences a lack of a change in character. *Id.* This does not hold true for the producer/consumer shift since even if there may be a producer/consumer good shift, this is not necessarily indicative of a change in character. Ultimately, the court in *SDI* decided that there was no change in character and use and the subject goods did not undergo a substantial transformation.

*Comment:* One supporting commenter states that in *National Juice Products Ass'n v. United States*, 628 F. Supp. 978 (CIT 1986), the court did not reach the result that *Midwood* would have

dictated and expressly stated that it was not obligated to follow the producers' good/consumers' good test. One opposing commenter states that it was dicta in *National Juice* to say that *Uniroyal* diminished the value of the producers' versus consumers' goods test, and that *National Hand Tool Corp. v. United States*, 16 CIT 308 (1992), stated that the determination of substantial transformation must be based on the totality of evidence.

*Response:* It is Customs opinion that in both *Uniroyal* and *National Juice*, the imported materials could clearly be characterized as producers' goods and the finished articles could clearly be considered consumers' goods had the court wished to adopt the reasoning used in *Midwood*. In *National Juice*, the court stated that the significance of the producers' goods to consumers' goods transformation in marking cases is diminished in light of its decision in *Uniroyal*. The court also stated that "under recent precedents, the transition from producers' to consumers' goods is not determinative." *National Juice*, 628 F. Supp. at 989-990. Disregarding plaintiff's specific reliance on *Midwood*, the court in *National Juice* stated that the imported product was "the very essence" of the retail product and held that manufacturing juice concentrate was not substantially transformed when it was processed into retail orange juice. *Id.* at 991. We also note that in *National Hand Tool*, the court did not even mention *Midwood*.

*Comment:* One supporting and two opposing commenters state that *Uniroyal* distinguished the facts of *Midwood*. However, the supporting commenter states that the court could have applied the *Midwood* test and would have reached the opposite conclusion. The supporting commenter also points out that the only case that used *Midwood* was *Torrington*, which can be reconciled with the *Uniroyal* essence test, and that *Uniroyal* and its progeny establish that there cannot be a substantial transformation without changing the fundamental character, as exemplified in *National Juice* and *CPC Int'l, Inc. v. United States*, 971 F. Supp. 574 (CIT 1997), *appeal docketed*, No. 98-1069 (Fed. Cir. 1997).

*Response:* Customs agrees with the supporting commenter. In both *Midwood* and *Uniroyal*, the issue centered around the processes occurring after the articles were imported into the United States.

In *Midwood*, the court only looked at the operations occurring after importation. Witnesses also testified that as imported, the forgings had no commercial use as they did not meet

any specifications. The court then found that the processes were manufacturing processes "irrespective of how performed, and albeit that these processes are representative of a successive stage of manufacture." *Midwood*, 313 F. Supp. at 957. The court found that the "end result of the manufacturing processes" was the transformation into "different articles having a new name, character and use." *Id.* The court noted that the imported articles were "'forgings' of one kind or another," indicating a name change. However, as to providing an analysis of the change in use and character of the traditional substantial transformation test, there was none except for the court's statement that as producers' goods they are not used by the consumer and are not capable of use by the consumer in that state. Further, the court found that while the imported forgings are made as close to the dimensions of ultimate finished form as is possible, they still remain forgings unless and until converted by some manufacturer into consumers' goods. *Id.* Lastly, the court in *Midwood* stated that a country of origin marking for the benefit of the purchaser of flanges and fittings serves no purpose because the ASA specifications have their own marking requirements. *Id.* Accordingly, in effect the court concluded that because of ASA marking requirements no other markings were necessary. There was no mention of changes in character and use in terms of the actual physical characteristics or purpose of the imported and finished goods.

By contrast, the court in *Uniroyal* did not solely focus upon the attachment of the outsole to the imported upper, but also considered the processes that occurred in making the upper abroad. Furthermore, unlike *Midwood* where the court noted that the forgings' dimensions were close to their finished form, but nevertheless found a substantial transformation, the court in *Uniroyal* focused upon the imported upper's finished shape, form, and size in finding no change in either character or use when made into the finished shoe. The court in *Uniroyal* made this finding even though the upper was not marketable at retail as a complete shoe without the outsole.

In making distinctions with other court decisions, the court in *Uniroyal* could point to the fact that in *Gibson-Thomsen* the imported articles were materials that lost their identity when combined with other articles and were substantially transformed. In distinguishing *United States v. International Paint Co., Inc.*, 35 CCPA, C.A.D. 376 (1948), a case involving

drawback, the court in *Uniroyal* noted that the upper did not undergo any physical change whatever and did not change in use as the upper was intended to be attached to an outsole. In *International Paint*, however, the paint changed into an antifouling paint. In distinguishing *Grafton Spools Ltd. v. United States*, 45 Cust. Ct. 16, C.D. 2190 (1960), a case pertaining to the country of origin marking of ribbon spools, the court pointed to the fact that the ribbon, and not the spool, was what was important or the essence of the article. However in distinguishing *Midwood*, the court in *Uniroyal* had to emphasize *Midwood's* analysis of the manufacturing processes, because the court in *Midwood* had not analyzed changes in the character and use of the forgings except to the extent that they changed from producers' to consumers' goods. Therefore, while Customs agrees that *Uniroyal* distinguished *Midwood*, as stated in *SDI*, "while a change in essence is not always a necessary prerequisite to a change in character, a lack of a change in essence evidences a lack of a change in character." *SDI*, 977 F. Supp. at 1240.

*Comment:* Two supporting commenters state that in *CPC*, the plaintiff relied on *Midwood* that peanut slurry was a producer good, and pointed out that the court dismissed the *Midwood* test, stating that *National Juice* had rejected the transformation from a producers' goods to consumers' goods as a determinative criterion in marking cases.

*Response:* Customs agrees that as in *SDI*, the court in *CPC* rejected plaintiff's reliance on *Midwood*.

*Comment:* One supporting commenter states that in *Madison Galleries, Ltd. v. United States*, 688 F. Supp. 1544 (CIT 1988), *aff'd*, 870 F.2d 627 (Fed Cir. 1989), the court in dicta stated that the post-*Midwood* cases may have diminished the significance of a producers' good-consumers' good approach. An opposing commenter states that *Midwood* has been cited with approval in *Madison Galleries*.

*Response:* Customs does not believe that the court in *Madison Galleries* either approved or disapproved of the *Midwood* decision. In *Madison Galleries*, a case pertaining to the Generalized System of Preferences (GSP), the court did not have to find that the article was a "product of" a GSP country, as the GSP at that time did not have such a requirement. While *Madison Galleries* cited *Midwood*, it was in response to the defendant's argument that it is not logical for an article to receive duty-free treatment under the GSP when that article would

not have to be marked as a product of that GSP country. The court in *Madison Galleries* responded that, as exemplified in *Midwood*, analysis of the marking requirements "can include consideration of the nature of the intended, immediate recipient of a foreign article, i.e., whether, for example that recipient is a producer or a consumer." *Madison Galleries*, 588 F. Supp. at 1547. Therefore, the court in *Madison Galleries* did not cite *Midwood* as support for the contention that the good was a "product of" the GSP country.

*Comment:* One supporting commenter states that in *Ferrostaal Metals Corp. v. United States*, 664 F. Supp. 535 (CIT 1987), where the result was consistent with the producers' good/consumers' good test, the court, while citing *Midwood*, did not rely on *Midwood*, but stated that the change was indicative of a substantial transformation. One opposing commenter states that *Ferrostaal* specifically rejected the essence test, and two opposing commenters state that *Midwood* was cited with approval in the *Ferrostaal* case.

*Response:* Customs does not believe that *Ferrostaal* supports the producers' goods versus consumers' goods test for determining substantial transformation. The court in *Ferrostaal* noted that while *Uniroyal* referred to an essence test, the test to be applied was whether the "imported article underwent a 'substantial transformation' which results in an article having a name, character or use differing from that of the imported article." *Ferrostaal*, 664 F. Supp. at 538, citing *Uniroyal*, 542 F. Supp. at 1029-30. Therefore, the court in *Ferrostaal* specifically rejected defendant's argument that an "essence" test displaced the change in name, character, and use test. *Id.*

Customs, by this notice, is not suggesting that the essence test replace the substantial transformation test. To the contrary, Customs adheres to the position stated in *CPC, supra*, that the essence test is "embraced by and aids in applying the traditional change of name, character or use test." *CPC*, 971 F. Supp. at 583. As Customs noted in the notice of proposed interpretation, the court in *Ferrostaal* also cited *Midwood* for its conclusion that a transition from producers' goods to consumers' goods was indicative of a change in use. *Id.* at 541. However, the court extensively considered the changes in character as result of the annealing and galvanizing processes as evidence of a substantial transformation. *Id.* at 539.

*Comment:* One supporting commenter states that *Midwood* is legally

unnecessary as courts have completely disregarded the producers' versus consumers' goods test or given it little to no weight. As support, the commenter cites *Zuniga v. United States*, 996 F.2d 1203 (Fed. Cir. 1993), where a casting slip was not substantially transformed by minor processes; *Aztec Milling Co. v. United States*, 890 F.2d 1150 (Fed. Cir. 1989), where dry corn flour was not substantially transformed and intermediate products did not lose identifying characteristics of constituent material; *United States v. Murray*, 621 F.2d 1163 (1st Cir. 1980), *cert denied*, 449 U.S. 837 (1980), where glue blend was not substantially transformed because it did not undergo a fundamental change; and *Grafton Spools, Ltd. v. United States*, 45 Cust. Ct. 16 (1960), where imported empty spools were not substantially transformed when wound with thread.

*Response:* Customs agrees that the courts generally have disregarded or given little weight to the producers' versus consumers' goods test.

*Comment:* One commenter states that Customs incorrectly cited *Gibson Thomsen, supra*, as support for the position that the substantial transformation test requires a change in name, character, "and" use, as opposed to a change in name, character "or" use.

*Response:* Customs disagrees. The Court of Customs and Patent Appeals in *Gibson-Thomsen* cited the criteria, "a new name, character, and use", five times in its decision. 27 CCPA 267, 270, 271, 272, 273 (1940) (emphasis added).

*Comment:* The proposal violates the Congressional request not to undertake changes to the country of origin rules while the World Trade Organization (WTO) continues to develop international harmonized country of origin rules.

*Response:* In the letter dated September 30, 1996, referred to in the comment, members of the Senate and the House of Representatives requested that any changes in policy with regard to country of origin marking requirements be deferred. The letter particularly requested deferring any changes in policy with regard to the country of origin marking requirements of metal forgings for hand tools. In fact, Customs has not made any policy changes with regard to hand tools, and also has not finalized its proposed regulations governing rules of origin for non-preferential trade even though the original deadline for completing the WTO process has passed. Moreover, in a September 30th letter, the Chairmen of the Senate Finance Committee and the Committee on Ways and Means

expressly recognized that such deferment in no way would affect the right of private parties to contest existing Treasury rulings. The subject notice of proposed interpretation was specifically initiated as a result of a private party's request to make the NAFTA and non-NAFTA rules for the country of origin marking of fittings and flanges uniform.

*Comment:* Two opposing commenters state that Customs lacks authority to limit *Midwood* and that 19 U.S.C. 1625(d) and 19 CFR 177.10(d) does not give Customs authority to disregard a court decision without first seeking appellate review, citing *Nestle Refrigerated Food Co. v. United States*, 18 CIT 661 (1994), *Orlando Food Corp. v. United States*, Slip Op. 97-19 (CIT 1997), and *Volkswagenwerk Aktiengesellschaft v. Federal Maritime Commission*, 390 U.S. 261, 272 (1968). They state that in *Orlando Food*, the CIT criticized Customs for limiting the application of a CIT decision after publication in the **Federal Register**. In *Orlando Food*, the court stated that Customs application of the section 1625(d) process circumvented judicial process. These commenters also cite *CPC Int'l, Inc. v. United States*, 933 F. Supp. 1093, 1101-02, 1104 (CIT 1996), *appeal pending*, where the court stated that Custom may not encroach on the judicial function by abrogating binding case law.

*Response:* Customs disagrees. Congress specifically codified 19 CFR 177.10 as part of Title VI, Customs Modernization, of the North American Free Trade Agreement implementation Act, Pub. L. 103-182, 103d Congress, 107 Stat. 2057 (1993), by adding 19 U.S.C. 1625(d) which states that "a decision that proposes to limit the application of a court decision shall be published in the Customs Bulletin together with notice of opportunity for public comment thereon prior to a final decision." The legislative history, House Report No. 103-361(I), reflects that Congress specifically recognizes that section 623 of H.R. 3450 (which became section 623 of Pub. L. 103-182 amending 19 U.S.C. 1625) requires only that "a decision that limits the application of a court decision \* \* \* be published for notice and comment in the Customs Bulletin." In this instance, Customs not only published the notice of proposed interpretation in the Customs Bulletin, but also in the **Federal Register** soliciting comments. Congress explained that the reason for the change was to provide "assurances of transparency concerning Customs rulings and policy directives through publication in the Customs Bulletin or

other easily accessible sources." House Report at 2674.

The CIT reference in *Orlando Food* that Customs application of 19 U.S.C. 1625(d) circumvents the judicial process is dicta. However, it is Customs opinion that considering all of the industry and trading pattern changes with which it has been faced and challenged within the last 28 years since the *Midwood* decision, Customs action under this notice is justified. Customs has acted in direct response to a private party's inquiry and in the absence of Customs action pursuant to 19 U.S.C. 1625(d), the country of origin marking requirements for fittings and flanges would remain unchanged and not uniform.

*Comment:* Seven commenters state that the *Midwood* decision has caused artificial distinctions within the pipe fitting industry, confusion, or does not accurately indicate the origin to consumers, which is the purpose of the marking statute, citing *Globemaster Inc. v. United States*, 340 F. Supp. 974, 976 (Cust. Ct. 1972), as support. One supporting commenter states that it is a GATT violation if the proposal is not adopted since the NAFTA Marking Rules are different. One opposing commenter states that it is unclear why Customs wants to eliminate the producers' versus consumers' good test.

*Response:* In response to the opposing commenter, the comments in support of the proposal illustrate why Customs has responded to the private party's request to address the situation concerning the marking of fittings and flanges. As one commenter puts it: "this whole issue has been a thorn of incredible proportion in the side of industry in general and the pipe fitting industry in particular." Because Customs believes that the issue presented in *Midwood* would be decided differently today, and because the NAFTA Marking Rules and *Midwood* decision render different results, it is Customs position that this action is necessary in order to provide equitable treatment to all importers of pipe fittings and flanges.

*Comment:* Three commenters supporting the proposal request that it be applied immediately or as expeditiously as possible. One commenter states that any marking required by the change can be accomplished through inexpensive means, in a short time frame, and without substantial economic loss. The commenter states that any further delay will continue to cause economic injury to certain industry members who have suffered lost sales and price suppression because of unmarked foreign flanges. One commenter opposing the proposal

states that Customs in the past has delayed the effective date of a rule change for 12 months. The commenter states that if Customs adopts the proposal, it would represent a drastic change to the rules under which fitting and flange producers operate. This commenter states that if the proposal is adopted, marking pipe fittings and flanges would entail far more than printing new labels; it would also require the purchase and installation of new machinery.

*Response:* Customs understands the concerns of both opposing and supporting parties. However, the fact remains that the rules for the country of origin marking for importations from NAFTA and non-NAFTA countries are not uniform. The change in treatment proposed by Customs will place all importers of pipe fittings and flanges on an equal footing. Customs notes that when the NAFTA Marking Rules were adopted, importations from NAFTA countries that were previously not subject to marking became subject to a marking requirement and those importers were able to make these changes in far less than a one-year period. Because the current country of origin marking requirement for pipe fittings and flanges is based on administrative treatment, rather than a specific ruling, Customs will require that all pipe fittings and flanges produced in the United States from imported forgings be marked with the country of origin of the imported forging. As specified in 19 CFR 177.10, Customs will make the change effective 90 days after publication of this notice in the **Federal Register**, except in the case of a ruling subject to the procedure specified in 19 U.S.C. 1625.

### Conclusion

In *Superior Wire v. United States*, *supra*, while the Federal Circuit acknowledged the lower court's reference to the producers' to consumers' goods shift, the Federal Circuit only analyzed the changes in name, character and use. The Federal Circuit also relied on *Uniroyal*, *supra*, where that distinction was not found to be determinative as to substantial transformation. The lower court in *Superior Wire* also did not analyze the facts of *Midwood*, *supra*, although it was a metal objects case. The court in *Ferrostaal*, *supra*, did not advocate the dilution of the traditional substantial transformation test in not finding the producers' to consumers' goods distinction to be particularly determinative. In *SDI, National Juice*, *Uniroyal*, and *CPC*, *supra*, the *Midwood* argument was rejected and the courts

examined the "essence" of the articles at issue. The court in *National Hand Tool, Aztec Milling, Murray, and Zuniga, supra*, did not even mention the *Midwood* decision. The only cases that really did not outright reject or diminish the application of the producers' to consumers' good shift are *Torrington* and *Madison Galleries, supra*, but the citation to *Midwood* in *Madison Galleries* does not even stand for the position that the article became a "product of" the GSP country.

Customs has provided notice in the Customs Bulletin (and **Federal Register**) as required by 19 U.S.C. 1625(d) of its intention not to rely on the producers' to consumers' good test. The opposing commenters have not cited a single decision (not even the favorable *Torrington* decision) where a court decided the substantial transformation test solely based on the producers' to consumers' good transition.

Furthermore, since the transition from producers' to consumers' good is not necessarily indicative of a substantial transformation, unlike a change in "essence", the purpose of the producers' to consumers' goods analysis does not aid in the determination of whether an article underwent a substantial transformation. Therefore, Customs will no longer rely on the distinction between producers' goods and consumers' goods in making country of origin determinations.

Inasmuch as the question of whether a good has been substantially transformed is based on specific facts, parties who have received rulings based on the producers' goods-consumers' goods analysis articulated in *Midwood* can continue to rely on those rulings unless and until Customs modifies or revokes them pursuant to 19 U.S.C. 1625, or they are specifically overruled by a court.

Approved: February 11, 2000.

**Raymond W. Kelly,**  
*Commissioner of Customs.*

**John P. Simpson,**  
*Deputy Assistant Secretary of the Treasury.*  
[FR Doc. 00-6115 Filed 3-13-00; 8:45 am]  
BILLING CODE 4820-02-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Art Advisory Panel of the Commissioner of Internal Revenue; Availability of Report of 1999 Closed Meetings

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of availability of report on closed meetings of the Art Advisory Panel.

**SUMMARY:** The report is now available.

Pursuant to 5 U.S.C. app. I section 10(d), of the Federal Advisory Committee Act; and 5 U.S.C. section 552b, the Government in the Sunshine Act: A report summarizing the closed meeting activities of the Art Advisory Panel during 1999, has been prepared. A copy of this report has been filed with the Assistant Secretary of the Treasury for Management and is now available for public inspection at: Internal Revenue Service, Freedom of Information Reading Room, Room 1621, 1111 Constitution Avenue, NW, Washington, DC 20224.

Requests for copies should be addressed to: Director, Disclosure Operations Division, Attn: FOI Reading Room, Box 388, Benjamin Franklin Station, Washington, DC 20224. Telephone (202) 622-5164 (Not a toll free telephone number).

The Commissioner of Internal Revenue has determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

**FOR FURTHER INFORMATION CONTACT:** Karen Carolan, C:AP:AS, Internal Revenue Service/Appeals, 1099 14th Street, NW, Washington, DC 20005. Telephone (202) 694-1861 (Not a toll free telephone number).

**Charles Rossotti,**

*Commissioner of Internal Revenue.*

[FR Doc. 00-6259 Filed 3-13-00; 8:45 am]

BILLING CODE 4830-01-U

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Art Advisory Panel—Notice of Closed Meeting

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of closed meeting of Art Advisory Panel.

**SUMMARY:** Closed meeting of the Art Advisory Panel will be held in Washington, DC.

**DATES:** The meeting will be held April 12 and 13, 2000.

**ADDRESSES:** The closed meeting of the Art Advisory Panel will be held on April 12 and 13, 2000 in Room 4600E beginning at 9:30 am, Franklin Court

Building, 1099 14th Street, NW, Washington, DC 20005.

**FOR FURTHER INFORMATION CONTACT:**

Karen Carolan, C:AP:AS 1099 14th Street, NW, Washington, DC 20005. Telephone (202) 694-1861, (not a toll free number).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a closed meeting of the Art Advisory Panel will be held on April 12 and 13, 2000 in Room 4600E beginning at 9:30 am, Franklin Court Building, 1099 14th Street, NW, Washington, DC 20005.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in Federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of section 6103 of Title 26 of the United States Code.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c)(3), (4), (6), and (7) of Title 5 of the United States Code, and that the meeting will not be open to the public.

The Commissioner of Internal Revenue has determined that this document is not a significant regulatory action as defined in Executive Order 12866 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

**Bob Wenzel,**

*Acting Commissioner of Internal Revenue.*

[FR Doc. 00-6262 Filed 3-13-00; 8:45 am]

BILLING CODE 4830-01-U

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of Citizen Advocacy Panel, So. Fla District

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

**ACTION:** Notice.

**SUMMARY:** An open meeting of the So. Fla Citizen Advocacy Panel will be held in Sunrise, Florida.

**DATES:** The meeting will be held Friday, March 24, 2000 and Saturday, March 25, 2000.

**FOR FURTHER INFORMATION CONTACT:** Nancy Ferree at 1-888-912-1227, or 954-423-7973.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Citizen Advocacy Panel will be held Friday, March 24, 2000 from 6 p.m. to 9 p.m. and Saturday, March 25, 2000 from 9 a.m. to 1 p.m., in Room 225, CAP Office, 7771 W. Oakland Park Blvd., Sunrise, Florida 33351. The public is invited to make oral comments. Individual comments will be limited to 10 minutes. If you would like to have the CAP consider a written statement, please call 1-888-912-1227 or 954-423-7973, or write Nancy Ferree, CAP Office, 7771 W. Oakland Park Blvd. Rm. 225, Sunrise, FL 33351. Due to limited conference space, notification of intent to attend the meeting must be made with Nancy Ferree. Ms. Ferree can be reached at 1-888-912-1227 or 954-423-7973. The agenda will include the following: Various IRS issue updates and reports by the CAP sub-groups.

**Note:** Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: March 7, 2000.

Nancy Ferree, Citizen Advocacy Panel Manager.

[FR Doc. 00-6260 Filed 3-13-00; 8:45 am]

BILLING CODE 4830-01-U

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of Citizen Advocacy Panel, Brooklyn District

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

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Brooklyn District Citizen Advocacy Panel will be held in Brooklyn, New York.

**DATES:** The meeting will be held Friday April 14, 2000.

**FOR FURTHER INFORMATION CONTACT:** Eileen Cain at 1-888-912-1227 or 718-488-3555.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Friday April 14, 2000, 6:00 p.m. to 9:00 p.m. at the Internal Revenue Service Brooklyn Building located at 625 Fulton Street, Brooklyn, NY 11201. For more information or to confirm attendance, notification of intent to attend the

meeting must be made with Eileen Cain. Mrs. Cain can be reached at 1-888-912-1227 or 718-488-3555. The public is invited to make oral comments from 8:30 p.m. to 9:00 p.m. on Friday April 14, 2000. Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1-888-912-1227 or 718-488-3555, or write Eileen Cain, CAP Office, P.O. Box R, Brooklyn, NY, 11201. The Agenda will include the following: various IRS issues.

**Note:** Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: March 1, 2000.

Eileen Cain,

Citizen Advocacy Panel Manager.

[FR Doc. 00-6261 Filed 3-13-00; 8:45 am]

BILLING CODE 4830-01-U

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Tax on Certain Imported Substances (Polyether Polyols); Filing of Petitions

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the acceptance, under Notice 89-61, of petitions requesting that nine polyether polyol substances be added to the list of taxable substances in section 4672(a)(3). Publication of this notice is in compliance with Notice 89-61. This is not a determination that the list of taxable substances should be modified.

**DATES:** Submissions must be received by May 15, 2000. Any modification of the list of taxable substances based upon these petitions would be effective October 1, 1992.

**ADDRESSES:** Send submissions to: CC:DOM:CORP:R (Petition), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (Petition), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may send submissions electronically to the IRS at Sharon.Y.Horn@m1.irs.counsel.treas.gov.

**FOR FURTHER INFORMATION CONTACT:** Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622-3130 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The petitions were received on November 21, 1991. The petitioner is Dow Chemical Company, a manufacturer and exporter of these substances. The following is a summary of the information contained in the petitions. The complete petitions are available in the Internal Revenue Service Freedom of Information Reading Room.

The nine polyether polyol substances are liquids. They are produced predominantly by the base-catalyzed reaction of cyclic ethers, usually ethylene oxide and propylene oxide, with active hydrogen-containing compounds (initiators) such as water, glycols, polyols, and amines. The reaction is carried out by a discontinuous batch process at elevated temperatures and pressures and under an inert atmosphere. The particular substance produced depends upon the oxides, initiators, reaction conditions, and catalysts used. The stoichiometric amounts of oxide reacted on the initiator determine the chain lengths and thus the molecular weights. HTS number: 3907.20.00

#### Poly(propylene)glycol

CAS number: 025322-69-4.

Poly(propylene)glycol is derived from the taxable chemicals propylene, chlorine, and sodium hydroxide.

The stoichiometric material consumption formula for this substance is:  $n+1(C_3H_6 \text{ (propylene)} + Cl_2 \text{ (chlorine)} + 2 NaOH \text{ (sodium hydroxide)}) + H_2O \text{ (water)} \rightarrow C_3H_8O_2(C_3H_6O)_n$  (poly(propylene)glycol) +  $n+1(2 NaCl \text{ (sodium chloride)} + H_2O \text{ (water)})$

According to the petition, taxable chemicals constitute at least 90 percent by weight of the materials used to produce this substance. The rate of tax for this substance would be \$7.74 per ton. This is based upon a conversion factor for propylene of 0.781, a conversion factor for chlorine of 1.31, and a conversion factor for sodium hydroxide of 1.43.

#### Poly(propylene/ethylene)glycol

CAS number: 053637-25-5.

Poly(propylene/ethylene)glycol is derived from the taxable chemicals propylene, chlorine, sodium hydroxide, and ethylene.

The stoichiometric material consumption formula for this substance is:  $n+1(C_3H_6 \text{ (propylene)} + Cl_2 \text{ (chlorine)} + 2 NaOH \text{ (sodium hydroxide)}) + H_2O \text{ (water)} + m/2(2 C_2H_4 \text{ (ethylene)} + O_2 \text{ (oxygen)}) \rightarrow C_3H_8O_2(C_3H_6O)_n(C_2H_4O)_m$  (poly(propylene/ethylene)glycol) +  $n+1(2 NaCl \text{ (sodium chloride)} + H_2O \text{ (water)})$

According to the petition, taxable chemicals constitute at least 90 percent by weight of the materials used to produce this substance. The rate of tax for this substance would be \$7.16 per ton. This is based upon a conversion factor for propylene of 0.663, a conversion factor for chlorine of 1.11, a conversion factor for sodium hydroxide of 1.21, and a conversion factor for ethylene of 0.123.

#### **Poly(propyleneoxy)glycerol**

CAS number: 025791-96-2.

Poly(propyleneoxy)glycerol is derived from the taxable chemicals propylene, chlorine, and sodium hydroxide.

The stoichiometric material consumption formula for this substance is:  $C_3H_8O_3$  (glycerine) +  $n(C_3H_6$  (propylene) +  $Cl_2$  (chlorine) + 2 NaOH (sodium hydroxide))  $\rightarrow C_3H_8O_3(C_3H_6O)_n$  (poly(propyleneoxy)glycerol) +  $n(2 NaCl$  (sodium chloride) +  $H_2O$  (water))

According to the petition, taxable chemicals constitute at least 85 percent by weight of the materials used to produce this substance. The rate of tax for this substance would be \$6.38 per ton. This is based upon a conversion factor for propylene of 0.645, a conversion factor for chlorine of 1.08, and a conversion factor for sodium hydroxide of 1.18.

#### **Poly(ethyleneoxy)glycerol**

CAS number: 031694-55-0.

Poly(ethyleneoxy)glycerol is derived from the taxable chemical ethylene.

The stoichiometric material consumption formula for this substance is:  $C_3H_8O_3$  (glycerine) +  $m/2(2 C_2H_4$  (ethylene) +  $O_2$  (oxygen))  $\rightarrow C_3H_8O_3(C_2H_4O)_m$  (poly(ethyleneoxy)glycerol)

According to the petition, taxable chemicals constitute more than 50 percent by weight of the materials used to produce this substance. The rate of tax for this substance would be \$3.31 per ton. This is based upon a conversion factor for ethylene of 0.681.

#### **Poly(propyleneoxy/ethyleneoxy)glycerol**

CAS number: 009082-00-2.

Poly(propyleneoxy/ethyleneoxy)glycerol is derived from the taxable chemicals propylene, chlorine, sodium hydroxide, and ethylene.

The stoichiometric material consumption formula for this substance is:  $C_3H_8O_3$  (glycerine) +  $n(C_3H_6$  (propylene) +  $Cl_2$  (chlorine) + 2 NaOH (sodium hydroxide)) +  $m/2(2 C_2H_4$  (ethylene) +  $O_2$  (oxygen))  $\rightarrow C_3H_8O_3(C_3H_6O)_n(C_2H_4O)_m$

(poly(propyleneoxy/ethyleneoxy)glycerol) +  $n(2 NaCl$  (sodium chloride) +  $H_2O$  (water))

According to the petition, taxable chemicals constitute at least 85 percent by weight of the materials used to produce this substance. The rate of tax for this substance would be \$7.20 per ton. This is based upon a conversion factor for propylene of 0.71, a conversion factor for chlorine of 1.05, a conversion factor for sodium hydroxide of 1.05, and a conversion factor for ethylene of 0.126.

#### **Poly(propyleneoxy)sucrose**

CAS number: 009049-71-2.

Poly(propyleneoxy)sucrose is derived from the taxable chemicals propylene, chlorine, and sodium hydroxide.

The stoichiometric material consumption formula for this substance is:  $C_{12}H_{22}O_{11}$  (sucrose) +  $n(C_3H_6$  (propylene) +  $Cl_2$  (chlorine) + 2 NaOH (sodium hydroxide))  $> C_{12}H_{22}O_{11}(C_3H_6O)_n$

(poly(propyleneoxy)sucrose) +  $n(2 NaCl$  (sodium chloride) +  $H_2O$  (water))

According to the petition, taxable chemicals constitute at least 65 percent by weight of the materials used to produce this substance. The rate of tax for this substance would be \$4.18 per ton. This is based upon a conversion factor for propylene of 0.423, a conversion factor for chlorine of 0.707, and a conversion factor for sodium hydroxide of 0.773.

#### **Poly(propyleneoxy/ethyleneoxy)sucrose**

CAS number: 026301-10-0.

Poly(propyleneoxy/ethyleneoxy)sucrose is derived from the taxable chemicals propylene, chlorine, sodium hydroxide, and ethylene.

The stoichiometric material consumption formula for this substance is:  $C_{12}H_{22}O_{11}$  (sucrose) +  $n(C_3H_6$  (propylene) +  $Cl_2$  (chlorine) + 2 NaOH (sodium hydroxide)) +  $m/2(2 C_2H_4$  (ethylene) +  $O_2$  (oxygen))  $\rightarrow C_{12}H_{22}O_{11}(C_3H_6O)_n(C_2H_4O)_m$  (poly(propyleneoxy/

ethyleneoxy)sucrose) +  $n(2 NaCl$  (sodium chloride) +  $H_2O$  (water))

According to the petition, taxable chemicals constitute at least 75 percent by weight of the materials used to produce this substance. The rate of tax for this substance would be \$6.11 per ton. This is based upon a conversion factor for propylene of 0.549, a conversion factor for chlorine of 0.918, a conversion factor for sodium hydroxide of 1.0, and a conversion factor for ethylene of 0.14.

#### **Poly(propyleneoxy/ethyleneoxy)diamine**

CAS number: 031568-06-6.

Poly(propyleneoxy/ethyleneoxy)diamine is derived from the taxable chemicals propylene, chlorine, and sodium hydroxide.

The stoichiometric material consumption formula for this substance is:  $C_4H_{12}N_2O$  (aminoethylethanolamine) +  $n(C_3H_6$  (propylene) +  $Cl_2$  (chlorine) + 2 NaOH (sodium hydroxide))  $\rightarrow C_4H_{12}N_2O(C_3H_6O)_n$  (poly(propyleneoxy/ethyleneoxy)diamine) +  $n(2 NaCl$  (sodium chloride) +  $H_2O$  (water))

According to the petition, taxable chemicals constitute at least 60 percent by weight of the materials used to produce this substance. The rate of tax for this substance would be \$4.92 per ton. This is based upon a conversion factor for propylene of 0.498, a conversion factor for chlorine of 0.833, and a conversion factor for sodium hydroxide of 0.91.

#### **Poly(propyleneoxy/ethyleneoxy)benzenediamine**

CAS number: 067800-94-6.

Poly(propyleneoxy/ethyleneoxy)benzenediamine is derived from the taxable chemicals propylene, chlorine, sodium hydroxide, and ethylene.

The stoichiometric material consumption formula for this substance is:  $C_7H_{10}N_2$  (ortho-toluenediamine) +  $n(C_3H_6$  (propylene) +  $Cl_2$  (chlorine) + 2 NaOH (sodium hydroxide)) +  $m/2(2 C_2H_4$  (ethylene) +  $O_2$  (oxygen))  $\rightarrow C_7H_{10}N_2(C_3H_6O)_n(C_2H_4O)_m$  (poly(propyleneoxy/ethyleneoxy)benzenediamine) +  $n(2 NaCl$  (sodium chloride) +  $H_2O$  (water))

According to the petition, taxable chemicals constitute at least 60 percent by weight of the materials used to produce this substance. The rate of tax for this substance would be \$5.25 per ton. This is based upon a conversion factor for propylene of 0.491, a conversion factor for chlorine of 0.821, a conversion factor for sodium hydroxide of 0.897, and a conversion factor for ethylene of 0.081.

#### **Comments and Requests for a Public Hearing**

Before a determination is made, consideration will be given to any written and electronic comments that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely

submits written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

**Dale D. Goode,**

*Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).*

[FR Doc. 00-6258 Filed 3-13-00; 8:45 am]

**BILLING CODE 4830-01-U**



# Federal Register

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**Tuesday,  
March 14, 2000**

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## **Part II**

### **Department of Labor**

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**Pension and Welfare Benefits  
Administration**

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**Proposed Exemptions; Barclays Bank PLC  
and its Affiliates (Collectively, Barclays);  
Notice**

**DEPARTMENT OF LABOR****Pension and Welfare Benefits Administration**

[Application No. D-10188, et al.]

**Proposed Exemptions; Barclays Bank PLC and its Affiliates (Collectively, Barclays)****AGENCY:** Pension and Welfare Benefits Administration, Labor.**ACTION:** Notice of Proposed Exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

**Written Comments and Hearing Requests**

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

**ADDRESSES:** All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Attention: Application No. \_\_\_\_, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5638, 200 Constitution Avenue, NW, Washington, DC 20210.

**Notice to Interested Persons**

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice

shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

**Barclays Bank PLC and its Affiliates (collectively, Barclays)**

Located in London, England  
[Application No. D-10188]

**Proposed Exemption**

The Department is considering granting an exemption under the authority of section 408(a) of the Act, section 4975(c)(2) of the Code, and section 8477(c)(3) of FERSA, in accordance with the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

*Section I—Retroactive Exemption for the Acquisition, Holding and Disposition of Barclays PLC Stock*

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(D), 406(b)(1) and 406(b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(D) and (E) of the Code, shall not apply, as of December 31, 1995 until the date this proposed exemption is granted, to the acquisition, holding and disposition of the common stock of Barclays PLC (the Barclays PLC Stock) by Index and Model-Driven Funds managed by Barclays, provided that the following conditions and the general conditions in Section III are met:

(a) The acquisition or disposition of the Barclays PLC Stock is for the sole purpose of maintaining strict

quantitative conformity with the relevant index upon which the Index or Model-Driven Fund is based, and does not involve any agreement, arrangement or understanding regarding the design or operation of the Fund acquiring the Barclays PLC Stock which is intended to benefit Barclays or any party in which Barclays may have an interest.

(b) All aggregate daily purchases of Barclays PLC Stock by the Funds do not exceed on any particular day the greater of:

(1) 15 percent of the average daily trading volume for the Barclays PLC Stock occurring on the applicable exchange or automated trading system (as described in paragraph (c) below) for the previous five (5) business days, or

(2) 15 percent of the trading volume for Barclays PLC Stock occurring on the applicable exchange or automated trading system on the date of the transaction, as determined by the best available information for the trades occurring on that date.

(c) All purchases and sales of Barclays PLC Stock occur either (i) on the London Stock Exchange, a recognized securities exchange as defined in Section IV(k) below, (ii) through an automated trading system (as defined in Section IV(j) below) operated by a broker-dealer independent of Barclays that is subject to regulation and supervision by the Securities and Futures Authority of the United Kingdom (pursuant to the applicable securities laws) that provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) in a direct, arms-length transaction entered into on a principal basis with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of Barclays and is either registered under the Securities Exchange Act of 1934 (the '34 Act), and thereby subject to regulation by the U.S. Securities and Exchange Commission (SEC), or subject to regulation and supervision by the Securities and Futures Authority of the United Kingdom (UK).

(d) No transactions by a Fund involve purchases from, or sales to, Barclays (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund.

(e) No more than five (5) percent of the total amount of Barclays PLC Stock issued and outstanding at any time is held in the aggregate by Index and Model-Driven Funds managed by Barclays.

(f) Barclays PLC Stock constitutes no more than three (3) percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based.

(g) A plan fiduciary independent of Barclays authorizes the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds Barclays PLC Stock, pursuant to the procedures described herein (see Paragraph 11 of the Summary of Facts and Representations below regarding portfolio management services provided for particular plans).

(h) A fiduciary independent of Barclays directs the voting of the Barclays PLC Stock held by an Index or Model-Driven Fund on any matter in which shareholders of Barclays PLC Stock are required or permitted to vote.

*Section II—Prospective Exemption for the Acquisition, Holding and Disposition of Barclays Stock*

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(D), 406(b)(1) and 406(b)(2) of the Act, section 8477(c)(2)(A) and (B) of FERSA, and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(D) and (E) of the Code, shall not apply to the acquisition, holding and disposition of Barclays PLC Stock or the common stock of an Affiliate of Barclays PLC (Barclays PLC Affiliate Stock) by Index and Model-Driven Funds managed by Barclays, provided that the following conditions and the general conditions in Section III are met:

(a) The acquisition or disposition of Barclays PLC Stock or Barclays PLC Affiliate Stock (collectively, Barclays Stock) is for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Index or Model-Driven Fund is based, and does not involve any agreement, arrangement or understanding regarding the design or operation of the Fund acquiring the Barclays Stock which is intended to benefit Barclays or any party in which Barclays may have an interest.

(b) Whenever Barclays Stock is initially added to an index on which an Index or Model-Driven Fund is based, or initially added to the portfolio of an Index or Model-Driven Fund, all acquisitions of Barclays Stock necessary to bring the Fund's holdings of such Stock either to its capitalization-weighted or other specified composition in the relevant index, as determined by the independent organization maintaining such index, or to its correct weighting as determined by the model

which has been used to transform the index, occur in the following manner:

(1) Purchases are from, or through, only one broker or dealer on a single trading day;

(2) Based on the best available information, purchases are not the opening transaction for the trading day;

(3) Purchases are not effected in the last half hour before the scheduled close of the trading day;

(4) Purchases are at a price that is not higher than the lowest current independent offer quotation, determined on the basis of reasonable inquiry from non-affiliated brokers;

(5) Aggregate daily purchases do not exceed 15 percent of the average daily trading volume for the security, as determined by the greater of (i) the trading volume for the security occurring on the applicable exchange or automated trading system on the date of the transaction, or (ii) an aggregate average daily trading volume for the security occurring on the applicable exchange or automated trading system for the previous five (5) business days, both based on the best information reasonably available at the time of the transaction;

(6) All purchases and sales of Barclays Stock occur either (i) on a recognized securities exchange (as defined in Section IV(k) below), (ii) through an automated trading system (as defined in Section IV(j) below) operated by a broker-dealer independent of Barclays that is either registered under the '34 Act, and thereby subject to regulation by the SEC, or subject to regulation and supervision by the Securities and Futures Authority of the UK, which provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) through an automated trading system (as defined in Section IV(j) below) that is operated by a recognized securities exchange (as defined in Section IV(k) below), pursuant to the applicable securities laws, and provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; and

(7) If the necessary number of shares of Barclays Stock cannot be acquired within 10 business days from the date of the event which causes the particular Fund to require Barclays Stock, Barclays appoints a fiduciary which is independent of Barclays to design acquisition procedures and monitor Barclays' compliance with such procedures.

(c) Subsequent to acquisitions necessary to bring a Fund's holdings of Barclays Stock to its specified weighting

in the index or model pursuant to the restrictions described in paragraph (b) above, all aggregate daily purchases of Barclays Stock by the Funds do not exceed on any particular day the greater of:

(1) 15 percent of the average daily trading volume for the Barclays Stock occurring on the applicable exchange or automated trading system (as defined below) for the previous five (5) business days, or

(2) 15 percent of the trading volume for Barclays Stock occurring on the applicable exchange or automated trading system (as defined below) on the date of the transaction, as determined by the best available information for the trades that occurred on such date.

(d) All transactions in Barclays Stock not otherwise described in paragraph (b) above are either: (i) Entered into on a principal basis in a direct, arms-length transaction with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of Barclays and is either registered under the '34 Act, and thereby subject to regulation by the SEC, or subject to regulation and supervision by the Securities and Futures Authority of the UK (SFA-UK), (ii) effected on an automated trading system (as defined in Section IV(j) below) operated by a broker-dealer independent of Barclays that is subject to regulation by either the SEC or SFA-UK, or an automated trading system operated by a recognized securities exchange (as defined in Section IV(k) below) which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) effected through a recognized securities exchange (as defined in Section IV(k) below) so long as the broker is acting on an agency basis.

(e) No transactions by a Fund involve purchases from, or sales to, Barclays (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund.

(f) No more than five (5) percent of the total amount of either Barclays PLC Stock or any Barclays PLC Affiliate Stock, that is issued and outstanding at any time, is held in the aggregate by Index and Model-Driven Funds managed by Barclays.

(g) Barclays Stock constitutes no more than five (5) percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based.

(h) A plan fiduciary independent of Barclays authorizes the investment of

such plan's assets in an Index or Model-Driven Fund which purchases and/or holds Barclays Stock, pursuant to the procedures described herein (see Paragraph 11 of the Summary of Facts and Representations below regarding portfolio management services provided for particular plans).

(i) A fiduciary independent of Barclays directs the voting of the Barclays Stock held by an Index or Model-Driven Fund on any matter in which shareholders of Barclays Stock are required or permitted to vote.

#### Section III—General Conditions

(a) Barclays maintains or causes to be maintained for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (b) of this Section to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Barclays, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than Barclays shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in paragraph (b)(2) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (a) of this Section are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a plan participating in an Index or Model-Driven Fund who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any plan participating in an Index or Model-Driven Fund or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in an Index or Model-Driven Fund, or a representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this paragraph (b) shall be authorized to examine trade secrets of Barclays or commercial or financial information which is considered confidential.

#### Section IV—Definitions

(a) The term "Index Fund" means any investment fund, account or portfolio sponsored, maintained, trustee, or managed by Barclays, in which one or more investors invest, and—

(1) which is designed to track the rate of return, risk profile and other characteristics of an independently maintained securities Index, as described in Section IV(c) below, by either (i) replicating the same combination of securities which compose such Index or (ii) sampling the securities which compose such Index based on objective criteria and data;

(2) for which Barclays does not use its discretion, or data within its control, to affect the identity or amount of securities to be purchased or sold;

(3) that contains "plan assets" subject to the Act, pursuant to the Department's regulations (see 29 CFR 2510.3-101, Definition of "plan assets"—plan investments); and,

(4) that involves no agreement, arrangement, or understanding regarding the design or operation of the Fund which is intended to benefit Barclays or any party in which Barclays may have an interest.

(b) The term "Model-Driven Fund" means any investment fund, account or portfolio sponsored, maintained, trustee, or managed by Barclays, in which one or more investors invest, and—

(1) which is composed of securities the identity of which and the amount of which are selected by a computer model that is based on prescribed objective criteria using independent third party data, not within the control of Barclays, to transform an independently maintained Index, as described in Section IV(c) below;

(2) which contains "plan assets" subject to the Act, pursuant to the Department's regulations (see 29 CFR 2510.3-101, Definition of "plan assets"—plan investments); and

(3) that involves no agreement, arrangement, or understanding regarding the design or operation of the Fund or the utilization of any specific objective criteria which is intended to benefit Barclays or any party in which Barclays may have an interest.

(c) The term *Index* means a securities index that represents the investment performance of a specific segment of the public market for equity or debt securities in the United States and/or foreign countries, but only if—

(1) the organization creating and maintaining the index is—

(A) engaged in the business of providing financial information,

evaluation, advice or securities brokerage services to institutional clients,

(B) a publisher of financial news or information, or

(C) a public stock exchange or association of securities dealers; and,

(2) the index is created and maintained by an organization independent of Barclays; and,

(3) the index is a generally accepted standardized index of securities which is not specifically tailored for the use of Barclays.

(d) The term *opening date* means the date on which investments in or withdrawals from an Index or Model-Driven Fund may be made.

(e) The term *Buy-up* means an acquisition of Barclays Stock by an Index or Model-Driven Fund in connection with the initial addition of such Stock to an independently maintained index upon which the Fund is based or the initial investment of a Fund in such Stock.

(f) The term *Barclays* refers to Barclays PLC and its Affiliates, as defined below in paragraph (g), including BZW Barclays Global Investors, N.A., BZW Barclays Global Fund Advisors, BZW Barclays Global Investors Services, BZW Investment Management, Inc., Barclays Bank PLC (London), Barclays Bank of Canada, Barclays Bank Zimbabwe, Barclays Bank of Kenya, and Barclays Bank of Botswana, Ltd.

(g) The term *Affiliate* means, with respect to Barclays PLC, an entity which, directly or indirectly, through one or more intermediaries, is controlled by Barclays PLC;

(h) An *affiliate* of Barclays includes:

(1) Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with the person;

(2) Any officer, director, employee or relative of such person, or partner of any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(i) The term *control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(j) The term *automated trading system* means an electronic trading system that functions in a manner intended to simulate a securities exchange by electronically matching orders on an agency basis from multiple buyers and sellers, such as an "alternative trading system" within the meaning of the SEC's Reg. ATS [17 CFR part 242.300], as such definition may be amended from time to time, or an "automated

quotation system” as described in Section 3(a)(51)(A)(ii) of the '34 Act [15 U.S.C. 78c(a)(51)(A)(ii)].

(k) The term *recognized securities exchange* means a U.S. securities exchange that is registered as a “national securities exchange” under Section 6 of the '34 Act (15 U.S.C. 78f), or a designated offshore securities market, as defined in Regulation S of the SEC [17 CFR part 230.902(b)], as such definition may be amended from time to time, which performs with respect to securities the functions commonly performed by a stock exchange within the meaning of definitions under the applicable securities laws (e.g., 17 CFR part 240.3b-16).

**EFFECTIVE DATE:** The proposed exemption, if granted, will be effective as of December 31, 1995, for those transactions described in Section I above, and as of the date the final grant is published in the **Federal Register** for those transactions described in Section II above.

### Summary of Facts And Representations

1. Barclays Global Investors, N.A. (“BGI”) is a national banking association which provides investment advisory, trust and related services to employee benefit plans and other fiduciary clients. BGI is an indirect subsidiary of Barclays PLC, a bank holding company incorporated under the laws of England and Wales, and Barclays Bank PLC (Barclays Bank), a bank incorporated under the laws of England and Wales and a subsidiary of Barclays PLC. BGI currently has two subsidiaries, both of which are California corporations and investment advisers registered under the Investment Advisers Act of 1940 (the “Advisers Act”). The first subsidiary, BZW Barclays Global Fund Advisers, provides investment advice to accounts and funds, including as an investment adviser or sub-adviser to certain mutual funds. The second subsidiary, BZW Barclays Global Investors Services, is registered as a broker-dealer and provides services to BGI and certain of its affiliates. In addition to BGI and its subsidiaries, Barclays Bank and certain of its affiliates may act as fiduciaries to ERISA-covered accounts and funds. BZW Investment Management, Inc., a Delaware corporation, is an investment adviser under the Advisers Act. BZW Asset Risk Management Limited, a corporation organized under the laws of England and Wales, is also registered as an investment adviser under the Advisers Act. The “Applicants” are BGI and those other Affiliates of Barclays

PLC that act or may act in the future as fiduciaries to ERISA-covered plans.

2. On December 31, 1995, Barclays Bank and certain of its affiliates acquired Wells Fargo Nikko Investment Advisors (WFNIA) and Wells Fargo Institutional Trust Company, N.A. (WFITC). WFITC became BZW Barclays Global Investors, N.A. (i.e. BGI) and WFNIA became BZW Barclays Global Fund Advisors (BZW Advisors).

Prior to January 1, 1996, WFITC and WFNIA maintained and managed Index and Model-Driven Funds which held assets of ERISA-covered employee benefit plans. Cross-trades of securities occurred among these Funds, as well as between the Funds and certain large pension plans, pursuant to Prohibited Transaction Exemption (PTE) 92-11 (56 FR 7800, March 4, 1992), an exemption issued to Wells Fargo Bank, N.A. and its affiliates (including at such time WFNIA and WFITC).<sup>1</sup> Part II of PTE 92-11 permitted Index and Model-Driven Funds maintained by Wells Fargo to acquire, hold and dispose of the common stock of Wells Fargo & Co. (WFC Stock).

The Applicants represent that as a result of the sale of WFNIA and WFITC to Barclays Bank, an individual exemption similar to that granted to Wells Fargo (i.e., Part II of PTE 92-11) for the acquisition, holding and disposition of WFC Stock is necessary, after December 31, 1995, to enable certain Index and Model-Driven Funds maintained by Barclays Bank and its Affiliates to acquire, hold and dispose of the common stock of Barclays PLC (i.e., Barclays PLC Stock). In this regard, there have been seven (7) Funds that, since December 31, 1995, have acquired, held and/or disposed of Barclays PLC Stock.<sup>2</sup> The Applicants request a retroactive exemption, effective as of December 31, 1995, to the date this proposed exemption is granted to permit such transactions by these Funds. The Applicants are not requesting any retroactive relief for the acquisition, holding or disposition of the common stock of any Affiliates of Barclays PLC (i.e., Barclays PLC

<sup>1</sup> PTE 92-11 superseded PTE 87-51 (52 FR 22558, June 12, 1987). Currently, Wells Fargo has an exemption application before the Department which seeks to amend PTE 92-11 (see Exemption Application No. D-9584).

<sup>2</sup> The Applicants state that acquisitions of Barclays PLC Stock have been made only by Funds that already held such Stock in their portfolios as of December 31, 1995. Thus, there have been no new acquisitions of Barclays PLC Stock by any Funds as a result of an initial addition of such Stock to their portfolios since that time. Such initial additions of Barclays PLC Stock will only be made by a Fund once this proposed exemption is granted, under the conditions required herein for a “buy-up” period (see Section II(b) above).

Affiliate Stock). The Applicants represent that no Index or Model-Driven Funds containing “plan assets” covered by the Act<sup>3</sup> have held such Stock. The Applicants also request that any further exemptive relief for cross-trades of securities by Index and Model-Driven Funds maintained by Barclays be considered separately.<sup>4</sup>

3. The Applicants represent that they provide investment advisory and management services to ERISA-covered plans through separately managed accounts and through collective investment vehicles. The Applicants’ investment management services include indexed, quantitative, and structured investment strategies. In addition to ERISA-covered plans, the Applicants’ clients include retirement plans with non-U.S. participants, governmental entities, governmental plans, church plans, mutual funds, and other institutional investors.

One of BGI’s clients is the Federal Employees’ Thrift Savings Plan (the Federal Thrift Plan) established pursuant to the provisions of the Federal Employees Retirement System Act of 1986 (FERSA) with respect to which BGI manages the assets of the Common Stock Index Investment Fund (the C Fund) and Fixed Income Investment Fund (the F Fund) through investing such assets in collective investment funds maintained by BGI. The Applicants state that the Federal Retirement Thrift Investment Board is planning to begin investing the Federal Thrift Plan in an Index Fund consisting of international equity securities, and such Fund is anticipated to include Barclays PLC Stock. Thus, the Applicants request that this proposed exemption provide prospective relief

<sup>3</sup> See 29 CFR 2510.3-101; Definition of “plan assets”—plan investments.

<sup>4</sup> In this regard, the Department directs interested persons to the Proposed Class Exemption for Cross-Trades of Securities by Index and Model-Driven Funds (the Cross-Trading Proposal) which was published in the **Federal Register** on December 15, 1999 (64 FR 70057). The Department notes that Section II(h) of the Cross-Trading Proposal states that the cross-trading of securities by an Index or Model-Driven Fund may not involve any security issued by the investment manager for the Fund unless such manager has obtained a separate prohibited transaction exemption for the acquisition of such security. Thus, the Cross-Trading Proposal would, if granted, permit Index and Model-Driven Funds maintained by Barclays to cross-trade Barclays Stock, pursuant to the conditions to be contained therein, if this proposed exemption is granted. The Applicants represent that currently cross-trades of Barclays PLC Stock by the Funds which hold such Stock are covered by PTE 92-11. However, the Department is providing no opinion in this proposed exemption as to whether any cross-trades of stocks, including Barclays PLC Stock, by such Funds meet the conditions necessary for relief under PTE 92-11.

under FERSA to acquire, hold and dispose of Barclays Stock.

4. In their capacity as fiduciary of an employee benefit plan, the Applicants may be directed by an independent plan fiduciary or a plan participant that has the ability to direct investments for his/her plan account under the plan document. Alternatively, in those cases in which the Applicants manage investments made for the plan, the Applicants represent that their discretionary authority over whether the plan invests in particular Funds is restricted by an independent plan fiduciary, unless the plan subscribes to Applicants' Portfolio Management in Funds (PMF) services (as discussed below).

5. The Applicants request that Index and Model-Driven Funds be permitted to invest in Barclays Stock if such Stock is included among the securities listed in the index utilized by the Fund. The Applicants have identified over twenty (20) indices that currently include either Barclays PLC Stock or Barclays PLC Affiliate Stock. Indexes which include Barclays PLC Stock are the FT-SE All Share Index, the MSCI UK Index, the FT-SE 100 Index, the FTSE Eurotop 100 Index, the FTSE Eurotop 300 Index, the FTSE E300 Financial Index, and the Bloomberg Europe Index. These indexes are compiled by financial information agencies, such as Standard & Poor's, Financial Times Ltd., and Morgan Stanley & Company International. These agencies are engaged in the provision of financial information or securities brokerage services to institutional investors and/or are publishers of financial information. In each instance, the indexes are compiled by organizations that are independent of Barclays and are generally accepted standardized indices of securities that are not tailored for the use of Barclays. While many of these indexes are not currently utilized by BGI for its Index and Model-Driven Funds, there is a possibility that Funds holding assets of ERISA-covered plans will be established in the future that are based on these indexes.

The Applicants represent that there were at least seven (7) different Index Funds maintained by BGI that included Barclays PLC Stock in their portfolios as of December 31, 1995. These Funds were the BGI MSCI Equity Index Fund—UK; the BGI MSCI Equity Index Fund B—UK; the BGI EAFE Equity Index Fund P; the BGI Exxon UK Alpha Tilts Fund; the BGI UK Equity Index Fund; the BGI UK Alpha Tilts Fund; and the BGI UK Alpha Tilts Fund B.

However, since December 31, 1995, BGI has excluded Barclays Stock from

the portfolios of any new Index and Model-Driven Funds even though such Stock is included in independently maintained indexes upon which such Funds are based. For those Index Funds whose goal is to replicate the rate of return of the index by tracking the capitalization-weighted composition of securities listed in the index, such exclusions of Barclays Stock create tracking errors which must be accounted for by re-weighting other securities in the index. For Model-Driven Funds that transform an index in a model-prescribed way, such exclusions of Barclays Stock create operational inefficiencies and strategic uncertainties that affect the criteria and data necessary to achieve the desired rates of return.

6. The Applicants state that the proposed exemption is necessary to allow Funds holding "plan assets" to purchase and hold Barclays Stock in order to replicate the capitalization-weighted or other specified composition of Barclays Stock in an independently maintained third party index used by an Index Fund or to achieve the desired transformation of an index used to create a portfolio for a Model-Driven Fund.<sup>5</sup>

In addition, the Applicants represent that there will be instances, once this proposed exemption is granted, when Barclays Stock will be added to an index on which a Fund is based or will be added to the portfolio of a Fund which seeks to track an index that includes such Stock. These instances will be referred to hereafter as a "Buy-up".<sup>6</sup> In such instances, acquisitions of Barclays Stock will be necessary to bring the Fund's holdings of such Stock either to its capitalization-weighted or other specified composition in the index, as determined by the

<sup>5</sup> The Applicants are not requesting any relief from sections 406 or 407(a) of the Act in connection with the acquisition and holding of Barclays Stock by any employee benefit plans established and maintained by Barclays for its own employees (the Barclays Plans) which invest in the Applicants' Index Funds. In this regard, such transactions may be covered by the statutory exemption under section 408(e) of the Act, if the conditions of that exemption are met. However, the Department is not providing an opinion in this proposed exemption as to whether the conditions of section 408(e) of the Act are met.

<sup>6</sup> The Applicants anticipate that generally acquisitions of Barclays Stock by an Index or Model-Driven Fund in a "Buy-up" will occur within 10 business days from the date of the event which causes the particular Fund to require Barclays Stock. Barclays does not anticipate that the amounts of Barclays Stock acquired by any Fund in a "Buy-up" will be significant. In this regard, the Department notes that the conditions required herein are designed to minimize the market impact of purchases made by the Funds in any "Buy-up" of Barclays Stock.

independent organization maintaining such index, or to the correct weighting for such Stock as determined by the computer model which has been used to transform the index. If the Index or Model-Driven Fund holds "plan assets," the Applicants represent that all acquisitions of Barclays Stock by such Fund will comply with the "Buy-up" conditions of this proposed exemption. These conditions are as follows:

(A) Purchases will be from or through only one broker or dealer on a single trading day;

(B) Based on the best available information, purchases will not be the opening transaction for the trading day;

(C) Purchases will not be effected in the last half hour before the scheduled close of the trading day;

(D) Purchases will be at a price that is not higher than the lowest current independent offer quotation, determined on the basis of reasonable inquiry from non-affiliated brokers;

(E) Purchases will not exceed 15 percent of the daily trading volume for the security, as determined by the greater of either (i) the trading volume for the security occurring on the applicable exchange or automated trading system on the date of the transaction, or (ii) an aggregate average daily trading volume for the security occurring on the applicable exchange or automated trading system for the previous five (5) business days, both based on the best information reasonably available at the time of the transaction;

(F) All purchases and sales of Barclays Stock will occur either (i) on a recognized securities exchange (as defined in Section IV(k)), (ii) through an automated trading system (as defined in Section IV(j)) operated by a broker-dealer that is either registered under the Securities Exchange Act of 1934 (the '34 Act) and thereby subject to regulation by the SEC, or subject to regulation and supervision by the SFA-UK, which provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) through an automated trading system (as defined in Section IV(j) above) that is operated by a recognized securities exchange (as defined in Section IV(k)), pursuant to the applicable securities laws which provide a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; and

(G) If the necessary number of shares of Barclays Stock cannot be acquired within 10 business days from the date of the event which causes the particular Fund to require Barclays Stock, Barclays

will appoint a fiduciary which is independent of Barclays to design acquisition procedures and monitor Barclays' compliance with such procedures.<sup>7</sup>

The independent fiduciary and its principals will be completely independent from the Applicants. The independent fiduciary will also be experienced in developing and operating investment strategies for individual and collective investment vehicles that track third-party indices. Furthermore, the independent fiduciary will not act as the broker for any purchases or sales of Barclays Stock and will not receive any commissions as a result of this initial acquisition program.

The independent fiduciary will have as its primary goal the development of trading procedures that minimize the market impact of purchases made pursuant to the initial acquisition program by the Funds. The Applicants would expect that, under the trading procedures established by the independent fiduciary, the trading activities will be conducted in a low-profile, mechanical, non-discretionary manner and would involve a number of small purchases over the course of each day, randomly timed. The Applicants further expect that such a program will allow the Applicants to acquire the necessary shares of Barclays Stock for the Funds with minimum impact on the market and in a manner that will be in the best interests of any employee benefit plans that participate in such Funds.

The independent fiduciary will also be required to monitor the Applicants' compliance with the trading program and procedures developed for the initial acquisition of Barclays Stock. During the course of any initial acquisition program, the independent fiduciary will be required to review the activities weekly to determine compliance with the trading procedures and notify the Applicants should any non-compliance be detected. Should the trading procedures need modifications due to unforeseen events or consequences, the independent fiduciary will be required to consult with the Applicants and must approve in advance any alteration of the trading procedures.

<sup>7</sup> In this regard, all Funds holding Barclays Stock as of December 31, 1995, which have continued to acquire, hold and dispose of Barclays Stock in order to track indexes including Barclays Stock will not need to have daily transactions involving such Stock directed by an independent fiduciary. Barclays states that the amount of Barclays Stock involved in such transactions has been and continues to be determined by the independent organization which created and maintains the relevant index, and all other conditions required under this proposed exemption have been met.

7. Subsequent to initial acquisitions necessary to bring a Fund's holdings of Barclays Stock to its specified weighting in the index or model pursuant to the restrictions described above, all aggregate daily purchases of Barclays Stock by the Funds will not exceed on any particular day the greater of:

(i) 15 percent of the average daily trading volume for the Barclays Stock occurring on the applicable exchange or automated trading system (as described herein) for the previous five (5) business days, or

(ii) 15 percent of the trading volume for Barclays Stock occurring on the applicable exchange or automated trading system (as described herein) on the date of the transaction, as determined by the best available information for the trades that occurred on such date.

The Applicants state that recent changes in the London Stock Exchange (LSE) have made that exchange more transparent for trading in Barclays PLC Stock by the Index and Model-Driven Funds. In late 1997, the LSE adopted the Stock Exchange Electronic Trading Service (SETS) for all stocks listed in the FTSE Indexes, which include Barclays PLC Stock. SETS is an order-driven system on which members post bids and offers, permitting trading on an agency basis. Prior to the use of SETS, trading on the LSE was a quote-driven principal market.

The Applicants state further that the advent of SETS has improved the availability of volume information about stocks traded on the LSE. Currently, all trades in stocks included in the SETS (whether executed through SETS or not) are reported to SETS within minutes of the trade and this data is available through various data providers, such as Reuters. Thus, the Applicants represent that the volume limitations imposed under this proposed exemption for transactions by the Funds involving Barclays PLC Stock will be effectively monitored by Barclays.

8. Barclays represents that as of December 31, 1995 until the date this proposed exemption is granted, all purchases and sales of Barclays PLC Stock by the Funds have occurred and will continue to occur in one of the following ways: (i) Through the London Stock Exchange, a recognized securities exchange as defined in Section IV(k) above; (ii) through an automated trading system (as defined in Section IV(j) above) operated by a broker-dealer that is subject to regulation by the SFA-UK (pursuant to the applicable securities laws), that provides a mechanism for customer orders to be matched on an anonymous basis without the

participation of a broker-dealer; or (iii) through a direct, arms-length transaction entered into on a principal basis with a broker-dealer<sup>8</sup> that is either registered under the '34 Act, and thereby subject to regulation by the SEC, or subject to regulation and supervision by the SFA-UK. In addition, Barclays states that as of the date this proposed exemption is granted, all future transactions by the Funds involving Barclays Stock which do not occur in connection with a Buy-up of such Stock by a Fund, as described above, will be either: (i) Entered into on a principal basis with a broker-dealer that is either registered under the '34 Act, and thereby subject to regulation by the SEC, or subject to regulation and supervision by the SFA-UK; (ii) effected on an automated trading system (as defined in Section IV(j) above) operated by a broker-dealer subject to regulation by either the SEC or SFA-UK, or on an automated trading system operated by a recognized securities exchange (as defined in Section IV(k) above) which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; or (iii) effected through a recognized securities exchange (as defined in Section IV(k) above) so long as the broker is acting on an agency basis.

9. With respect to all acquisitions and dispositions of Barclays PLC Stock by the Funds since December 31, 1995, the Applicants state that no such transactions have involved purchases from or sales to Barclays (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund. The Applicants represent that all future acquisitions and dispositions of Barclays Stock by any Index or Model-Driven Funds maintained by Barclays will also not involve any purchases from or sales to Barclays (including officers, directors, or employees thereof), or any party in interest that is

<sup>8</sup> The Department notes that no relief is being provided herein for purchases and sales of securities between a Fund and a broker-dealer, acting as a principal, which may be considered prohibited transactions as a result of such broker-dealer being a party in interest, under section 3(14) of the Act, with respect to any plans that are investors in the Fund. However, such transactions may be covered by one or more of the Department's existing class exemptions. For example, PTE 84-14 (49 FR 9497, March 13, 1984) permits, under certain conditions, parties in interest to engage in various transactions with plans whose assets are invested in an investment fund managed by a "qualified professional asset manager" (QPAM) who is independent of the parties in interest (with certain limited exceptions) and meets specified financial standards.

a fiduciary with discretion to invest plan assets into the Fund.

10. The Applicants state that no more than five (5) percent of the total amount of either Barclays PLC Stock or Barclays PLC Affiliate Stock, that is issued and outstanding at any time, will be held in the aggregate by Index and Model-Driven Funds managed by Barclays.

For purposes of the acquisition and holding of Barclays PLC Stock by Funds from December 31, 1995 until the date this proposed exemption is granted, such Stock will constitute no more than three (3) percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based. For example, Barclays PLC Stock currently represents only 2.03% of the MSCI UK Index and 1.86% of the FTSE 100 Index. Although some indexes include Barclays PLC Stock in percentages that exceed three (3) percent of the index, Barclays does not currently utilize such indices for its Index and Model-Driven Funds with "plan assets" subject to the Act.

For purposes of future acquisitions and holdings of Barclays Stock by such Funds once this proposed exemption is granted, neither the Barclays PLC Stock nor the Barclays PLC Affiliate Stock will constitute no more than five (5) percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based. In this regard, the Applicants have identified at least seven (7) indexes which include Barclays Stock where the current approximate capitalization weight of the index represented by Barclays Stock exceeds three (3) percent. The Applicants request that the proposed exemption allow Barclays to design a passive investment strategy for an Index or Model-Driven Fund which seeks to track an index that contains Barclays Stock, or which transforms such an index in a model-prescribed way, as long as the Barclays Stock does not constitute more than five (5) percent of the index.<sup>9</sup>

With respect to an index's specified composition of particular stocks in its portfolio, the Applicants state that future Funds may track an index where the appropriate weighting for stocks listed in the index is not capitalization-weighted. In this regard, the Applicants

<sup>9</sup> The Applicants have identified certain independent third party indexes where the current approximate capitalization weight of the index represented by Barclays Stock exceeds five (5) percent. However, the Applicants have agreed to limit the prospective relief that would be provided by this proposed exemption to Index and Model-Driven Funds which track indexes where the specified composition of Barclays Stock in the index does not exceed five (5) percent of such index.

note that the exemption received by WFITC and WFNIA (now BGI and BZW Advisors, respectively) from the Department in 1992 (*i.e.* PTE 92-11) covered transactions by index and model-driven funds that were designed to replicate the capitalization-weighted composition of an independently maintained stock index. However, the Applicants state that Funds maintained by BGI and other Affiliates of Barclays PLC may track indexes where the selection of a particular stock by the index, and the amount of stock to be included in the index, is not established based on the market capitalization of the corporation issuing such stock. Therefore, since an independent organization may choose to create an index where there are other index weightings for stocks composing the index, the Applicants request that the proposed exemption allow for Barclays Stock to be acquired by a Fund in the amounts which are specified by the particular index, subject to the other restrictions imposed under this proposed exemption. The Applicants represent that, in all instances, acquisitions or dispositions of Barclays Stock by a Fund will be for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Fund is based or, in the case of a Model-Driven Fund, a modified version of such an index as created by a computer model based on prescribed objective criteria and third-party data.

11. The Applicants state that plan fiduciaries independent of Barclays have authorized and will continue to authorize the investment of any plan's assets in an Index or Model-Driven Fund which purchases and/or holds Barclays Stock.

With respect to transactions involving Barclays Stock, the Applicants state that they may provide portfolio management services (*i.e.*, PMF services) to a particular plan (a PMF Plan). In this regard, the Applicants may exercise some discretion in allocating and reallocating the plan's assets among various collective investment funds, including Funds which may hold Barclays Stock. These allocations are based on a plan's investment objectives, risk profile and market conditions. However, the Applicants make the following representations with respect to the purchase, directly or indirectly, of Barclays Stock by such plans:

(a) The Applicants represent that any prohibited transactions which might occur as a result of the discretionary allocation and reallocation of plan assets among collective investment funds will be exempt from the

prohibitions of section 406 of the Act by reason of section 408(b)(8).<sup>10</sup>

(b) Before Barclays Stock is purchased by a Fund, the appropriate independent fiduciary for each PMF Plan which is currently invested or could be invested in such Fund will be furnished an explanation and a simple form to return to Barclays for the purpose of indicating either approval or disapproval of investments in the Fund including Barclays Stock, together with a postage-paid return envelope. If the form is not returned to the Applicants, the Applicants may obtain a verbal response by telephone. If a verbal response is obtained by telephone, the Applicants will confirm the fiduciary's decision in writing within five (5) business days. In the event no response is obtained from a plan fiduciary, the assets of the plan will not be invested in any Fund which invests in Barclays Stock and any plan assets currently invested in such Fund at that time would be withdrawn.

(c) Each new management agreement with such a plan will contain language specifically approving or disapproving the investment in any Fund which holds or might hold Barclays Stock. The fiduciary for each such plan will be informed that the existing management agreement could be modified in the same way. However, if the fiduciary does not specifically approve language in the agreement allowing the investment of plan assets in Funds which hold or might hold Barclays Stock, then no such investment will be made by the Applicants.

(d) Each such plan will be informed on a quarterly basis of any investment in, or withdrawal from, any Fund holding Barclays Stock. The plan would be granted the election to override the Applicants discretionary decision to invest in, or withdraw from, such Funds. If the plan overrides the Applicants' decision to invest in, or withdraw from, the Funds, then the Applicants will carry out the plan's election as soon as possible after being notified of such election.

12. The Applicants will appoint an independent fiduciary which will direct the voting of Barclays Stock held by the Funds. Currently, the independent fiduciary that directs the voting of Barclays PLC Stock held by the Funds is Institutional Shareholders Services, Inc.

<sup>10</sup> The Department is expressing no opinion in this proposed exemption as to whether Applicants' discretionary allocation and reallocation services for any collective investment funds maintained by the Applicants satisfy the requirements of section 408(b)(8) of the Act and is not proposing any exemptive relief beyond that offered by section 408(b)(8).

Barclays states that in all instances the independent fiduciary chosen to vote Barclays Stock for the Funds will be a consulting firm specializing in corporate governance issues and proxy voting on behalf of institutional investors with large equity portfolios. The fiduciary will develop and follow standard guidelines and procedures for the voting of proxies by institutional fiduciaries. The Applicants will provide the independent fiduciary with all necessary information regarding the Funds that hold Barclays Stock, the amount of Barclays Stock held by the Funds on the record date for shareholder meetings of the Applicants, and all proxy and consent materials with respect to Barclays Stock. The independent fiduciary will maintain records with respect to its activities as an independent fiduciary on behalf of the Funds, including the number of shares of Barclays Stock voted, the manner in which they were voted, and the rationale for the vote if the vote was not consistent with the independent fiduciary's procedures and current voting guidelines in effect at the time of the vote. The independent fiduciary will supply the Applicants with such information after each shareholder meeting. The independent fiduciary will be required to acknowledge that it will be acting as a fiduciary with respect to the plans which invest in the Funds which own Barclays Stock, when voting such stock.

16. In summary, with respect to all acquisitions, holdings, and dispositions of Barclays PLC Stock by the Funds since December 31, 1995, the Applicants represent that such transactions meet the criteria of section 408(a) of the Act for the following reasons:

(a) Each Index or Model-Driven Fund involved is based on an Index, as defined in Section IV(c) above;

(b) The acquisition, holding and disposition of the Barclays PLC Stock by the Index or Model-Driven Fund is for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Fund is based, and does not involve any agreement, arrangement or understanding regarding the design or operation of the Fund acquiring the Barclays PLC Stock which is intended to benefit Barclays or any party in which Barclays may have an interest;

(c) All aggregate daily purchases of Barclays PLC Stock by the Funds do not exceed, on any particular day, 15 percent of the average daily trading volume for such Stock occurring on the applicable exchange or automated trading system, as determined by the

best available information for the trades occurring on that date;

(d) All purchases and sales of Barclays PLC Stock occur either (i) on the London Stock Exchange, a recognized securities exchange as defined herein, (ii) through an automated trading system (as defined herein) operated by a broker-dealer that is subject to regulation by the SFA-UK (pursuant to the applicable securities laws) that provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) in a direct, arms-length transaction entered into on a principal basis with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of Barclays and is either registered under the '34 Act, and thereby subject to regulation by the SEC, or subject to regulation and supervision by the SFA-UK;

(e) No transactions by a Fund involve purchases from or sales to Barclays (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund;

(f) No more than five (5) percent of the total amount of Barclays PLC Stock issued and outstanding at any time is held in the aggregate by Index and Model-Driven Funds managed by Barclays;

(g) Barclays PLC Stock constitutes no more than three (3) percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based;

(h) A plan fiduciary independent of Barclays authorizes the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds Barclays PLC Stock; and

(i) A fiduciary independent of Barclays (*i.e.* Institutional Shareholders Services, Inc.) directs the voting of the Barclays PLC Stock held by an Index or Model-Driven Fund on any matter in which shareholders of Barclays PLC Stock are required or permitted to vote.

With respect to all acquisitions, holdings, and dispositions of Barclays PLC Stock or Barclays PLC Affiliate Stock by the Funds after this proposed exemption is granted, the Applicants represent that such transactions will meet the criteria of section 408(a) of the Act for the following reasons:

(a) Each Index or Model-Driven Fund involved will be based on an Index, as defined in Section IV(c) above;

(b) The acquisition or disposition of Barclays Stock will be for the sole purpose of maintaining strict quantitative conformity with the

relevant Index upon which the Index or Model-Driven Fund is based, and will not involve any agreement, arrangement or understanding regarding the design or operation of the Fund acquiring the Barclays Stock which is intended to benefit Barclays or any party in which Barclays may have an interest;

(c) Whenever Barclays Stock is initially added to an index on which a Fund is based, or initially added to the portfolio of a Fund (*i.e.*, a Buy-up), all acquisitions of Barclays Stock necessary to bring the Fund's holdings of such Stock either to its capitalization-weighted or other specified composition in the relevant index, as determined by the independent organization maintaining such index, or to its correct weighting as determined by the computer model which has been used to transform the index, will be restricted by conditions which are designed to prevent possible market price manipulations;

(d) Subsequent to acquisitions necessary to bring a Fund's holdings of Barclays Stock to its specified weighting in the index or model, pursuant to the restrictions noted in paragraph (c) above, all aggregate daily purchases of Barclays Stock by the Funds will not exceed, on any particular day, 15 percent of the average daily trading volume for such Stock occurring on the applicable exchange or automated trading system, as determined by the best available information for the trades that occurred on such date;

(e) All transactions in Barclays Stock, other than acquisitions of such Stock in a Buy-up described in paragraph (c) above, will be either: (i) Entered into on a principal basis with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of Barclays and is either registered under the '34 Act, and thereby subject to regulation by the SEC, or subject to regulation and supervision by the SFA-UK, (ii) effected on an automated trading system operated by a broker-dealer subject to regulation by either the SEC or SFA-UK, or by a recognized securities exchange which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) effected through a recognized securities exchange (as defined herein) so long as the broker is acting on an agency basis.

(f) No transactions by a Fund will involve purchases from or sales to Barclays (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund;

(g) No more than five (5) percent of the total amount of either Barclays PLC Stock or Barclays PLC Affiliate Stock, that is issued and outstanding at any time, will be held in the aggregate by Index and Model-Driven Funds managed by Barclays;

(h) Barclays Stock will constitute no more than five (5) percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based;

(i) A plan fiduciary independent of Barclays will authorize the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds Barclays Stock pursuant to the procedures described herein, including those which relate to portfolio management services provided to certain plans (see Paragraph 11 of the Summary of Facts and Representations above); and

(k) A fiduciary independent of Barclays will direct the voting of the Barclays Stock held by an Index or Model-Driven Fund on any matter in which shareholders of Barclays Stock are required or permitted to vote.

**NOTICE TO INTERESTED PERSONS:** Notice of the proposed exemption should be mailed by first class mail to interested persons, including the appropriate fiduciaries for employee benefit plans currently invested in the Index and/or Model-Driven Funds that acquire and hold Barclays Stock. The notice should contain a copy of the proposed exemption as published in the **Federal Register** and an explanation of the rights of interested parties to comment on or request a hearing regarding the proposed exemption. All notices should be sent to interested persons within 15 days of the publication of this proposed exemption in the **Federal Register**. Any written comments and/or requests for a hearing must be received by the Department from interested persons within 45 days of the publication of this proposed exemption in the **Federal Register**.

In addition, Barclays shall provide a copy of the proposed exemption and, if granted, a copy of the final exemption upon request to all ERISA-covered plans that invest in any Index or Model-Driven Fund that will include Barclays PLC Stock or Barclays PLC Affiliate Stock in its portfolio after the date the final exemption is published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Mr. E.F. Williams of the Department, telephone (202) 219-8194. (This is not a toll-free number.)

## **BOSC, Inc. (BOSC)**

Located in Tulsa, Oklahoma  
[Application No. D-10834]

### **Proposed Exemption**

#### *I. Transactions*

A. The restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.<sup>11</sup>

B. The restrictions of sections 406(b)(1) and 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code, shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;  
(ii) solely in the case of an acquisition of certificates in connection with the

<sup>11</sup> Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3-21(c).

initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) a plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.<sup>12</sup> For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1)(i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B.(1) or (2).

C. The restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in, the prospectus or private placement memorandum provided to investing plans before they purchase certificates issued by the trust.<sup>13</sup>

<sup>12</sup> For purposes of this proposed exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

<sup>13</sup> In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act, or from the taxes imposed by reason of section 4975(c) of the Code, for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. The restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

## II. General Conditions

A. The relief provided under Part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating from a rating agency (as defined in section III.W.) at the time of such acquisition that is in one of the three highest generic rating categories;

(4) The trustee is not an affiliate of any other member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in

connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith;

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933; and

(7) In the event that the obligations used to fund a trust have not all been transferred to the trust on the closing date, additional obligations as specified in subsection III.B.(1) may be transferred to the trust during the pre-funding period (as defined in section III.BB.) in exchange for amounts credited to the pre-funding account (as defined in section III.Z.), provided that:

(a) The pre-funding limit (as defined in section III.AA.) is not exceeded;

(b) All such additional obligations meet the same terms and conditions for eligibility as those of the original obligations used to create the trust corpus (as described in the prospectus or private placement memorandum and/or pooling and servicing agreement for such certificates), which terms and conditions have been approved by a rating agency.

Notwithstanding the foregoing, the terms and conditions for determining the eligibility of an obligation may be changed if such changes receive prior approval either by a majority of the outstanding certificateholders or by a rating agency;

(c) The transfer of such additional obligations to the trust during the pre-funding period does not result in the certificates receiving a lower credit rating from a rating agency upon termination of the pre-funding period than the rating that was obtained at the time of the initial issuance of the certificates by the trust;

(d) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations in the trust at the end of the pre-funding period will not be more than 100 basis points lower than the average interest rate for the obligations which were

transferred to the trust on the closing date;

(e) In order to ensure that the characteristics of the receivables actually acquired during the pre-funding period are substantially similar to those which were acquired as of the closing date, the characteristics of the additional obligations will be either monitored by a credit support provider or other insurance provider which is independent of the sponsor, or an independent accountant retained by the sponsor will provide the sponsor with a letter (with copies provided to the rating agency, the underwriter and the trustees) stating whether or not the characteristics of the additional obligations conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or pooling and servicing agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the closing date;

(f) The pre-funding period shall be described in the prospectus or private placement memorandum provided to investing plans; and

(g) The trustee of the trust (or any agent with which the trustee contracts to provide trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities and liabilities as a fiduciary under the Act. The trustee, as the legal owner of the obligations in the trust, will enforce all the rights created in favor of certificateholders of such trust, including employee benefit plans subject to the Act.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, nor any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance

Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

### III. Definitions

For purposes of this proposed exemption:

#### A. Certificate means:

(1) A certificate—

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) or a Financial Asset Securitization Investment Trust (FASIT) within the meaning of section 860D(a) or section 860L, respectively, of the Internal Revenue Code of 1986; and

(b) That is issued by, and is an obligation of, a trust; with respect to certificates defined in (1) and (2) above for which BOSC or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this proposed exemption, references to “certificates representing an interest in a trust” include certificates denominated as debt which are issued by a trust.

B. Trust means an investment pool, the corpus of which is held in trust and consists solely of:

(1) (a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association); and/or

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T); and/or

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property); and/or

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U); and/or

(e) “Guaranteed governmental mortgage pool certificates,” as defined in 29 CFR 2510.3–101(i)(2); and/or

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);

(2) Property which had secured any of the obligations described in subsection B.(1);

(3) (a) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders; and/or

(b) Cash or investments made therewith which are credited to an account to provide payments to certificateholders pursuant to any yield supplement agreement or similar yield maintenance arrangement to supplement the interest rates otherwise payable on obligations described in subsection III.B.(1) held in the trust, provided that such arrangements do not involve swap agreements or other notional principal contracts; and/or

(c) Cash transferred to the trust on the closing date and permitted investments made therewith which:

(i) Are credited to a pre-funding account established to purchase additional obligations with respect to which the conditions set forth in clauses (a)-(g) of subsection II.A.(7) are met and/or;

(ii) Are credited to a capitalized interest account (as defined in section III.X.); and

(iii) Are held in the trust for a period ending no later than the first distribution date to certificateholders occurring after the end of the pre-funding period.

For purposes of this clause (c) of subsection III.B.(3), the term “permitted investments” means investments which are either: (i) Direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by the United States, or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (ii) have been rated (or the obligor has been rated) in one of the three highest generic rating categories by a rating agency; are described in the pooling and servicing agreement; and are permitted by the rating agency; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship, yield supplement agreements described in clause (b) of subsection III.B.(3) and other credit support arrangements with respect to any obligations described in subsection III.B.(1).

Notwithstanding the foregoing, the term “trust” does not include any investment pool unless: (i) The investment pool consists only of assets of the type described in clauses (a) through (f) of subsection III.B.(1) which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by a rating agency for at least one year prior to the plan’s acquisition of certificates pursuant to this proposed exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan’s acquisition of certificates pursuant to this proposed exemption.

#### C. Underwriter means:

(1) BOSC;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with BOSC; or

(3) Any member of an underwriting syndicate or selling group of which BOSC or a person described in (2) is a manager or co-manager with respect to the certificates.

D. Sponsor means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. Master Servicer means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. Subservicer means an entity which, under the supervision of and on behalf of the master servicer, services obligations contained in the trust, but is not a party to the pooling and servicing agreement.

G. Servicer means any entity which services obligations contained in the trust, including the master servicer and any subservicer.

H. Trustee means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. Insurer means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. Obligor means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the

trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. *Excluded Plan* means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. *Restricted Group* with respect to a class of certificates means:

- (1) each underwriter;
- (2) each insurer;
- (3) the sponsor;
- (4) the trustee;
- (5) each servicer;

(6) any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) any affiliate of a person described in (1)-(6) above.

M. *Affiliate* of another person includes:

- (1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;
- (2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and
- (3) Any corporation or partnership of which such other person is an officer, director or partner.

N. *Control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

- (1) Such person is not an affiliate of that other person; and
- (2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. *Sale* includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

- (1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;
- (2) The prospectus or private placement memorandum is provided to

an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this proposed exemption (if granted) applicable to sales are met.

Q. *Forward delivery commitment* means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. *Reasonable compensation* has the same meaning as that term is defined in 29 CFR 2550.408c-2.

S. *Qualified Administrative Fee* means a fee which meets the following criteria:

- (1) the fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;
- (2) the servicer may not charge the fee absent the act or failure to act referred to in (1);
- (3) the ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and
- (4) the amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer

T. *Qualified Equipment Note Secured by a Lease* means an equipment note:

- (1) which is secured by equipment which is leased;
- (2) which is secured by the obligation of the lessee to pay rent under the equipment lease; and
- (3) with respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as would be the case if the equipment note were secured only by the equipment and not the lease.

U. *Qualified Motor Vehicle Lease* means a lease of a motor vehicle where:

- (1) the trust owns or holds a security interest in the lease;
- (2) the trust owns or holds a security interest in the leased motor vehicle; and
- (3) the trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as would be the case if the trust consisted of motor vehicle installment loan contracts.

V. *Pooling and Servicing Agreement* means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as

debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

W. *Rating Agency* means Standard & Poor's Structured Rating Group (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Credit Rating Co. (D & P) or Fitch IBCA, Inc. (Fitch), or their successors.

X. *Capitalized Interest Account* means a trust account: (i) which is established to compensate certificateholders for shortfalls, if any, between investment earnings on the pre-funding account and the pass-through rate payable under the certificates; and (ii) which meets the requirements of clause (c) of subsection III.B.(3).

Y. *Closing Date* means the date the trust is formed, the certificates are first issued and the trust's assets (other than those additional obligations which are to be funded from the pre-funding account pursuant to subsection II.A.(7)) are transferred to the trust.

Z. *Pre-Funding Account* means a trust account: (i) Which is established to purchase additional obligations, which obligations meet the conditions set forth in clauses (a)-(g) of subsection II.A.(7); and (ii) which meets the requirements of clause (c) of subsection III.B.(3).

AA. *Pre-Funding Limit* means a percentage or ratio of the amount allocated to the pre-funding account, as compared to the total principal amount of the certificates being offered which is less than or equal to 25 percent.

BB. *Pre-Funding Period* means the period commencing on the closing date and ending no later than the earliest to occur of: (i) the date the amount on deposit in the pre-funding account is less than the minimum dollar amount specified in the pooling and servicing agreement; (ii) the date on which an event of default occurs under the pooling and servicing agreement; or (iii) the date which is the later of three months or 90 days after the closing date.

CC. *BOSC* means BOSC, Inc. an Oklahoma corporation, and its affiliates.

The Department notes that this proposed exemption is included within the meaning of the term "Underwriter Exemption" as it is defined in section V(h) of Prohibited Transaction Exemption 95-60 (60 FR 35925, July 12, 1995), the Class Exemption for Certain Transactions Involving Insurance Company General Accounts (see 60 FR at 35932).

#### Summary Of Facts and Representations

1. BOSC is a broker-dealer registered with the Securities and Exchange Commission (SEC) and is a member of

the National Association of Securities Dealers, Inc. As of June 30, 1999, it had total assets of \$15.1 million.

BOSC is a wholly-owned subsidiary of BOK Financial Corporation (BOK Financial), a bank holding with its principal offices located in Tulsa, Oklahoma. BOSC was established as a broker-dealer subsidiary of BOK Financial pursuant to an order of the Board of Governors of the U.S. Federal Reserve System (the Federal Reserve Board) effective April 29, 1997 (the Tier 1 Order). The Federal Reserve Board regulates BOK Financial as a bank holding company and restricts activities of BOSC and its affiliates under the Glass-Steagall Act.

Under the Tier 1 Order, BOSC is authorized to engage, subject to certain prudential limitations established by the Federal Reserve Board, in underwriting and dealing in certain mortgage-related securities, municipal revenue bonds, commercial paper and consumer receivables-related securities (Tier 1 Activities). In addition, BOSC is authorized to act as agent in the private placement of all types of securities, including providing related advisory services, and to buy and sell securities on the order of investors. The Tier 1 Order is subject to the condition that BOSC does not derive more than a limited percentage of its total gross revenues over any two-year period from underwriting and dealing in certain categories of securities, including asset-backed securities of the type described herein.

BOSC has also been authorized by the Federal Reserve Board to engage, subject to certain prudential limitations established by the Federal Reserve Board dated December 2, 1998, in certain additional securities activities, including underwriting and dealing in corporate debt and equity securities (Tier 2 Activities).

BOSC has been involved in the structuring and placement of asset-backed securities transactions since July 1998. In March, 1999, BOSC has served as lead underwriter in public offerings of trust certificates of the BOK Auto Grantor Trust 1999-A. BOSC is developing additional offerings of asset backed securities.

BOK Financial, the parent of BOSC, is the largest financial institution headquartered in Oklahoma, with total assets of approximately \$8.2 billion as of June 30, 1999 and approximately \$15.5 billion in assets under management and administration. BOK Financial's subsidiaries include Bank of Oklahoma, National Association (the largest national bank headquartered in Oklahoma), Bank of Texas, National

Association (headquartered in the Dallas-Ft. Worth Metropolitan Area), Bank of Arkansas, National Association (headquartered in Fayetteville, Arkansas), and Bank of Albuquerque, National Association (headquartered in Albuquerque, New Mexico). BOK Financial, through its subsidiary banks, provides a full range of consumer and commercial banking services, trust services, mortgage origination and servicing, and investment advisory services. The Bank of Oklahoma Trust Division serves as the investment advisor for the American Performance Funds Group of Mutual Funds.

#### *Trust Assets*

2. BOSC seeks exemptive relief to permit plans to invest in pass-through certificates representing undivided interests in the following categories of trusts: (1) Single and multi-family residential or commercial mortgage investment trusts;<sup>14</sup> (2) motor vehicle receivable investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificate investment trusts.<sup>15</sup>

3. Commercial mortgage investment trusts may include mortgages on ground leases of real property. Commercial mortgages are frequently secured by ground leases on the underlying property, rather than by fee simple interests. The separation of the fee simple interest and the ground lease interest is generally done for tax reasons. Properly structured, the pledge of the ground lease to secure a mortgage provides a lender with the same level of security as would be provided by a pledge of the related fee simple interest. The terms of

<sup>14</sup> The Department notes that PTE 83-1 [48 FR 895, January 7, 1983], a class exemption for mortgage pool investment trusts, would generally apply to trusts containing single-family residential mortgages, provided that the applicable conditions of PTE 83-1 are met. BOSC requests relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure. However, BOSC has stated that it may still avail itself of the exemptive relief provided by PTE 83-1.

<sup>15</sup> Guaranteed governmental mortgage pool certificates are mortgage-backed securities with respect to which interest and principal payable is guaranteed by the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Federal National Mortgage Association (FNMA). The Department's regulation relating to the definition of "plan assets" (29 CFR 2510.3-101(i)) provides that where a plan acquires a guaranteed governmental mortgage pool certificate, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not, solely by reason of the plan's holding of such certificate, include any of the mortgages underlying such certificate. The applicant is requesting exemptive relief for trusts containing guaranteed governmental mortgage pool certificates because the certificates in the trusts may be plan assets.

the ground leases pledged to secure leasehold mortgages will in all cases be at least ten years longer than the term of such mortgages.<sup>16</sup>

#### *Trust Structure*

4. Each trust is established under a pooling and servicing agreement between a sponsor, a servicer and a trustee.<sup>17</sup> The sponsor or servicer of a trust selects assets to be included in the trust.<sup>18</sup> These assets are receivables which may have been originated by a sponsor or servicer of the trust, an affiliate of the sponsor or servicer, or by an unrelated lender and subsequently acquired by the trust sponsor or servicer.<sup>19</sup>

Typically, on or prior to the closing date, the sponsor acquires legal title to all assets selected for the trust, establishes the trust and designates an independent entity as trustee. On the closing date, the sponsor conveys to the trust legal title to the assets, and the trustee issues certificates representing fractional undivided interests in the trust assets. Typically, all receivables to be held in the trust are transferred as of the closing date, but in some transactions, as described more fully below, a limited percentage of the receivables to be held in the trust may

<sup>16</sup> Trust assets may also include obligations that are secured by leasehold interests on residential real property. See PTE 90-32 involving Prudential-Bache Securities, Inc. (55 FR 23147, June 6, 1990 at 23150).

<sup>17</sup> The Department is of the view that the term "trust" includes a trust: (a) The assets of which, although all specifically identified by the sponsor or the originator as of the closing date, are not all transferred to the trust on the closing date for administrative or other reasons but will be transferred to the trust shortly after the closing date, or (b) with respect to which certificates are not purchased by plans until after the end of the pre-funding period at which time all receivables are contained in the trust.

<sup>18</sup> It is the Department's view that the definition of "trust" contained in section III.B. includes a two-tier structure under which certificates issued by the first trust, which contains a pool of receivables described above, are transferred to a second trust which issues securities that are sold to plans. However, the Department is of the further view that, since the exemption provides relief for the direct or indirect acquisition or disposition of certificates that are not subordinated, no relief would be available if the certificates held by the second trust were subordinated to the rights and interests evidenced by other certificates issued by the first trust.

<sup>19</sup> It is the view of the Department that section III.B.(4) includes within the definition of the term "trust" rights under any yield supplement or similar arrangement which obligates the sponsor or master servicer, or another party specified in the relevant pooling and servicing agreement, to supplement the interest rates otherwise payable on the obligations described in section III.B.(1), in accordance with the terms of a yield supplement arrangement described in the pooling and servicing agreement, provided that such arrangements do not involve swap agreements or other notional principal contracts.

be transferred during a limited period of time following the closing date, through the use of a pre-funding account.

BOSC, alone or together with other broker-dealers, acts as underwriter or placement agent with respect to the sale of the certificates. All of the public offerings of certificates presently contemplated are to be underwritten by BOSC on a firm commitment basis. In addition, BOSC anticipates that it may privately place certificates on both a firm commitment and an agency basis. BOSC may also act as the lead underwriter for a syndicate of securities underwriters.

Certificateholders will be entitled to receive distributions of principal and/or interest, or lease payments due on the receivables, adjusted, in the case of payments of interest, to a specified rate—the pass-through rate—which may be fixed or variable. These distributions will be made monthly, quarterly, semi-annually, or at such other intervals and dates as specified in the related prospectus or private placement memorandum.

When installments or payments are made on a semi-annual basis, funds are not permitted to be commingled with the servicer's assets for longer than would be permitted for a monthly-pay security. A segregated account is established in the name of the trustee (on behalf of certificateholders) to hold funds received between distribution dates. The account is under the sole control of the trustee, who invests the account's assets in short-term securities which have received a rating comparable to the rating assigned to the certificates. In some cases, the servicer may be permitted to make a single deposit into the account once a month. When the servicer makes such monthly deposits, payments received from obligors by the servicer may be commingled with the servicer's assets during the month prior to deposit. Usually, the period of time between receipt of funds by the servicer and deposit of these funds in a segregated account does not exceed one month. Furthermore, in those cases where distributions are made semi-annually, the servicer will furnish a report on the operation of the trust to the trustee on a monthly basis. At or about the time this report is delivered to the trustee, it will be made available to certificateholders and delivered to or made available to each rating agency that has rated the certificates.

5. Some of the certificates will be multi-class certificates. BOSC requests exemptive relief for two types of multi-class certificates: "strip" certificates and "fast-pay/slow-pay" certificates. Strip

certificates are a type of security in which the stream of interest payments on receivables is split from the flow of principal payments and separate classes of certificates are established, each representing rights to disproportionate payments of principal and interest.<sup>20</sup>

"Fast-pay/slow-pay" certificates involve the issuance of classes of certificates having different stated maturities or the same maturities with different payment schedules. Interest and/or principal payments received on the underlying receivables are distributed first to the class of certificates having the earliest stated maturity of principal, and/or earlier payment schedule, and only when that class of certificates has been paid in full (or has received a specified amount) will distributions be made with respect to the second class of certificates. Distributions on certificates having later stated maturities will proceed in like manner until all the certificateholders have been paid in full. The only difference between this multi-class pass-through arrangement and a single-class pass-through arrangement is the order in which distributions are made to certificateholders. In each case, certificateholders will have a beneficial ownership interest in the underlying assets. In neither case will the rights of a plan purchasing a certificate be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. In particular, if the amount available for distribution to certificateholders is less than the amount required to be so distributed, all senior certificateholders then entitled to receive distributions will share in the amount distributed on a pro rata basis.<sup>21</sup>

6. The trust will be maintained as an essentially passive entity. Therefore, both the sponsor's discretion and the servicer's discretion with respect to assets included in a trust are severely limited. Pooling and servicing

<sup>20</sup> It is the Department's understanding that where a plan invests in REMIC "residual" interest certificates to which this exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to income tax under the Code. The Department emphasizes that the prudence requirement of section 404(a)(1)(B) of the Act would require plan fiduciaries to carefully consider this and other tax consequences prior to causing plan assets to be invested in certificates pursuant to this proposed exemption.

<sup>21</sup> If a trust issues subordinated certificates, holders of such subordinated certificates may not share in the amount distributed on a pro rata basis with the senior certificateholders. The Department notes that the proposed exemption does not provide relief for plan investment in such subordinated certificates.

agreements provide for the substitution of receivables by the sponsor only in the event of defects in documentation discovered within a short time after the issuance of trust certificates (within 120 days, except in the case of obligations having an original term of 30 years, in which case the period will not exceed two years). Any receivable so substituted is required to have characteristics substantially similar to the replaced receivable and will be at least as creditworthy as the replaced receivable.

In some cases, the affected receivable would be repurchased, with the purchase price applied as a payment on the affected receivable and passed through to certificateholders.

In some cases the trust will be maintained as a Financial Asset Securitization Investment Trust ("FASIT"), a statutory entity created by the Small Business Job Protection Act of 1996, adding sections 860H, 860J, 860K and 860L to the Code. In general, a FASIT is designed to facilitate the securitization of debt obligations, such as credit card receivables, home equity loans, and auto loans, and thus, allows certain features such as revolving pools of assets, trusts containing unsecured receivables and certain hedging types of investments. A FASIT is not a taxable entity and debt instruments issued by such trusts, which might otherwise be recharacterized as equity, will be treated as debt in the hands of the holder for tax purposes. However, a trust which is the subject of the proposed exemption will be maintained as a FASIT only where the assets held by the FASIT will be comprised of secured debt; revolving pools of assets or hedging investments will not be allowed unless specifically authorized by the exemption, if granted, so that a trust maintained as a FASIT will be maintained as an essentially passive entity.

#### *Trust Structure With Pre-Funding Account*

##### *Pre-Funding Accounts*

7. As described briefly above, some transactions may be structured using a pre-funding account or a capitalized interest account. If pre-funding is used, cash sufficient to purchase the receivables to be transferred after the closing date will be transferred to the trust by the sponsor or originator on the closing date. During the pre-funding period, such cash and temporary investments, if any, made therewith will be held in a pre-funding account and used to purchase the additional receivables, the characteristics of which will be substantially similar to the

characteristics of the receivables transferred to the trust on the closing date. The pre-funding period for any trust will be defined as the period beginning on the closing date and ending on the earliest to occur of (i) the date on which the amount on deposit in the pre-funding account is less than a specified dollar amount, (ii) the date on which an event of default occurs under the related pooling and servicing agreement or (iii) the date which is the later of three months or ninety (90) days after the closing date. Certain specificity and monitoring requirements described below will be met and will be disclosed in the pooling and servicing agreement and/or the prospectus or private placement memorandum.

For transactions involving a trust using pre-funding, on the closing date, a portion of the offering proceeds will be allocated to the pre-funding account generally in an amount equal to the excess of (i) the principal amount of certificates being issued over (ii) the principal balance of the receivables being transferred to the trust on such closing date. In certain transactions, the aggregate principal balance of the receivables intended to be transferred to the trust may be larger than the total principal balance of the certificates being issued. In these cases, the cash deposited in the pre-funding account will equal the excess of the principal balance of the total receivables intended to be transferred to the trust over the principal balance of the receivables being transferred on the closing date.

On the closing date, the sponsor transfers the assets to the trust in exchange for the certificates. The certificates are then sold to an underwriter for cash or to the certificateholders directly if the certificates are sold through a placement agent. The cash received by the sponsor from the certificateholders (or the underwriter) from the sale of the certificates issued by the trust in excess of the purchase price for the receivables and certain other trust expenses, such as underwriting or placement agent fees and legal and accounting fees, constitutes the cash to be deposited in the pre-funding account. Such funds are either held in the trust and accounted for separately, or are held in a sub-trust. In either event, these funds are not part of assets of the sponsor.

Generally, the receivables are transferred at par value, unless the interest rate payable on the receivables is not sufficient to service both the interest rates to be paid on the certificates and the transaction fees (*i.e.*, servicing fees, trustee fees and fees to credit support providers). In such cases,

the receivables are sold to the trust at a discount, based on an objective, written, mechanical formula which is set forth in the pooling and servicing agreement and agreed upon in advance between the sponsor, the rating agency and any credit support provider or other insurer. The proceeds payable to the sponsor from the sale of the receivables transferred to the trust may also be reduced to the extent they are used to pay transaction costs (which typically include underwriting or placement agent fees and legal and accounting fees). In addition, in certain cases, the sponsor may be required by the rating agencies or credit support providers to set up trust reserve accounts to protect the certificateholders against credit losses.

The pre-funding account of any trust will be limited so that the percentage or ratio of the amount allocated to the pre-funding account, as compared to the total principal amount of the certificates being offered (the pre-funding limit) will not exceed 25%. The pre-funding limit (which may be expressed as a ratio or as a stated percentage or a combination thereof) will be specified in the prospectus or the private placement memorandum.

Any amounts paid out of the pre-funding account are used solely to purchase receivables and to support the certificate pass-through rate (as explained below). Amounts used to support the pass-through rate are payable only from investment earnings and are not payable from principal. However, in the event that, after all of the requisite receivables have been transferred into the trust, any funds remain in the pre-funding account, such funds will be paid to the certificateholders as principal prepayments. Upon termination of the trust, if no receivables remain in the trust and all amounts payable to certificateholders have been distributed, any amounts remaining in the trust would be returned to the sponsor.

A dramatic change in interest rates on the receivables held in a trust using a pre-funding account would be handled as follows. If the receivables (other than those with adjustable or variable rates) had already been originated prior to the closing date, no action would be required as the fluctuations in the market interest rates would not affect the receivables transferred to the trust after the closing date. In contrast, if interest rates fall after the closing date, loans originated after the closing date will tend to be originated at lower rates, with the possible result that the receivables will not support the certificate pass-through rate. In such

situations, the sponsor could sell the receivables into the trust at a discount, and more receivables would be used to fund the trust in order to support the pass-through rate. In a situation where interest rates drop dramatically and the sponsor is unable to provide sufficient receivables at the requisite interest rates, the pool of receivables would be closed. In this latter event, under the terms of the pooling and servicing agreement, the certificateholders would receive a repayment of principal from the unused cash held in the pre-funding account. In transactions where the certificate pass-through rates are variable or adjustable, the effects of market interest rate fluctuations are mitigated. In no event will fluctuations in interest rates payable on the receivable affect the pass-through rate for fixed rate certificates.

The cash deposited into the trust and allocated to the pre-funding account is invested in certain permitted investments (see below), which may be commingled with other accounts of the trust. The allocation of investment earnings to each trust account is made periodically as earned in proportion to each account's allocable share of the investment returns. As pre-funding account investment earnings are required to be used to support (to the extent authorized in the particular transaction) the pass-through amounts payable to the certificateholders with respect to a periodic distribution date, the trustee is necessarily required to make periodic, separate allocations of the trust's earning to each trust account, thus ensuring that all allocable commingled investment earnings are properly credited to the pre-funding account on a timely basis.

#### The Capitalized Interest Account

8. In certain transactions where a pre-funding account is used, the sponsor and/or originator may also transfer to the trust additional cash on the closing date, which is deposited in a capitalized interest account and used during the pre-funding period to compensate the certificateholders for any shortfall between the investment earnings on the pre-funding account and the pass-through interest rate payable under the certificates.

The capitalized interest account is needed in certain transactions since the certificates are supported by the receivables and the earnings on the pre-funding account, and it is unlikely that the investment earnings on the pre-funding account will equal the interest rates on the certificates (although such investment earnings will be available to pay interest on the certificates). The

capitalized interest account funds are paid out periodically to the certificateholders as needed on distribution dates to support the pass-through rate. In addition, a portion of such funds may be returned to the sponsor from time to time as the receivables are transferred into the trust and the need for the capitalized interest account diminishes. Any amounts held in the capitalized interest account generally will be returned to the sponsor and/or originator either at the end of the pre-funding period or periodically as receivables are transferred and the proportionate amount of funds in the capitalized interest account can be reduced. Generally, the capitalized interest account terminates no later than the end of the pre-funding period. However, there may be some cases where the capitalized interest account remains open until the first date distributions are made to certificateholders following the end of the pre-funding period.

In other transactions, a capitalized interest account is not necessary because the interest paid on the receivables exceeds the interest payable on the certificates at the applicable pass-through rate and the fees of the trust. Such excess is sufficient to make up any shortfall resulting from the pre-funding account earning less than the certificate pass-through rate. In certain of these transactions, this occurs because the aggregate principal amount of receivables exceeds the aggregate principal amount of certificates.

#### Pre-Funding Account and Capitalized Interest Account Payments and Investments

9. Pending the acquisition of additional receivables during the pre-funding period, it is expected that amounts in the pre-funding account and the capitalized interest account will be invested in certain permitted investments or will be held uninvested. Pursuant to the pooling and servicing agreement, all permitted investments must mature prior to the date the actual funds are needed. The permitted types of investments in the pre-funding account and capitalized interest account are investments which are either: (i) Direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (ii) have been rated (or the obligor has been rated) in one of the three highest generic rating categories by a rating agency, as set forth in the pooling and servicing agreement

and as required by the rating agencies. The credit grade quality of the permitted investments is generally no lower than that of the certificates. The types of permitted investments will be described in the pooling and servicing agreement.

The ordering of interest payments to be made from the pre-funding and capitalized interest accounts is pre-established and set forth in the pooling and servicing agreement. The only principal payments which will be made from the pre-funding account are those made to acquire the receivables during the pre-funding period and those distributed to the certificateholders in the event that the entire amount in the pre-funding account is not used to acquire receivables. The only principal payments which will be made from the capitalized interest account are those made to certificateholders if necessary to support the certificate pass-through rate or those made to the sponsor either periodically as they are no longer needed or at the end of the pre-funding period when the capitalized interest account is no longer necessary.

#### The Characteristics of the Receivables Transferred During the Pre-Funding Period

10. In order to ensure that there is sufficient specificity as to the representations and warranties of the sponsor regarding the characteristics of the receivables to be transferred after the closing date:

(i) All such receivables will meet the same terms and conditions for eligibility as those of the original receivables used to create the trust corpus (as described in the prospectus or private placement memorandum and/or pooling and servicing agreement for such certificates), which terms and conditions have been approved by a rating agency. However, the terms and conditions for determining the eligibility of a receivable may be changed if such changes receive prior approval either by a majority vote of the outstanding certificateholders or by a rating agency;

(ii) The transfer to the trust of the receivables acquired during the pre-funding period will not result in the certificates receiving a lower credit rating from the rating agency upon termination of the pre-funding period than the rating that was obtained at the time of the initial issuance of the certificates by the trust;

(iii) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations in the trust at the end of the pre-funding period will not be more than 100 basis points lower than the average interest

rate for the obligations which were transferred to the trust on the closing date;

(iv) The trustee of the trust (or any agency with which the trustee contracts to provide trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities, and liabilities as a fiduciary under the Act. The trustee, as the legal owner of the obligations in the trust, will enforce all the rights created in favor of certificateholders of such trust, including employee benefit plans subject to the Act.

In order to ensure that the characteristics of the receivables actually acquired during the pre-funding period are substantially similar to receivables that were acquired as of the closing date, the characteristics of the additional obligations subsequently acquired will be either: (i) Monitored by a credit support provider or other insurance provider which is independent of the sponsor; or (ii) an independent accountant retained by the sponsor will provide the sponsor with a letter (with copies provided to the rating agency, BOSC and the trustee) stating whether or not the characteristics of the additional obligations acquired after the closing date conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or pooling and servicing agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the closing date.

Each prospectus, private placement memorandum and/or pooling and servicing agreement will set forth the terms and conditions for eligibility of the receivables to be included in the trust as of the related closing date, as well as those to be acquired during the pre-funding period, which terms and conditions will have been agreed to by the rating agencies which are rating the applicable certificates as of the closing date. Also included among these conditions is the requirement that the trustee be given prior notice of the receivables to be transferred, along with such information concerning those receivables as may be requested. Each prospectus or private placement memorandum will describe the amount to be deposited in, and the mechanics of, the pre-funding account and will describe the pre-funding period for the trust.

#### Parties to Transactions

11. The *originator* of a receivable is the entity that initially lends money to

a borrower (obligor), such as a home owner or automobile purchaser, or leases property to a lessee. The originator may either retain a receivable in its portfolio or sell it to a purchaser, such as a trust sponsor.

Originators of receivables included in the trusts will be entities that originate receivables in the ordinary course of their businesses, including finance companies for whom such origination constitutes the bulk of their operations, financial institutions for whom such origination constitutes a substantial part of their operations, and any kind of manufacturer, merchant, or service enterprise for whom such origination is an incidental part of its operations. Each trust may contain assets of one or more originators. The originator of the receivables may also function as the trust sponsor or servicer. The originator may be an affiliate of BOSC.

12. The *sponsor* will be one of three entities: (i) A special-purpose or other corporation unaffiliated with the servicer, (ii) a special-purpose or other corporation affiliated with the servicer, or (iii) the servicer itself. Where the sponsor is not also the servicer, the sponsor's role will generally be limited to acquiring the receivables to be included in the trust, establishing the trust, designating the trustee, and assigning the receivables to the trust.

13. The *trustee* of a trust is the legal owner of the obligations in the trust. The trustee is also a party to or beneficiary of all the documents and instruments deposited in the trust, and as such is responsible for enforcing all the rights created thereby in favor of certificateholders.

The trustee will be an independent entity, and therefore will be unrelated to BOSC, the trust sponsor, the servicer or any other member of the Restricted Group (as defined in section III.L.). BOSC represents that the trustee will be a substantial financial institution or trust company experienced in trust activities. The trustee receives a fee for its services, which will be paid by the servicer or sponsor or out of the trust assets. The method of compensating the trustee which is specified in the pooling and servicing agreement will be disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

14. The *servicer* of a trust administers the receivables on behalf of the certificateholders. The servicer's functions typically involve, among other things, notifying borrowers of amounts due on receivables, maintaining records of payments received on receivables and instituting foreclosure or similar proceedings in the event of default. In

cases where a pool of receivables has been purchased from a number of different originators and deposited in a trust, the receivables may be "subserviced" by their respective originators and a single entity may "master service" the pool of receivables on behalf of the owners of the related series of certificates. Where this arrangement is adopted, a receivable continues to be serviced from the perspective of the borrower by the local subservicer, while the investor's perspective is that the entire pool of receivables is serviced by a single, central master servicer who collects payments from the local subservicers and passes them through to certificateholders.

Receivables of the type suitable for inclusion in a trust invariably are serviced with the assistance of a computer. After the sale, the servicer keeps the sold receivables on the computer system in order to continue monitoring the accounts. Although the records relating to sold receivables are kept in the same master file as receivables retained by the originator, the sold receivables are flagged as having been sold. To protect the investor's interest, the servicer ordinarily covenants that this "sold flag" will be included in all records relating to the sold receivables, including the master file, archives, tape extracts and printouts.

The sold flags are invisible to the obligor and do not affect the manner in which the servicer performs the billing, posting and collection procedures related to the sold receivables. However, the servicer uses the sold flag to identify the receivables for the purpose of reporting all activity on those receivables after their sale to investors.

Depending on the type of receivable and the details of the servicer's computer system, in some cases the servicer's internal reports can be adapted for investor reporting with little or no modification. In other cases, the servicer may have to perform special calculations to fulfill the investor reporting responsibilities. These calculations can be performed on the servicer's main computer, or on a small computer with data supplied by the main system. In all cases, the numbers produced for the investors are reconciled to the servicer's books and reviewed by public accountants.

The *underwriter* (i.e., BOSC, its affiliate, or a member of an underwriting syndicate or selling group of which BOSC or its affiliate is a manager or co-manager) will be a registered broker-dealer that acts as underwriter or placement agent with respect to the sale

of the certificates. Public offerings of certificates are generally made on a firm commitment basis. Private placement of certificates may be made on a firm commitment or agency basis. It is anticipated that the lead and co-managing underwriters will make a market in certificates offered to the public.

In some cases, the originator and servicer of receivables to be included in a trust and the sponsor of the trust (although they may themselves be related) will be unrelated to BOSC. In other cases, however, affiliates of BOSC may originate or service receivables included in a trust or may sponsor a trust.

#### *Certificate Price, Pass-Through Rate and Fees*

15. In some cases, the sponsor will obtain the receivables from various originators pursuant to existing contracts with such originators under which the sponsor continually buys receivables. In other cases, the sponsor will purchase the receivables at fair market value from the originator or a third party pursuant to a purchase and sale agreement related to the specific offering of certificates. In other cases, the sponsor will originate the receivables itself.

As compensation for the receivables transferred to the trust, the sponsor receives certificates representing the entire beneficial interest in the trust, or the cash proceeds of the sale of such certificates. If the sponsor receives certificates from the trust, the sponsor sells all or a portion of these certificates for cash to investors or securities underwriters.

16. The price of the certificates, both in the initial offering and in the secondary market, is affected by market forces, including investor demand, the pass-through interest rate on the certificates in relation to the rate payable on investments of similar types and quality, expectations as to the effect on yield resulting from prepayment of underlying receivables, and expectations as to the likelihood of timely payment.

The pass-through rate for certificates is equal to the interest rate on receivables included in the trust minus a specified servicing fee.<sup>22</sup> This rate is generally determined by the same market forces that determine the price of a certificate. The price of a certificate and its pass-through, or coupon, rate

<sup>22</sup> The pass-through rate on certificates representing interests in trusts holding leases is determined by breaking down lease payments into "principal" and "interest" components based on an implicit interest rate.

together determine the yield to investors. If an investor purchases a certificate at less than par, that discount augments the stated pass-through rate; conversely, a certificate purchased at a premium yields less than the stated coupon.

17. As compensation for performing its servicing duties, the servicer (who may also be the sponsor or an affiliate thereof, and receive fees for acting in that capacity) will retain the difference between payments received on the receivables in the trust and payments payable (at the pass-through rate) to certificateholders, except that in some cases a portion of the payments on receivables may be paid to a third party, such as a fee paid to a provider of credit support. The servicer may receive additional compensation by having the use of the amounts paid on the receivables between the time they are received by the servicer and the time they are due to the trust (which time is set forth in the pooling and servicing agreement). The servicer typically will be required to pay the administrative expenses of servicing the trust, including in some cases the trustee's fee, out of its servicing compensation.

The servicer is also compensated to the extent it may provide credit enhancement to the trust or otherwise arrange to obtain credit support from another party. This "credit support fee" may be aggregated with other servicing fees, and is either paid out of the interest income received on the receivables in excess of the pass-through rate or paid in a lump sum at the time the trust is established.

18. The servicer may be entitled to retain certain administrative fees paid by a third party, usually the obligor. These administrative fees fall into three categories: (a) prepayment fees; (b) late payment and payment extension fees; and (c) expenses, fees and charges associated with foreclosure or repossession, or other conversion of a secured position into cash proceeds, upon default of an obligation.

Compensation payable to the servicer will be set forth or referred to in the pooling and servicing agreement and described in reasonable detail in the prospectus or private placement memorandum relating to the certificates.

19. Payments on receivables may be made by obligors to the servicer at various times during the period preceding any date on which pass-through payments to the trust are due. In some cases, the pooling and servicing agreement may permit the servicer to place these payments in non-interest bearing accounts maintained with itself or to commingle such payments with its

own funds prior to the distribution dates. In these cases, the servicer would be entitled to the benefit derived from the use of the funds between the date of payment on a receivable and the pass-through date. Commingled payments may not be protected from the creditors of the servicer in the event of the servicer's bankruptcy or receivership. In those instances when payments on receivables are held in non-interest bearing accounts or are commingled with the servicer's own funds, the servicer is required to deposit these payments by a date specified in the pooling and servicing agreement into an account from which the trustee makes payments to certificateholders.

20. The underwriter will receive a fee in connection with the securities underwriting or private placement of certificates. In a firm commitment underwriting, this fee would consist of the difference between what the underwriter receives for the certificates that it distributes and what it pays the sponsor for those certificates. In a private placement, the fee normally takes the form of an agency commission paid by the sponsor. In a best efforts underwriting in which the underwriter would sell certificates in a public offering on an agency basis, the underwriter would receive an agency commission rather than a fee based on the difference between the price at which the certificates are sold to the public and what it pays the sponsor. In some private placements, the underwriter may buy certificates as principal, in which case its compensation would be the difference between what it receives for the certificates that it sells and what it pays the sponsor for these certificates.

#### *Purchase of Receivables by the Servicer*

21. The applicant represents that as the principal amount of the receivables in a trust is reduced by payments, the cost of administering the trust generally increases, making the servicing of the trust prohibitively expensive at some point. Consequently, the pooling and servicing agreement generally provides that the servicer may purchase the receivables remaining in the trust when the aggregate unpaid balance payable on the receivables is reduced to a specified percentage (usually 5 to 10 percent) of the initial aggregate unpaid balance.

The purchase price of a receivable is specified in the pooling and servicing agreement and will be at least equal to: (1) The unpaid principal balance on the receivable plus accrued interest, less any unreimbursed advances of principal made by the servicer; or (2) the greater of (a) the amount in (1) or (b) the fair

market value of such obligations in the case of a REMIC, or the fair market value of the receivables in the case of a trust that is not a REMIC.

#### *Certificate Ratings*

22. The certificates will have received one of the three highest ratings available from a rating agency. Insurance or other credit support (such as surety bonds, letters of credit, guarantees, or overcollateralization) will be obtained by the trust sponsor to the extent necessary for the certificates to attain the desired rating. The amount of this credit support is set by the rating agencies at a level that is a multiple of the worst historical net credit loss experience for the type of obligations included in the issuing trust.

#### *Provision of Credit Support*

23. In some cases, the master servicer, or an affiliate of the master servicer, may provide credit support to the trust (*i.e.*, act as an insurer). In these cases, the master servicer, in its capacity as servicer, will first advance funds to the full extent that it determines that such advances will be recoverable (a) out of late payments by the obligors, (b) from the credit support provider (which may be the master servicer or an affiliate thereof) or, (c) in the case of a trust that issues subordinated certificates, from amounts otherwise distributable to holders of subordinated certificates, and the master servicer will advance such funds in a timely manner. When the servicer is the provider of the credit support and provides its own funds to cover defaulted payments, it will do so either on the initiative of the trustee, or on its own initiative on behalf of the trustee, but in either event it will provide such funds to cover payments to the full extent of its obligations under the credit support mechanism. In some cases, however, the master servicer may not be obligated to advance funds but instead would be called upon to provide funds to cover defaulted payments to the full extent of its obligations as insurer. Moreover, a master servicer typically can recover advances either from the provider of credit support or from future payments on the affected assets.

If the master servicer fails to advance funds, fails to call upon the credit support mechanism to provide funds to cover delinquent payments, or otherwise fails in its duties, the trustee would be required and would be able to enforce the certificateholders' rights, as both a party to the pooling and servicing agreement and the owner of the trust estate, including rights under the credit support mechanism. Therefore, the

trustee, who is independent of the servicer, will have the ultimate right to enforce the credit support arrangement.

When a master servicer advances funds, the amount so advanced is recoverable by the master servicer out of future payments on receivables held by the trust to the extent not covered by credit support. However, where the master servicer provides credit support to the trust, there are protections in place to guard against a delay in calling upon the credit support to take advantage of the fact that the credit support declines proportionally with the decrease in the principal amount of the obligations in the trust as payments on receivables are passed through to investors. These safeguards include:

(a) There is often a disincentive to postponing credit losses because the sooner repossession or foreclosure activities are commenced, the more value that can be realized on the security for the obligation;

(b) The master servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which an obligation ordinarily will be deemed uncollectible. The pooling and servicing agreement will require the master servicer to follow its normal servicing guidelines and will set forth the master servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible;

(c) As frequently as payments are due on the receivables included in the trust (monthly, quarterly or semi-annually, as set forth in the pooling and servicing agreement), the master servicer is required to report to the independent trustee the amount of all past-due payments and the amount of all servicer advances, along with other current information as to collections on the receivables and draws upon the credit support. Further, the master servicer is required to deliver to the trustee annually a certificate of an executive officer of the master servicer stating that a review of the servicing activities has been made under such officer's supervision, and either stating that the master servicer has fulfilled all of its obligations under the pooling and servicing agreement or, if the master servicer has defaulted under any of its obligations, specifying any such default. The master servicer's reports are reviewed at least annually by independent accountants to ensure that the master servicer is following its normal servicing standards and that the master servicer's reports conform to the master servicer's internal accounting records. The results of the independent

accountants' review are delivered to the trustee; and

(d) The credit support has a "floor" dollar amount that protects investors against the possibility that a large number of credit losses might occur towards the end of the life of the trust, whether due to servicer advances or any other cause. Once the floor amount has been reached, the servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount thereafter is subject to reduction only for actual draws. From the time that the floor amount is effective until the end of the life of the trust, there are no proportionate reductions in the credit support amount caused by reductions in the pool principal balance. Indeed, since the floor is a fixed dollar amount, the amount of credit support ordinarily increases as a percentage of the pool principal balance during the period that the floor is in effect.

#### *Disclosure*

24. In connection with the original issuance of certificates, the prospectus or private placement memorandum will be furnished to investing plans. The prospectus or private placement memorandum will contain information material to a fiduciary's decision to invest in the certificates, including:

(a) Information concerning the payment terms of the certificates, the rating of the certificates, and any material risk factors with respect to the certificates;

(b) A description of the trust as a legal entity and a description of how the trust was formed by the seller/servicer or other sponsor of the transaction;

(c) Identification of the independent trustee for the trust;

(d) A description of the receivables contained in the trust, including the types of receivables, the diversification of the receivables, their principal terms, and their material legal aspects;

(e) A description of the sponsor and servicer;

(f) A description of the pooling and servicing agreement, including a description of the seller's principal representations and warranties as to the trust assets, including the terms and conditions for eligibility of any receivables transferred during the pre-funding period and the trustee's remedy for any breach thereof; a description of the procedures for collection of payments on receivables and for making distributions to investors, and a description of the accounts into which such payments are deposited and from which such distributions are made; a description of permitted investments for

any pre-funding account or capitalized interest account; identification of the servicing compensation and any fees for credit enhancement that are deducted from payments on receivables before distributions are made to investors; a description of periodic statements provided to the trustee, and provided to or made available to investors by the trustee; and a description of the events that constitute events of default under the pooling and servicing contract and a description of the trustee's and the investors' remedies incident thereto;

(g) A description of the credit support;

(h) A general discussion of the principal federal income tax consequences of the purchase, ownership and disposition of the pass-through securities by a typical investor;

(i) A description of the underwriters' plan for distributing the pass-through securities to investors;

(j) Information about the scope and nature of the secondary market, if any, for the certificates; and

(k) A statement as to the duration of any pre-funding period and the pre-funding limit for the trust.

25. Reports indicating the amount of payments of principal and interest are provided to certificateholders at least as frequently as distributions are made to certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the underlying assets, including, where applicable, information as to the amount and number of delinquent and defaulted loans or receivables.

26. In the case of a trust that offers and sells certificates in a registered public offering, the trustee, the servicer or the sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934. Although some trusts that offer certificates in a public offering will file quarterly reports on Form 10-Q and Annual Reports on Form 10-K, many trusts obtain, by application to the SEC, a complete exemption from the requirement to file quarterly reports on Form 10-Q and a modification of the disclosure requirements for annual reports on Form 10-K. If such an exemption is obtained, these trusts normally would continue to have the obligation to file current reports on Form 8-K to report material developments concerning the trust and the certificates and copies of the statements sent to certificateholders. While the SEC's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning a trust will be filed to the

extent required under the Securities Exchange Act of 1934.

27. At or about the time distributions are made to certificateholders, a report will be delivered to the trustee as to the status of the trust and its assets, including underlying obligations. Such report will typically contain information regarding the trust's assets (including those purchased by the trust from any pre-funding account), payments received or collected by the servicer, the amount of prepayments, delinquencies, servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the servicer. Such report also will be delivered to or made available to the rating agency or agencies that have rated the trust's certificates.

In addition, promptly after each distribution date, certificateholders will receive a statement prepared by the servicer or trustee summarizing information regarding the trust and its assets. Such statement will include information regarding the trust and its assets, including underlying receivables. Such statement will typically contain information regarding payments and prepayments, delinquencies, the remaining amount of the guaranty or other credit support and a breakdown of payments between principal and interest.

#### *Forward Delivery Commitments*

28. BOSC may contemplate entering into forward delivery commitments in connection with the offering of pass-through certificates. The utility of forward delivery commitments has been recognized with respect to offering similar certificates backed by pools of residential mortgages, and BOSC may find it desirable in the future to enter into such commitments for the purchase of certificates.

#### *Secondary Market Transactions*

29. BOSC may attempt to make a market for securities for which it is lead or co-managing underwriter, although it is under no obligation to do so. At times, BOSC will facilitate sales by investors who purchase certificates if BOSC has acted as agent or principal in the original private placement of the certificates and if such investors request BOSC's assistance.

#### *Summary*

30. In summary, the applicant represents that the transactions for which exemptive relief is requested satisfy the statutory criteria of section 408(a) of the Act due to the following:

(a) The trusts contain "fixed pools" of assets. There is little discretion on the part of the trust sponsor to substitute receivables contained in the trust once the trust has been formed;

(b) In the case where a pre-funding account is used, the characteristics of the receivables to be transferred to the trust during the pre-funding period will be substantially similar to the characteristics of those transferred to the trust on the closing date, thereby giving the sponsor and/or originator little discretion over the selection process, and compliance with this requirement will be assured by the specificity of the characteristics and the monitoring mechanisms contemplated under the proposed exemption. In addition, certain cash accounts will be established to support the certificate pass-through rate and such cash accounts will be invested in short-term, conservative investments; the pre-funding period will be of a reasonably short duration; a pre-funding limit will be imposed; and any Internal Revenue Service requirements with respect to pre-funding intended to preserve the passive income character of the trust will be met. The fiduciary of the plans making the decision to invest in certificates is thus fully apprised of the nature of the receivables which will be held in the trust and has sufficient information to make a prudent investment decision.

(c) Certificates in which plans invest will have been rated in one of the three highest rating categories by a rating agency. Credit support will be obtained to the extent necessary to attain the desired rating;

(d) All transactions for which BOSC seeks exemptive relief will be governed by the pooling and servicing agreement, which is made available to plan fiduciaries for their review prior to the plan's investment in certificates;

(e) Exemptive relief from sections 406(b) and 407 for sales to plans is substantially limited; and

(f) BOSC anticipates that it will make a secondary market in certificates (although it is under no obligation to do so).

**NOTICE TO INTERESTED PERSONS:** The applicant represents that because those potentially interested participants and beneficiaries cannot all be identified, the only practical means of notifying such participants and beneficiaries of this proposed exemption is by the publication of this notice in the **Federal Register**. Comments and requests for a hearing must be received by the Department not later than 30 days from the date of publication of this notice of

proposed exemption in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Mr. J. Martin Jara of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

#### **Bankers Trust Company (BTC)**

Located in New York, New York  
[Application Nos. D-10838]

#### **Proposed Exemption**

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to: (1) The proposed granting to BTC (a) by the Cheslock-Bakker Opportunity Fund, L.P. (the LP) of security interests in (i) the capital commitments (the Capital Commitments) and capital contributions (Capital Contributions) of certain employee benefit plans (the Plans) investing in the LP and (ii) a borrower collateral account to which all Capital Contributions will be deposited when paid (Borrower Collateral Account) and (b) by the LP and by CBA Real Estate Partners, LLC, a Delaware limited liability company (the General Partner) of the right to make calls for cash contributions (Contribution Calls) under the Cheslock-Bakker Opportunity Fund, L.P. Limited Partnership Agreement (the Agreement), where BTC is the representative of certain lenders (the Lenders) that will fund a so-called "credit facility" (the Credit Facility) providing credit to the LP, and where the Lenders are parties in interest with respect to the Plans; and (2) the execution of a partner agreement and estoppel (the Estoppel) under which the Plans agree to honor the Contribution Calls; provided that (a) the proposed grants and Estoppels are on terms no less favorable to the Plans than those which the Plans could obtain in arm's-length transactions with unrelated parties; (b) the decisions on behalf of each Plan to invest in the LP and to execute such Estoppels in favor of BTC are made by a fiduciary which is not included among, and is independent of and unaffiliated with, the Lenders and BTC; (c) with respect to Plans that have invested or may invest in the LP in the future, such Plans have or will have assets of not less than \$100 million and

not more than 5% of the assets of any such Plan are or will be invested in the LP. For purposes of this condition (c), in the case of multiple plans maintained by a single employer or single controlled group of employers, the assets of which are invested on a commingled basis, (e.g., through a master trust), this \$100 million threshold will be applied to the aggregate assets of all such plans; and (d) the general partner of the LP must be independent of BTC, the Lenders and the Plans.

**Summary of Facts and Representations**

1. The LP was formed by the General Partner (as sole general partner and sponsor) with the intent of seeking Capital Commitments from a limited number of prospective investors who would become limited partners (the Partners) of the LP. The General Partner (i.e., CBA Real Estate Partners, LLC) is an entity unrelated to BTC, the Lenders and the Plans. Under the terms of the

Agreement, the LP is expected to dissolve in the year 2008. There are three current and prospective Partners having, in the aggregate, irrevocable, unconditional capital commitments of approximately \$140 million.

2. The LP is designed to invest in real estate-related assets including portfolios, individual assets, privately-held operating companies, commercial mortgage-backed securities, mezzanine financing and other forms of real estate related debt, limited partnerships, and other joint ventures. As described in the Private Placement Memorandum, the LP believes that significant opportunities exist to achieve superior risk-adjusted returns on its investments in excess of 20% per annum.

3. Proceeds from investments may be reinvested to the extent they represent a return of capital invested by the LP. To the extent they are not reinvested, net proceeds will be distributed to the Partners on a quarterly basis or more

frequently at the General Partner's discretion.

4. The Agreement requires each Partner to execute a subscription agreement that obligates the Partner to make contributions of capital up to a specified maximum. The Agreement requires Partners to make Capital Contributions to fulfill this obligation upon receipt of notice from the General Partner. Under the Agreement, the General Partner may make Contribution Calls up to the total amount of a Partner's Capital Commitment upon 10 business days' notice, subject to certain limitations. The Partners' Capital Commitments are structured as unconditional, binding commitments to contribute capital when Contribution Calls are made by the General Partner. In the event of a default by a Partner, the LP may exercise any of a number of specific remedies.

The Partners constituting over 90% of the equity interests and their investments in the LP are:

Name of partner	Capital commitment
General Motors Hourly Rate Employees Pension Trust, by Chase Manhattan Bank, as Trustee .....	\$65,000,000.01
General Motors Salaried Employees Pension Trust, by Chase Manhattan Bank, as Trustee .....	\$34,999,999.99
Kodak Income Retirement Plan, by Boston Safe Trust and Deposit Company, as Trustee .....	\$30,000,000

5. The applicant states that the LP will incur indebtedness in connection with many of its investments. In addition to mortgage indebtedness, the LP will incur short-term indebtedness for the acquisition of particular investments. This indebtedness will take the form of the Credit Facility, described in representation 6 below, secured by, among other things, a pledge and assignment of each Partner's Capital Commitment. This type of facility will allow the LP to consummate investments quickly without having to finalize the debt/equity structure for an investment or having to arrange for interim or permanent financing prior to making an investment, and will have additional advantages to the Partners and the LP. Under the Agreement, the General Partner may encumber Partners' Capital Commitments and Capital Contributions, including the right to make Contribution Calls, to one or more financial institutions as security for the Credit Facility. Each of the Partners has appointed the General Partner as its attorney-in-fact to execute all documents and instruments of transfer necessary to implement the provisions of the Agreement. In connection with this Credit Facility, each of the Partners is required to execute documents customarily required in secured

financings, including an agreement to honor Contribution Calls unconditionally.

6. BTC will become agent for a group of Lenders providing a \$25 million revolving Credit Facility to the LP. BTC will also be a participating Lender. Some of the Lenders may be parties in interest with respect to some of the Plans that invest in the LP by virtue of such Lenders' (or their affiliates') provisions of fiduciary or other services to such Plans with respect to assets other than the Plans' interests in the LP. BTC is requesting an exemption to permit the Plans to enter into security agreements with BTC, as the representative of the Lenders, whereby such Plans' Capital Commitments and Capital Contributions to the LP will be used as collateral for loans made under the Credit Facility to the LP, when such loans are funded by Lenders who are parties in interest to one or more of the Plans. However, BTC represents that neither it nor any Lender will act in any fiduciary capacity for the decision made by any of the Plans to invest in the LP (as discussed in Paragraph 13, below).

The Credit Facility will be used to provide immediate funds for real estate acquisitions made by the LP, as well as for the payment of LP expenses. Repayments will be secured generally

by the LP from the Partners' Capital Contributions and Contribution Calls on the Partners' Capital Commitments. The Credit Facility is intended to be available until May 31, 2002. The LP can use its credit under the Credit Facility either by direct or indirect borrowings, by requesting guaranties, or by requesting that letters of credit be issued. All Lenders will participate on a pro rata basis with respect to all cash loans, guaranties or letters of credit up to the maximum of the Lenders' respective commitments. All such loans, guaranties and letters of credit will be issued to the LP, or an entity in which the LP owns a direct or indirect interest (a Qualified Borrower), and not to any individual Partner. All payments of principal and interest made by the LP or a Qualified Borrower will be allocated pro rata among all Lenders.

7. The Credit Facility will be a recourse obligation of the LP, the repayment of which is secured primarily by the grant of a security interest to BTC, as agent under the Credit Facility for the benefit of the Lenders, from the LP, in (a) the Partners' Capital Commitments and Capital Contributions; and (b) the Borrower Collateral Account. In addition, the LP and the General Partner will grant BTC, as agent under the Credit Facility for the

benefit of the Lenders, a security interest in the right to Contribution Calls under the Agreement. The Borrower Collateral Account will be assigned to BTC to secure repayment of the indebtedness incurred under the Credit Facility. BTC has the right to apply any or all funds in the Borrower Collateral Account toward payment of the indebtedness in any manner it may elect. The Capital Commitments are fully recourse to all the Partners and to the General Partner. In the event of default under the Credit Facility, the agent (*i.e.*, BTC) has the right to make Contribution Calls unilaterally on the Partners to pay their unfunded Capital Commitments, and will apply cash received from such Contribution Calls to any outstanding debt.

8. Under the Credit Facility, each Partner that is a Plan will execute an acknowledgment (the Estoppel) pursuant to which it acknowledges that the LP and the General Partner have pledged and assigned to BTC, for the benefit of each Lender which may be a party in interest (as defined in Act section 3(14)) of such Partner, all of their rights under the Agreement relating to Capital Commitments and Contribution Calls. The Estoppel will include an acknowledgment and covenant by the Plan that, if an event of default exists, such Plan will unconditionally honor any Contribution Call made by BTC in accordance with the Agreement up to the unfunded Capital Commitment of such Plan to the LP.

9. The applicant represents that at the present time the Kodak Retirement Income Trust (the Kodak Trust) holds the assets of one defined benefit plan, the Kodak Retirement Income Plan (the Kodak Plan), which owns an interest in the LP. The Kodak Trust has made a capital commitment of \$30 million to the LP. The applicant states that some of the Lenders may be parties in interest with respect to the Kodak Plan by virtue of such Lenders' (or their affiliates') provision of fiduciary services to the Kodak Plan with respect to Kodak Trust assets other than its limited partnership interests in the LP. The total number of participants in the Kodak Plan is approximately 99,000, and the approximate fair market value of the total assets of the Kodak Plan held in the Kodak Trust as of December 31, 1997 is \$7 billion.

The applicant represents that the fiduciary generally responsible for investment decisions in real estate matters on behalf of the Kodak Plan is the Kodak Retirement Income Plan Committee (the Kodak Plan Committee), which was responsible for reviewing

and authorizing the investment in the LP. The Kodak Plan Committee is composed of individuals who are officers of Eastman Kodak Company, and such individuals are independent of BTC and the other Lenders (as discussed in Paragraph 13, below).

10. The applicant represents that the Kodak Plan is currently the only employee benefit plan subject to the Act that is a Partner of the LP which requires the relief to be provided by the exemption proposed herein. Two other Partners, the General Motors Hourly Rate Employees Pension Trust and the General Motors Salaried Employees Pension Trust (the GM Trusts), are master trusts for certain qualified plans sponsored by the General Motors Corporation and its affiliates, which are covered by the Act. However, the applicant has received a representation from the relevant independent fiduciary for the GM Trusts that the investment in the LP by the GM Trusts qualifies for the protections set forth in Prohibited Transaction Exemption 96-23 (PTE 96-23, 61 FR 15975, April 10, 1996), the class exemption for transactions by a plan with certain parties in interest where such plan's assets are managed by an in-house asset manager.<sup>23</sup> The applicant states that it is possible that one or more other Plans will become Partners of the LP in the future. Thus, the applicant requests relief for any such Plan under this proposed exemption, provided the Plan meets the standards and conditions set forth herein. In this regard, such Plan must be represented by a fiduciary independent of the General Partner, the Lenders and BTC. Furthermore, the General Partner, who also must be independent of the Lenders and BTC, must receive from the Plan one of the following:

(1) a representation letter from the applicable fiduciary with respect to such Plan substantially identical to the representation letter submitted by the fiduciary of the Kodak Plan, in which case this proposed exemption, if granted, will apply to the investments made by such Plan if the conditions required herein are met; or

(2) evidence that such Plan is eligible for a class exemption<sup>24</sup> or has obtained

<sup>23</sup> In this regard, the Department is providing no opinion in this proposed exemption as to whether the investment in the LP by the GM Trusts meets all of the conditions required for relief under PTE 96-23.

<sup>24</sup> For example, in addition to the relief provided by PTE 96-23 noted above, PTE 84-14 (49 FR 9497, March 13, 1984) permits, under certain conditions, parties in interest to engage in various transactions with plans whose assets are managed by a "qualified professional asset manager" (QPAM) who is independent of the parties in interest (with

an individual exemption from the Department covering the potential prohibited transactions which are the subject of this proposed exemption.

11. BTC represents that the LP has obtained an opinion of counsel as of June 8, 1999 that the LP constitutes an "operating company" under the Department's plan asset regulations [see 29 CFR 2510.3-101(c)] and further states that the General Partner is required under the Agreement to use its best efforts to cause the LP to conduct its affairs so as to constitute an "operating company."<sup>25</sup>

12. BTC represents that the Estoppel constitutes a form of credit security which is customary among financing arrangements for real estate limited partnerships or limited liability companies, wherein the financing institutions do not obtain security interests in the real property assets of the partnership or limited liability companies. BTC also represents that the obligatory execution of the Estoppel by the Partners for the benefit of the Lenders was fully disclosed in the Private Placement Memorandum as a requisite condition of investment in the LP during the private placement of the partnership interests. BTC represents that the only direct relationship with respect to the LP between any of the Partners and any of the Lenders is the execution of the Estoppel. All other aspects of the transaction, including the negotiation of all terms of the Credit Facility, are exclusively between the Lenders and the LP. BTC represents that the proposed execution of the Estoppel will not affect the ability of the Kodak Trust to withdraw from investment and participation in the LP.<sup>26</sup> The only Plan

certain limited exceptions) and meets specified financial standards.

<sup>25</sup> The Department notes that the term "operating company" as used in the Department's plan asset regulation cited above includes an entity that is considered a "real estate operating company" as described therein (see 29 CFR 2510.3-101(e)). However, the Department expresses no opinion in this proposed exemption regarding whether the LP would be considered either an operating company or a real estate operating company under such regulations. In this regard, the Department notes that it is providing no relief for either internal transactions involving the operation of the LP or for transactions involving third parties other than the specific relief proposed herein. In addition, the Department encourages potential Plan investors and their independent fiduciaries to carefully examine all aspects of the LP's proposed real estate investment program in order to determine whether the requirements of the Department's regulations will be met.

<sup>26</sup> In this regard, the Department cautions Plan fiduciaries to fully understand all aspects of the Agreement, including the terms of the Estoppel, prior to making any capital commitments to the LP. The Department notes that section 404(a) of the Act requires, among other things, that a fiduciary of a

assets to be affected by the proposed transactions are any funds which must be contributed to the LP in accordance with requirements under the Agreement to make Contribution Calls to honor a Partner's Capital Commitments.

13. BTC represents that neither it nor any Lender acts or has acted in any fiduciary capacity with respect to the Kodak Trust's investment in the LP and that BTC is independent of and unrelated to the fiduciary responsible for authorizing and overseeing the Kodak Trust's investment in the LP (the Kodak Trust Fiduciary). The Kodak Trust Fiduciary is the Kodak Plan Committee. The Kodak Trust Fiduciary represents that its authorization of Kodak Trust investments in the LP was free of any influence, authority or control by the Lenders, including BTC. The Kodak Trust Fiduciary states that the Kodak Trust's investments in, and Capital Commitments to, the LP were made with the knowledge that each Partner would be required subsequently to grant a security interest in Contribution Calls and Capital Commitments to the Lenders and to honor unconditionally Contribution Calls made on behalf of the Lenders without recourse to any defenses against the General Partner. The Kodak Trust Fiduciary represents that it is independent of and unrelated to BTC and the Lenders and that the investment by the Kodak Trust for which the Kodak Trust Fiduciary is responsible continues to constitute a favorable investment for the Kodak Plan participating in the Kodak Trust. The Kodak Trust Fiduciary represents further that the execution of the Estoppel is in the best interests and protective of the participants and beneficiaries of the Kodak Plan.

In the event another Plan proposes to become a Partner, the applicant represents that it will require representations to be made by such Plan's independent fiduciary that are similar to those that have been made by the Kodak Trust Fiduciary on behalf of the Kodak Plan. In addition, any Plan proposing to become a Partner in the future and needing to avail itself of the exemption proposed herein will have assets of not less than \$100 million,<sup>27</sup> and not more than 5% of the assets of such Plan will be invested in the LP. As noted in paragraph 9 above, the Kodak Plan has total assets which exceed \$100

plan act prudently when making investment decisions for the plan.

<sup>27</sup> In the case of multiple plans maintained by a single employer or single controlled group of employers, the assets of which are invested on a commingled basis, (e.g., through a master trust), this \$100 million threshold will be applied to the aggregate assets of all such plans.

million and has committed amounts to the LP which are less than 5% of its total assets.

14. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (1) The Kodak Plan's investment in the LP was authorized and is overseen by the Kodak Trust Fiduciary, which is independent of the Lenders and BTC, and other Plan investments in the LP from other employee benefit plans subject to the Act will be authorized and monitored by independent Plan fiduciaries; (2) none of the Lenders (including BTC) had any influence, authority or control with respect to the Kodak Trust's investment in the LP or the Kodak Trust's execution of the Estoppel; (3) the Kodak Trust Fiduciary invested in the LP on behalf of the Kodak Plan with the knowledge that the Estoppel is required of all Partners investing in the LP, and all other Plan fiduciaries that invest their Plan's assets in the LP will be treated the same as other Partners are currently treated with regard to the Estoppel; (4) any Plan which has invested or may invest in the LP in the future, which needs to avail itself of the exemption proposed herein, has or will have assets of not less than \$100 million,<sup>28</sup> and not more than 5% of the assets of any such Plan are or will be invested in the LP; and (5) the General Partner of the LP is independent of BTC, the Lenders and the Plans.

**FOR FURTHER INFORMATION CONTACT:** Gary H. Lefkowitz of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

#### **Bay Internists, Inc. Profit Sharing Plan (the Plan)**

Located in Kilmarnock, Virginia  
[Application No. D-10847]

#### **Proposed Exemption**

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the Plan of certain unimproved real property (the Property) located in Kilmarnock, Virginia, to Bay-Med, a

<sup>28</sup> See footnote 4, *ibid*.

general partnership which is a party in interest with respect to the Plan, provided that the following conditions are satisfied:

- (a) the proposed sale is a one-time cash transaction;
- (b) the Plan receives the current fair market value for Property, as established at the time of the sale by an independent, qualified appraiser; and
- (c) the Plan pays no commissions or other expenses associated with the sale.

#### **Summary of Facts and Representations**

1. The Plan was established on April 30, 1980, and was amended and restated effective July 1, 1989. The Plan is a defined contribution plan. As of June 30, 1998, the Plan had 19 participants. As of June 30, 1999, the Plan had \$822,451 in total assets. Bay Internists Inc. (Bay) is the sponsor of the Plan. The Plan's trustees are Dr. Charles D. Price (Dr. Price) and Steven F. Glessner. Bay was established on July 10, 1978, and is a professional subchapter "C" State of Virginia medical corporation specializing in internal medicine.

Bay-Med was established on May 23, 1985, for the purpose of building and maintaining the building in which Bay now conducts its medical practice (the Bay Office). Bay-Med is a State of Virginia general partnership comprised of the physician-stockholders in Bay, the Plan sponsor. Four physician partners in Bay-Med have a 16.67% partnership share, and Dr. Price has a 33.32% partnership share in Bay-Med.

2. On May 2, 1986, the Plan purchased the Property from the Town of Kilmarnock, Virginia, an unrelated third party, for \$15,000 in cash. The Property is an approximately 1.5 acre parcel of unimproved real property located on DMV Drive in Kilmarnock, Virginia. The Property is adjacent to the Bay's corporate offices (*i.e.*, the Bay Office).<sup>29</sup> It is represented that the Plan trustees made the decision to purchase the Property as a investment for the Plan. The Plan trustees thought that the Property would be a good investment for the Plan because it could be developed in the future and would be marketable to third parties. At the time of purchase, the Property represented approximately 25% of the Plan's total assets. The applicant represents that as of June 30, 1998, the Property represented less than 6% of the total value of the Plan's assets.

3. The applicant represents that since it was originally acquired by the Plan,

<sup>29</sup> The Department is not providing any opinion in this proposed exemption as to whether the acquisition and holding of the Property by the Plan violated any of the provisions of Part 4 of Title I of the Act.

the Property has not been used or leased by anyone, including any parties in interest described herein. Since it was originally acquired by the Plan in 1986, the Property has not been an income-producing asset.

4. The Property was appraised on November 1, 1999 (the Appraisal). The Appraisal was prepared by Sandra Hargett (Ms. Hargett), who is an independent Virginia state certified appraiser. Ms. Hargett was assisted by George W. Yeatman (Mr. Yeatman, collectively; the Appraisers). Ms. Hargett and Mr. Yeatman are with Bay Appraisal Co., located at 111 N. Main Street in Kilmarnock, Virginia.

The Appraisers relied primarily on the market approach, with an analysis of recent sales of similar properties in the local geographic area, to value the Property. The Appraisers determined that the fair market value of the Property was \$48,000, as of November 1, 1999.<sup>30</sup> Because the Property is adjacent to the Bay Office, the Appraisers considered whether this adjacency factor merits a premium above the Property's fair market value for a sale of the Property to Bay-Med. In this regard, the Appraisers state that the Bay Office has vacant sites on each side. Further, due to the large amount of land available in the vicinity and because the Bay Office currently is very large, the Appraisers represent that there is no data which supports adding a premium to the fair market value of the Property because of the adjacency to the Bay Office.

5. The applicant proposes that Bay-Med purchase the Property from the Plan in a one-time cash transaction. The applicant represents that the proposed transaction would be in the best interest and protective of the Plan because the

<sup>30</sup> The Appraisers state that the Property is currently zoned for commercial use and the Appraisal is contingent on the Property meeting all relevant local, state and federal regulations for a suitable business site. The Appraisers also state that the valuation conclusions of the Appraisal are based on the highest and best use of the land.

Plan will pay no expenses or commissions associated with the sale.

Bay-Med will pay the Plan the current fair market value for the Property, as established by an independent qualified appraiser at the time of the transaction. The proposed sale of the Property to Bay-Med will increase the liquidity of the Plan's portfolio, will enable the trustees to diversify the assets of the Plan, and will enable the Plan to sell an illiquid, non-income producing asset. The applicant maintains that Bay-Med does not have any specific plans for the development or future sale of the Property at this time.

6. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The proposed sale will be a one-time cash transaction;

(b) the Plan will receive the current fair market value for each Property established at the time of the sale by an independent, qualified appraiser;

(c) the Plan will pay no expenses or commissions associated with the sale; and

(d) the sale will provide the Plan with liquidity and enable the Plan to reinvest the proceeds of the sale in financial instruments that will provide greater returns.

**FOR FURTHER INFORMATION CONTACT:**

Ekaterina A. Uzlyan of the Department at (202) 219-8883. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does

not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 8th day of March, 2000.

**Ivan Strasfeld,**

*Director of Exemption Determinations  
Pension and Welfare Benefits Administration,  
U.S. Department of Labor.*

[FR Doc. 00-6047 Filed 3-13-00; 8:45 am]

**BILLING CODE 4510-29-P**



# Federal Register

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**Tuesday,  
March 14, 2000**

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**Part III**

## **The President**

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**Notice of March 13, 2000—Continuation  
of Iran Emergency**



## Title 3—

Notice of March 13, 2000

## The President

## Continuation of Iran Emergency

On March 15, 1995, by Executive Order 12957, I declared a national emergency with respect to Iran pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the threat to the national security, foreign policy, and economy of the United States constituted by the actions and policies of the Government of Iran, including its support for international terrorism, efforts to undermine the Middle East peace process, and acquisition of weapons of mass destruction and the means to deliver them. On May 6, 1995, I issued Executive Order 12959 imposing more comprehensive sanctions to further respond to this threat, and on August 19, 1997, I issued Executive Order 13059 consolidating and clarifying these previous orders. The last notice of continuation was published in the **Federal Register** on March 12, 1999.

Because the actions and policies of the Government of Iran continue to threaten the national security, foreign policy, and economy of the United States, the national emergency declared on March 15, 1995, must continue in effect beyond March 15, 2000. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Iran. Because the emergency declared by Executive Order 12957 constitutes an emergency separate from that declared on November 14, 1979, by Executive Order 12170, this renewal is distinct from the emergency renewal of November 1999. This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,  
March 13, 2000.

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#### NUCLEAR REGULATORY COMMISSION

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Radioactive material packaging and transportation:

Nuclear waste shipment; advance notification to Native American Tribes; comments due by 3-22-00; published 12-21-99

Rulemaking proceedings:

Christie, Bob; comments due by 3-22-00; published 1-12-00

#### PERSONNEL MANAGEMENT OFFICE

Retirement:

Nuclear materials couriers under CSRS and FERS; eligibility; comments due by 3-20-00; published 1-18-00

#### TRANSPORTATION DEPARTMENT

##### Coast Guard

Regattas and marine parades, anchorage regulations, and ports and waterways safety:

OPSAIL 2000/International Naval Review 2000; regulated areas; comments due by 3-23-00; published 2-7-00

#### TRANSPORTATION DEPARTMENT

##### Federal Aviation Administration

Airworthiness directives:

Boeing; comments due by 3-20-00; published 2-2-00

Bombardier; comments due by 3-21-00; published 1-21-00

Eurocopter France; comments due by 3-20-00; published 1-20-00

Fokker; comments due by 3-20-00; published 2-17-00

Kaman Aerospace Corp.; comments due by 3-24-00; published 1-24-00

Class E airspace; comments due by 3-20-00; published 2-7-00

#### TRANSPORTATION DEPARTMENT

##### Federal Highway Administration

Engineering and traffic operations:

Uniform Traffic Control Devices Manual—

Tourist oriented directional signs, recreation and cultural interest signs, and traffic controls for bicycle facilities; comments due by 3-24-00; published 6-24-99

#### TRANSPORTATION DEPARTMENT

##### Research and Special Programs Administration

Hazardous materials:

Rulemaking and program procedures, etc.; Regulatory Flexibility Act and plain language reviews; comments due by 3-22-00; published 12-20-99

#### TREASURY DEPARTMENT Internal Revenue Service

Income taxes:

Construction aid contribution; definition;

comments due by 3-22-00; published 12-20-99

#### LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-523-6641. This list is also available online at <http://www.nara.gov/fedreg>.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available on the Internet from GPO Access at <http://www.access.gpo.gov/nara/index.html>. Some laws may not yet be available.

#### H.R. 1451/P.L. 106-173

Abraham Lincoln Bicentennial Commission Act (Feb. 25, 2000; 114 Stat. 14)

#### S. 632/P.L. 106-174

Poison Control Center Enhancement and Awareness Act (Feb. 25, 2000; 114 Stat. 18)

Last List February 23, 2000

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